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Educating Children of Immigrant Workers: Language Policies in France &(and) U.S.A.

Stephen A. Rosenbaum

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In recent years, international organizations have begun to look closely at the phenomenon of "immigrant workers," workers who migrate from one country to another in order to improve their economic status. Worker migration may result from formal arrangements between governments or informal patterns of movement, usually where there is a labor surplus in the country of emigration or a labor shortage in the country of immigration. While appearing to be a free choice, migration is usually a product of de jure or de

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2. Usually "migration" crosses national frontiers, but may also mean movement from rural to urban areas within one country or from one farm to another. See text at n. 157-160 infra.


5. The "commuter aliens," persons who cross the border to work on a daily or seasonal basis, exemplify "informal" arrangements. See e.g. Bolen & Tenzer, "The Alien Commuter After Saxbe v. Bustos," 8 U.C. Davis L. Rev. 33 (1975).
facto policies in the "home" and "host" countries. 6

International interest has extended from workers themselves to workers' families, i.e. the spouses and children who accompany immigrant laborers in ever-increasing numbers. 7 The Council of Europe, 8 the European Economic Community (EEC), 9 and the United Nations and its agencies 10 are among those who have expressed concern for the education of these children and the preservation of their native languages and cultures. Why this concern with teaching the mother tongue and culture? First, research has shown that migrant children returning to their country of origin have been handicapped by lack of knowledge of their mother tongue. 11 This may lead to psychological and sociological problems resulting in inferior performance, isolation, withdrawal from school and lack of employment opportunities. 12 Second, an education which extols "home" values may help youngsters appreciate the parental culture and

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9. The EEC, or Common Market, has enacted a number of protective measures, in particular a Directive based on EEC Treaty art. 49 and 235 calling on Member States to ensure that children of other Member States are provided schooling which facilitates integration and teaches the host country language and culture. Adopted 28 June 1977 (Europe No. 2247 (new series) 29 June 1977 at 7). See also background information in Duyssens, supra n. 3 at 518 n. 76 and Seché, "Free Movement of Workers Under Community Law," 14 Common Market L. Rev. 385, 397 (1977).

10. See e.g. "World Population Plan of Action" in Report, United Nations World Population Conference, Bucharest 1974, E/CONF. 60/19, ¶ 55-56, implementing U.N. Charter art. 55; U.N. Secretary-General's Report to the Economic and Social Council (ECOSOC), E/CN.5/515, ¶ 114; Resolution 21 (XXXIV) of the U.N. Commission on Human Rights, Preamble, ¶ 2.3 (8 March 1978); Resolutions 1.141 and 1.142 of UNESCO Doc. 17 C/Resolutions of the 17th General Conference (1972); see also summary of UNESCO Proposals in Meeting of Experts, supra n. 7 at ¶ 3 et seq.; and n. 1 supra.


likewise allay parental ambivalence toward school.\textsuperscript{13} Third, mastery of the child’s native language, according to some pedagogues, facilitates learning in the language of the new country.\textsuperscript{14}

This article is an overview of legal regimes in education which address the linguistic and cultural aspects of migrant children’s adjustment to the country of immigration. Part I documents the legal instruments adopted in France and the U.S.A., i.e. the major legislative acts, administrative regulations and judicial decisions. Part II compares and critiques the policies promoted by the law in these same countries.\textsuperscript{15}

The French and American models were chosen because, first, they reveal legal thought on this subject in two of the principal nations of immigration in the world. France is typical of industrialized western Europe, a region which has approximately 6,000,000 migrant workers, most from the Mediterranean basin.\textsuperscript{16} The U.S. is “home” to approximately 8,000,000 workers of foreign origin, most from Latin America.\textsuperscript{17} Second, both France and the U.S. have instituted educational programs designed to meet the special needs of the children of immigrant workers\textsuperscript{18} and to aid “host” schools to absorb large numbers of students from different linguistic and cultural backgrounds. While the French and American experiences are shaped by different political, demographic, cultural and educational factors, there are lessons of significance to be learned from the ways legislators, judges and other policy-makers in each country have dealt with this phenomenon.

**PROTECTION OF LINGUISTIC MINORITIES**

The rights of certain minorities have been recognized since the beginning of modern international law.\textsuperscript{19} The International Protection of Minorities System, developed after World War I under the auspices of the League of nations, spawned treaties protecting the rights of nationals belonging to racial, religious and linguistic minor-

\textsuperscript{13} See Charbit, supra n. 11 at 96.
\textsuperscript{15} It is beyond the scope of this article to examine all facets of migrant education or to assess program effectiveness. The discussion here is devoted to the legal framework for language and culture programs, their rationale, and criticisms of the same.
\textsuperscript{16} Samman, supra n. 3 at 20.
\textsuperscript{17} Id. Most of these workers are from Mexico.
\textsuperscript{18} This term refers to immigrant workers' children and to the children of all low-income immigrants and second or third generation immigrants.
These rights included the establishment, management and control of educational institutions using their own language for instruction and the utilization of minority languages in public schools where these minorities constituted a considerable proportion of the population. The Permanent Court of International Justice, in an early advisory opinion, declared that the protection of linguistic minorities was intended to secure peaceful coexistence and friendly cooperation with the dominant language group and to preserve the characteristics which distinguish the minority from the majority.

The United Nations Charter remains faithful to the League's concern for the welfare of linguistic minorities. The Charter, the Universal Declaration of Human Rights and the International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights all affirm equal protection of the laws without regard to language or national origin.

UNESCO, the United Nations agency which addresses concerns in the educational, scientific and cultural spheres, has also adopted accords which evoke the twin themes of equal treatment in education and preservation of native languages among minority school children. The Convention Against Discrimination in Education, adopted by the UNESCO General Conference in 1960, forbids "any distinction, exclusion, limitation or preference" on language or other grounds which in purpose or effect nullifies or impairs equality of treatment in education, but also permits the establishment or maintenance of separate educational systems or institutions for "linguistic reasons."

The Member States of UNESCO recently...
adopted a Declaration on Race and Racial Prejudice which pro-
claims that “all individuals and groups have the right to be differ-
ent”29 and that “[p]opulation groups of foreign origin, particularly
migrant workers and their families” should be afforded “security
and respect for their dignity and cultural values. . . .” The Declara-
tion also requests that measures be taken “to facilitate their adapta-
tion to the host environment . . .” including instruction in their
mother tongue.30

NATIONAL LEGAL BASES FOR IMMIGRANT EDUCATION

FRANCE

Like most of industrialized Europe, France has experienced
heavy immigration since World War II.31 By 1975, immigrants ac-
counted for about 10% of the population.32 Beginning in 1972, the
French Government instituted a series of measures aimed at re-
stricting immigration,33 and formally halted all new immigration in
July 1974, at the height of the world economic crisis.34 Proposed le-
gal measures once again threaten the precarious status of foreign
workers in France.35 Recent political attacks on French immigration
policy have also intensified, occasionally accompanied by violence.36

The numbers of immigrants to France have varied over time, as
have their countries of origin. Immigration from Poland and
Belgium began to taper off after World War II, while Italian and Al-

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29. Art. 1, 2, UNESCO Doc. 20 C/Proceedings of the 20th General Conference
(1978).
30. Id., Art. 9, ¶ 3. See also Art. 14, European Convention on Human Rights, 213
No. 36.
31. The German Federal Republic, France, Great Britain, and Switzerland have
the largest numbers of foreign workers in Western Europe. Samman, supra n. 3 at 21,
Table 1 (1975 estimates).
32. CEMRIC, supra n. 3 at 9.
33. A summary of the measures is contained in Immigration 4 (June 1980), a bul-
letin of ACFAL/CIMADE, Lyon, France.
34. Samman, supra n. 3 at 29; Hultman, Report for Council of Cultural Coopera-
tion, Council of Europe (DECS/EGT (78) 12 Définitif) at 14 (1978).
35. See e.g. Loi (Parliamentary Law) No. 80-09 of 10 January 1980, the so-called
"loi Bonnet," on entry restrictions and terms for expulsion (Journal Officiel de
Circulaire of 10 June 1980 of the Secrétariat d’Etat auprès du Ministère du Travail et
de la Participation, containing instructions on work permit applications by foreigners
(J.O., 19 July 1980, 6387 et seq.) See n. 46 infra for a definition of circulaire.
36. See e.g. an account of right-wing and left-wing opposition to immigrant work-
ers in New York Times, 30 December 1980, at 3, col. 3. For “anti-racism” law and
cases see Richevaux, “La loi et le racisme,” 1978 Revue pr. de dr. soc. 141-142.
german immigration remained constant. In the early 1960s, large
numbers of Turkish, Yugoslav, West African and Tunisian laborers
joined the ranks of the Spaniards and Portuguese who had formerly
been the leading post-war immigrants. The non-European arrivals
have met greater obstacles to assimilation and programs to meet
the social, cultural and linguistic needs of immigrant families re-
main insufficient. Educational problems have been aggravated by
the proportion of young foreigners, which increased from 17% of
all foreigners in 1962 to 25% in 1975.

There is no requirement that students be French citizens in or-
der to attend public schools. In 1977-78, approximately 800,000 chil-
dren of immigrant workers were enrolled in France’s public and
private schools, about 75% in primary schools. Most of the latter
were from North Africa (42%) and Portugal (25%). In the secon-
dary schools, immigrant youngsters accounted for about 6% of the
total 1978-79 enrollment.

Despite the availability of schooling, there has been significant
educational failure among the foreign origin students due, in part, to
cultural differences and economic conditions.

