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Counting the Costs of a Global Anglophonic Hegemony: Examining the Impact of U.S. Language Education Policy on Linguistic Minorities Worldwide

STEPHEN M. HARPER*

ABSTRACT

As the need for efficient communication between global participants in academia, business, and politics has grown in recent decades, English has quickly become the dominant universal language in these arenas. Language policy scholars have noted, however, that the rapid spread of English could present a substantial threat to the linguistic diversity of the world, as some scholars have estimated that as many as fifty percent of the world's languages will be extinct by the end of the twenty-first century. This Note argues that the United States' current stance in the area of language education will contribute to this global language decline by reinforcing an already strong Anglophonic hegemony. Additionally, the Note argues that the neoliberal tendency to rely on market-driven decisions is ill-advised in the context of language policy, as the seemingly rational decisions of individuals and nations to invest in developing English-language skills will collectively result in drastic language loss that will not be fully accounted for in the market.

INTRODUCTION

Increases in the transnational flow of capital, media, people, and culture have created a situation in which the world's societies are more interdependent, yet more directly in competition with one another for positions of power in the global marketplace. In this context, the need for efficient communication among various global participants in politics, academia, and business is great, and English is quickly

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becoming the dominant universal language of both the marketplace and the academic world.¹ If the world's languages were in competition with one another, then English would be "winning handily, as people throughout the world scramble to acquire English literacy and fluency in truly astonishing numbers."² It is unsurprising that people throughout the world have a strong interest in learning English, given that English language skills help people access global markets and the world's ever-increasing circulation of information. In fact, some studies have estimated that English is the language of approximately eighty percent of all websites, and it is a primary source of communication for key supranational organizations like the World Bank, the European Union, and the United Nations.³

While the spread of English fluency might help to integrate the peoples of the world in some positive ways,⁴ there are also considerable fears that English could become the *lingua franca* of the globalized world at the expense of the cultural and linguistic diversity that currently exists.⁵ The ascendancy of English as a global language, as education professor Stephen May notes, "specifically *militates against* the ongoing use, and even existence, of minority languages."⁶ Many other language policy scholars also forecast that the spread of English will result in the decline and extinction of many of the world's languages; current predictions state that between twenty percent and fifty percent of the estimated 6,800 languages in the world today will no longer exist at the end of the twenty-first century.⁷ As the existing linguistic diversity narrows, the knowledge, aesthetics, and cultural identities embodied in these various languages will also be lost.

While the current dominance of English can be attributed to a number of historical factors, including the longstanding geopolitical influence of British colonialism, most scholars and cultural critics agree

1. See NELLY P. STROMQUIST, *EDUCATION IN A GLOBALIZED WORLD: THE CONNECTIVITY OF ECONOMIC POWER, TECHNOLOGY, AND KNOWLEDGE* 70 (2002).

2. Ronald Schmidt, *Political Theory and Language Policy*, in *AN INTRODUCTION TO LANGUAGE POLICY: THEORY AND METHOD* 95, 99 (Thomas Ricento ed., 2006).

3. STROMQUIST, *supra* note 1, at 70.

4. See James W. Tollefson, *Critical Theory in Language Policy*, in *AN INTRODUCTION TO LANGUAGE POLICY: THEORY AND METHOD*, *supra* note 2, at 42; Christina Bratt Paulson & Kai Heidemann, *Language Policies and the Education of Linguistic Minorities*, in *AN INTRODUCTION TO LANGUAGE POLICY: THEORY AND METHOD*, *supra* note 2, at 299 (noting that Black South Africans turned to English as a means of upward social mobility following the end of apartheid).

5. Robert Phillipson, *Language Policy and Linguistic Imperialism*, in *AN INTRODUCTION TO LANGUAGE POLICY: THEORY AND METHOD*, *supra* note 2, at 346, 353.

6. Stephen May, *Language Policy and Minority Rights*, in *AN INTRODUCTION TO LANGUAGE POLICY: THEORY AND METHOD*, *supra* note 2, at 255, 257.

7. *Id.*

that the United States is now the pivotal player in extending this linguistic hegemony.⁸ Language policy scholars often refer to the expansion of English as an example of linguistic imperialism, but it is important to note that the United States' influence in this ongoing process, though less overt, is perhaps even more powerful than the forceful impositions associated with British colonialism.⁹ Instead, the United States often exerts its influence by maintaining hegemonic power structures that allow for a more subtle type of dominance that relies on both top-down institutional pressures and bottom-up choices by individuals who rationally wish to accrue the benefits that come with English fluency.¹⁰ French theorist Pierre Bourdieu aptly described this power as follows:

“Globalization” serves as a password, a watchword, while in effect it is the legitimatory mask of a policy aiming to universalize particular interests and the particular tradition of the economically and politically dominant powers, above all the United States, and to extend to the entire world the economic and cultural model that favors these powers most, while simultaneously presenting it as a norm, a requirement, and a fatality, a universal destiny, in such a manner as to obtain adherence or at least, universal resignation.¹¹

Considering this dramatic hegemony, it appears certain that the power structure and policies of the United States will continue to reach beyond the nation's geographical borders and drastically impact linguistic minorities throughout the world.

In particular, language education policies, as carried out in public school systems, have a substantial impact on linguistic minorities.¹²

8. See Phillipson, *supra* note 5, at 347.

9. See *id.* at 347-52.

10. See May, *supra* note 6, at 263-265; Phillipson, *supra* note 5, at 349-52, 357.

11. PIERRE BOURDIEU, *CONTRE-FEUX 2: POUR UN MOUVEMENT SOCIAL EUROPÉEN* 84 (2001), translated in Phillipson, *supra* note 5, at 351-52.

