

MULTILINGUALISM AND MULTICULTURALISM:
TRANSATLANTIC DISCOURSES ON
LANGUAGE, IDENTITY, AND
IMMIGRANT SCHOOLING

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INTRODUCTION

In September 2010, an eye-catching article appeared on the front page of the *New York Times* “Arts” section. The headline read, “Cultures United to Honor Separatism.”¹ Basque and Catalan nationalists, Sinn Fein leaders, and others were convening on the island of Corsica, not to chart out war strategies, as might have been expected, but rather to discuss cultural politics. As time would tell, pitched battles over sovereignty and independence seemed to be yielding to equally passionate calls for linguistic and cultural recognition.² Facing the pressure of English as the global *lingua franca*, historically militant groups were placing their political weight on maintaining, and in some cases, reviving their distinct languages and cultures.

To most readers, the article was an interesting novelty especially for a section devoted to the arts. On the surface, it presented concerns politically and geographically remote from those weighing on the minds of most New Yorkers, and most Americans. Yet for linguistic minorities and for those attuned to their lives, it resonated deeply.

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1 Michael Kimmelman, *Cultures United to Honor Separatism*, N.Y. TIMES, Nov. 14, 2010, at A1.

2 John F. Burns, *Separatists Halt Violence to Advance Basque Cause*, N.Y. TIMES, Oct. 20, 2011, at A4 (separatist group ETA declares that it will cease “military activity” and appeals to a “direct dialogue” with French and Spanish governments).

Most strikingly, a nationalist party leader underscored culture and language to be “the essence” of Corsican identity.³ While his heartfelt words evoked a truth often overlooked in public debates over European regional languages, they also rang true for immigrant languages on both sides of the Atlantic.

Of course, one can easily distinguish between immigrant and regional language speakers. The former presumably are engaged in a voluntary process; the latter seek to recapture or sustain a legacy involuntarily lost. In Europe the distinction is especially noted. Various European Commission and Council of Europe declarations have weighed upon national governments to afford regional languages greater accommodations,⁴ thereby giving those languages a degree of “cultural capital” not granted those spoken by immigrants.

This obvious slight should not be lightly dismissed. Children from immigrant families in Europe, no less than those in the United States, feel the push and pull of competing forces as they simultaneously struggle to maintain ties with their family and community while gaining social acceptance and economic status in the mainstream of society. Unlike prior waves of immigrants for whom leaving the homeland was a painstaking and clear break, for this growing number of students, culture and identity are decreasingly grounded in locality. Though advances in technology, including discounted air travel, satellite TV, the Internet, and other media, soften the edges around cultural differences, they just as affirmatively promote transnational lifestyles that transport those differences to new destinations and render them borderless.

Current controversies over multiculturalism and immigration have brought these realities to the political forefront. As immigrant groups, some more than others, maintain their language, cultural traditions, political affiliations, and economic ties to their home land, they lay bare notions of personal and national identity. The long-standing assumption, in countries like the United States and even more forcefully France, that immigrants should abandon their native language and culture and blend into the mainstream is now open to question. Transformed by migration, the mainstream increasingly defies definition. Meanwhile, countries like the Netherlands, and more affirmatively, Great Britain, which have promoted multicultural integration, now claim to assertively reject those policies in favor of assimilation. Cries of “Who are we?,” often tied to calls for more vigor-

3 See Kimmelman, *supra* note 1, at ARI.

4 See *infra* Part III.

ous immigration control, reverberate loudly across Western Europe and within certain corners of the United States.⁵

Together these developments pose particular challenges for state-operated schools where the connection between language and identity bears individual and national consequences. As agents of the state, schools are the primary vehicle for inculcating society's principles and values through a shared narrative. Nation-states have long joined schooling and a common language to create a sense of belonging and to maintain political stability. For countries like France and, later Italy, both factors were essential in crafting a unified nation out of disparate regions and dialects.⁶ The same can be said for the United States in shaping a relatively new nation from an ongoing influx of foreign-born.

Here lies the paradox on immigrant education especially for liberal democracies. Language is a mechanism for eliminating diversity as seen in the primacy of the official or national language. Yet it also can be a means for sustaining diversity to promote the public good. Preserving minority languages seems to run counter to the traditional socializing mission of public schooling. At the same time, from the standpoint of human rights, education programs that force children to relinquish the language of their families appear morally unjust and, as research suggests, pedagogically simplistic and developmentally unwise. Yet this is not simply a matter of personal interests. From the national perspective, such programs also fall short in meeting demands in the global economy for linguistic proficiency and cultural understanding.

In this Essay, I explore these interconnections as reference points for defining the right of linguistic minority children to a "meaningful" education. I look at language not only for its instrumental value as a tool of communication, but also for its intrinsic worth as a key component of culture and a distinctive marker of ethnic identity. I consider identity not only with regard to the individual student's need for family and community relationships, but also with a view toward the nation's interest in social cohesion. I focus on the extent to which these dual interests have weighed in the policy making balance on the federal level in the United States, and on the supranational level, in Western Europe where decision makers operate against a wider spectrum of concerns.

5 See SAMUEL P. HUNTINGTON, *WHO ARE WE?* (2004).

6 See, e.g., TULLIO DE MAURO, *STORIA LINGUISTICA DELL'ITALIA UNITA* 34–42 (1984); EUGEN WEBER, *PEASANTS INTO FRENCHMEN* 67–94 (1976).

To that end, I use contrasting discourses on multilingualism and multiculturalism in the United States and Western Europe as a framework for examining how history and politics have shaped attitudes and policies on immigrants and their languages and how the current political rhetoric at times defies reality and reason. I begin with the United States, where the argument for maintaining immigrant languages, predominantly Spanish, holds diminishing traction despite an unofficial “multiculturalism lite.” Here symbolic forms of ethnic diversity are widely embraced against a backdrop of common core values and tepid government support for linguistic diversity. By way of contrast, I describe the challenges faced by Western European nations where multilingualism (in certain languages) is officially promoted for European integration while multiculturalism, whether official or not, has come under broad attack. In that context, linguistic and cultural differences raise discrete points of controversy tied marginally to regional groups and primarily to the growing Muslim population and related fears of terrorism in a post-9/11 world.

In making the case for recognizing language as a constituent of culture, I examine research findings supporting the emotional and academic benefits that students derive when schools affirm their home language. In conclusion, I attempt to resolve the apparent conflicts and contradictions in transatlantic discourses on multilingualism and multiculturalism and suggest that schools on both sides of the Atlantic consider a range of policies and practices that recognize and respect the language of all linguistic minority students, and most specifically the children of immigrants.

I. BILINGUALISM AND AMERICAN AMBIVALENCE

In the United States, upward of 12 million, or twenty-three percent, of school-age children come from immigrant families.⁷ Contrary to popular belief, only about one-quarter of those 12 million are foreign-born.⁸ As of 2007, twenty-one percent of children between five and seventeen years spoke a language other than English at home.⁹

7 See *Children in Immigrant Families (Percent)—2010*, NATIONAL KIDS COUNT DATA CENTER, ANNIE E. CASEY FOUNDATION, <http://datacenter.kidscount.org/data/acrossstates/Rankings.aspx?loct=2&by=a&order=a&ind=115&dtm=446&tf=133> (last visited May 6, 2012).

8 See *Children of Immigrants Data Tool*, URBAN INSTITUTE, <http://datatool.urban.org/charts/datatool/pages.cfm> (last visited May 6, 2012).

9 See *Children that Speak a Language Other Than English at Home (Percent)—2007*, NATIONAL KIDS COUNT DATA CENTER, ANNIE E. CASEY FOUNDATION, <http://datacenter.kidscount.org/data/acrossstates/Rankings.aspx?loct=2&by=a&order=a&ind=81&dtm=397&tf=18> (last visited May 6, 2012).

About 5.3 million fell into the English learner category.¹⁰ Close to eighty percent spoke Spanish.¹¹ While these numbers are compelling, they are not remarkable for a country that prides itself on being predominantly, though not exclusively, a “nation of immigrants.”

The United States, nonetheless, has had a checkered history of educating immigrant offspring. The rich linguistic mosaic these students have formed has brought with it challenges and opportunities. Despite the popular assimilation narrative, language and culture have long been “contested terrain.”¹² And while English is the common language, it does not enjoy the constitutional or statutory status of an official language like French in France¹³ or Italian in Italy;¹⁴ it merely operates in that capacity *de facto*. The reason for this indecisiveness is unclear.¹⁵ In any case, there exists no official language policy but merely a series of ambivalent and somewhat inconsistent statutes, regulations, and guidelines. These pronouncements primarily address education, drawing on anti-discrimination principles grounded in race and national origin. In reality, they reflect the prevailing attitudes toward immigrants rather than overarching theories of teaching or learning.

Such legislative and administrative policies are joined together in a deep-seated discomfort with “difference” and an underlying fear of dismantling a mythical consensus on an idealized American identity. They speak in terms of “deficiencies” and “barriers” to learning. They focus on what linguistic minority students lack in English skills rather than on their potential for developing bilingual skills—a view of immigrant schooling as subtractive where it ought to be additive.