37. Ministère de l’Intérieur, in CEMRIC, supra n. 3 at 12-14.
38. CEMRIC, supra n. 3 at 10.
39. CEMRIC, supra n. 3 at 10-11. Décret No. 76-383 of 29 April 1976 (J.O., 2 May
1976) and Circulaire No. 7-76 of 19 July 1976 (not reprinted in J.O.) permit families of
officially settled foreign workers to enter France. See n. 46 infra for an explanation of
décret and circulaire.
40. Under age 15.
Droit Social 110, explains that the term “foreign children” in-
cludes both those born abroad as well as those born of immigrant parents.
42. “Primary schools” include nursery schools as well as elementary schools.
Statistics compiled by the Service des études informatiques et statistiques, Ministère
de l'Education.
43. CEMRIC, supra n. 3 at Table 10. Source: Courrier de l’Education (Ministère
de l’Education).
44. Note d’Information No. 79-32, Ministère de l’Education, Service des études in-
formatiques et statistiques, at 5. Most of these youngsters are in collèges of second-
ary education (CES) and technical schools (CET), with decreasing numbers in lycées. CEMRIC, supra n. 3 at Table 11. The CES is akin to the American junior high
or middle school, i.e. the school which serves as a bridge between elementary and se-
nior high school for the 11- to 15-year-old age group. The CET is a vocational or tech-
nical school and the lycée is a senior high school for superior and pre-professional
students. At the secondary level, the largest number of students are of North African
(primarily Algerian) and Portuguese origin, followed by those of Spanish descent.
45. CEMRIC, supra n. 3 at 37. See also Courbin, “Quel avenir pour les jeunes mi-
grants?,” Revue française des affaires sociales 130-131 (Apr.-June 1978); Lamboitte,
supra n. 41 at 111-112, and Soubiran (IDERIC), Le cadre juridique de la scolarisation
Executive Decisions

Elementary Schools

As early as the 1920s, a circulaire of the Ministère de l'Éducation authorized special instruction for “foreign” or “immigrant” children. This instruction was aimed primarily at Poles and Italians who migrated to France in large numbers between 1924 and 1940 to work in the northern coal mines. The French Government also made language lessons in the mother tongue available to workers' children in the public schools.

In 1939, the Ministry issued a circulaire designed to coordinate the earlier administrative memoranda, allowing foreign teachers to give modern foreign language instruction in the nation's primary schools. The memo was concerned less with pedagogy than with administrative matters. Subject matter was restricted to the grammar, history and geography of the teacher's native country, “excluding any other subject.” Courses were open only to children who had written parental permission to attend. Although public school facili-

46. A circulaire is a type of instruction de service, an administrative memorandum issued to ministry functionaries indicating the Ministry's interpretation of a law (loi) and its intended application. It is a rough analogue to a federal regulation in the U.S., except circulaires are not always founded on laws adopted by the legislature. (In France, the Parliament shares a great deal of law-making power with the Executive Branch). Executive legal acts follow a hierarchical scheme, the most important being the décret. A décret may only be issued by the President or the Prime Minister, a presidential appointee who heads the Executive branch. Next in importance are (1) the arrêté, similar to the décret except it may be issued by other ministers or secretaries of state and (2) instructions de service. On executive law-making, see Levinson, “Presidential Self-Regulation Through Rulemaking: Comparative Comments on Structuring the Chief Executive's Constitutional Powers,” 10 Vand. J. of Transnat. L. 110-22 (1977) and Prélot, Institutions politiques et droit constitutionnel 693-96, 718-19, 735-37 (5th ed. 1972).


48. By 1929 there were already 584 Franco-Polish bilingual schools. Verdooit, supra n. 4 at 10.

49. Id.

50. Circulaire of 12 July 1939.

51. Interestingly, the same privilege was never accorded native-born national and ethnic minorities. However, under the “loi Deixonne,” adopted in 1951 but only slowly implemented since 1976, public schools may teach such “regional language” electives as Breton, Basque, Catalan, Corsican, and the Occitan languages, with the authorization of various school officials. Le Point 66 (11 Aug. 1980). “Local” language Créole programs have been tried in some overseas schools. Discourse Budgétai, J.O.A.N., 11 Nov. 1976.

52. In 1976, restrictions on subject matter were deleted, the only reference being to “courses of foreign language and civilizations.” Circulaire No. 76-128 of 30 March 1976. By 1978, this term was replaced by “courses of native languages and cultures.” Circulaires Nos. 78-238 of 25 July 1978, (B.O. No. 31, 9 Sept. 1978) and 79-158 of 16 May 1979 (B.O. No. 21, 24 May 1979).
ties were available for this purpose, classes were taught outside regular class hours, e.g. in the evening or on days off. This policy remained unchanged until 1973 when the Portuguese Government pledged to support approximately 50 Portuguese language teachers to fill the needs of immigrant children. According to a circulaire formalizing the Franco-Portuguese accord, language and culture classes were to facilitate the adjustment of recent immigrants to a new social and cultural milieu. The classes were also to prepare immigrant children who had been in France for a time for the high school foreign language requirements. Although recruited and remunerated by a foreign government, the teachers were placed under the jurisdiction of the Education Ministry and their specific role defined by département, académie and local school officials. This arrangement was formalized four years later in an arrêté.

In conformity with the 1939 policy, lessons were optional and conducted outside class hours; participation was contingent upon parental consent. The memo also set limits on class size, frequency and duration, and prohibited homework assignments. This circulaire was the first to state any legislative rationale for such instruction: in the short term, an insufficient mastery of the mother tongue made learning French more difficult; in the long term, the disuse of the native tongue strained parent-child relations.

Two years after the introduction of a special curriculum for the children of Portuguese immigrants, the Ministère de l'Education extended the experiment to other migrant children. First, the Ministry's Direction des écoles, or elementary schools division, inaugurated a teacher information and training center for migrant

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53. Foreign language instruction in private schools was limited to no more than half of the school hours.

54. In the interim, private and quasi-governmental organizations, aided by foreign governments, continued to conduct courses in native languages and culture outside the public school system. Of particular note is the Amicale des Algériens en Europe, which has been teaching Arabic to Algerians residing in Europe since World War II. “L'expérience de l'Amicale des Algériens en Europe,” Migrants-Formation 33-35 (Mar. 1980) and Le Monde de l'Éducation, No. 3, February 1975 at 10, col. 1.

55. Circulaire No. 73-1008 of 2 February 1973. Almost identical accords were later concluded with Turkey (Circulaire No. 78-323 of 22 Sept. 1978, B.O. No. 36, 12 Oct. 1978), Yugoslavia (Circulaire No. 77-447 of 22 Nov. 1977), Italy, Spain, Morocco and Tunisia. The Algerian Consulate conducts courses through the Amicale, see n. 54 supra, and the Greek consulate also holds outside classes. CEMRIC supra n. 3 at 38.

56. Children are grouped according to the length of their residence in France.

57. France is divided into 27 académies, or educational administrative units. Each académie is headed by a state-appointed recteur. The recteur has a delegate in each département, the inspecteur d'académie, who is responsible for all elementary and secondary school functions, including personnel, academic and budgetary matters. Several inspecteurs are under the authority of the inspecteur d'académie.


59. No longer than two hours per session and four hours per week.

child education, known as CEFISEM.\textsuperscript{61} Second, the Ministry announced a plan to facilitate the entry of migrants into the school system while avoiding the burden of after-hours classes by encouraging the establishment of \textit{cours intégrés}, classes “integrated” into the regular schedule.\textsuperscript{62} The major provisions of the earlier \textit{circulaires} remain the same,\textsuperscript{63} except that \textit{cours intégrés} are now the rule rather than the exception.\textsuperscript{64} The 1939 \textit{circulaire} was formally amended in 1976\textsuperscript{65} and stipulates that teachers are to be recruited and paid for by their respective governments, but certified by the appropriate \textit{académie} inspector.

In 1979, the Ministry recognized the predicament of children of the same nationality within one geographic area who were not sufficiently numerous at any one school to warrant the creation of language classes.\textsuperscript{66} Through establishment of academy-level committees composed of inspectors, immigration specialists and consular staff, the Ministry hoped to confront problems of this sort and other long-range planning needs. The goal of each committee is to draw up an annual plan which maximizes the use of foreign personnel in light of local needs and coordinates the efforts of consulates with those of the \textit{académies}.\textsuperscript{67}

\textit{Secondary Schools}

There is no parallel to the elementary-level language and culture instruction for foreign-origin or immigrant students in secondary schools. However, according to \textit{Circulaire} No. 73-1008 of 1973,\textsuperscript{68}

\begin{itemize}
  \item \textsuperscript{61} Centre de formation et d'information pour la scolarisation des enfants des migrants. CEFISEM was created under \textit{Circulaire} No. 77-310 of 1 Sept. 1977 (B.O. No. 34, 29 Sept. 1977), but the original center was established in 1975 at the Ecole Normale d'Institutrices de Lyon. By 1978, there were a total of seven CEFISEM. These centers organize workshops and in-service training for various teaching personnel working with migrant children. See generally, Hultman, supra n. 34 and “Scolarisation des enfants étrangers et formation des maîtres,” \textit{Hommes et Migrations} 3-18 (15 Oct. 1976).
  \item \textsuperscript{62} \textit{Circulaire} No. 75-148 of 9 April 1975 (B.O. No.15, 17 April 1975).
  \item \textsuperscript{63} A curious minor addition is that the mayor, a local government official not part of the school hierarchy, must give permission to use school facilities for courses taught outside class hours. Children still need written parental permission to enroll. \textit{Circulaire} No. 75-148, supra n. 62, allows Portuguese children to enroll with only verbal consent from their parents.
  \item \textsuperscript{64} \textit{Circulaire} No. 79-158, supra n. 52, also promotes school-hours classes where feasible. But for Turkish courses, where \textit{cours intégrés} are not feasible, only one class hour (out of the three-hour maximum) may take place after regular school hours. \textit{Circulaire} No. 78-323, supra n. 55.
  \item \textsuperscript{65} \textit{Circulaire} No. 76-128 of 30 March 1976. See also \textit{Arrêté} of 29 June 1977, supra n. 58.
  \item \textsuperscript{66} \textit{Circulaire} No. 79-158, supra n. 52.
  \item \textsuperscript{67} Committees must meet annually in plenary session, with working groups for each major nationality to be convened in the interim.
  \item \textsuperscript{68} See n. 55 supra and accompanying text.
\end{itemize}
primary school classes may serve as a stepping stone to the modern foreign language courses required for all high school students.\footnote{69} This circular allows students to substitute the foreign language requirement \textit{(première langue)}\footnote{70} for instruction in their native tongue. Whether non-European or uncommon languages have been offered has depended on the number of interested students.\footnote{71} Some consulates and immigrant worker associations have offered such courses on their own.\footnote{72}

In the early 1970s attempts were made to expand the modern foreign language offerings to include those spoken by the country's major immigrant groups.\footnote{73} Circulars of 1977 and 1978 have been credited for increased offerings at the high school level.\footnote{74} Although these courses are mostly frequented by students of foreign origin, the official rationale for enlarging language choice includes not only the linguistic or cultural adjustment of immigrant youth, but also the enhancement of commercial and career interests for all students. There are job opportunities, for example, in diplomacy, journalism, translation, technology transfers, trade and the Common Market.\footnote{75}

\textit{Other Programs}

An integral part of France's educational policy for immigrant children involves contact with French language, culture and society. A 1970 \textit{circulaire} issued by the Ministry of Education encouraged the proliferation of experimental \textit{classes d'initiation} (CLIN), i.e., "introduction" or orientation classes for elementary-school-age, "non-French-speaking foreigners of normal aptitude."\footnote{76} Its underly-

\footnote{69} The term "high school" and "secondary school" are used interchangeably to refer to the equivalent of about the seventh through twelfth grades in the United States. This obscures the elaborate educational scheme in France but is sufficient for purposes of this article. On the French educational system see Ministère de l'Education, C.N.D.P., \textit{Le Système Educatif en France} (1978).