12. Cristina M. Rodriguez, *Language and Participation*, 94 CAL. L. REV. 687, 758 (2006) (“In many societies with multilingual populations, public education rests at the heart of the language question. Minority language education represents the chief survival mechanism for a language, because in the educational context, a language's fate is sealed. For some multilingual societies, such as Canada, this realization has generated constitutionally protected minority educational rights. But in the United States, the only language-based educational ‘right’ that exists is the statutory right of non-English-speaking students to programs that assist them in overcoming language barriers, or the right to learn English.”).

While the U.S. legal system has not completely ignored the issue of language education for linguistic minorities, it certainly has not shown a strong national commitment to preserving multilingualism or protecting linguistic minorities.¹³ Some sociolinguistic scholars have argued that the nation's absence of strong legal protections in this area gives rise to a "no-policy policy" in which the linguistic group with the most economic, social, or political power always wins out.¹⁴ The hands-off approach that the United States often adopts with respect to language policy generally reflects the nation's cultural tendency to place the communicative burden on non-English speakers. Not only does this attitude have a strong impact on the ever more diverse population existing within the United States, but this posture is also increasingly being exported throughout the world via the power of the global marketplace.

This Note argues that the United States' current stance on language education could lead to an increasingly laissez-faire attitude toward language policy globally, which will have a detrimental impact on the world's linguistic minorities. As the forces of the global marketplace continue to influence language policy, there is a significant risk that market failure in this area could result in a dramatic decline in linguistic diversity around the world. Part I provides an overview of the history of language education laws in the U.S. and briefly explores the implications of a recognizable shift away from multilingualism and toward policies heavily focused on English language acquisition. Part II examines the larger global impact that could result from the spread of a strong, market-driven Anglophonic hegemony. Lastly, Part III explores some state-driven policy suggestions for the United States and other nations that could help preserve the world's linguistic diversity.

I. U.S. LAW AND LANGUAGE EDUCATION POLICY

Historically, "the United States has always been a multilingual society, but this linguistic diversity has long complicated . . . conceptions of American national identity."¹⁵ The United States has never had an explicit national language policy, but rhetorical battles concerning the linguistic identity of the nation have continued even in recent decades.¹⁶ Since the 1980s, there have been several attempts by legislators in the

13. *Id.* at 705.

14. See Joshua A. Fishman, *Language Policy and Language Shift*, in AN INTRODUCTION TO LANGUAGE POLICY: THEORY AND METHOD, *supra* note 2, at 311, 318.

15. Rodriguez, *supra* note 12, at 689.

16. Harold Schiffman, *Language Policy and Linguistic Culture*, in AN INTRODUCTION TO LANGUAGE POLICY: THEORY AND METHOD, *supra* note 2, at 111, 121.

United States to make English the nation's official language, but these attempts have failed thus far.¹⁷ In spite of these failures, many language policy experts have noted that official demarcation of English's legal status is unnecessary for its dominance to continue in American society.¹⁸ The *de facto* linguistic culture of the country already "supports the use of English to the exclusion of almost all other languages" such that *de jure* support of English is often unnecessary.¹⁹ Despite fears among some in the United States that the use of English will decline as immigration continues, the absence of authoritative language policy actually works in favor of English, as it is the language of the most influential societal actors and institutions.²⁰ Given the existing power dynamics in the United States, an overtly proactive language policy is not necessary to foster the continued dominance of English in the country.²¹

Although the United States has largely exhibited a hands-off approach to national language policy, it is difficult in practice for any government to maintain a wholly neutral stance with regard to language policy because the state operates as a key cultural actor in many vital areas of society.²² There has been a "tendency in American legal discourse to cabin culture in the private sphere, away from state involvement," but this artificial separation is impossible to maintain in state-dominated institutions such as public education.²³ As such, a small body of law has developed concerning language education. While this controversial body of law has not completely ignored the interests of non-English speakers in the United

17. This push to make English the official language largely began in 1981 when Senator S.I. Hayakawa introduced an English Language Amendment to the Constitution. Hayakawa's proposed amendment eventually failed, but federal interest in the issue revived in the 1990s. The nation was at its closest to a federally sanctioned language when the House passed the English Language Empowerment Act of 1996, but the bill eventually died in Senate committee. Similar proposals continue to come forward in Congress, but none have been successful. See Marina Torres, *Inside Looking Out: An Application of International and Regional Linguistic Protections to the U.S. Spanish-Speaking Minority*, 87 NEB. L. REV. 599, 625 (2009) (summarizing the history of the Official English movement in the United States).

18. *E.g.* Schiffman, *supra* note 16, at 121.

19. *Id.*

20. Fishman, *supra* note 14, at 318.

21. *Id.* at 325.

22. See Thomas Ricento, *Theoretical Perspectives in Language Policy: An Overview*, in AN INTRODUCTION TO LANGUAGE POLICY: THEORY AND METHOD, *supra* note 2, at 3, 7-8 (noting that some scholars suggest state neutrality is more likely with respect to religious pluralism than language planning).