The most promising effort to reverse that mindset came in the adoption of Title VII of the Elementary and Secondary Education Act, commonly known as the Bilingual Education Act of 1968.¹⁶ Born out of the civil rights movement and the push toward equal educational opportunity, the initial impetus was to address low academic achieve-

10 See *Frequently Asked Questions*, NATIONAL CLEARINGHOUSE FOR ENGLISH LANGUAGE ACQUISITION, <http://www.ncela.gwu.edu/faqs/> (last visited May 6, 2012).

11 See *id.*

12 RONALD SCHMIDT, SR., *LANGUAGE POLICY & IDENTITY IN THE UNITED STATES* 191 (2000).

13 1958 CONST. art. 2 (Fr.).

14 *Italian Becomes Official Language . . . of Italy*, REUTERS (Mar. 30, 2007, 5:42 P.M.), <http://uk.reuters.com/article/2007/03/30/oukoe-uk-italy-language-idUKL3041879820070330>.

15 See DENNIS BARON, *THE ENGLISH-ONLY QUESTION* 41–50 (1990).

16 Bilingual Education Act of 1968, Pub. L. No. 90–247, §§ 702–703, 81 Stat. 783 (1968).

ment among Mexican-Americans students.¹⁷ The Act was historic. For the first time, federal law provided funds for school programs that utilized the child's home language and recognized the home culture.¹⁸ Yet it was weighted down with ambivalence among congressional lawmakers, raising more questions than it answered. It consequently set the stage for unending disagreements over whether instruction through the home language for what we now call "English learners" (ELs) advances or impedes academic achievement and social assimilation.

Fanning the flames of discontent were a persistent Latino-white achievement gap and growing anti-immigrant sentiments. Together they gradually ignited a backlash against bilingual instruction in favor of "structured English immersion" (SEI), an approach using modified language and instructional materials in an English-only setting. The move toward SEI reached a critical juncture in 2001. At that time, Congress completely removed all bilingual terminology and emphasis from Title VII when it converted and folded the Bilingual Education Act into Title III of the No Child Left Behind Act (NCLB).¹⁹

Both Title VII and the NCLB were federal funding statutes. Neither guaranteed a legal right to bilingual education or any other method. The most forceful statement of rights, and the one that bilingual advocates continue to invoke, came from the U.S. Supreme Court in its 1974 decision in *Lau v. Nichols*.²⁰ Widely hailed as the symbolic touchstone for language rights to schooling, the case was brought on behalf of Chinese speaking students in the San Francisco public schools. Setting aside the constitutional claim under the Fourteenth Amendment equal protection clause,²¹ the Court relied instead on Title VI of the Civil Rights Act of 1964 to rule in favor of the plaintiffs.²² In a unanimous opinion, the Justices made clear that merely providing "students who do not understand English" with "the same facilities, textbooks, teachers, and curriculum" as other students, "effectively foreclose[s] [them] from any meaningful education. . . ."

17 See *Bilingual Education Programs: Hearing on H.R. 9840 and H.R. 10224 Before the Subcomm. on Educ. of the H. Comm. on Educ. & Labor*, 90th Cong. 90-99 (1967) (statement of Rep. Augustus F. Hawkins).

18 See Bilingual Education Act of 1968, *supra* note 16, at §§ 702-703.

19 See English Language Acquisition, Language Enhancement, and Academic Achievement Act, Pub. L. No. 107-110, §§ 3001-3141, 115 Stat. 1690 (2002) (codified as amended in scattered sections of 20 U.S.C.).

20 414 U.S. 563 (1974) (striking down the program as a violation of Title VI of the Civil Rights Act of 1964).

21 U.S. CONST. amend. XIV, § 2.

22 Civil Rights Act of 1964, Pub. L. No. 88-352, §§ 601-602, 78 Stat. 252, 252-53 (1964) (codified in scattered sections of 20 U.S.C.).

[T]hose who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful.”²³

The Court drew its *constructive* or *functional* exclusion rationale from the appellate court’s dissenting opinion. As Judge Shirley Hufstedler, who would later become the first Secretary of Education, graphically had explained, these children were “completely foreclosed” from educational access because they could not “comprehend any of it.”²⁴ They were “functionally deaf and mute,” and “[even] more isolated from equal educational opportunity” than the children subjected to physical segregation in *Brown v. Board of Education*.²⁵

Following that reasoning, the Justices in *Lau* specifically relied on 1970 guidelines issued by the Department of Health, Education, and Welfare pursuant to Title VI.²⁶ The guidelines called for “effective participation” for students and for school districts to take “affirmative steps” in that direction.²⁷ Yet the Justices understood the constrained federal role in education and the limits of judicial expertise. They also were sensitive to the cultural implications of bilingual education. And so they did not mandate education in the student’s home language,²⁸ much to the dismay of bilingual advocates. Instruction in English or Chinese or other approaches would suffice so long as it was something different from what the district was offering mainstream students.²⁹ The holding, though undeniably vague, was legally significant. Equality did not merely demand same treatment as understood in *Brown*, but it also could mean different treatment where the differences were real and not socially constructed.

Congress codified that broader sense of equality in the Equal Educational Opportunities Act of 1974 (EEOA).³⁰ Though essentially an anti-busing measure, one small provision in the Act required states to take “appropriate action to overcome language barriers” that “impede” students from “equal participation in the instructional program.”³¹ In 1991, the Office for Civil Rights clarified that mandate.

23 *Lau*, 414 U.S. at 566.

24 Order Denying Request for En Banc Consideration, *Lau v. Nichols*, 483 F. 2d 791, 805–806 (9th Cir. 1973) (Hufstedler, J., dissenting).

25 347 U.S. 483 (1954).

26 *Lau*, 414 U.S. at 566–567.

27 See Identification of Discrimination and Denial of Services on the Basis of National Origin, 35 Fed. Reg. 11,595 (July 18, 1970).

28 See *Lau*, 414 U.S. 563.

29 *Id.* at 565.

30 Equal Educational Opportunities Act of 1974, Pub. L. No. 93-380, 88 Stat. 514 (1974) (codified as amended in scattered sections of 20 U.S.C.).

31 20 U.S.C. § 1703 (2006).

In doing so, it took a three-part standard initially laid down by the Fifth Circuit Court of Appeals in *Castaneda v. Picard*,³² and applied it to enforcement under both the EEOA and Title VI. First, the program must be informed by an educational theory that at least some experts recognize as sound or that seems to be “a legitimate experimental strategy.”³³ Second, it must be reasonably designed to effectively implement the educational theory by providing the “practices, resources and personnel necessary to transform the theory into reality.”³⁴ And third, it must produce positive results in overcoming language barriers after a trial period.³⁵ While English learners thus have neither a constitutional nor statutory right to dual language instruction, the EEOA affords them the right to an education that effectively develops English proficiency and maintains academic progress in the content areas. That is the standard as it now stands.

The Obama Administration, following the lead of Congress and the Court, has remained neutral on instructional methods. Nonetheless, the Department of Justice has stated that enforcing the EEOA is a “top priority,” and that, “[a]ll English Language Learner students have the right to *appropriate* language support until they achieve English proficiency.”³⁶ The Department has maintained the position that “districts must provide educationally sound ELL programs that are *adequately* resourced and that enable students to achieve English proficiency so that they can *meaningfully* participate in educational programs.”³⁷ Both the Justice Department and the Office for Civil Rights have applied that standard vigorously in recent enforcement actions against school districts nationwide. These investigations have focused largely on procedural matters although in some cases the ultimate remedy agreed upon has affected the substance of the education

32 648 F.2d 989 (5th Cir. 1981).

33 *Id.* at 1009.

34 *Id.* at 1010.

35 *See id.*; *see also* Memorandum from Michael L. Williams, Assistant Secretary for Civil Rights, to OCR Senior Staff, Policy Update on Schools’ Obligations toward National Origin Minority Students with Limited-English Proficiency (LEP Students) (Sept. 27, 1991).

36 Press Release, Department of Justice Office of Public Affairs, Justice Department Announces Changes in Illinois Rule Concerning English Language Learner Students (July 13, 2010), *available at* www.justice.gov/opa/pr/2010/July/10-crt-800.html (emphasis added).

37 Mary Ann Zehr, *The Justice Department Provides Stats on ELL Investigations*, EDUC. WEEK (July 28, 2010, 9:30 A.M.), http://blogs.edweek.org/-edweek/learning-the-language/2010/07/statistics_from_the_justice_de.html (statement of Xochiti Hinojosa, spokeswoman, U.S. Department of Justice) (emphases added).

provided.³⁸ Yet again, nowhere does the DOJ policy statement expressly refer to bilingual or dual language instruction. And like the Supreme Court's decision in *Lau v. Nichols*, it makes no mention of identity, whether individual or national, nor its connection to language.

Federal policies in other ways have proven less neutral and in fact have undermined efforts to promote bilingualism in both immigrant and native English speaking students. The No Child Left Behind Act³⁹ as well as Obama Administration initiatives like *Race to the Top*⁴⁰ have created incentives, in the form of rigid English testing and accountability standards, for school districts to set aside dual language approaches and move students quickly and exclusively toward proficiency in English.⁴¹ At the same time, though there is much talk in Washington on the foreign language "deficit," the federal emphasis on reading and math has diverted resources from enrichment programs including foreign languages, which are not covered in federal accountability measures.⁴² Fearful of losing much-needed education funds in an era of declining state and local resources, school districts have increasingly focused the school curriculum on what matters to federal officials. What makes the situation especially troubling is that other parts of the world and especially Western European countries are moving towards not merely bilingualism, but multilingualism.