\footnote{70} By the time they prepare for their \textit{baccalauréat}, French students must have taken courses in two foreign languages, i.e. a \textit{première langue} and a \textit{deuxième langue}. A \textit{troisième langue} is optional. \textit{Première langue} should not be confused with a child's primary or mother tongue (\textit{langue maternelle}).


\footnote{72} See n. 54 supra.

\footnote{73} Rectors have the authority to initiate new language classes under an \textit{Arrêté} of 18 Sept. 1962. Classes in Arabic were made available by a \textit{Circulaire} of 16 July 1965. Portuguese classes for secondary students have been taught since the Franco-Portuguese accords of 1973. See Halff, "Place de l'enseignement de l'arabe dans le second degré," \textit{Migrants-Formation} 57 (March 1980) and Parvaux, id. at 59.

\footnote{74} \textit{Circulaires} Nos. 77-65 of 14 Feb. 1977 (B.O. No. 7, 24 Feb. 1977) on language instruction and 78-238, supra n. 52, on the schooling of migrant children.

\footnote{75} Halff, supra n. 73 at 57 and Parvaux, id. at 61.

\footnote{76} \textit{Circulaire} No. 70-37 of 13 Jan. 1970 (B.O.E.N. No. 5, 29 Jan. 1970). Such classes
ing policy is the rapid acquisition of French by foreign youth and their integration into the school setting.

In general, students are divided into at least two groups according to age. The younger attend preparatory courses and the older may enroll in courses offered by the Amicale pour l'enseignement des étrangers, a friendship association dedicated to teaching foreigners, or in special activity classes (tiers-temps). Teaching methods are those employed by the BELC or CREDIF technical assistance centers.\textsuperscript{77}

A similar program of classes d'adaptation, or "adaptation" classes, was established three years later for 12- to 16-year-olds.\textsuperscript{78} Whether placed in special classes or not, continuous contact with French-speaking peers is deemed essential for these youngsters. Three program options are available with varying numbers of separate classes for non-French-speakers. When there are more than five non-French-speaking students, they are placed in French language classes during part of the day. In schools experiencing "heavy immigration," youngsters who have had some formal schooling before coming to France normally spend one day in a classe d'adaptation with heavy emphasis on learning French. Those with little or no prior education generally spend two years in such classes.

Few orientation classes are in effect at the écoles maternelles, nursery schools for children between two and six years of age. The official thinking is that these children are too young to benefit from such classes. They are at an age when other kinds of communication are dominant and when language acquisition is the goal for all children, French-speakers and others alike.\textsuperscript{79}

\textbf{UNITED STATES}

The U.S. has always known immigration. Until the late 19th century, most newcomers were of Anglo-Saxon, Germanic or Nordic ori-
Later immigrants from Asia and eastern and southern Europe were viewed as a threat to urban conditions, democracy and what was considered a "traditional" American lifestyle. Violent anti-ethnric movements developed. School segregation and discrimination in employment, land ownership and social membership also became commonplace. Laws excluding or limiting employment of the Chinese, Japanese and most other Asians were enacted in the late 1800s and early 1900s, and immigration quotas were established in 192181 giving preference to immigrants from northern and western Europe.82 Quotas were eased considerably in 1965,83 and by 1973 persons of Hispanic origin constituted the second largest U.S. minority group, at 4.4% of the total population.84 Hispanics include primarily Mexicans or their descendants who migrated at the time of the Mexican Revolution or during the post-W.W. II demand for agricultural labor in the southwestern and western U.S.85 Asian immigration has also experienced rapid increases, especially since the 1940s when restrictive legislation was repealed.86 By 1977, the country with the greatest number of immigrants87 in the U.S. was Mexico, followed by the Philippines, South Korea and Cuba.88

The number of school-age immigrants has remained relatively stable since 1967 and represents less than half the total number of

84. Demographers predict that Hispanics will outnumber blacks, the largest minor- ity group, by the end of the 1980s. New York Times, 11 May 1980 at 1, col. 1.
85. The controversial contract farm labor (bracero) program with Mexico established in 1942 was responsible for much of the legal and clandestine immigration. Fogel, Mexican Illegal Aliens in the United States 13 (1978). For a description, see Meister & Loftis, supra n. 82 at 71-91 and Almaguer, "Class, Race and Chicano Opres- sion." 5 Socialist Revolution (no. 3) 71, 86-87 (1975). Legislation was introduced during the Carter Administration to initiate a new "guest worker" program. See "United States-Mexico Good Neighbor Act of 1979," S. 1427 § 2 (96th Cong., 1st Sess.) Similar proposals have received favorable attention from the Reagan Administration. Christian Science Monitor, 2 July 1981 at 10, col. 3.
86. The Chinese Exclusion Act was repealed in 1943, 57 Stat. 600. Asians, or more generally Eastern Hemisphere immigrants, were still restricted by the quota system until changes in 1965. See n. 83 supra, and 1976, 90 Stat. 2703.
87. The term "immigrant" is used broadly here to refer to all aliens who enter the U.S., legally or illegally, with the exception of tourists, exchange students and certain foreign officials and their staffs. "Alien" is the legal term for persons who are neither citizens nor nationals of the United States. 8 U.S.C. § 1101(a)(3)(A) (1980 Supp.).
88. As of 30 June 1977. INS, 1977 Annual Report, supra n. 80 at Table 6.
all immigrants. A 1975 survey of 42,000 U.S. households conducted by the Census Bureau, found that there are almost 15,000,000 limited-English-speaking persons in the country, of whom about 3,600,000 are school-age. In this group, Spanish is by far the prevalent language.

The education of American immigrants and other language minorities is an issue of national scope as the country grapples with the influx of undocumented workers, i.e. aliens who enter the U.S. clandestinely or who prolong their stay without government authorization. The children of undocumented workers are currently the target of efforts in some localities to reduce public school expenditures.

**Ethnic-Based Schools**

Private, non-English schools have flourished in the United States since its earliest days as a nation, using native tongues as a medium of instruction and English as a second language. These schools have met the needs of the country's diverse immigrant

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89. Id. at Table 10.
91. Id. at 412. Other sources estimate that there are over 5 million school-age, non-English-speaking children, Grubb, "Breaking the Language Barrier: The Right to Bilingual Education," 9 *Harv. C.R.-C.L. L. Rev.* 52, 53 (1974), including persons who are foreign-born, usually speak a language other than English or who come from a household where another language is spoken in lieu of or in addition to English. United States Commission on Civil Rights, *A Better Chance to Learn: Bilingual-Bicultural Education* 10 (1975). According to one news account, most limited-English children in the U.S. are not immigrants but native-born. San Francisco Chronicle, 3 Feb. 1981 at 18, col. 5.
92. Spanish is the primary tongue for 49% of the total sample and 69% of the school-age group. For about one-fifth of the 15 million persons, the dominant language was either English or undetermined. *Condition of Bilingual Education*, supra n. 90 at 412. The second largest group speaks Asian languages such as Korean, Vietnamese, Cambodian, and Chinese and Pilipino languages. 45 Fed. Reg. 52053 (1980). Other major languages are Italian, French and German. *Condition of Bilingual Education*, supra n. 90 at 411-12.
93. See e.g. Texas Ed. Code Ann. § 21.031 (1980 Supp.) which allows all children who are U.S. citizens or legally admitted aliens of school age to attend school tuition-free. Two federal courts have ruled that youngsters whose parents have entered the U.S. undetected, or have illegally prolonged their stay, must be treated the same as legal residents for educational purposes. Doe v. Plyler, 458 F. Supp. 569 (E.D. Tex. 1978), aff'd 628 F.2d 448 (5th Cir. 1980) and In re Alien Children Education Litigation, 501 F. Supp. 544 (S.D. Tex. 1980).
94. There were, for example, German schools in the Midwest, Spanish schools in the Southwest and French schools in New England and Louisiana. Andersson & Boyer, *Bilingual Schooling in the United States* 17-20 (1970) and *Condition of Bilin-
populations. In the early 1960s there were still 2,500 to 3,000 such schools, offering language instruction on a whole-day, weekend or after-school basis.95

Public tolerance of this practice was shattered after U.S. entry into World War I when anti-German sentiment took on xenophobic proportions. Many states enacted statutes forbidding the teaching of modern foreign languages in grade schools. After the war, the Supreme Court struck down one such statute in the landmark case of Meyer v. Nebraska.96 While recognizing the state legislature's desire to "foster a homogeneous people with American ideals," the Court concluded that the statute infringed on the freedom to acquire knowledge.97 Still, as recently as 1971, twenty-one states required that all instruction be conducted in English.98

Federal Legislation: Bilingual Education, Cultural Heritage

Prior to 1968, the federal law99 was silent as to the needs of linguistic minorities. One of the first attempts at federal assistance was the Migration and Refugee Assistance Act of 1962100 which allocated funds to Florida schools primarily for English instruction for the huge influx of Cuban refugees. State- and locally-funded programs were also initiated for other language minorities.101

The first national legislation devoted to the teaching of native languages and culture to children of foreign origin was the Bilingual Education Act of 1968.102 Federal grants were made available to local educational agencies103 to meet the "special educational

gual Education, supra n. 90 at 391-401. For contemporary language law developments in regions with historically strong ethnic populations, see n. 147 infra.