23. See Rodriguez, *supra* note 12, at 740.

States, the most recent developments have placed an emphasis on English acquisition and assimilation rather than multilingualism.²⁴

A. *A Promising Start: Meyer v. Nebraska, Lau v. Nichols, and the Equal Educational Opportunities Act*

While some states in the United States had progressive bilingual education measures in place as early as the mid-1800s, the anti-immigrant sentiment that spread before World War I resulted in a negative reaction to non-English instructional policies.²⁵ Even though non-English instruction was under attack, two early twentieth-century Supreme Court cases seemed to offer some recognition of language rights for linguistic minorities. The first of these two cases, *Meyer v. Nebraska*, was decided in 1923 when the Court reversed the conviction of a teacher who had violated a Nebraska law that made it illegal to instruct any student below an eighth-grade level in a language other than English.²⁶ The statute was intended “to promote civic development by inhibiting training and education of the immature in foreign tongues and ideals before they could learn English and acquire American ideals.”²⁷ However, the statute was held unconstitutional by the Court on grounds that it violated Fourteenth Amendment liberty interests, including students’ right to acquire knowledge, parents’ power to control their children’s education, and teachers’ right to instruct.²⁸ The Court emphasized that “[t]he protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue.”²⁹ The state’s prohibition of instruction in another language, therefore, was found to be an unjustified limitation on a citizen’s mental activities.

Four years later, in *Farrington v. Tokushige*, the Supreme Court used the logic of *Meyer* to unanimously strike down a law in the territory of Hawaii that brought all schools operating in a foreign

24. Cf. Bethany Li, Note, *From Bilingual Education to OELALEALEPS: How the No Child Left Behind Act Has Undermined English Language Learners’ Access to a Meaningful Education*, 14 GEO. J. ON POVERTY L. & POL’Y 539, 541 (2007).

25. See *id.* at 540 (noting that Ohio authorized a bilingual education law as early as 1839 with other states soon following).

26. *Meyer v. Nebraska*, 262 U.S. 390, 396 (1923).

27. *Id.* at 401.

28. *Id.* at 399-403. While the recognition of substantive due process rights has garnered harsh criticism over time, Justice Kennedy more recently suggested in a 2000 dissenting opinion that *Meyer* might have been best decided on First Amendment grounds of freedom of speech and belief. *Troxel v. Granville*, 530 U.S. 57, 95 (2000) (Kennedy, J., dissenting).

29. *Meyer*, 262 U.S. at 401.

language under the strict control of the territory's Department of Public Instruction.³⁰ This law transformed the language of instruction in foreign language schools by requiring that "all new text-books used in elementary foreign language schools shall be based upon the principle that the pupil's normal medium of expression is English."³¹ Operating a private foreign language school without following these regulations was illegal under the Act. The Court cited *Meyer* in its determination that the Hawaiian law violated parents' constitutional right to direct the education of their children without unreasonable restrictions.³² As *Meyer* and *Farrington* kept non-English instruction from being condemned to illegality, the sweeping language contained in these two early twentieth-century opinions also offered promise for continued constitutional protection of linguistic minorities.

A few decades later, U.S. interest in multilingual education was reaffirmed as Congress merged the Bilingual Education Act (BEA), originally introduced as a bill in 1967, into the Elementary and Secondary Education Act (ESEA) in 1968.³³ While the Act's name was a bit of a misnomer in that it did not actually require instruction in a student's native language, it did provide federal funding for increased research and operation of bilingual education programs.³⁴ In 1974, amendments to the BEA also "specifically noted the importance of using students' native languages and cultural heritages to provide 'effective instruction' to . . . [non-English speaking students]."³⁵

The same year the amendments were passed, the Supreme Court rendered an important decision in *Lau v. Nichols*, which further expanded the rights of minority language students.³⁶ In an opinion delivered by Justice Douglas, the Court held that the San Francisco Unified School District violated the Civil Rights Act of 1964 because it failed to make appropriate linguistic accommodations for non-English-speaking students.³⁷ The Court found that the lack of appropriate accommodations caused the district's Chinese-speaking minority to receive fewer benefits from the federally funded education system when compared to English-speaking students. Justice Douglas emphasized

30. *Farrington v. Tokushige*, 273 U.S. 284, 298-99 (1927).

31. *Id.* at 294.

32. *Id.* at 298-99.

33. Bilingual Education Act, Pub. L. No. 90-247, 81 Stat. 783, 816-20 (1968). The BEA was repealed by the No Child Left Behind Act, Pub. L. No. 107-110, 115 Stat. 1425 (2002) (codified as amended in scattered sections of 20, 25, and 42 U.S.C.).

34. Tamar Brandes, *Rethinking Equality: National Identity and Language Rights in the United States*, 15 TEX. HISP. J.L. & POL'Y 7, 44-45 & n.134 (2009).

35. Li, *supra* note 24, at 551.

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

37. *See id.* at 566.

that the district's failure to provide accommodations to non-English-speaking students made "a mockery of public education."³⁸ Despite the Court's criticism of the school district's approach to teaching linguistic minorities, the Court made no effort to explain what type of accommodations would be appropriate for these students. In the years that followed the *Lau* decision, various government officials debated whether fulfilling these obligations meant that schools must provide bilingual instruction for students with limited English proficiency.³⁹

Congress responded to the *Lau* decision by codifying it as part of the Equal Educational Opportunities Act (EEOA) of 1974.⁴⁰ The EEOA requires that public school systems "develop appropriate programs for limited English proficient (LEP) students."⁴¹ The Act requires that schools take "appropriate action" to overcome any language barriers that impede student progress, but Congress managed to maintain a relatively hands-off posture by refusing to define what "appropriate action" entails.⁴² As such, the EEOA did not require bilingual instruction or any other specific teaching methodology.⁴³

An influential decision interpreting the EEOA came from the Fifth Circuit in 1981. In *Castañeda v. Pickard*, the court of appeals established a three-part test for determining whether a particular bilingual program met the requirements of the EEOA.⁴⁴ In order to meet this basic threshold, the court stated that the program must: (1) be based on sound educational theory; (2) be implemented effectively with appropriate resources; and (3) be proven effective at overcoming language barriers after a trial period.⁴⁵ While the *Castañeda* test was perhaps applied more flexibly in subsequent cases,⁴⁶ the case represents a willingness on the part of the courts to inquire into the soundness of the educational theories employed to assist non-English-speaking students.