II. MULTILINGUALISM AND EUROPEAN IDENTITY

While questions of unbridled immigration and enduring ties to "melting pot" assimilation color the politics of language, identity, and schooling in the United States, the European landscape is even more textured and contentious. A long history of internal conflicts and competing interests shape the European narrative and resulting education policies in more profound ways. Widespread concerns over immigration's effects on national identity, pressure from the European Union to establish an integrated European identity, and

38 See Rosemary C. Salomone, *Educating English Learners: Reconciling Bilingualism and Accountability*, 6 HARV. L. POL'Y REV. 115, 133–35 (2012) (noting settlement agreements reached with the states of Arizona and Massachusetts Departments of Education and the Boston, Los Angeles, and Durham, North Carolina school districts).

39 See English Language Acquisition Act, *supra* note 19, at § 1111.

40 U.S. DEP'T OF EDUC., RACE TO THE TOP PROGRAM: EXECUTIVE SUMMARY (2009), available at <http://www2.ed.gov/programs/racetothetop/executive-summary.pdf>.

41 See Rosemary C. Salomone, *Does NCLB Promote Monolingualism?*, EDUC. WK., Mar. 17, 2010, at 32.

42 See Rosemary C. Salomone, *The Foreign Language Deficit: A Problem in Search of an Obvious Solution*, TEACHERS COL. REC., Jan. 28, 2011, available at <http://tcrecord.org>.

demands from regional and national groups for affirmative language policies all weigh heavily on European policymakers and educators. Meanwhile, the business community and Europeans themselves press for English skills to maintain a competitive edge in the global economy.⁴³ The state of affairs is further confounded with other political and historical factors. Chief among these are past threats that language minorities presented in the formation of European nation-states, colonialism and its lingering economic and social consequences, repeated shifts in national boundaries in the aftermath of wars, and variously motivated modern-day policies promoting multiculturalism, as in Great Britain or, in the least tolerating it, as in the Netherlands.⁴⁴

Just as advocates for linguistic minorities in the United States bootstrapped onto the civil rights movement in the 1960s to promote legislation at the federal level, advocates in Europe have drawn on post-World War II concerns for human rights to push for language and cultural recognition within supranational institutions. In response to those demands, governments in the 1990s officially recognized certain linguistic minorities in part as a matter of political strategy. The individual human right to language was simply less threatening and therefore more politically acceptable than collective claims to self-determination or group entitlements.⁴⁵

To best understand the specific policies that emerged from that approach, however, we must examine the general discourse on language and identity in Europe. That discourse has taken a decidedly different turn from that in the United States or from the way human rights advocates hoped it would evolve. With the exception of several nods to regional or national languages, various supranational institutions have framed the language narrative not in terms of bilingualism to preserve individual or group identity, but rather in terms of multilingualism as a matter of expediency to promote European identity, social cohesion, and economic prosperity. The European Commission, the European Parliament, the forty-one-member Council of Europe, UNESCO (the United Nations Educational, Scientific, and Cultural Organization), and OSCE (the Organization for Security and Cooperation in Europe) in recent years have repeatedly affirmed mul-

43 See EUROPEAN COMMISSION, DIRECTORATE-GENERAL FOR EDUCATION AND CULTURE, LANGUAGES MEAN BUSINESS: COMPANIES WORK BETTER WITH LANGUAGES 11 (2007).

44 See TARIQ MODOOD, MULTICULTURALISM 10–14 (2007).

45 See Lisane Wilken, *The Development of Minority Rights in Europe*, in THE TENSION BETWEEN GROUP RIGHTS AND HUMAN RIGHTS 89, 101–102 (Koen De Feyter & George Pavlakos eds., 2008).

tilingualism with vague hints toward linguistic diversity. The focus has been on national languages of Europe in the interests of globalism and European integration and not on languages like Chinese, Arabic, and Turkish, spoken by immigrants outside the Western European orbit.

The European Union now recognizes twenty-three official languages among its twenty-seven members.⁴⁶ In addition, spread throughout the member states are sixty regional or minority languages and more than 175 migrant languages.⁴⁷ As a 2008 “communication” entitled *Multilingualism: An Asset for Europe and a Shared Commitment* noted, such diversity is a “source of benefits and richness.”⁴⁸ But if not managed properly, the document warned, it could “increase social divisions,” allowing those who are multilingual better “living and working opportunities” while precluding those who lack those skills from taking full advantage of the single market.⁴⁹

Support for language learning and individual multilingualism has been a cornerstone of E.U. education policy dating from the Maastricht Treaty of 1992.⁵⁰ Since that time, in document after document, the European Commission has endorsed teaching at least two foreign languages beginning in the early grades.⁵¹ A more recent 2007 report of the Commission of the European Communities’ High Level Group on Multilingualism affirmed the goal for every citizen to develop “practical skills” in at least two languages beyond the mother tongue.⁵² The report not only recognized the career and cognitive benefits in multilingualism, but in a faint bow to immigrant lan-

46 EUROPEAN COMMISSION, *SPEAKING FOR EUROPE: LANGUAGES IN THE EUROPEAN UNION* 4 (2008), available at <http://www.google.com/url?sa=t&crct=j&q=&esrc=&source=web&cd=5&ved=0CEEQFjAE&url=http%3A%2F%2Fec.europa.eu%2Fpublications%2Fbooklets%2Fmove%2F74%2Fen.doc&ei=MY9KT4iHIIj50gHgyPSdDg&usq=AFQjCNG0qDkOgllNRaBmub7vdxBubvLLtw>.

47 See COMMUNION FROM THE COMM. OF THE EUROPEAN CMTYS. TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECON. & SOC. COMM. & THE COMM. OF THE REGIONS, *MULTILINGUALISM: AN ASSET FOR EUROPE AND A SHARED COMMITMENT* 4 (Sept. 18, 2008).

48 See *id.* at 5.

49 *Id.*

50 The Maastricht Treaty: Provisions Amending the Treaty Establishing the European Economic Community with a View to Establishing the European Community (Feb. 7, 1992), available at www.eurotreaties.com/maastrichtec.pdf.

51 See, e.g., *supra* notes 46–47 (and accompanying text).

52 See COMMISSION OF THE EUROPEAN COMMUNITIES, *HIGH LEVEL GROUP ON MULTILINGUALISM, FINAL REPORT* (2007).

guages, it also noted the economic and intercultural benefits of heritage language literacy for second- and third- generation immigrants.⁵³

In 2008, then E.U. Commissioner Leonard Orban definitively placed multilingualism in the “genetic code of the European project,” calling it “not just the ethos, but [a] concept and philosophy as well.”⁵⁴ The Commission plans to publish in 2012 the findings from a survey evaluating the proficiency of European schoolchildren in two foreign languages by the end of lower secondary education. The majority of European education systems have established that goal.⁵⁵ In most European countries, mandatory foreign language instruction now begins in primary school. In France it begins at age seven and in Spain as early as age three in some localities.⁵⁶

These directives and policy initiatives, while seemingly ambitious, are limited in their purposes and scope. Pragmatically emphasizing multilingualism to support the global economy and European integration, they make scarce reference to the human element, more specifically the connection between language and individual identity and the personal benefits in preserving one’s home language. As one European Commissioner, a parent of students at the European School in Brussels, wisely observed: “‘Diversity of language skills for young children is great’ but . . . ‘Which language is your mother tongue? . . . Which one is in your heart?’”⁵⁷

These pronouncements talk of multilingualism but not linguistic diversity. While individual proficiency in multiple languages is viewed as promoting the ends of an integrated Europe, societal multilingualism evokes associations with threats to social solidarity and, even worse, with multiculturalism, a now maligned concept. A 2008 report prepared for the European Parliament teased out the conflicting agendas as follows: Multilingualism is influenced by “harder” priorities like “economic competitiveness and [labor] market mobility;” linguistic diversity is concerned with “softer” issues like “inclusion and

53 See *id.* at 9–10.

54 Orban: *Multilingualism ‘Cost of Democracy’ in EU*, EURACTIV.COM (Nov. 12, 2008), <http://www.euractiv.com/culture/orban-multilingualism-cost-democracy-eu/article-177107>.