95. Gaarder, "The Federal Role in the Education of Bilingual Children," at 5, paper, Symposium on the Spanish-Speaking Child in the Schools of the Southwest, Tucson, 22 Sept. 1966, cited in Schneider, Revolution, Reaction or Reform: The 1974 Bilingual Education Act 21 (1976). 1,000 to 2,000 of these schools have taught language courses in the student's native tongue. For the most part, however, the language is not used as a medium of general instruction. Gaarder, id. at 6.


97. 262 U.S. 390, 402.


99. Control of education in the United States has traditionally been assumed by state and local governments. The Elementary & Secondary Education Act (ESEA) of 1965, 79 Stat. 27, 20 U.S.C. § 2701 et seq. (1980 Supp.), mandated the first direct federal assistance program for elementary and secondary schools; its goal was to aid "educationally disadvantaged children."

100. 76 Stat. 121.

101. Condition of Bilingual Education, supra n. 90 at 400. For example, there were special classes in Florida for Cubans, in Texas for Mexicans and Mexican-Americans, and in Arizona for Navajo Indians. Id.


103. "Local educational agency" or LEA refers to the agency responsible for administering elementary and secondary education in a particular "school district."
needs of limited-English-speaking (LES) students in schools with high concentrations of low-income LES children. The Congressional committee which considered the bill concluded that there was a close relationship between poverty, low educational achievement, and lack of English-speaking ability. To expand the number of schools eligible for funds, the low-income requirement was deleted in the 1974 amendments; however the poorest children were to be the first to receive services. The definition of LES children was expanded to include not only those from non-English-dominant environments but also the foreign-born and those whose native language is other than English. Four years later, Congress added American Indians and Alaskan Natives whose linguistic environment has had "a significant impact" on their English proficiency.

Congress also voiced some objectives left unstated in 1968: although "a primary means" by which a child learns is through the "use" of his or her language and cultural heritage, the goal of bilingual education was intended to be English language competence. Their native tongue, place of birth or linguistic milieu

The district's policy-making body is a "board of education" which is generally popularly elected.

104. I.e., equal educational opportunity through bilingual practices and techniques. 20 U.S.C. § 3222(a).

105. Children from environments where the dominant language is not English. The term "limited English proficiency" replaced "limited-English-speaking" (LES) and "non-English-speaking (NES) in the 1979 amendments, since the focus is not simply on speech. 20 U.S.C. § 3223(a)(1). The terms are used interchangeably throughout this article.


108. For a comprehensive legislative history from 1968 to 1974 see generally Schneider, supra n. 95.


113. To that end, bilingual programs were defined to include "... instruction given
aside, these LES youngsters’ eligibility under the Bilingual Educa-
tion Act was to be based on their difficulty in speaking and under-
standing instruction in the English language.114

The 1974 Amendments permitted limited, voluntary enrollment
of English-speaking children, but priority was to be given LES chil-
dren and “[i]n no event [would] the program be designed for the
purpose of teaching a foreign language to English-speaking chil-
dren.”115 Under the 1978 amendments, there may be no more than
40% English-language children in any bilingual program. Although
the prohibition on teaching foreign languages to these children has
been deleted, the program’s objective remains assistance to limited-
English children and improvement of English-language skills.116

The 1970s also witnessed a renewed awareness of ethnicity and
cultural diversity. In 1972, the Elementary and Secondary Educa-
tion Act was amended to include an Ethnic Heritage Studies compo-
nent.117 Congress mandated the development of elementary and
secondary curricular materials to aid students to learn their own
heritage and assist them in learning the heritage of others. The
House Committee Report on this amendment explicitly discredited
the “melting-pot” notion in favor of cultural pluralism.118 The Com-
mittee also stated that materials were needed for all children, not
just for “the economically and educationally disadvantaged
child,”119 but local school districts120 may choose whether or not to
use these materials.121

National Origin Discrimination

Other federal statutory, administrative and case law is aimed
not at bilingual instruction but at the prevention of national origin
discrimination in American schools. Title VI of the Civil Rights Act
of 1964122 proscribes discrimination in federally-assisted programs123

in, and study of, English.” Native languages could be employed “to the extent neces-
sary to allow a child to progress effectively through the educational system. . . .”
§ 703(4)(A)(ii) of the Act, as amended, 88 Stat. 504-5. Four years later, this was
amended to read “to the extent necessary to allow a child to achieve competence in
114. § 703(a)(1)(A)(B) of the Act, as amended, 88 Stat. 504. In 1978, eligibility was
expanded to include sufficient difficulty in reading and writing. 20 U.S.C. § 3223(a)(1).
115. § 703(4)(B) of the Act, as amended, 88 Stat. 505.
117. 20 U.S.C. § 3361 et seq. Minor amendments were adopted in 1978.
119. Id. at 2531.
120. See n. 103 supra.
121. House Report No. 92-554, supra n. 118.
122. 42 U.S.C. § 2000(d) - d-4 (1980 Supp.) See also 45 CFR § 80 (1979), for regula-
tions implementing Title VI. No school system administering a federally-funded pro-
gram may employ criteria having the effect of defeating program objectives with
on grounds of, inter alia, national origin. In 1970 the Department of Health, Education and Welfare (HEW) promulgated a regulation implementing Title VI with respect to equal educational opportunity for LES students. An HEW memorandum further interpreted that regulation for school districts with more than 5% national-origin minority children: where such children are excluded from effective participation, the district must take "affirmative steps" to rectify their "language deficiencies." Two years later, Congress reaffirmed this HEW policy and allocated additional funds for bilingual programs in the Emergency School Aid Act (ESAA).

The U.S. Supreme Court held in 1974, in Lau v. Nichols, that Title VI and its implementing regulations are violated when a school district fails to take affirmative steps to rectify the English-language

respect to individuals of a particular national origin. Title IV of the Civil Rights Act authorized the creation of regional general assistance centers to serve local school districts implementing desegregation plans. Dubbed "Lau Centers" in 1975 (see text accompanying n. 130-145 infra), the national origin desegregation assistance centers help schools comply with federal and state laws on bilingual education and discrimination. See 45 C.F.R. § 180.15 et seq. (1979).

Virtually every public school in the country operates programs which receive federal assistance. Since the Civil Rights Act was aimed primarily at attacking discriminatory racial practices, there is almost no legislative history on the precise meaning of national origin. See 110 Cong. Rec. 2549 (1964). In Espinoza v. Farah Manufacturing Co., 414 U.S. 475 (1974), and U.S. v. Texas, 342 F. Supp. 264, 269 (5th Cir. 1972), cert. den. — U.S. — (1981), 49 U.S.L.W. 3511 ("national origin" and "ethnic or sociocultural traits" are not synonymous.)

On 1 July 1980, the Department of Health, Education and Welfare was reorganized into the Department of Health & Human Services (HHS) and the Department of Education. The latter is responsible for the functions previously assumed by HEW's Office of Education. The Commissioner of Education has been replaced by the Secretary of Education. The terms "Commissioner," "Office of Education," and "HEW" will be preserved in this article for pre-1980 citations.


25 May 1970 Memorandum from J.S. Pottinger, Director, Office for Civil Rights (OCR), the HEW unit responsible for enforcing certain civil rights legislation. Since 1980, OCR's functions have been divided between offices in the Departments of Education and Health & Human Services.
deficiencies of its students. "[T]here is no equality of treatment," the majority wrote,
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.\textsuperscript{131}
The Court relied heavily on the HEW 1970 memo in its reading of Title VI. No remedy was specified except to suggest either that English be taught to the particular language-minority plaintiffs or that the group be taught in its native tongue.\textsuperscript{132} Shortly after the Court issued its opinion, Congress enacted the Equal Educational Opportunities Act of 1974\textsuperscript{133} which codified the essence of \textit{Lau} and strengthened the federal commitment, as defined in Title VI, to eradicate discrimination: the failure by an educational agency "to take appropriate action to overcome [students'] language barriers" could constitute a denial of equal educational opportunity on the basis of national origin.\textsuperscript{134}

Such "appropriate action" was spelled out in the findings of a task force convened by HEW after the \textit{Lau} decision. The so-called "\textit{Lau Guidelines}"\textsuperscript{135} require that a school found in non-compliance with Title VI under \textit{Lau} submit a plan to the Office for Civil Rights (OCR) for addressing the needs of LES students. When there are 20 or more\textsuperscript{136} non- or limited-English-speaking\textsuperscript{137} students of the same language group in a district's elementary or intermediate

\textsuperscript{131} Id. at 566.
\textsuperscript{132} Id. at 565.
\textsuperscript{134} Id., at (f). There is no legislative history on the meaning of "appropriate action" or "language barrier."
\textsuperscript{135} "Task Force Findings Specifying Remedies Available for Eliminating Past Educational Practices Ruled Unlawful Under \textit{Lau v. Nichols}," [also known as the "\textit{Lau Guidelines}" or "\textit{Lau Remedies}""] (Summer 1975), reprinted in Center for Law and Education, \textit{Bilingual-Bicultural Education} (1975). In 1980, the Department of Education issued "proposed rules" which, if adopted by the Secretary, would have replaced the less authoritative "guidelines," 45 Fed. Reg. 52052 et seq. (1980). These rules were formally revoked by the succeeding Secretary of Education who described them as "harsh, inflexible, unworkable and incredibly costly" and an intrusion on state and local sovereignty. New York Times, 3 February 1981 at 1, col. 1.
\textsuperscript{136} Title VI and the \textit{Lau} majority opinion do not refer to sufficient numbers as a prerequisite for relief. But see Blackmun, J., concurring in \textit{Lau} at 572: agreeing that relief is required in the \textit{Lau} case where 1,800 language minority students were involved, Blackmun states that the result might be different if fewer children or a single child were involved. See also Serna v. Portales Municipal Schools, discussed in text accompanying n. 148-149 infra, at 1154; Otero v. Mesa County School Board, 408 F. Supp. 162, 171 (D. Colo. 1975); and Note, "Bilingual Education—A Problem of "Substantial Numbers?," 5 \textit{Fordham L. J.} 561 (1977).
\textsuperscript{137} Under these guidelines a student is limited- or non-English-speaking (LES/ NES) if his or her "primary" or "home" language is not English, i.e., (1) the student's first acquired language; (2) the language most often spoken by the student; or (3) the language most often spoken in the student's home. "\textit{Lau Guidelines}," ¶ I.
schools, additional options are available in senior high schools. The guidelines also specify that courses may not have a discriminatory effect, i.e., that language-minority students and English-speaking students may not be separated. All parents of LES/NES students must be notified of all aspects of the programs designed for their children.