38. *Id.*

39. Rodriguez, *supra* note 12, at 759.

40. 20 U.S.C. § 1703(f) (2006).

41. STEPHEN B. THOMAS ET AL., PUBLIC SCHOOL LAW: TEACHERS' AND STUDENTS' RIGHTS 163 (6th ed. 2009).

42. *See id.*

43. *See id.*

44. *Castañeda v. Pickard*, 648 F.2d 989, 1007-10 (5th Cir. 1981).

45. *Id.* at 1009-10.

46. See Eric Haas, *The Equal Educational Opportunity Act 30 Years Later: Time to Revisit "Appropriate Action" for Assisting English Language Learners*, 34 J.L. & EDUC. 361, 361-71 (2005), for an argument that applications of the *Castañeda* test often place an insurmountable burden of proof on LEP students to show that the program in place is "inappropriate" by demonstrating that it is unsupported under all circumstances.

B. Regression: No Child Left Behind and an Increased Emphasis on English-Only Acquisition

While cases like *Lau* and federal legislation like the BEA and the EEOA offered promise for the continued development of educational language rights for linguistic minorities in the United States, momentum seems to have halted, or even reversed, over the past twenty years. Congress reauthorized the BEA in 1974, 1978, 1984, 1988, and for the last time in 1994.⁴⁷ Each reauthorization expanded the scope of the BEA and the final 1994 amendment emphasized that educational programs should strive to maintain students' use of their native languages.⁴⁸ In the late 1990s, however, some states began to seek ballot initiatives banning bilingual education, beginning with California Proposition 227 in 1998.⁴⁹ Other states followed suit with their own ballot provisions, which are sometimes collectively referred to as the "Unz Initiatives," after California millionaire Ronald Unz, who provided significant financial backing for antibilingual, English-only campaigns in several states.⁵⁰ Ballot provisions barring bilingual education were passed with fairly strong majorities in California, Arizona, and Massachusetts. The only Unz-backed, antibilingual campaign to fail was in Colorado in 2002.⁵¹ The antibilingual initiative in California was followed by the implementation of "sheltered English immersion" (SEI) programs, in which "nearly all" classroom instruction was offered in English and students' native languages were not to be used.⁵²

These state initiatives foreshadowed a change in tenor at the federal level with the enactment of the No Child Left Behind Act (NCLB) in 2002.⁵³ There is no explicit denunciation of bilingual education in NCLB, and there is a specific provision stating that nothing in the Act should be construed in a manner inconsistent with existing federal civil rights law. Yet, law student Bethany Li has argued that an unstated goal of NCLB is "quashing federal support for bilingual education."⁵⁴ Notably, the NCLB renamed the Bilingual Education Act the "English Language Acquisition, Language Enhancement, and Academic

47. Li, *supra* note 24, at 551.

48. *See id.*

49. *Id.* at 549, 554.

50. *Id.* at 553-54.

51. *See id.* at 554 (illustrating that California voted in favor of the initiative to bar bilingual education by a margin of 61 percent to 39 percent, while Arizona passed its initiative with a 63 percent majority, and Massachusetts passed its initiative with a 68 percent majority).

52. THOMAS ET AL., *supra* note 41, at 165.

53. *See* Li, *supra* note 24, at 553-56.

54. *Id.* at 554-55.

Achievement Act,” and the term “bilingual education” no longer appears anywhere in the Act.⁵⁵ In doing so, it seems Congress has moved away from emphasizing the importance of multilingualism and multiculturalism and has instead “embarked on a new English-only era under the guidance of the new Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited-English-Proficient Students.”⁵⁶

Likewise, courts have not provided any increased support for the expansion of linguistic minority rights in education in recent years. Numerous cases followed the *Lau* decision, as LEP students sought to use the precedent to challenge their school districts’ accommodations as inadequate, but only one lower court decision has used the EEOA to require that a school district look into using bilingual instruction to ensure that LEP students were not deprived of their right to equal educational opportunities.⁵⁷ Also, two Supreme Court cases, *Guardians Association v. Civil Service Commission* and *Alexander v. Sandoval*, make it more difficult for LEP students to bring disparate impact causes of action under Title VI, which prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.⁵⁸ Some scholars argue that the foundation of the *Lau* decision has been undone, or at least substantially weakened, by these two decisions.⁵⁹

In an extreme case of language discrimination recently considered by a federal court in Kansas, a public high school principal and several teachers told their students that they were not allowed to speak Spanish on school premises.⁶⁰ One of these students was suspended from school for using Spanish during the lunch hour and in the hallway. When the student challenged this policy, the district court found that the plaintiff could not cite to any cases or statutes that established a

55. *Id.* at 554.

56. *Id.* at 541.

57. See *United States v. Texas*, 506 F. Supp. 405, 436-42 (E.D. Tex. 1981) (imposing additional bilingual education as a remedy in a school desegregation suit unless the school district could satisfy that it had taken other “appropriate action” to overcome the language barriers of Mexican-American students).