55 NATHALIE BAIDAK & THEODORA PARVERA, *KEY DATA ON TEACHING LANGUAGES AT SCHOOL IN EUROPE* 31 (2008).

56 See *id.* at 39.

57 *No Extra EU Cash for Languages ‘Until 2013,’* EURACTIV.COM (Sept. 19, 2008), <http://www.euractiv.com/culture/extra-eu-cash-languages-2013/article-175525>.

human rights.”⁵⁸ As the report concluded, when measured by concrete actions, multilingualism has prevailed.⁵⁹

The popular view among Europeans is for children to learn one or two additional “prestige” languages for pragmatic economic and political reasons and not to create a multilingual society. That being said, the rapid spread of English could inadvertently produce that exact result.⁶⁰ By 2008, over ninety percent of European schoolchildren were learning English.⁶¹ The percentage in Germany had reached ninety-six percent among secondary school students, and in France, 97.5%. In at least thirteen E.U. countries, including Germany, Italy, Greece, and the Netherlands, the first mandatory second language was English.⁶²

For at least some Europeans, this is troubling news. Those who view the multilingual project as a bulwark against the onrush of English fear that the widespread use of English could actually dilute the importance of Europe’s national languages.⁶³ According to the *Charte Européenne du Plurilinguisme*, endorsed by policy makers, researchers, and members of civil society, “there cannot be a single language in Europe.”⁶⁴ Europeans must “refus[e] to think and work through the use of the languages of present or future superpowers.”⁶⁵ To do otherwise is bad for both national and European identity.⁶⁶ The Council of Europe subsequently tied that position to schooling, cautioning that while English has a place in the language curriculum, it is “far from sufficient to meet society’s language needs.”⁶⁷

Of far less concern are the rights of speakers of immigrant languages. In fact, in view of the role that migration now plays in Euro-

58 MENEN NETWORK EEIG, MULTILINGUALISM: BETWEEN POLICY OBJECTIVES AND IMPLEMENTATION iii (2008).

59 See *id.* at iii–iv.

60 BRITTA SCHNEIDER, LINGUISTIC HUMAN RIGHTS AND MIGRANT LANGUAGES 33 (2005).

61 Emily Thompson, *Teachers Split on Compulsory English*, THE PRAGUE POST (Aug. 31, 2011), <http://praguepost.com/education/10008-teachers-split-on-compulsory-english.html>.

62 BAIDAK & PARVERA, *supra* note 55, at 35–36, fig. B4.

63 ROSEMARY C. SALOMONE, TRUE AMERICAN 210 (2010).

64 Plurilinguisme et Identités Européennes, in CHARTE EUROPÉENNE DU PLURILINGUALISME 4, OBSERVATOIRE EUROPÉENNE DU PLURILINGUALISME (2005), available at http://plurilinguisme.europe-avenir.com/images/Fondamentaux/charteplurilinguisme_itv2.13.pdf.

65 *Id.*

66 *Id.*

67 COUNCIL OF EUROPE, LANGUAGE POLICY DIVISION, PLURILINGUAL AND INTERCULTURAL EDUCATION AS A PROJECT 12 (2009).

pean policy discussions, the inevitable question is whether immigrant and other minority languages carry any weight in the drive toward multilingualism. Here is where the struggle for language as a right to cultural identity has largely failed on one discernible count. Though a number of European nations have officially recognized regional/territorial languages in varying degrees, immigrant languages have not garnered the same recognition. On the national level, for example, Basque and Catalan in Spain and Sardinian in Italy benefit from national policies that grant them a measure of recognition for school instruction. No similar accommodations are afforded immigrant groups.

Part of the impetus for recognizing regional languages comes from European institutions, primarily from the European Commission and the Council of Europe, both of which have issued statements endorsing linguistic and cultural rights for regional group members. Article 8 of the *European Charter for Regional or Minority Languages*, opened for signature in 1992 and ratified by twenty-four member states within the Council of Europe, promotes and protects the historical regional or minority languages of Europe, from preschool to adult education but excludes the languages of migrants.⁶⁸ That explicit exclusion has provoked wide criticism for running counter to the notion of equal human rights.⁶⁹ In a similar way, Article 14 of the Council's *Framework Convention for the Protection of National Minorities*, opened in 1995 and signed by thirty-five states (fifteen of them E.U. members), grants "every person belonging to a national minority" the right to "learn his or her minority language," but it does not cover immigrant languages as conventionally defined.⁷⁰

Documents that afford immigrant rights are so vague and thin on enforcement that advocates suggest it would be "decisive" for monitoring committees to interpret them progressively. Yet interpretations have been inconsistent and contradictory, just adding to the confusion.⁷¹ The documents further contain "push back clauses" that weaken the obligation to comply. Article 15 of the *European Conven-*

68 See EUROPEAN CHARTER FOR REGIONAL OR MINORITIES LANGUAGES art. 8 (1992).

69 GUUS EXTRA & KUTLAY YAGMUR, URBAN MULTILINGUALISM IN EUROPE 90 (2004); Fernand de Varennes, *Lesser Used Languages and the Law in Europe*, 3 INT'L J. ON MULTICULTURAL SOC'YS 22 (2001).

70 FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES art. 14 (1995).

71 Tove Skutnabb-Kangas, *The Right to Mother Tongue Medium Education—The Hot Potato in Human Rights Instruments* 6, Plenary Address presented at II Simposi Internacional Mercator: Europe 2004: Un Nou Marc per a Totes Les Llengües? (Feb. 27–28, 2004) (Tarragon-Catalunya, Spain).

tion on the Legal Status of Migrant Workers, opened for signature in 1977, is a clear case on point. It grants children of parents who migrated to the host country as guest workers from one of the official sending countries the right to “special courses” for teaching the mother tongue, but only as “so far as practicable” and to “facilitate, *inter alia*, their return to their State of origin.”⁷²

The European Commission’s 1977 Directive on the children of migrant workers likewise obliges “Member States . . . in cooperation with States of origin . . . [and] in coordination with normal education,” to promote “teaching of the mother tongue and culture of the country of origin.”⁷³ The meaning of “promote” obviously lends itself to diverse definitions. Moreover, like the *European Convention*, the Directive was adopted at a time when host countries like Germany and the Netherlands mistakenly believed that “guest workers,” invited during the post–World War II industrial boom, would return to their home countries within several years. Subsequent developments to the contrary have dampened interest in enforcing the Directive. A European Parliament “resolution” from 2009 more broadly addresses the education rights of immigrant children in the context of today’s Europe.⁷⁴ But again it merely calls for “promot[ing] [the] native languages and cultures” of “children of legal migrants”⁷⁵ and leaves the “place” and “organization” of mother tongue teaching in the curriculum to the Member States.⁷⁶ Moreover, as a mere resolution, it has no legally binding force.

The United Nations Convention on the Rights of the Child, adopted in 1989 and signed by every country with the exception of the United States and Somalia, provides similarly ineffective “rights.” Article 8 respects the child’s right to “his or her identity.”⁷⁷ Article 29 talks of developing “respect for the child’s . . . own cultural identity, language and values” through education.⁷⁸ Article 30 grants the ethnic and linguistic minority child the right to “enjoy his or her own culture” and to “use his or her own language.”⁷⁹ All of these imply

72 EUROPEAN CONVENTION ON THE LEGAL STATUS OF MIGRANT WORKERS art. 15 (1977).

73 EUROPEAN COMMISSION, COUNCIL DIRECTIVE 77/486/EEC OF 25 JULY 1977 ON THE EDUCATION OF THE CHILDREN OF MIGRANT WORKERS (July 1977).

74 See Resolution, European Parliament, *Educating the Children of Migrants* cl. K8 (Apr. 2, 2009).

75 *Id.* at cl. K8.

76 *Id.* at cl. K10.

77 See U.N. CONVENTION ON THE RIGHTS OF THE CHILD art. 8 (Nov. 20, 1989).

78 *Id.* at art. 29.

79 *Id.* at art. 30.

negative rights, freeing the child from government interference. They place no affirmative obligation upon the state to develop the child's home language or culture. The vagueness in the language seems more hortatory than action- or result-oriented.

In contrast to the European Commission, the Council of Europe typically uses the term *plurilingualism* in lieu of *multilingualism*. It draws a distinction between *plurilingual individuals*, who are able to communicate in more than one language no matter the level of proficiency, and *multilingual regions or societies*, where two or more languages are used, what the European Commission would call *linguistic diversity*. The Council's *Common European Framework of Reference for Languages* supports language education that promotes plurilingual and intercultural competence.⁸⁰ To that end, the Council's guide to the development of language education policies notes that plurilingualism is a "prerequisite for maintaining linguistic diversity" and that policies that aim to promote it "provide a more concrete basis for democratic citizenship in Europe."⁸¹ Plurilingual competence not only "ensures communication," but "above all, [it] results in respect for each language."⁸² Though the Council here makes no explicit reference to immigrant languages, the European Commission has recognized the role such languages, in the least, might play in promoting intercultural dialogue. The 2008 European Commission "communication," for example, notes that students with "different mother tongues" can "motivate their classmates to learn different languages and open up to other cultures."⁸³

Any references in European official documents to mother tongue instruction are mildly suggestive and lacking in detail, denoting a sense of ambivalence or even avoidance. The most affirmative support for immigrant languages in the schools has come more recently from the Language Policy Division of the Council of Europe. A 2009 concept paper tentatively proposes that states could (not "should") develop "migration languages . . . as language resources" through "varied, plural and partial approaches,"⁸⁴ as a "subject" or as "part of

80 COUNCIL OF EUROPE, COMMON EUROPEAN FRAMEWORK OF REFERENCE FOR LANGUAGES 168 (2001), available at http://www.coe.int/t/dg4/linguistic/cadre_en.asp.

81 COUNCIL OF EUROPE, FROM LINGUISTIC DIVERSITY TO PLURILINGUAL EDUCATION: GUIDE FOR THE DEVELOPMENT OF LANGUAGE EDUCATION POLICIES IN EUROPE 10 (2007), available at http://www.coe.int/t/dg4/linguistic/Guide_niveau2_en.asp.