The advisory nature of these guidelines is emphasized in an OCR cover letter accompanying them, but where alternative approaches are selected the burden of proof is on the school district to demonstrate that such programs will insure equal educational opportunity. There is also some dispute whether the guidelines carry the weight of federal regulations.

Since Lau there have been other statutory and case law developments. Many of the state laws forbidding non-English instruction have been repealed and others passed permitting or encouraging bilingual education. As of March 1980, approximately 22 states had enacted some form of mandatory or optional bilingual education. Some federal courts have addressed the remedy issue.

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138. Also known as "middle schools" or "junior high schools," the intermediate schools serve youngsters in the early 2-3 years of their secondary education.
139. The appropriate program depends on whether the student is monolingual, bilingual, multilingual or predominant in one language or another. "Lau Guidelines," ¶ III.
140. In addition to the variables stated in n. 139 supra, the appropriate program depends on whether the secondary student is achieving at grade level or underachieving. Id., ¶ III.
141. Id., ¶ IV-VI.
142. Id., ¶ VII.
143. Letter of 11 Sept. 1975 from OCR Director to Chief State School Officers. For one alternative, see text at n. 192-98 infra.
left undecided by the Supreme Court in Lau. In Serna v. Portales Municipal Schools the Court of Appeals for the Tenth Circuit agreed to adopt portions of plaintiff's bilingual/bicultural plan as an appropriate remedy, holding that [u]nder Title VI ... [plaintiffs] have a right to bilingual education." In Keyes v. School Dist. No. 1 the same appellate court was less inclined to take such a sweeping approach. It found that the bilingual plan approved by the trial court went beyond the mere attainment of proficiency in the English language. The Ninth Circuit Court of Appeals, faced with the same issue in Guadalupe Org. v. Tempe Ele. School Dist. No. 3, found no constitutional duty under the Equal Protection Clause to provide a bilingual/bicultural program for limited-English students where the state had a rational response to the problems of LES pupils, viz., an English-language approach. Moreover, the court held that there was no Title VI violation under Lau or § 1703(f) of the Equal Educational Opportunity Act since the district's remedial instruction in English for LES students made a meaningful education available. In stating that "[l]inguistic and cultural diversity ... whatever may be its advantages ... can restrict the scope of the fundamental compact [of the nation-state]," the court harkened back to a sentiment manifested in the English-only statutes overturned in Meyer v. Nebraska more than a half-century ago.


148. 499 F.2d 1147 (10th Cir. 1974).
149. Id. at 1154.
150. 521 F.2d 465 (10th Cir.), cert. den. 423 U.S. 1066 (1975). Bilingual education was viewed as a desegregation remedy, only one of many issues judicially reviewed in this protracted litigation.
151. Id. at 482.
152. Supra n. 144.
153. For a right to bilingual education under the U.S. Constitution see Grubb, supra n. 91 at 71-92 and Note, supra n. 12.
155. Guadalupe Org., supra n. 144 at 1029-30. Cf. Rios v. Reed, 73 F.R.D. 589, 595 (E.D.N.Y., 1977), the court held that to a non-English-speaking child, an inadequate remedial program was as harmful as no program at all and that Lau required an effective program.
156. Guadalupe Org., supra n. 144 at 1027. See also Holmes, J., dissenting in Bartels v. Iowa, supra n. 96 at 630.
Migratory Children

Children of foreign-origin migratory workers experience difficulties which may be more severe than those of other LES youngsters. According to one study, the majority of today’s migratory agricultural laborers and their children are Spanish-speaking. A prominent child welfare organization notes that more than 65% of migratory children “need a bilingual experience.”

Transience and poverty compound the problems of language barriers.

In 1966, Congress amended the Elementary and Secondary Education Act to make Title I monies available for the first time to the children of persons who move from field to field to obtain temporary or seasonal employment in an agricultural activity. Eight years later, provisions were made for the sons and daughters of migratory fishermen.

Educators and youth advocates have long urged that federal regulations require some form of bilingual or multicultural instruction as part of migratory education programs. In 1978, federal administrators responded by requiring state education agencies to assess accurately the cultural and linguistic backgrounds of eligible children and to describe the appropriate compensatory or non-discriminatory measures that should be taken. States are given great leeway in the design and operation of their migrant education programs. In addition to traditional elementary and secondary classroom instruction, states and school districts provide such services as counseling, career guidance, parent training and health care.

157. The term “migrant” is sometimes used in lieu of “migratory.” Migratory children are not all foreign-born or limited in English proficiency, although this is true for many of them. They span various ethnic, cultural and racial groups, including Mexicans and Mexican-Americans, blacks, Puerto Ricans and whites. See National Child Labor Committee, Promises to Keep: The Continuing Crisis in the Education of Migrant Children 1 (1977).


164. See e.g. California Master Plan for Migrant Education for Fiscal Year 1979-80, California State Department of Education (April 1978).
LANGUAGE AND CULTURE POLICIES: COMPARISON AND CRITIQUE

There are some obvious differences in the French and American approaches to language and culture problems. For example, the French mandates address the educational needs only of foreign or immigrant-worker children while the American policies concern all national-origin minorities or LES youths. In France, the legal responses have all been initiated by the Executive Branch; in the United States, the legislators and the judiciary have been the primary movers. These differences should not obscure the fact that in both countries policy makers are coming to terms with similar phenomena. Legal directives in the U.S. and France aim to teach children the official language, foster cultural identity and intercultural understanding, and facilitate entry into mainstream society. Let us now look at the different interpretations of these aims and the various means by which they are to be met.

Participation by Extra-Governmental Parties

Parents and Popular Organizations

The U.S. tradition in educational decision-making and implementation is one of decentralization; administration remains largely in the hands of locally-elected school boards. Where there are state and federal mandates, most notably tied to acceptance of funds, local districts have some flexibility in the manner in which they meet those requirements. There are also state laws and local school board policies supplementing the federal case and statutory law considerably. There are also a number of lay organizations which lobby Congress, state legislatures and state and local boards of education. These organizations, along with professional educators, are in large part responsible for putting bilingual education on the agenda of lawmakers and for initiating the litigation which resulted in the Lau doctrine.

In the actual implementation of the legislative programs outlined above, there is a formal role for persons outside the U.S. educational administrative hierarchy. In 1974, Congress stipulated that parents of LES children, teachers and, where appropriate, secondary students be consulted in the development of bilingual programs under the Bilingual Education Act. Once programs and

165. Some of the active bilingual education proponents are the Mexican American Political Association (MAPA), the California Association for Bilingual Education (CABE), the Union de Padres, the Chinese for Affirmative Action, the League of United Latin American Citizens (LULAC) and the American G.I. Forum.

projects are approved, these same constituencies must select persons to “participate” in their operation.\textsuperscript{167} Four years later this participation was formalized and elevated to the status of local “advisory councils” including a majority of parents and “other representatives” of LES children.\textsuperscript{168} Federal regulations on migratory education similarly require that all state education agencies “assure effective parental involvement” in the state migrant education programs. Essentially, funding recipients must establish advisory councils composed of parents of children eligible for services to oversee curriculum, budget and planning.\textsuperscript{169} States may require even greater participation by parents or students. These official forums have contributed to the political education of various ethnic and national minorities and in some cases have served as power bases in local politics\textsuperscript{170} or as stepping stones to larger political initiatives.\textsuperscript{171}

Some of the French reforms are also, indirectly, the product of grassroots pressure. The 1979 platform of one immigrant worker organization stressed the importance of an introduction to one's native culture and tongue.\textsuperscript{172} Another association put pressure on académies with large Arabic-speaking populations to open more classes in Arabic instruction.\textsuperscript{173} However, the ministerial directives provide the basic framework, with details and implementational decisions left to various administrators in the educational hierarchy. This practice is very much in keeping with France’s traditionally centralized administration in education and other government matters. Parents and the youngsters who participate in these classes have no official role in program implementation or evaluation, although they may interact directly with principals and teachers.\textsuperscript{174} They are also

\begin{itemize}
  \item \textsuperscript{167} § 703(4)(E) of the Act, as amended, 88 Stat. 505.
  \item \textsuperscript{168} 20 U.S.C. § 3223(a)(4)(E) (1980 Supp.) Secondary school students are also meant to consult and participate in bilingual program planning and oversight.
  \item \textsuperscript{169} 45 C.F.R. § 116d.37 (1979).
  \item \textsuperscript{170} See Rosenbaum, “Bilingual Education at the Crossroads: Strategies for a General Assistance Center” at 30 (master’s thesis, University of California, Berkeley, 1979), for a discussion of bilingual programs as modern-day ethnic political machines and patronage systems linking minority communities and the political and economic superstructure. For parental reaction to bilingual education, see id. at 34-36.
  \item \textsuperscript{171} See e.g. the experience of the Denver-based Chicano Education Project. Community Jobs (Dec. 1980-Jan. 1981) at 7, col. 1.
  \item \textsuperscript{172} Maisons de Travailleurs Immigrés (MTI), Paris, Plateforme sur la formation des travailleurs immigrés (Jan. 1979). Other immigrant associations in France include: the Association d’aide aux travailleurs d’outre-mer (ATOM), the Amicale des Algériens en Europe, the Comité inter-mouvements auprès des évacués (CIMADE), the Commission des travailleurs immigrés, the Service nationale pastoral des migrants, and the Fédération des associations solidaires aux travailleurs immigrés (FASTI).
  \item \textsuperscript{173} Association J. Posier. The incident is described in Santucci, supra n. 71 at 11-12.
  \item \textsuperscript{174} Reactions of parents to the elementary language programs vary. Most are
able to exert indirect pressure through their respective embassies or consulates.