58. 42 U.S.C. § 2000d (2006); *Alexander v. Sandoval*, 532 U.S. 275 (2001); *Guardians Ass’n v. Civil Service Comm’n*, 463 U.S. 582 (1983).

59. See Rachel F. Moran, *Undone by Law: The Uncertain Legacy of Lau v. Nichols*, 16 BERKELEY LA RAZA L.J. 1, 4-6 (2005) (arguing that *Guardians Ass’n v. Civil Service Comm’n* and *Alexander v. Sandoval* have undermined the ability to enforce the guarantees of *Lau* for LEP plaintiffs).

60. *Rubio v. Turner Unified Sch. Dist. No. 202*, 453 F. Supp. 2d 1295, 1297 (D. Kan. 2006).

right to speak a foreign language at a public school and dismissed the student's § 1983 claim for this reason.⁶¹

Horne v. Flores is the most recent Supreme Court case to impact LEP students, and it also demonstrates a lack of support for linguistic minorities.⁶² The *Horne* case involved a 2001 court order holding that Arizona's plan to fund English Language Learner programs was inadequate, arbitrary, and in violation of the EEOA.⁶³ Over the next eight years, the Superintendent of Public Instruction and the Arizona State Board of Education sought relief from this district court order.⁶⁴ In a majority opinion that was largely about the procedural elements of the case, the Court remanded the case and granted the petitioners an opportunity to obtain relief from the 2001 judgment.⁶⁵ Justice Breyer, joined by three other Justices, offered a lengthy dissenting opinion in which he argued that the majority's position would make it more difficult for courts to enforce the federal guarantees offered to non-English-speaking schoolchildren.⁶⁶ Justice Breyer stressed that "it is important to ensure that those children, without losing the cultural heritage embodied in the language of their birth, nonetheless receive the English-language tools they need."⁶⁷ Although many organizations submitted *amicus* briefs arguing that the Court should use *Horne* as an opportunity to take a strong stance protecting linguistic minorities,⁶⁸ these hopes were ultimately left unanswered by the Court.

C. Policy Implications for Linguistic Minorities in the U.S.

The recognition and acceptance of societal multilingualism is arguably "an important requirement for the realization of meaningful democracy, since the constituent groups of the state are better positioned to participate as equals when their cultures and languages are respected and afforded legitimacy through institutional recognition and support."⁶⁹ In his dissent in *Horne*, Justice Breyer seemingly agreed

61. *Id.* at 1305.

62. *Horne v. Flores*, 129 S. Ct. 2579 (2009).

63. *Id.* at 2588-89.

64. *Id.*

65. *Id.* at 2607.

66. *Id.* at 2631 (Breyer, J., dissenting).

67. *Id.*

68. *See, e.g.*, Brief for the Asian American Legal Defense & Education Fund, et al. as Amici Curiae Supporting Respondents, *Horne v. Flores*, 129 S. Ct. 2579 (2009) (Nos. 08-289 & 08-294), 2009 WL 796293 at *5-24 (arguing that the EEOA's requirement that English Language Learners (ELLs) receive appropriate language services and support is particularly important for Asian American ELLs and should be strongly protected).

69. Ricento, *supra* note 22, at 15.

with this assumption, writing, “linguistic diversity can complement and support, rather than undermine, our democratic institutions.”⁷⁰ However, actions of the Supreme Court, Congress, and the states demonstrate that recognition and appreciation of linguistic diversity has been marginalized in the United States. Instead, U.S. courts and legislatures have tended to view linguistic differences through a transitional framework of assimilation and antidiscrimination.⁷¹ While some antidiscrimination protections have been offered to linguistic minorities through the law, linguistic minority status is treated as something that is ideally lost as English-language skills are acquired.⁷² In this way, the process of assimilation, often implemented through English-immersion programs in the context of public education, actually “removes the protection of the law.”⁷³

Not only does institutional support of monolingualism have the capacity to discourage the democratic participation of various ethnolinguistic groups at a macro level, but these policies can also have a negative impact on an individual basis. For example, some studies have shown that sheltered immersion language education programs can impair cognitive development in LEP students.⁷⁴ Because these programs do not work to develop students’ native language skills and also do not utilize students’ existing knowledge of grammar and vocabulary in teaching them a new language, the result can sometimes be that students’ fluency in both English and their native language is impaired.⁷⁵ This scenario can be disastrous for a student because the student may become caught between two cultural worlds without being able to participate fully in either.⁷⁶ For example, a teenage student who has grown up in this type of program may not be able to converse fluently with her elders in her native language, but she also might not be fully prepared to engage in more rigorous levels of education carried out in English.⁷⁷

The problems that arise from this institutionally created cultural divide become exaggerated as globalization trends impact migration patterns.⁷⁸ For example, many migrants travel between the United

70. 129 S. Ct. at 2631 (Breyer, J., dissenting).

71. Rodriguez, *supra* note 12, at 706.

72. *See id.* at 708.

73. *See id.*

74. *See* Tove Skutnabb-Kangas, *Language Policy and Linguistic Human Rights*, in AN INTRODUCTION TO LANGUAGE POLICY: THEORY AND METHOD, *supra* note 2, at 273, 278-79.

75. *See id.*

76. *Cf. id.*

77. *See, e.g., id.* at 279.