82 See *id.*

83 See COMMISSION OF THE EUROPEAN COMMUNITIES, MULTILINGUALISM: AN ASSET FOR EUROPE AND A SHARED COMMITMENT (2008).

84 MARISA CAVALLI ET AL., COUNCIL OF EUROPE, PLURILINGUAL AND INTERCULTURAL EDUCATION AS A PROJECT 13 (2009).

heritage or language maintenance programmes designed to help maintain cultural and linguistic identity and broaden learners' communicative reach."⁸⁵

A Language Policy Division paper from the following year is noticeably more forceful and direct. Prepared for a forum composed of prominent language advocates and presumably endorsed by them, the paper recommends fostering "the home language skills of children and adolescents from migrant backgrounds . . . by whatever means are practically available, partly as a matter of human rights and partly in order to increase society's linguistic and cultural capital."⁸⁶ The paper goes on to recognize the use of the home language at school to affirm the child's identity and to overcome the stigma attached to belonging to a group considered "linguistically inferior."⁸⁷

These policy papers admittedly carry no force of law. Nonetheless, following the European Parliament's 2009 "resolution" on *Educating the Children of Migrants*,⁸⁸ they suggest a more positive shift in European thinking (at least among high level officials) on the role of language in the life of the immigrant child. How effectively this viewpoint filters down to the level of individual nation-states remains to be seen, though the prognosis is not especially positive in view of rising opposition to immigration.

Surveying the current landscape, across Western Europe, national guidelines and directives promoting immigrant languages in the schools, in fact, are rare and outdated. Where nations have done so, they typically have viewed them as a means to facilitate return to the home country and not to support communication and identity formation for students in their lives as now lived. Policies and laws often refer to the children of immigrants in exclusionary terms as "foreigners" (*étrangers, Ausländer*). They reject immigrant languages as

85 EIKE THÜRMAN ET AL., COUNCIL OF EUROPE, LANGUAGE(S) OF SCHOOLING: FOCUSING ON VULNERABLE LEARNERS 15 (2010), available at http://www.coe.int/t/dg4/linguistic/source/source2010_forumgenova/2vulnerlearnesthurm_EN.pdf.

86 DAVID LITTLE, COUNCIL OF EUROPE, THE LINGUISTIC AND EDUCATIONAL INTEGRATION OF CHILDREN AND ADOLESCENTS FROM MIGRANT BACKGROUNDS 16 (2010).

87 See *id.* ("[T]he threat of being judged and found wanting based on negative stereotypes related to one's social category membership, can seriously undercut the achievement of immigrant and minority students." (citing Janet Ward Schofield & Ralph Bangs, *Conclusions and Further Perspectives, in* MIGRATION BACKGROUND, MINORITY-GROUP MEMBERSHIP AND ACADEMIC ACHIEVEMENT FROM SOCIAL, EDUCATIONAL AND DEVELOPMENTAL PSYCHOLOGY, 5 AKI RESEARCH REV. 93 (Janet Ward Schofield, ed. 2006))).

88 EUROPEAN PARLIAMENT, EDUCATING THE CHILDREN OF MIGRANTS (2009), available at <http://www.euoparl.europa.eu/sides/getDoc.do?pubref=-//EP//NONSGML+TA+P6-TA-2009-0202+0+DOC+PDF+V0//EN>.

barriers to integration. They refer to them as “nonterritorial,” “non-regional,” and “nonautochthonous.”⁸⁹ For most children who speak an immigrant language at home, multilingualism means learning the official language of the host country and English, the latter to compete in the global economy. Yet the very fact that their home language is nearly invisible and invalidated in the school makes students internalize this negativity into their sense of self, promoting low academic achievement and social alienation widely observed among certain groups of immigrant students.

III. A MEANINGFUL EDUCATION

That takes the discussion back to a “meaningful” education and the U.S. Supreme Court’s decision in *Lau v. Nichols*. In using the term “meaningful” to support an “effective” education, the Court was looking to language as a vehicle of communication, acknowledging the irrefutable fact that education is useless if students cannot understand the language of instruction.⁹⁰ But English proficiency is only one piece of the education puzzle for immigrant offspring. Education must also be meaningful on a psychological and emotional level for it to be effective. For some and perhaps many students, maintaining ties to family and community through language is essential to academic success. On that point, studies from the United States, where the immigrant language question has gained particularly intense scholarly attention, prove useful in examining and proposing education policies.

The dominant “deficit” model on both sides of the Atlantic maintains that cultural ties, including language, unequivocally impede the educational and social mobility of linguistic minority children. Yet research findings increasingly suggest the opposite. Primary attachments to family play a pivotal role in the process of children defining themselves. Through language children learn the cultural beliefs and practices of parents and community, in essence what they value. Relinquishing the home language, with all its personal associations, forces a rupture in those fundamental ties, pushing the child into a state of cultural confusion and isolation. Historically, schools and the larger society have forced immigrant children to make a painful choice. Either they adopt the language and customs of the school and risk absorbing negative feelings about themselves and their commu-

89 See EXTRA & YAGMUR, *supra* note 69, at 17–18.

90 *Lau v. Nichols*, 414 U.S. 563, 566 (1974).

nity, or they resist and risk becoming alienated from their peers.⁹¹ Either way, they lose.⁹²

Commentators from the old immigration to the new have chronicled the price that schooling and its comprehensive assimilation exact from immigrant families. Back in the 1930s, prominent educator Leonard Covello, recalling his own school days in New York City, noted that absent any recognition afforded the home language and culture, “We were becoming Americans by learning how to be ashamed of our parents.”⁹³ For Covello and immigrants of his generation, not just language but “[a]ll the habits, rituals, and other expressions that gave meaning and value to their being, and the accepted roles of family members, lay open to challenge, rejection, and inversion.”⁹⁴

In more recent times, Carola and Marcelo Suárez-Orozco have described how in losing competency in the home language, children “lose much of the sustenance that the culture of origin provides.”⁹⁵ Even as children from immigrant families build bridges to their new country, they warn, it is essential that they continue “bonding with, talking to, and respecting their parents.”⁹⁶ Yet in switching back and forth between languages, with children increasingly responding to parents in the language of school instruction, it is not uncommon for each to completely miss the other’s “intent.” Beyond basic everyday conversation, subtleties often get lost, resulting in arguments and family tension.⁹⁷ As Lily Wong-Fillmore stirringly tells us:

When parents are unable to talk to their children, they cannot easily convey to them their values, beliefs, understandings, or wisdom about how to cope with their experiences . . . or what it means to be a moral or ethical person in a world with too many choices and too few guideposts to follow.⁹⁸

In discussions with my own law students from immigrant backgrounds, I have heard similar stories and regrets. Many admit to having felt distant from their parents and ashamed of their ethnicity. They recall that only as young adults did they begin to appreciate the

91 See SALOMONE, *supra* note 63, at 85.

92 See *id.*

93 LEONARD COVELLO, *THE HEART IS THE TEACHER* 44 (1958).

94 SALOMONE, *supra* note 63, at 84.

95 CAROLA SUÁREZ-OROZCO & MARCELO M. SUÁREZ-OROZCO, *CHILDREN OF IMMIGRATION* 106 (2001).

96 CAROLA SUÁREZ-OROZCO & MARCELO M. SUÁREZ-OROZCO, *LEARNING A NEW LAND* 372 (2008).

97 See SUÁREZ-OROZCO & SUÁREZ-OROZCO, *supra* note 95, at 106.

98 Lily Wong Fillmore, *When Learning a Second Language Means Losing the First*, 6 *EARLY CHILDHOOD RESEARCH Q.* 343 (1991).

richness of their culture or the personal and career advantages to maintaining their home language. Often the initial awareness came through ethnic student organizations in college.⁹⁹ Others revel in the connections they consciously have maintained. As one second-generation student who continued to speak her home language and remained active in ethnic youth organizations put it, “There’s something more to me. I feel like I belong to something. It’s a comfort zone.”¹⁰⁰ Unsurprisingly, researchers have found that many young people from immigrant families, as my students have affirmed, hope to raise their children bilingually.¹⁰¹

Immigrant parents experience related conflicts. Though they want their children to learn the dominant language for its social and economic rewards, they too are frustrated by their inability to communicate with their children for whom language is shifting at breakneck speed. That is not to suggest that immigrant parents have no need to learn the dominant language, which undeniably is important for their own integration and that of their children. Nor does it imply that most immigrant parents are disinterested or unmotivated to do so. Yet the fact remains that immigrants often live in segregated ethnic communities and work in jobs forged by ethnic networks offering little opportunity to interact with the mainstream. Their inability to speak the language, in turn, puts other jobs outside their reach thus creating an ongoing cycle. Overwhelmed with meeting the daily demands of working and raising their families, they have neither the time nor the financial resources to enroll in language classes. And even where immigrant parents become sufficiently proficient in the new language to converse with their children, the home language still carries social capital in maintaining relationships with grandparents and older community members who are less likely to acquire second language skills.