**Foreign Governments and Personnel**

For several decades the French have allowed or encouraged the governments of countries with large emigrant populations to become involved in language and cultural instruction in France. It will be recalled that in the 1920s foreign teachers were permitted in schools and that by the 1970s foreign consulates were granted a large role in the shaping of policy. Consular officials recruit and pay the salaries of the classroom teachers and serve on *académie* planning committees.\(^{175}\) Although this practice relieves the French Government of a large financial and administrative burden, it has not been free from pedagogical and political criticism. One international body claims that shifting the burden to other governments demonstrates a lack of commitment to migrant education and drains professional resources from the developing countries which supply the majority of emigrants.\(^{176}\)

Despite an effort to improve relations at the consular-ministerial level, there are complaints of poor coordination between the foreign and French teachers in the classrooms.\(^{177}\) One analyst has referred to staff relations as “fragile and ambiguous”: foreign teachers “find themselves both outside the French educational system and inside [it].”\(^{178}\) The problem has been aggravated by a general absence of institutional contacts among instructors.\(^{179}\) Workshops and in-service training which bring together both French and foreign teaching personnel have been responses to this problem. The expansion of CEFISEM, the teacher training and information centers, has also helped to ease the situation.\(^{180}\)

Another criticism of foreign governments or their agents concerns the rapport between teachers and students. Foreign teachers, favorable, although some do not welcome the programs because they consider French the “language of promotion.” Boulot et al., “Les cours intégrés . . .,” *Migrants-Formations* 16, 18 (March 1980); *Le Monde de l’Education*, supra n. 54 at 10, col. 1.

175. *Circulaire* No. 79-158, supra n. 52.


178. Hultman, supra n. 34 at 15.

179. Boulot et al., supra n. 174 at 15.

180. For a description of some in-service training and workshops for teachers see CEFISEM, “Un stage de formation d’enseignants italiens en France,” *Migrants-Formation* 67-68 (March 1980) and Charlot, “Une formation à la culture maghrébine,” id. at 72-73.
as recent or temporary settlers, may themselves be ill-adapted to France and poorly suited as role models for adjustment in the host country. Furthermore, they may conceive of language and culture in a manner alien to a working-class community, not to mention a community “in diaspora,” or to second or third-generation immigrants. Last, these instructors often fail to satisfy one of the stated rationales for their employment, to serve as a bridge between immigrant families and the school. They often do little to facilitate contact with their student’s parents because they maintain a professional distance, or the parents have an “excessive respect” for them. In some instances however, the foreign instructors undergo specialized training prior to their arrival in France; this helps them meet the challenges of establishing good rapport with their compatriots and adjusting themselves to life outside the homeland.

In the U.S., there has been some attempt to recruit teachers familiar with the linguistic and cultural backgrounds of their students. One professor of education claims however that teachers who come from the same cultural groups as their students do not necessarily have a greater capacity for understanding or accepting their students’ needs or patterns of behavior. Since the education of limited-English speakers is not viewed in the context of immigration or diplomatic relations, there has been no direct involvement by foreign teachers or governments in federal or state programs.

It is clear that participation outside regular government chan-

181. Verdoodt, supra n. 4 at 19, criticizes the school run by the country of origin because it “divides the child between two cultural poles.” Other educators think the presence of teachers from the child’s native country is important. See e.g., Corriera Botelho, “Présence des langues d’origine à l’école maternelle” and Delaine, “Quelle image de son pays proposer à l’enfant,” Migrants-Formation 30, 41-42 (March 1980). See also text accompanying n. 215-223 infra.

182. For instance a “national” language may be taught in lieu of a child’s native dialect or regional idiom. See interview with F. Mandelbaum-Reiner, school psychologist, in Migrants-Formation 27 (March 1980). See n. 187 infra for remarks on similar problems in the U.S.

183. See Circulaire No. 73-1008, supra n. 55.

184. Mechta, supra n. 177 at 297-98. One migrant program director remarked that for many North African parents educated at Koranic schools, “the teacher remains a prophet.” Le Monde de l’Education, supra n. 54 at 9, col. 3.

185. See e.g. teacher training at the New University of Lisbon, “L’Université Nouvelle de Lisbonne et la formation des enseignants portugais,” Migrants-Formation 69-70 (March 1980).

186. See e.g. the Lau Guidelines, supra n. 135 at 19 V (instructional personnel must be “linguistically/culturally familiar” with the background of their students), 45 C.F.R. § 118.15(d) (permitting Lau Centers to assist schools in recruiting national origin minority group personnel). California is one such state. See California Master Plan, supra n. 164 at 16.

187. Fillmore, “Dimensions of Bilingual Programs and Some Problems” at 19, paper presented at the Conference on Dimensions in Bilingual Education, Washington, D.C. (Feb. 1977, mimeo). Furthermore, the language of prestige taught in the classroom may not correspond to the dialect or language spoken at home. Id. at 17.
nels can take many forms. Implementation problems aside, this kind of involvement can do much to build material and moral support for the creation and actual operation of programs for immigrant and language minorities. There are nevertheless some important political questions to be considered, e.g., to what extent should non-professionals or foreign governments exercise authority and, conversely, how much of the state’s responsibility can be shifted to other parties?

Equal Opportunity Through Assimilation

Both France and the United States are conscious of the need to integrate their linguistic minorities into the school setting. The U.S. directives differ from the French circulaires in two major respects. First, they are part of an overall, explicit policy of non-discrimination against national minorities. Second, they allow the equal educational opportunity objective to be met either through intensive English classes or through some form of bilingual education. The French orientation class however is a remedial device for educating outsiders or newcomers through intensive Francisation, and is a discrete component of immigrant education.

Both countries seek, as the overriding objective, communication in the official or national tongue. Presumably both see language as the common denominator or equalizing force that will allow immigrant or minority youth to take advantage of the educational system and become full members of society.

The U.S. Supreme Court has held that schools must remove any linguistic barriers which prevent children from receiving an education in public schools. Congress has affirmed this decision. The Lau Guidelines clearly favor bilingual education, but also allow for equally effective alternatives. The federal executive branch is also shifting its emphasis from a bilingual to an English-only approach. Even before the advent of the Reagan Administration, the Department of Education decided that a particular school district could meet its obligations under Title VI, Lau and the Equal Educational Opportunities Act through an intensive English program. The Bilingual Education Act is, of course, a strong endorsement of a two-language teaching approach, but suffers from what one linguist calls

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188. Lebel, supra n. 28 at 265, distinguishes “human right” from “linguistic right,” the former protected in international texts, viz., prohibition of discrimination on the basis of language, the latter an unprotected right to use a specific language.

189. S.F. Chronicle, 31 Dec. 1980 at 1, col. 5. In other developments, President Reagan’s Secretary of Education has criticized federal endorsement of bilingual instruction as part of the “Lau Remedies” and the President himself has denounced native language preservation as an economic handicap for LES youngsters. New York Times at 1, col. 1 (3 Feb. 1981) and 1, col. 6 (3 March 1981).
“ambivalent if not schizoid” tendencies, being neither “clearly for [bilingualism] nor against it... [T]he Act’s true purpose has been to foster English.”

The statute contains restrictive language: It states that the objective of the program is improvement of English-language skills and requires a certain amount of instruction in English. The use of native tongues is allowed only to the extent necessary to achieve competence in English. To be eligible, it is not enough that students come from an environment where a language other than English is dominant; they must demonstrate a certain level of difficulty in English.

English-as-a-Second-Language (ESL) is the traditional method for teaching the national idiom to children of limited-English proficiency. It is designed to complement the exposure to English which students receive outside the classroom. That many youngsters do not receive the necessary exposure is one of the criticisms leveled against this method. Moreover, many ESL teachers are poorly trained or have no background in elementary or secondary education. Critics also allege that ESL is useful only in communities “where it is possible to maintain pride in the native language and culture and therefore develop a positive attitude toward the learning of English.”

Some specialists have argued that the use of a child’s native language is essential to the learning process. It has been suggested by linguists, psychologists and sociologists alike that youngsters should not be saddled with the task of learning a new idiom upon entering school. A final objection to ESL is that it is often viewed as a remedial program for socially or economically disadvantaged children. Most bilingual education supporters oppose the notion that a non-English language represents a handicap or a

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191. See text at n. 112-116 supra.
192. ESL is a structured language-acquisition program designed to teach English to students whose native language is not English. Students usually receive all subject matter instruction in English, but are “pulled out” of the regular classrooms for special English language skills training.
194. Interview with linguist M. Saville-Troike, in id., Introduction, n. 84.
195. Id. at 28.
barrier, irrespective of the pupil's socio-economic status.\textsuperscript{198}

Though certain educators are skeptical about ESL, they are not necessarily quick to embrace bilingual education.\textsuperscript{199} One of the sharpest attacks on bilingual education, from a pedagogical perspective, was made in an evaluation commissioned by the HEW Office of Education. The study of programs established under the Bilingual Education Act showed that LES students enrolled in bilingual classes, at all grade levels, actually performed less well in the English language than their peers who were placed in regular classrooms.\textsuperscript{200} The evaluation has, however, been severely criticized, largely on methodological grounds.\textsuperscript{201} Subsequent assessments have produced more favorable results.\textsuperscript{202}

The French \textit{classes d'initiation} and \textit{classes d'adaptation} are the analogue to the ESL program in the United States. Rapid integration into the regular curriculum is the main objective. Contact with French-speaking pupils is considered of paramount importance, with greater contact suggested for the older students.\textsuperscript{203} Some educators see the orientation classes as a means of better integration into French society and reduction of failures,\textsuperscript{204} while others believe they contribute to social exclusion. According to a study of one département, the orientation class, rather than being viewed as a "dumping ground," has been the envy of students in the regular classrooms.\textsuperscript{205} One teacher commented that the class reinforces the students' sense of "foreignness," imprinting an identity which they may carry throughout their educational careers. In her words, it is a "ghetto system" and "falsely assimilationist."\textsuperscript{206} An expert in the

\textsuperscript{198} See e.g. UNESCO, supra n. 196 at ¶ 20; Epstein, supra n. 18 at 18, 49-50.
\textsuperscript{199} See comments in Epstein, supra n. 18 at 50-54.
\textsuperscript{200} The two sets of students performed about the same in mathematics, however. See American Institutes for Research (AIR), \textit{Evaluation of the Impact of ESEA Title VII Spanish/English Bilingual Education Program. Vol. III: Year Two Impact Data, Educational Process and In-Depth Analyses} at xliv (1978). An earlier Office of Education study claimed that bilingual education projects were "the hardest to implement and the least successful in meeting their goals." RAND Corp., \textit{Title IV of the Civil Rights Act of 1964: A Review of Program Operations} (R-1901/2-HEW) (August 1976).
\textsuperscript{202} See e.g. Title VII programs in Troike, \textit{Research Evidence for the Effectiveness of Bilingual Education} (Center for Applied Linguistics, 1978).
\textsuperscript{203} \textit{Circulaires} Nos. 70-77, supra n. 75, and 73-383, supra n. 78.
\textsuperscript{205} CEMRIC, supra n. 3 at 86.
\textsuperscript{206} Neves, "Migrations et confrontations culturelles," speech at International Colloquium on Cultural Dialogue (Strasbourg, July 1976), reprinted in \textit{Bulletin...
pathology of refugees has stated that far from giving migrant adolescents the chance to bridge the gap of knowledge separating them from their peers, the policy of special classes severely aggravates the separation.\textsuperscript{207}