78. *See generally* Sharon Utakis & Marianne D. Pita, *An Educational Policy for Negotiating Transnationalism: The Dominican Community in New York City*, in

States and their home country, creating “communities that transcend national boundaries.”⁷⁹ “Transnational” students within these communities often face the problem of participating in two school systems with opposing linguistic goals; the result is often that the students suffer academically in both countries.⁸⁰ An alternative to sheltered English programs are transitional bilingual programs, which are more helpful to linguistic minorities who travel back and forth from their home countries. In transitional bilingual programs, students generally receive instruction in their native language in multiple subjects, such as math and science, until a transition can be made to an English-only classroom. Still, students are essentially punished for learning English quickly in these programs, as instruction in their native language is terminated when minimal English competence is reached.⁸¹

Dual language programs provide a different alternative and have the goal of teaching both native English speakers and native speakers of a partner language fluency in both languages. In these programs, LEP students’ growth and understanding of both English and their native language is supported simultaneously with the belief that acquiring fluency in a second language comes more easily if students have a greater understanding of the grammar and structure of their native language. Additionally, these programs also require native English speakers to work towards fluency in a language other than English. Dual language programs are currently the best structural solution in language education,⁸² but they are rare in the United States because they are not required by law and often lead to increased costs for school districts.⁸³

RECLAIMING THE LOCAL IN LANGUAGE POLICY AND PRACTICE 147 (A. Suresh Canagarajah ed., 2005) (using New York City’s Dominican community as a case study and discussing how the transnational communities and identities created as a result of globalization interact with language policy).

79. *Id.* at 147.

80. *See id.* at 155 (describing the educational experiences of “transnational” Dominican students in New York City who face difficulties as they transition back and forth between their education in the United States and their education in the Dominican Republic).

81. *Id.* at 154.

82. *Id.*

83. Rodriguez, *supra* note 12, at 761 (“[W]ith one exception, courts have never constitutionally required bilingual or bicultural education; constitutional resources do not extend far enough to require bilingual education or to differentiate between the groups who might be entitled to it. Further, courts have proven ill-equipped to police the types of decisions that must be made in creating language education programs. Such decisions hinge on the demographic characteristics of the school district in question, the availability of competent teachers, and the programmatic demands on a resource pie of surely limited size.”).

Despite the fact that the United States has always been a multilingual country, U.S. law and culture have shifted antagonistically against linguistic diversity. When the explicit policies of the United States work in combination with the country's *de facto* English-dominated linguistic culture, language minorities in the United States have limited power to control their own cultural and linguistic destiny in the face of a powerful Anglophonic hegemony. As a result, the "American dream" often tends to be one that is created by an Anglo-Protestant society, and linguistic minorities "will share in that dream and in that society only if they dream in English."⁸⁴

II. THE GLOBAL IMPACT OF U.S. LANGUAGE POLICY

The United States has a prominent role in the process of globalization, and because of its role, the United States has a significant impact on language policy around the world. The law and linguistic culture in the United States have long demonstrated that the nation is quick to put the communicative burden on non-English speakers, forcing them to adapt to dominant Anglophonic practices.⁸⁵ This attitude is increasingly impacting language minorities around the world as the United States' linguistic norms are exported through the global marketplace.

Generally, globalization pushes cultures more toward uniformity than differentiation,⁸⁶ and these broad pressures have given rise to the use of English as a common tool of global communication.⁸⁷ While some celebrate the spread of English as a positive sign that democracy, modernity, and capitalism are reaching new parts of the globe, many sociolinguists recognize that this trend could have negative consequences for many minority languages in the world.⁸⁸

Language decline occurs most often in multilingual contexts in which a majority language with greater political power and social prestige replaces the functions of a minority language.⁸⁹ While language loss and language shift have always occurred throughout history, it is important to note that the exponential rate of decline currently being

84. Samuel P. Huntington, *The Hispanic Challenge*, FOREIGN POL'Y, Mar.-Apr. 2004, at 30, 45 (arguing that Mexican immigrants are not assimilating into the language and culture of the United States).

85. See Rodriguez, *supra* note 12, at 688-93.

86. STROMQUIST, *supra* note 1, at 13.

87. See, e.g., Alastair Pennycook, *Postmodernism in Language Policy*, in AN INTRODUCTION TO LANGUAGE POLICY: THEORY AND METHOD, *supra* note 2, at 60, 67-68.

88. See May, *supra* note 6, at 262.

89. *Id.* at 257-58.

observed is unprecedented.⁹⁰ Today, ninety-six percent of the world's languages are spoken by only four percent of the world's population, and therefore, future levels of language decline are expected to be incredibly high.⁹¹ A study conducted by Michael Krauss in the 1990s estimated that fifty percent of the world's languages would be extinct by the end of the twenty-first century and another forty percent would be considered threatened or endangered.⁹²

While the global spread of English resists any simple cause and effect explanation—there are ultimately too many interdependent social phenomena at work—it is clear that the United States has played a significant role in its rise.⁹³ Professor Joshua Fishman rejects the notion that the United States has explicitly conspired to create an English-speaking empire by tricking much of the world into learning English.⁹⁴ Instead, Fishman has more plausibly emphasized that most of the power the United States enjoys comes as a result of the implicit maintenance of hegemonic power structures that strongly influence economics and culture.⁹⁵ Fishman explained this power as the following:

The fact that the United States does not usually have an overtly proactive language policy toward specific other languages does not mean that such a “no-policy policy” does not strongly foster the spread of English for power functions in non-English mother-tongue countries The United States may not mean to do so, and it may not actually be involved in a conspiracy (as some would claim) to kill off the world's languages, but the consequences may very well be the same, regardless of whatever its conscious motivation may be.⁹⁶

When a conflict between two languages arises in the absence of authoritative language policies, which is happening more often in the current globalized context, the language that carries more political and economic power will always prevail.⁹⁷ Since English has taken a stronghold

90. *Id.*

91. *Id.*

92. Michael Krauss, *The World's Languages in Crisis*, 68 *LANGUAGE* 4, 4-7 (1992) (emphasizing, however, that statistics on language use and language viability are scarce).