In the United States, families with economic resources and community support apparently understand the importance of these ethnic ties. Immigrant and even second-generation parents are enrolling their children in after-school and weekend language and culture classes in unprecedented numbers.¹⁰² For some families, the motivation

99 See SALOMONE, *supra* note 63, at 92–97.

100 See *id.* at 94.

101 ALEJANDRO PORTES & RUBÉN G. RUMBAUT, *IMMIGRANT AMERICA* 277 (3d ed. 2006).

102 See Evelyn Shih, *Heritage Language Schools Help Bind Families of Immigrants*, NORTHJERSEY.COM, Oct. 15, 2006, available at <http://www.chineseservicecenter.org/bergen/therecords.pdf>; Russell Working, *Young Learners, Old Ways: As Immigrants Flock to Chicago Suburbs, More Parents Put Faith in Foreign-Language Schools to Pass on Culture to*

lies as much in “resistance” as in “retention.” As enthused as immigrant parents are in their children learning the “instrumental” aspects of American culture, including English, many are equally apprehensive of their children’s exposure to “expressive” attitudes toward school, authority, violence, and sex that run contrary to their traditional values.¹⁰³

Yet another equally important and related aspect of immigrant schooling must be considered. Data on both sides of the Atlantic continue to document the achievement gap between many immigrant offspring and other students. The Programme for International Student Assessment, or PISA study, conducted by the Organization for Economic Cooperation and Development (OECD), provides quantitative evidence of these differences. Among the thirty-nine countries that participated in the 2009 study, including the United States and most Western European countries (France, Germany, Italy, the Netherlands, Portugal, Spain), fifteen-year-old students with neither parent born in the country had reading and mathematics scores forty-four points below those with two native-born parents.¹⁰⁴ In some countries, the gap remained stark even when scores were adjusted for socioeconomic status.¹⁰⁵ Students who did not speak the language of instruction at home were at a particular disadvantage.¹⁰⁶ And so for education to be meaningful, it must be pedagogically effective; it must prepare immigrant children to socially and economically integrate into mainstream society. Proficiency in the dominant language is undeniably essential to that task.

Here is where the crux of the immigrant education controversy lies. Those who oppose using or developing the home language in the schools argue that “time on task” is what matters. The more students that use the dominant language, the more effectively they will gain proficiency in it.¹⁰⁷ Objectively speaking, that position sounds reasonable, yet a growing body of research has demonstrated that language learning and use is not a zero-sum game. At least five meta-

Their Children, CHI. TRIB., Jan. 4, 2008, at 2C.1; see also Eun Kyug Kim, *Language Gap Affects Bosnians at School, Home*, ST. LOUIS POST-DISPATCH, Mar. 9, 2006, available at <http://baecstl.tripod.com/id12.html>.

103 See Marcelo M. Suárez-Orozco, *Everything You Ever Wanted to Know About Assimilation but Were Afraid to Ask*, 129 DAEDALUS 20 (Fall 2000).

104 See OECD FAMILY DATABASE, PERCENTAGE OF IMMIGRANT CHILDREN AND THEIR EDUCATIONAL OUTCOMES 5, available at <http://www.oecd.org/dataoecd/58/60/49295179.pdf> (last updated, Jan. 1, 2012).

105 See *id.*

106 See *id.* at 7–8.

107 See ROSALIE PEDALINO PORTER, FORKED TONGUE: THE POLITICS OF BILINGUAL EDUCATION 83 (1990).

analyses of research findings show that compared to immersing children in English, teaching them to read in the native language leads to higher English reading achievement especially if they enter U.S. schools at an early age.¹⁰⁸ Studies on bilingualism and cognition have found that bilingual children have a “metalinguistic awareness” that gives them a more refined “cognitive process” for approaching skills like reading.¹⁰⁹ More recent studies confirm that even where there is no difference in achievement based on method of instruction, students learning bilingually have the added advantage of literacy in two languages.¹¹⁰

Beyond instructional approaches and achievement test scores, bilingualism may produce greater mental flexibility, creative thinking,¹¹¹ and the capacity to read social cues as a form of emotional intelligence.¹¹² As psychologists Ellen Bialystok and Kenji Hakuta have observed:

[K]nowing two languages is much more than simply knowing two ways of speaking . . . [I]t seems evident that the mind of a speaker who has in some way attached two sets of linguistic details to a conceptual representation, whether in a unified or discretely arranged system, has entertained possibilities and alternatives that the monolingual speaker has had no need to entertain.¹¹³

On a more global note, bilingualism holds further merit as a vehicle for increasing opportunities for educational and career advancement.

108 See WAYNE P. THOMAS & VIRGINIA P. COLLIER, A NATIONAL STUDY OF SCHOOL EFFECTIVENESS FOR LANGUAGE: MINORITY STUDENTS' LONG-TERM ACADEMIC ACHIEVEMENT (2002); Kellie Rolstad et al., *The Big Picture: A Meta-Analysis of Program Effectiveness Research on English Language Learners*, 19 EDUC. POL'Y 572, 590 (2005); Robert E. Slavin & Alan Chung, *A Synthesis of Research on Language of Reading Instruction for English Language Learners*, 75 REV. EDUC. RES. 247, 274 (2005); see also FRED GENESEE, KATHRYN LINDHOLM-LEARY, ET AL., EDUCATING ENGLISH LANGUAGE LEARNERS 181–83 (2006); David J. Francis et al., *Language of Instruction, in DEVELOPING LITERACY IN SECOND-LANGUAGE LEARNERS: REPORT OF THE NATIONAL LITERACY PANEL ON LANGUAGE-MINORITY CHILDREN AND YOUTH* (Diane August & Timothy Shanahan eds., 2006).

109 Ellen Bialystok, *Language and Literacy Development, in THE HANDBOOK OF BILINGUALISM* 597 (Tej K. Bhatia & William C. Ritchie, eds. 2004).

110 See ROBERT E. SLAVIN ET AL., *Reading and Language Outcomes of a Five-Year Randomized Evaluation of Transitional Bilingual Education 2* (2010), available at http://www.bestevidence.org/word/bilingual_education_Apr_22_2010.pdf.

111 See Ellen Bialystok, *Consequences of Bilingualism for Cognitive Development, in HANDBOOK OF BILINGUALISM: PSYCHOLINGUISTIC APPROACHES* 417, 428 (Judith F. Kroll & Annette M.B. De Groot eds., 2005).

112 See F. Genesee et al., *Communication Skills of Bilingual Children*, 46 CHILD DEV. 1010 (1975).

113 ELLEN BIALYSTOK & KENJI HAKUTA, *IN OTHER WORDS* 122 (1994).

Those who advocate on behalf of dual language instruction argue that students gain emotional and academic benefits when taught in their native language. Maintaining their home language increases their social capital by preserving and enhancing connections with community members in both their new and old countries.¹¹⁴ By way of example, one study of second generation junior high school students revealed that students who had become fluent bilinguals reported lower levels of conflict, higher family cohesion, and greater self-esteem, as well as higher educational aspirations and higher academic achievement.¹¹⁵ A more recent study among Mexican-American college students found that those who embraced their cultural heritage and regularly spoke their native language had higher grade point averages than those who spoke only English in school and at home.¹¹⁶ Obviously, there is a need for more controlled longitudinal studies.

That being said, while these findings are persuasive, they do not answer the question whether instruction in the home language may be more effective in some settings and with certain students than with others. Linguistic minority students are not monolithic even within a given country or a given language group. They differ widely on a number of important indices. Immigrant students, as well as refugees and asylum seekers, vary in the point at which they enter the new country, as early as pre-school and as late as secondary school. Those who are of school age when they arrive are typically beginners in the language of the schools.¹¹⁷ Those born in the host country, or who migrated before starting the elementary grades, may have conversational skills but often have difficulty with academic language which is necessary to acquire knowledge in the content areas and to progress successfully through the grades.¹¹⁸ Some have attended school in their home country and gained literacy skills in their native language. Others have experienced little or interrupted schooling, without having learned even the concept of reading words from a printed page. For some, the home language is a dialect or an informal spoken lan-

114 See *supra* note 100 (and accompanying text).

115 See ALEJANDRO PORTES & RUBÉN G. RUMBAUT, LEGACIES 274 (2001).

116 See David Aguayo et al., *Culture Predicts Mexican Americans' College Self-Efficacy and College Performance*, 4 J. DIVERSITY IN HIGHER EDUC. 79 (2011).

117 See Christian Dustmann & Albrecht Glitz, *Migration and Education*, in 4 HANDBOOK OF THE ECONOMICS OF EDUCATION 397–99 (2011).

118 See *id.*

guage. Some students have learning disabilities that render literacy in two languages a difficult task.¹¹⁹

Refugees, asylum seekers, and the undocumented in particular have no choice but to make a complete physical break with their home country at least for the time being. Others adopt transnational lifestyles, shuttling back during holidays and summer vacations, both reinforcing and necessitating bilingualism. In any case, most maintain virtual connections through the Internet and social media.¹²⁰ Some families welcome the schools' developing their children's home language skills; others embrace an assimilationist path to success or consider language to be a private or community matter preserved outside of formal schooling. Beyond personal background and preferences, in many communities the student population is so linguistically diverse that providing dual language instruction for any or all groups is costly and administratively impractical.¹²¹

Given these variations, a one-size-fits-all approach is pedagogically inappropriate and unrealistic. Students who enter the schools of the host country at the secondary level must quickly learn the common language to prepare for college and the work force. Those who enter in pre-kindergarten, kindergarten, or first grade could benefit from "dual" or "two-way immersion" where balanced numbers of language majority students and native speakers of a partner minority language are integrated and where at least fifty percent of instruction is in the partner language at all grade levels. The ultimate goal is for both groups to develop bilingual proficiency and bi-literacy, reach high academic achievement, and gain intercultural understanding and appreciation. These programs are gaining increasing favor among educated English dominant parents who value bilingualism for its career opportunities. There are now upward of 800 such programs nationwide.¹²²

Yet even here, certain pre-conditions are essential, including a critical mass of students who speak the same minority language, a core

119 See BILINGUALISM AND LEARNING DISABILITIES (Ann C. Willig & Hinda F. Greenberg, eds., 1986).

120 See Thomas Soehl & Roger Waldinger, *Making the Connections: Latino Immigrants and Their Cross-Border Ties*, 33 ETHNIC & RACIAL STUDIES 1489 (2010).