The irony is that a policy of assimilation may actually do more to isolate immigrant youths and language minorities than to make them equal with their peers in school or society. There seems to be agreement that educational achievement in the country of immigration entails mastery of the official tongue. There is less consensus however on what, if any, role the mother tongue should play in the learning of the new language.\textsuperscript{208}

\textit{Protection of Linguistic and Cultural Identity}

A child’s primary language is more than a tool for learning a second language. The American and French laws both recognize the need to foster the linguistic or cultural identity of certain national sub-groups, but there is much debate about how far government educational policies should go in shaping that identity and with what result. One organization, which serves as an unofficial liaison between its sponsoring government and migrant workers throughout Europe, declares the objectives of cultural education to be: increasing the sensitivity of migrant youngsters to the values of their national heritage; instilling in them a sense of their own originality within the host country; and creating a “secure psychological climate” for children living on the edge of two societies.\textsuperscript{209}

In France, government directives make explicit reference to the appreciation of cultural identity and fostering better inter-familial relations as objectives of the linguistic and cultural policies for migrant youth.\textsuperscript{210} Some studies conclude that second generation immigrant youths in France have integrated aspects of both their native and the dominant culture.\textsuperscript{211} Still, the responses of these youths vary: some express a profound sense of identity with their “homeland” or refer to themselves as \textit{émigrés}, even though the majority

d\textit{’Information Internationale} 9 (December 1976) (Ligue internationale de l’enseignement, de l’éducation et de la culture populaire).

208. For differing views of assimilation, see pronouncements by the EEC Council of Ministers, supra n. 9; U.N. Seminar, supra n. 1 at \textsuperscript{1} 58; and Goutard, supra n. 79 at 3.
209. See Amicale des Algériens en Europe, supra n. 54 at 34.
211. The studies did not find that less inculcation of the native culture necessarily led to greater penetration into French social life. In fact, contact with the dominant culture tended to reinforce attachment to the culture and country of origin. Direction de la Population et des Migrations, “La condition de la seconde génération de migrants,” \textit{Revue française des affaires sociales} 124 (April-June 1978).
have no plans to return to their country.\textsuperscript{212} Others have confided that due to the long period of exposure to French life they feel little attachment to their native culture and country.\textsuperscript{213} For others, their length of stay or place of birth does not remove the sense of foreignness.\textsuperscript{214}

\textit{Return to the Homeland}

Language maintenance also follows from a more concrete, short-term goal. The French Ministry of Education has stated that use of a child's native language and culture facilitates that child's return to his or her home country and reintegration into that country's educational system.\textsuperscript{215} This rationale has been adopted by some immigrant organizations\textsuperscript{216} and condemned by others. One spokesperson claimed that this policy keeps immigrant workers in a state of temporariness and transition, "making them dream of return."\textsuperscript{217} The preference for return over adaptation to the host country has also been criticized as a dismissal of youngsters' immediate concerns, i.e. adjustment to their present environment.\textsuperscript{218} Some specialists believe that a return to the home country may be at once desired and rejected. It is usually something envisioned for the distant future but postponed once actually obtainable.\textsuperscript{219}

Educators do agree however that foreign youngsters must be given training which could serve them either in the French employment market, should they decide to remain, or in their home countries.\textsuperscript{220} Indeed, the thrust of the international organizations on the subject is that migrant workers and their families, so often viewed as an expendable commodity in an expanding or shrinking labor market, must be equipped to survive in host and home country alike.\textsuperscript{221} One French public official and party leader is concerned that immigrants be given the free choice to remain in France or to return to their country of origin.\textsuperscript{222} The Secretary of State for Immi-

\begin{itemize}
\item \textsuperscript{212} Id.
\item \textsuperscript{213} Chi Lan, "Jeunes Vietnamiens anciennement et récemment installés en France," \\textit{Migrants-Formation} 79 (March 1980).
\item \textsuperscript{214} In the words of one young person of Spanish origin: "A Spaniard always remains a Spaniard." Charlot, "De jeunes espagnols se préparent au retour," \\textit{Migrants-Formation} 76-77 (March 1980).
\item \textsuperscript{215} See \textit{Note d'Information} No. 951, supra n. 210.
\item \textsuperscript{216} See Direction de la Population, supra n. 211 at 121-22.
\item \textsuperscript{217} M. Dias in \textit{Information FASTI} (organ of the Fédération des associations solidaire aux travailleurs immigrés), Paris (n.d.).
\item \textsuperscript{218} Soubiran, supra n. 176 at 19.
\item \textsuperscript{219} Boulot et al., supra n. 174 at 16.
\item \textsuperscript{220} Delattre, supra n. 204 at 140.
\item \textsuperscript{221} See e.g., ILO, "Symposium on Workers' Education," ILO/Wed/S.28/D.4 ¶ 43 (Oct. 1974).
\item \textsuperscript{222} Comments of A. Carignon, Conseiller-Préfet and Central Committee Mem-
grant Worker Affairs remarked, after the Government’s adoption of new social and cultural measures for the immigrant community, that France must at once welcome foreign workers, respect their differences, create a link with their home countries and grant them equal opportunity.223

**Affirmative Ethnicity**

The “return to the homeland” theme is marked in the U.S. language and culture policies only by its absence.224 In fact, United States immigration law presumes that all entering non-nationals intend to become permanent residents unless and until they establish otherwise.225 The question of safeguarding cultural and linguistic identity assumes a different form.

The official sanctioning of cultural values as part of public school curriculum in the Bilingual Education Act, the Ethnic Heritage Studies amendments and the Lau Guidelines is a response to the political and ethnic “consciousness-raising” of the mid-1960s.226 The Civil Rights Movement, which had focused almost exclusively on concerns of black Americans, trickled into the Hispanic and American Indian communities. These minorities had likewise suffered from a history of racism and wanted their share of public monies, jobs, education and political muscle.227 At the same time, the “white ethnics” began to assert demands.228 In part to dissociate themselves from the history of oppression in the U.S. and in part to raise their own claims of identity, these descendants of Europeans sought to protect their political and economic turf too.

Critics of cultural instruction have protested government financing and fostering of what one writer calls “affirmative ethnicity.”229

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227. See generally RAND Corp., supra n. 200.

228. Earlier, these groups had urged, like blacks during the “pro-integration” phase of the Civil Rights Movement, that they were like everybody else. Sociologist Nathan Glazer hypothesizes that it was no longer in the interest of Italians, Slavs, Jews and others to emphasize their “American” identities; that would mean bearing responsibility for slavery, exploitation and imperialism. Glazer, Affirmative Discrimination: Ethnic Inequality and Public Policy 177 (1975).

229. See e.g. comments of the United Automobile Workers (U.A.W.) and the Na-
They argue that this is the proper role of family, religious groups, private schools, and ethnic associations and publications. A noted sociologist writes that members of ethnic groups must have the choice of affiliating with ethnic institutions; the government should adopt a policy of "salutary neglect," neither encouraging nor discouraging affiliation. Some have even expressed a fear of inciting ethnic warfare. They allege that over-emphasis on cultural identity could lead to separatist movements and "bitter linguistic politics" whereby language becomes a "major point of cleavage" in state and local politics, educational institutions, job qualifications and social relations. Other American scholars believe that cultural heritage is a false issue in the education of LES youngsters. One anthropologist views the promotion of cultural identity or positive self-image as "window-dressing" for bilingual programs that have failed to produce glowing results on academic grounds. A political scientist writes that the stereotype of non-Anglo children who have little self-esteem and are forced to function in a school which shows no regard for their culture is "terribly wrong" and oversimplifies the real needs of LES children.

Language Maintenance

Fostering cultural identity is only part of the question. There is a divergence of thinking among policy-makers in both the U.S. and France on the state's encouragement of bilingualism among immigrants or minorities.

There are deep divisions in the U.S. over whether the mother tongue should be used as a "bridge" to learn English, the so-called transitional scheme, or whether the native language should be further developed once English proficiency is achieved, under a maintenance policy. The Bilingual Education Act reflects both the transitional and maintenance concepts in its text and legislative history, although it leans more toward the transitional approach. Before going to a Senate-House Conference, the 1974 amendments left open the door for maintenance programs. In their final report

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231. Glazer, supra n. 228 at 25.
232. Comments of G. Orfield; political scientist, in Epstein, supra n. 14 at 24.
234. Orfield, "Response" in Epstein, supra n. 14 at 86.
235. For a fuller explanation of these two instructional modes, see Comment, supra n. 201 at 1565-66.
236. One language specialist called the 1968 act "masterfully ambiguous" due to its lack of clarity on transitional vs. maintenance objectives. Gaarder, "Bilingual-Bicultural Education: The Special Case of the Mexican-Americans" at 2, paper, cited in Schneider, supra n. 95 at 32.
however, the House Conferees warned that “the definition not be
misinterpreted to indicate that an ultimate goal of the program is
the establishment of a ‘bilingual society.’”237

There is some evidence that the French commitment to native
language preservation is also ambivalent. The elementary school
program, while considerably upgraded from its status of a decade
ago, still remains on the fringes of the regular curriculum. That
courses must often be initiated, staffed or funded by non-govern-
mental parties has already been discussed. The prohibition of
homework, difficulty in obtaining classrooms and inconvenient or in-
sufficient class hours may also be an indication that the program is
less than serious. The lack of a formal program at the secondary
school level, except for the regular modern foreign language
classes,238 has also been criticized by teachers and legislators.239
One educational advisor was prompted to write a few years ago that
“bilingualism is a broken concession in the form of a few hours of
native language instruction.”240

Some commentators claim that bilingual education alone will
not promote bilingualism. What is needed instead is widespread
use of native languages in the homes, communities, social institu-
tions and local economies of the nation’s various minority
groups.241 Others argue that nothing short of official second languages in the
workplace and the public sector, on the Belgian or Canadian mod-
els, will keep other languages alive.242

Promotion of Cross-Cultural Understanding

The international community has recognized that migrant edu-
cation policies must address the level of awareness and sensitivity

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237. Conference Report No. 93-1026, 1974 Amendments to the Bilingual Education

238. Parvaux, supra n. 73 at 60, states that the high school instruction in Portu-
guese should be regarded as the normal continuation of the primary school courses
in language. It should be recalled that the purpose of Circulaire No. 73-383 was not
language transition or maintenance as much as the easing of a heavy course-load.