93. See Fishman, *supra* note 14, at 325.

94. See *id.* at 323-25.

95. See *id.*

96. *Id.* at 325.

97. See *id.* at 318.

as the language of global market transactions, it is not surprising that it is quickly rising in usage at the expense of the world's minority languages.⁹⁸

A. The Influence of Supranational Organizations on Language Policy

One key notion that has played a substantial role in modern theories of globalization and neoliberalism is the idea that the state's monopoly on power has been broken and multiple agents at all levels have come to hold greater influence.⁹⁹ This notion, at least in part, seems to hold true in the context of language policy, with many supranational organizations playing an important role in the rise of English.¹⁰⁰ Globalization has expanded the potential labor force for many types of jobs beyond low-wage manufacturing positions, and multinational corporations now seek to employ professionals throughout the world who hold the skills that they desire;¹⁰¹ one of the most important skills determining employability is English proficiency.¹⁰² Because English language skills are often directly tied to possibilities of employment, there is not only a strong incentive for individuals to learn English, but there are also incentives for national governments to provide English-based language education programs to their citizens.¹⁰³

In addition to promoting increased employment opportunities for their citizenry, national governments in countries like the Congo and Mozambique have been motivated to promote the use of English in their countries in order to align themselves with organizations like the International Monetary Fund and the World Bank.¹⁰⁴ Other international institutions like the European Union, despite publicly promoting the ideal of multilingualism, have actually come to rely on

98. See STROMQUIST, *supra* note 1, at 70.

99. *Id.* at 13.

100. Tollefson, *supra* note 4, at 51 (citing Hassana Alidou, *Medium of Instruction in Sub-Saharan Africa*, in MEDIUM OF INSTRUCTION POLICIES: WHICH AGENDA? WHOSE AGENDA? 195 (J.W. Tollefson & A.B.M. Tsui eds., 2004); Alamin Mazrui, *The English Language in African Education: Dependency and Colonization*, in LANGUAGE POLICIES IN EDUCATION: CRITICAL ISSUES 285 (J.W. Tollefson & A.B.M. Tsui eds. 2002)).

101. Maya Khemlani David & Subra Govindasamy, *Negotiating a Language Policy for Malaysia: Local Demand for Affirmative Action Versus Challenges From Globalization*, in RECLAIMING THE LOCAL IN LANGUAGE POLICY AND PRACTICE, *supra* note 78, at 123, 123-24.

102. See, e.g., *id.* at 124 (noting that a large portion of Malay graduates were unable to procure employment because of their lack of English proficiency).

103. See *id.*

104. Jan Blommaert, *Language Policy and National Identity*, in AN INTRODUCTION TO LANGUAGE POLICY: THEORY AND METHOD, *supra* note 2, at 238, 241.

English and promote its usage because of its practical utility and commonality.¹⁰⁵

Educational institutions are another set of transnational organizations that are significantly aiding the global spread of English. While it is often stated that English has become the language of international markets, it is important to note that English has also become the primary language of scientific and academic research.¹⁰⁶ The publication of research in scholarly journals and textbooks is increasingly becoming an English-only domain, resulting in a forced language shift that often marginalizes the work of researchers who do not publish in English.¹⁰⁷ As a result of these linguistic norms, research paradigms from the Anglo-American world often become more highly valued in a number of academic fields.¹⁰⁸ If researchers who do not write in English want their scholarly work to be widely read by the international academic community, then they must bear the communicative burden and find a way to express their research in English.¹⁰⁹

In the past few decades, multinational corporations have had a greater role in shaping secondary and higher educational institutions.¹¹⁰ Globalization has led to an expanded market for educational services, and knowledge has become a widespread international commodity. Consequently, there has been a significant increase in for-profit education providers, such as Sylvan Learning Center, Jones International University, and the University of Phoenix. These “[m]ultinational institutions of higher education will disseminate curricular and other innovations and meet the needs of students who lack adequate colleges and universities in their respective countries.”¹¹¹ In addition, well-respected research institutions like the University of Michigan, University of California–Berkeley, and Columbia University have established ties with major private sector media organizations like Time-Warner, Disney, Microsoft, and Cisco to develop the support and the software needed to meet the global demands for online higher education.¹¹² The influence of these educational institutions will most certainly contribute to the continued production of a “knowledge society” that emphasizes the development of skills and human capital rather than natural resources

105. Phillipson, *supra* note 5, at 356-57.

106. *Id.* at 350.

107. *Id.*

108. *Id.*

109. *See id.*

110. STROMQUIST, *supra* note 1, at 95-97.

111. *Id.* at 96.

112. *Id.* at 120.

and material endowments.¹¹³ These changes will also likely contribute to the continued spread of English to the peoples of the world.