121 See *Why Don't We Teach ELLs in Their Native Language?*, NY TEACHERS BLOG, (Mar. 9, 2009), <http://nyteachers.wordpress.com/2009/05/04/why-dont-we-teach-ells-in-their-native-language/>.

122 See Alyse Shorland, *Immersion Language Programs Growing Across the Country*, SENTINEL SOURCE (Jan. 29, 2012, 8:00 A.M.), www.sentinelsource.com/features/education/immersion-language-programs-growing-across-the-country/article_820e27cb-191c-59f5-89b7-55c324b68.html.

of teachers with proficiency in the language, and a sufficiently large number of dominant language families interested in the program. How many native German families want their children to learn in Turkish? How many native French want their children to learn in Arabic? How many Americans see much value in their children learning in Urdu? It is therefore not surprising that in the United States, Spanish is by far the most common among dual language programs, though a growing number include Mandarin Chinese and French.¹²³

In addition to dual immersion programs, there are “newcomer” programs for more recent arrivals,¹²⁴ after-school classes in the minority language, summer language programs, heritage language classes for students who are proficient in the school language but who speak a minority language at home,¹²⁵ programs that engage parents of linguistic minority students in the work of the school, and programs in partnership with community organizations. While varied in their intensity and ultimate goals, these approaches all recognize the importance of language to personal identity and academic achievement. They acknowledge that students who speak another language possess an added “tool with which to interpret reality, to understand the world, and to learn.”¹²⁶

IV. MULTICULTURALISM DECONSTRUCTED

On a conceptual level, school programs that recognize and respect minority languages and cultures are reasonable when abstracted from political context. Yet politics are painfully concrete and the realm of possibilities within policymaking is colored by differences related to history, traditions, and legal culture. And so the inevitable question is whether promoting the languages of immigrants, in particular, can stand up against the current European critique of multiculturalism as well as anti-immigrant sentiments of varying intensity both in Europe and the United States.

The fact that “multiculturalism” is open to a variety of definitions makes the concept all the easier to attack. But it also makes the discourse all the more difficult to maintain on a reasonable track and the

123 See, e.g., *PATHWAYS TO MULTILINGUALISM* (Diane J. Tedick et al. eds., 2008).

124 See CTR. FOR APPLIED LINGUISTICS, *Secondary Newcomer Programs in the U.S.* (2009), <http://www.cal.org/CALWebDB/newcomer> (database identifying exemplary programs, practices, and policies for English learners in middle and high school).

125 See *HERITAGE LANGUAGE EDUCATION* (Donna Brinton et al. eds., 2008) (discussing research and practices on teaching heritage language learners).

126 Christine Hélot & Andrea Young, *Bilingualism and Language Education in French Primary Schools: Why and How Should Migrant Languages Be Valued?*, 5 *INT’L J. BILINGUAL EDUC. & BILINGUALISM* 96, 110 (2002).

tension more difficult to resolve. Is it the mere existence of other cultures, or the unwillingness of certain ethnic or religious groups to assimilate into the mainstream, or the state's tolerating or affirmatively promoting other cultures? And how do any of these interpretations play into the recognition of immigrant languages in the schools? The answers to these questions have taken distinct paths on each side of the Atlantic. Further complicating the matter are the politics of immigration and their inextricable link to national self-understanding.

For the United States, immigration has formed an essential part of the nation-building process. It has shaped the family stories of most Americans and thus the country's collective identity. Except for a relatively small number of indigenous peoples, most Americans, including those incorporated involuntarily through conquest or slavery, ultimately draw their roots from elsewhere. As a result, many though certainly not all share a cautious sensitivity toward newcomers. As multilingualism may be in the DNA of Europe, multiculturalism is in the American DNA. Yet it is a form of "multiculturalism lite," specifically conceived of and expressed in terms of "ethnic diversity." It reflects lives as privately lived on the ground and preserved through organs of civil society, like religious and cultural institutions, as opposed to official policies imposed from on high. It is best reflected in the food, art, culture, and foreign phrases that interject daily life and form common ground among most Americans. It finds more visible presentation in the numerous Chinatowns, Koreatowns, and "Little" Indias and Mexicos that dot the American landscape.

The concept of the nominally hyphenated American, though increasingly weakened through intermarriage, has retained broad acceptance as long as one embraces the basic political principles on which the nation was founded and does not depart too far from the social mainstream. The extent to which that acceptance continues in an era of dual citizenship, transnational lifestyles, and diverse social values and religious beliefs admittedly remains to be seen.

Yet even in the United States, multiculturalism is not merely neutral and descriptive as its evolution over the past decades demonstrates. The term itself grows out of the 1960s when the civil rights movement and a new progressive politics of identity fostered claims to difference based on group characteristics.¹²⁷ Current anxieties over multiculturalism in Europe provoke similarly negative responses among some Americans. They recall the term's earlier alliance with affirmative action, the euphemistic use of "culture" for "race," and the

127 MODOOD, *supra* note 44, at 1-2.

“implicit translation of the ideal of ‘racial equality’ into one of ‘cultural equality.’”¹²⁸ The resulting controversy reached a fever pitch in the 1990s’ “culture wars” over efforts to validate and introduce diverse views into the school curriculum.¹²⁹

At the same time, the United States has taken definitive steps to address inequality on a number of fronts through anti-discrimination laws that are enforced to an extent unthinkable in Europe.¹³⁰ In the least, the federal government can threaten to withdraw federal education funds from school districts that fail to comply with legal mandates. It can even take school officials to court to order compliance. Those mandates, largely procedural, flow out of civil rights protections that typically use language as a proxy for national origin.

In the United States, opposition to immigration primarily targets the overwhelming number of Spanish speakers who now account for sixty-six percent of the country’s limited English proficient population.¹³¹ Many of them are undocumented and work in “shadow industries” for below-minimum wages. They thus provoke claims that they are taking jobs away from American citizens. The economic downturn of recent years has given particular immediacy to those allegations. Contrary to previous waves of immigrants, Spanish speakers also tend to retain their home language through successive generations even as they learn English, seemingly defying the American assimilation project. Anxieties over what that retention eventually will mean for American identity rustle beneath demands for immigration reform and stepped-up border control. At times these concerns are cloaked in arguments that Spanish will soon eclipse English as the dominant or common language and, therefore, English ought to be the national language by federal statute or constitutional amendment.¹³²

The European situation is markedly different on a number of counts. Europe as a federation of states was never consciously designed, but rather continually re-arranged over the centuries as successive wars shifted national boundaries. Though individual nation-

128 David A. Hollinger, *National Culture and Communities of Descent*, in *DIVERSITY AND ITS DISCONTENT* 247, 252 (Neil J. Smelser & Jeffrey C. Alexander eds., 1999).

129 See NATHAN GLAZER, *WE ARE ALL MULTICULTURALISTS NOW* (1997).

130 See Michael Cosgrove, *Op Ed—Multiculturalism Better in America than Europe?*, *DIGITAL JOURNAL* (Oct. 17, 2010), www.digitaljournal.com/article/299044.

131 See MIGRATION POLICY INSTITUTE, *LEP DATA BRIEF, LIMITED ENGLISH PROFICIENT INDIVIDUALS IN THE UNITED STATES: NUMBER, SHARE, GROWTH, AND LINGUISTIC DIVERSITY* 6 (2011).

132 *Official English*, U.S. ENGLISH, <http://www.us-english.org/view/8> (last visited May 8, 2012) (declaring that a federal mandate requiring all official government business to be conducted in English would “encourages immigrants to learn English in order to use government services and participate in the democratic process”).

states emerged through the process of unifying disparate regions, languages, and identities, their celebrated founders did not begin at ground zero, as the American founders did, to chart a vision for a new society. Nor has immigration been a key component of the European narrative notwithstanding what the future may hold. In Europe, views on immigration are further tied in part to colonialism and to ambivalence about the ability of migrants from former colonies to fully integrate into mainstream society given racial and religious differences. There remains a colonialist mindset, whether conscious or not, that considers immigrants as temporary labor and not integral to European society or part of a wider “mosaic” as American society has been described in its best light. Moreover, the wrongs of colonialism do not summon up the same level of majority guilt or minority group mobilization as does American slavery.