239. At the 1979 National Forum for Modern Languages, in Paris, 500 teachers de-
manded that all secondary students (1st cycle) learn two languages and deplored the
poor implementation of the government policy to diversify languages, particularly
lack of classes in Arabic and Portuguese, the two major “immigrant languages.” Le
Monde, 4 Dec. 1979. See also remarks by Senator Gamboa in the J.O. (Débats Parle-
mentaires/Sénat) 28162 (1 March 1979).


242. See e.g. the comments of M. Fierro, President of El Congresso (National Con-
gress of Hispanic-American Citizens) and Professor J. González, cited in Epstein,
supra n. 14 at 35-36. The establishment of a second official language in the U.S. is un-
likely for the near future. Voters repealed one county’s short-lived policy of bilin-
of the indigenous or host populations.\textsuperscript{243} Cultural pluralism has been the byword of many American educators and political leaders. The aim of the Elementary and Secondary Education Act's ethnic studies amendments was not only to give students a sense of positive self-identification, but to foster "understanding of the nature of American society as a pluralistic society."\textsuperscript{244} The Congressional Report on the Ethnic Heritage Studies bill declared that the price of the "melting-pot theory" in American life had been "a feeling of alienation from . . . society felt by many citizens and . . . a mood of intolerance of any diversity in our society."\textsuperscript{245}

\textit{Involvement of Native Speakers and Non-Immigrants}

Some linguists have urged, in the U.S. and France, that bilingual-bicultural instruction not be limited to immigrants or youngsters who are not fluent in the official language.\textsuperscript{246} As already noted, that separation may intensify the isolation of racial, ethnic or linguistic minorities and reinforces a negative self-image. In the United States, it should be recalled, this kind of separation is expressly prohibited under the \textit{Lau} Guidelines as a form of national origin discrimination.\textsuperscript{247} The 1978 amendments to the Bilingual Education Act specify that English-speaking children may be enrolled in bilingual classes in order to prevent this form of segregation. Another reason for encouraging the participation of fluent-English-speaking (FES) children is to promote intercultural exchange. Despite earlier restrictions,\textsuperscript{248} the Bilingual Education Act's most recent amendments formally recognized that utilization of multiple languages and cultural resources benefit both children of limited English proficiency and children whose primary language is English.\textsuperscript{249}

At least one state statute requires a balance of LES/NES and fluent-English-speaking pupils.\textsuperscript{250} The rationales are: to prevent national origin segregation, to broaden FES students' understanding of other languages and to assist LES students in improving their English by interacting with their fluent-English peers.\textsuperscript{251} Some educa-

\textsuperscript{243} See e.g. UNESCO, Meeting of Experts, supra n. 196 at § 37 et seq.
\textsuperscript{244} House Report No. 92-554, supra n. 118 at 2531.
\textsuperscript{245} Id.
\textsuperscript{246} See e.g. Fillmore, supra n. 187 at 4 and President's Commission on Foreign Language and International Studies, \textit{Strength Through Wisdom: A Critique of U.S. Capability 1, 10} (1979). See also Hultman, supra n. 34 at 4, on the lack of opportunities for French youngsters to participate in language programs.
\textsuperscript{247} See text at n. 141 supra.
\textsuperscript{248} See text at n. 115 supra.
\textsuperscript{249} 20 U.S.C. § 3222(a)(5). See also President's Commission, supra n. 246 at 6-10.
\textsuperscript{251} Report of the Office of the Auditor General to the Joint Legislative Audit
tors however are opposed to placing fluent- and limited-English students in the same classroom because they believe that teaching a language to a non-native speaker and to one who has some home or community exposure to it is a different process.\textsuperscript{252} It should be noted that foreign language classes are also available as an elective for native English speakers in most American secondary schools.\textsuperscript{253}

The French have no official provisions for the participation of native French-speaking youngsters in the elementary language and culture classes. However, pilot projects have been introduced in some schools where in the same classroom French children and their foreign peers learn about the latters' language and culture.\textsuperscript{254} According to one educational psychologist, this technique is intended to avoid prolonged separation and to foster cross-cultural exchange for students of the dominant culture.\textsuperscript{255}

The reaction of French parents and teaching personnel has been mixed. One département inspector stated that French parents believe their children receive a better education in schools with few immigrants. Some districts have drawn school boundary lines to minimize immigrant enrollment in certain schools, thereby creating segregated schools.\textsuperscript{256} A CREDIF survey however claims that some French parents have expressed a desire for their children to be enrolled in the language and culture courses.\textsuperscript{257}

\textit{Developing an Immigrant Culture}

Although cultural pluralism has been legally sanctioned in the U.S. and unofficially tested in France, there are some criticisms about the form cultural instruction has taken in practice. One onsite teaching team of CEFISEM has condemned the textbook concept of culture as nothing more than the "national culture" of a particular country of emigration: it obscures the popular culture of immigrant communities in much the same way that "bourgeois culture" projects itself as the culture of the French bourgeoisie and working class alike.\textsuperscript{258} Cultural instruction, in the team's view, is also limited and repetitive and amounts to mere folklore. One cannot
not simply revive a denied or repressed culture by noting that it is misunderstood.\textsuperscript{259}

A Paris-based CEFISEM research associate has remarked that in trying to present culture to their students, teachers all too often turn to a mélange of culture, folklore, tourism and history, thereby distorting the "lively and evolving" nature of "migrant culture."\textsuperscript{260} An American professor of education finds similar pedagogical shortcomings in the United States.\textsuperscript{261} While folklore or "artifacts and trappings" may aid immigrants in their search for identity or enrich and enliven the curriculum, they do not change the attitudes or interactional patterns which prevail in the classroom.\textsuperscript{262}

\textbf{Conclusion}

In comparing the legal schemes in France and the United States, this article has attempted to highlight the theoretical objectives of policies dealing with the education of immigrants and other linguistic and cultural minorities, and criticisms of these policies.

Conceptual and programmatic differences have been alluded to, but more must be said about the fundamentally distinct policy approaches. In the United States, a country populated by successive waves of immigrants, education of minority youths is seen in the context of combating discrimination, providing equal opportunity and promoting cultural pluralism, in a society which tends to assume that immigrants will remain and become permanent residents or citizens. France on the other hand has waged a battle of national unity since the French Revolution and only relatively recently has come to know significant immigration in the \textit{Métropole}. Consequently, its educational programs are part of a larger policy for addressing the employment and social conditions of immigrants, particularly migrant workers, who are assumed more likely to return home than to stay permanently in France. Both countries agree however that differences in language and culture affect the level of scholastic achievement and employability of the offspring of working-class immigrants and minorities.

There is a tendency, of course, in concentrating on the native tongue and cultural milieu, to overlook other factors in educational performance. It is not necessarily true, for example, that all immigrant workers' children in France are non-French-speaking\textsuperscript{263} or that

\begin{itemize}
  \item\textsuperscript{259} Id. at 8.
  \item\textsuperscript{260} Delain, supra n. 181 at 30 and Hultman, supra n. 34 at 14. This opinion is confirmed in studies by France's Ministry of Labor, Population and Migrations Division. See Direction de la Population et des Migrations, supra n. 211 at 121.
  \item\textsuperscript{261} Fillmore, supra n. 187 at 18-19. See also Comment, supra n. 201 at 150, for a discussion of "fantasy heritage."
  \item\textsuperscript{262} Fillmore, supra n. 187 at 19.
  \item\textsuperscript{263} Only slightly more than 18\% of nursery school "foreign children" and 10\% of
all U.S. youngsters who are members of identifiable ethnic minorities or are exposed to a non-English language at home are limited in English proficiency. Some research in the U.S. and France indicates that class background may constitute a greater learning handicap than language, and that the problems encountered by "foreign" children are often the same as those faced by all children from socially, economically or culturally disadvantaged backgrounds.

It is important that legislators and policy makers not don blinders, shutting out the larger dimensions of this problem: the education of immigrants and minorities must account as much for socio-economic status, racism and the international migration phenomenon as for language and culture. Attention must be given to fighting the ills of poverty, prejudice and poor resource distribution if the schooling of these youngsters is to be adequately addressed.

With respect to the linguistic and cultural component of education, nations like France and the United States must search for that delicate mixture of policies which facilitates: 1) economic, social and political integration; 2) subnational or ethnic self-determination; and 3) contact between majority and minority cultures. Admittedly, there are strains of each of these objectives in the French and American legal texts. But the contradictions and the ambivalence are all too apparent. How can a government lay out the welcome mat but close its doors at the same time? How can it instill an appreciation of cultural diversity without fanning the flames of inter-ethnic rivalry or sealing the lid on the melting pot?

The answers are not easy, but the questions demand a broad perspective and some thoughtful analysis to offset the myopia and incrementalism which pervade legislative and judicial decision-making. It is not enough, opines one public official, to create a legal niche for immigrants. His answer, which strikes the chords of both an early opinion by the Permanent Court of International Justice and a recent human rights declaration by a United Nations agency, is as simple as it is complex:

It is important that they be accepted with their right to be different... we must learn to live together.

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264. See e.g. Condition of Bilingual Education, supra n. 90 at 408-409; AIR, supra n. 200 at xxvi; and Rosenbaum, n. 170 at 30, Appendix III.
265. See SNI, supra n. 263 at VI. Le Monde de l'Education, supra n. 54 at 8, col. 1. Orfield, supra n. 234 at 86, comparing middle-class and poor Hispanics in the U.S., also suggests that class is a primary determinant of LES children's needs.
266. See text at n. 22 supra.
267. See text at n. 29 supra.
268. Comments by A. Carignon in Le Monde, supra n. 222 at 2, col. 1.