In Europe, concerns for preserving a European identity as well as specific national identities are far more central and overtly articulated, and arguably more compelling, than nationalist sentiments in the United States. The identity question has generated debates over “social order, crime, and the use of public resources”¹³³ that are more widespread and rancorous than projected in the American political scene. European opposition to immigration, and with it multiculturalism, is directed generally toward the failure of certain groups to assimilate into the mainstream and specifically toward terrorism from radical Islamic elements. With the Muslim population in Western Europe now numbering over 17 million, that opposition extends to Islam in general and its perceived threat to western values and a particular “way of life.”¹³⁴ Especially since the September 2001 air strikes on New York and Washington, followed by attacks in Madrid by Islamic extremists, bombings in London by British-born Pakistanis, and the murder of Dutch filmmaker Theo Van Gogh, many Europeans oppose immigration as dangerous to social cohesion and national security. The “coded” debate now raging in Western Europe over multiculturalism is the outward manifestation of all these factors and fears.¹³⁵ In some cases, it is the result of government policies affirmatively supporting a form of multiculturalism that in the end has isolated some immigrant communities and, it is claimed, promoted cultural divisions and communal tensions.

133 See PATRICK IRELAND, *BECOMING EUROPE 2* (2004).

134 *Muslim Networks and Movements in Western Europe*, THE PEW FORUM ON RELIGION & PUBLIC LIFE (Sept. 15, 2010), <http://features.pewforum.org/muslim/number-of-muslims-in-western-europe.html>.

135 ALANA LENTIN & GAVIN TITLEY, *THE CRISIS OF MULTICULTURALISM* 12 (2011).

European leaders have confirmed these concerns, creating a firestorm in the media. Britain's Prime Minister David Cameron, in his now-famous Munich speech in February 2011, drew a direct link between "the doctrine of state multiculturalism" and "segregated communities."¹³⁶ "We've failed," he said, "to provide a vision of society to which [different cultures] feel they want to belong."¹³⁷ His words echoed those of Germany's Chancellor Angela Merkel that efforts to create a multicultural society in Germany had "failed, utterly failed."¹³⁸ Her words, however, were somewhat perplexing as Germany's national efforts to "accommodate" in particular its Turkish community, initially recruited as guest workers, were never intended to integrate the migrants but rather to segregate them from mainstream Germans in the hopes they would return home.¹³⁹

France's President Nicholas Sarkozy similarly declared multiculturalism a failure. "We have been too concerned about the identity of the person who was arriving and not enough about the identity of the country that was receiving him," he said in a February 2011 television interview.¹⁴⁰ Yet here too, unlike the British, the French government had never established a policy of ethnic accommodation. In fact, as a nation "built on republican values, egalitarianism, and a myth of national homogeneity," France has zealously resisted the forces of cultural pluralism.¹⁴¹ Within this same time frame, the Dutch government affirmed that it was officially abandoning its longstanding model of multicultural toleration, which appeared to be creating a parallel society.¹⁴²

V. CONFLICTS AND CONTRADICTIONS

These provocative statements from Western European leaders are symptomatic of conflicts and contradictions in political rhetoric and

136 *PM's Speech at Munich Security Conference*, THE OFFICIAL SITE OF THE BRITISH PRIME MINISTER'S OFFICE (Feb. 5, 2011), <http://www.number10.gov.uk/news/pms-speech-at-munich-security-conference>.

137 *See id.*

138 Matthew Clark, *Germany's Angela Merkel: Multiculturalism Has "Utterly Failed,"* CHRISTIAN SCIENCE MONITOR (Oct. 17, 2010), available at <http://www.csmonitor.com/World/Global-News/2010/1017/Germany-s-Angela-Merkel-Multiculturalism-has-utterly-failed>.

139 *See id.*

140 *Sarkozy Declares Multiculturalism "A Failure,"* FRANCE 24, <http://www.france24.com/en/20110210-multiculturalism-failed-immigration-sarkozy-live-broadcast-tf1-france-public-questions> (last updated Jan. 11, 2011).

141 SALOMONE, *supra* note 63, at 203.

142 *Dutch on Multiculturalism: Enough!*, WORLD NET DAILY (July 5, 2011, 9:15 PM), <http://www.wnd.com/2011/07/319077>.

underlying policies in Europe as well as in the United States. On the European side, they represent an extreme “all or nothing” view or “thick” multiculturalism that forecloses any public discussion on reasonable ways to balance diversity and social cohesion. They also reveal that multiculturalism in Europe is losing any “programmatically meaningful” or “credibility as a social vision.” Even worse, it has become a dumping ground for social discontents and, as some maintain, a “code” for marking racial minorities as “threats to social order.”¹⁴³ The current push back further belies the European discourse on multilingualism in the interests of “intercultural dialogue,” a term that suggests cultural diversity, though in reality it excludes immigrant languages. In the same vein, the absolute negativity cast upon multiculturalism in any form reinforces traditionally strong views that marginalize the language immigrant children bring to school and denies the potential benefits.

The problem is in part definitional. A “white paper” published by the European Council in 2011 is instructive on that score.¹⁴⁴ There the Council distinguished multiculturalism (as a concept of a Western European social order) from intercultural dialogue, the former setting the majority and minority in opposition to each other and the latter demanding a “common core which leaves no room for moral relativism.”¹⁴⁵ Setting that dichotomy in such stark relief uncovers the possibility of shifting the multicultural definition to a “thinner” sense of affording respect to diverse cultural backgrounds including language. Understood in this way, multiculturalism need not stand “diametrically-opposed” to civic integration. Within the bounds of shared political principles, the two can be mutually supportive.¹⁴⁶

Commentators now commonly speak of the “rise and fall” of multiculturalism, yet some maintain that while the term “multiculturalism” has “disappeared,” many programs once deemed “multicultural” nonetheless remain, especially at the local level. From that perspective, much of the work once supported under multiculturalism now falls under the rubric of “diversity” which recognizes individual differences as opposed to group traits.¹⁴⁷ And so rather than completely “abandon” multicultural policies, as official pronouncements seem to

143 LENTIN & TITELY, *supra* note 135, at 194–95.

144 COUNCIL OF EUROPE, WHITE PAPER ON INTERCULTURAL DIALOGUE: LIVING TOGETHER AS EQUALS IN DIGNITY (2008), *available at* http://www.coe.int/t/dg4/intercultural/source/white%20paper_final_revised_en.pdf.

145 *See id.* at 18–20.

146 *See* MODOOD, *supra* note 44, at 14–22.

147 *See* THE MULTICULTURALISM BACKLASH: EUROPEAN DISCOURSES, POLICIES AND PRACTICES 18, 21 (Steven Vertovec & Susan Wessendorf, eds., 2010).

suggest, countries have modified them and added “civic integration” policies that generally focus on language skills and civic knowledge.¹⁴⁸ In practice, findings from schools in Germany and England demonstrate that if managed well, together the two concepts so defined can underlie and inspire educational programs that forge bonds among diverse students while preserving their ethnic and linguistic identities.¹⁴⁹

As the European position on multiculturalism is historically driven, politically contested, and riddled with definitional problems, the U.S. position on multilingualism is equally complicated. Related more subtly to national identity, it is not merely definitional, but rather begs for a dramatic change in outlook. Above all, it is counter-intuitive. A nation that openly celebrates its diversity and its openness to newcomers presumably would place high value on linguistic competence. It also would demonstrate rich linguistic proficiency across the population. But that is not the reality. The reason lies in part in America’s ambivalence toward language and its cultural and political associations, specifically as they concern immigrants. The fact that English is quickly becoming the *lingua franca* of commerce, academic discourse, and the media further heightens American disinterest in mastering other languages.

Though Americans give lip service to promoting language learning among the native-born, and admire those who are fluent in more than one language, learning English for the foreign-born and their children is most typically a subtractive process. Becoming a “true American” necessarily entails leaving behind the home language and all its cultural associations. It is assumed that immigrants, who fail to do so, even though proficient in English, are socially indifferent and lack civic commitment. And just as opposition to multiculturalism in Europe has exploded out of proportion to official policies, so too have mass migration, terrorism, and globalization created an American paradox, as in Europe, whereby language is both a skill of international necessity and a symbol of national threat. In both cases the implications for immigrant children and schooling are significant.

CONCLUSION

Policies on language and schooling in the United States and Western Europe reveal a decided concern for preserving social cohesion. That concern finds expression in contrasting discourses on mul-

148 See WILL KYMLICKA, *MULTICULTURALISM: SUCCESS, FAILURE, AND THE FUTURE* 15–16 (2012).

149 See DANIEL FAAS, *NEGOTIATING POLITICAL IDENTITIES* 225 (2010).

tilingualism and multiculturalism and the apparent disconnect between the political rhetoric and the reality of policies as they affect the real lives of students. The importance of the home language in promoting emotional well being, cognitive development, and social integration consequently gets lost in the heat of surrounding debates. As research evidence continues to support the benefits of dual language instruction and bilingualism in general, decision makers need to address not only collective needs of the state and society, but individual needs for linguistic affirmation. It is now time for government officials and educators on both sides of the Atlantic to consider policies and practices that definitively respect the language of linguistic minority students, while finding common ground between the home and mainstream culture. The United States federal government and European supranational institutions historically have been standard bearers for protecting language rights. In that continued capacity, they should articulate an overall vision of schooling that state actors can put into practice within a range of approaches informed by research and transnational collaboration.