B. Economic Analysis and Market Failure in the Context of Language Policy

As mentioned previously, the state's monopoly on power has been somewhat broken through the processes of globalization, and multiple agents, many of them private businesses, exercise more influence in all levels of societal decision making.¹¹⁴ One standard assumption in neoliberal thought is that the increased influence of multiple agents and private entities will improve creativity, productivity, and efficiency, while also providing goods and services at lower overall costs.¹¹⁵ Many global trends are rooted in the notion that the global market will provide the most efficient method of meeting people's needs.¹¹⁶ However, serious questions exist as to whether this idea holds true when it comes to decisions of cultural identity and language policy.¹¹⁷

1. Global English and Notions of Efficiency

Sociolinguists have done very little research on the connection between language policy and economics.¹¹⁸ Until recently, when global market trends have had a more significant impact on language policy, economics was not considered closely related to language.¹¹⁹ In recent research, however, economist Francois Grin has examined the use of language in economic terms and has noted that language is a unique type of public good.¹²⁰ While there are certainly valuation problems in measuring the overall worth of a specific set of language skills, it is important to note that knowledge of a particular language becomes more valuable as a tool for communication as more individuals share those same skills.¹²¹ In this way, there are positive network externalities at play in the context of language skills, as the benefits of having these skills are an increasing function of the number of other

113. *Id.* at 15.

114. *Id.* at 13.

115. *Id.*

116. *See id.* at 13-14.

117. *See Tollefson, supra* note 4, at 46-47.

118. François Grin, *Economic Considerations in Language Policy*, in AN INTRODUCTION TO LANGUAGE POLICY: THEORY AND METHOD, *supra* note 2, at 77, 77.

119. *Cf. id.*

120. *Id.* at 81.

121. *Id.*

users.¹²² Operating under the assumption that the value of language stems from its utility for communication, a nation's decision to establish English-based language education programs would be economically optimal.¹²³ If this assumption is maintained, and a narrow economic analysis is performed, then the spread of global English at the expense of minority languages would appear to be a straightforward example of the efficient decision making power of the market.¹²⁴ Under this simple analysis, maintenance of multilingualism and support for linguistic diversity would seem to give rise to unnecessary transaction and communication costs that would interfere with ideal notions of efficiency.¹²⁵ The notion that linguistic pluralism inefficiently increases communication and transaction costs has commonly been used as an argument in favor of official national language policies.¹²⁶

The fact that English is thought to have a "disproportionately high economic value compared to other languages," provides a strong incentive for governments of countries in which English is not the native language to push their citizens to gain English fluency.¹²⁷ Many countries, including Singapore, Taiwan, Thailand, Hong Kong, and the Philippines have placed emphasis on developing successful English language education systems in an effort to maximize the value of their human capital.¹²⁸ If multilingualism is viewed as inefficient and the promotion of English is viewed as advantageous, then it would appear to be economically sound for nations to promote the use of English at the expense of other native tongues. In addition to the top-down pressures that the state might put on its citizens to become fluent in English, it is natural to assume that individual citizens would also realize the utility of English proficiency and make rational decisions to invest time and money in gaining these skills. Assuming that individuals would prioritize their efforts in learning a new language based only on the language's utility in communication, individuals would invest their efforts in mastering English over any other language.

122. Jeffrey Church & Ian King, *Bilingualism and Network Externalities*, 26 CANADIAN J. OF ECON. 337, 337-38 (1993).

123. See, e.g., Eric Jones, *The Case for a Shared World Language*, in CULTURAL FACTORS IN ECONOMIC GROWTH 210, 212 (Mark Casson & Andrew Godley eds., 2000) (arguing that teaching a shared, majority language enlarges trade by reducing transaction costs).

124. *Contra* Grin, *supra* note 118, at 81 (arguing that this idea erroneously presupposes that "language is *only* a tool for communication").

125. See Jones, *supra* note 123, at 212 (emphasizing that shared languages reduce transaction costs in trade).

126. Torres, *supra* note 17, at 601.

127. David & Govindasamy, *supra* note 101, at 124.

128. See *id.*

2. Occurrences of Market Failure in the Spread of Global English

The efficiencies illustrated in the economic analysis above only remain true, however, if the only value ascribed to language comes from its utility in communication. Yet this underlying assumption is flawed; language also carries with it enormous cultural, historical, and aesthetic significance that is likely to be undervalued in a narrow economic analysis. Another assumption often at play in theories of globalization is that increased privatization will lead to better overall outcomes, such as increased efficiency, creativity, and productivity.¹²⁹ However, this assumption should be rigorously examined when one's cultural identity is at stake. Individuals' loss of control over their own cultural identities as a result of encroachment by market mechanisms—a process that scholars sometimes refer to as “colonization”—often leads to disillusionment and cynicism.¹³⁰ While the market model assumes that each individual makes a conscious and rational choice to invest in learning English, it is also possible to reach a point of market failure in which the hegemonic power of English, viewed in economic terms as a type of monopoly, is too great for any individual to resist. In this scenario, linguistic minorities face inevitable language loss that stems from flawed economic assumptions.

A narrow economic analysis also fails to account for certain negative externalities that could severely impact linguistic minorities.¹³¹ In the simple analysis previously outlined, an individual might make the economically rational decision to forego continued investment of time and resources in learning her native language in favor of investing in learning English. While this behavior is individually rational, the collective result that logically follows if each speaker of that minority language acts in a similarly rational way is the extinction of the language. This scenario is somewhat analogous to the features at work in the tragedy of the commons, in that each individual's decision remains rational while the collective result is disastrous for society at large.

Another concern with the simple economic model is that the market does not account for future generations' desire to preserve a particular minority language.¹³² This concept is similar to a familiar paradigm of environmental law where “there is no market on which *future*, yet unborn generations could express their wish for a particular animal or

129. STROMQUIST, *supra* note 1, at 13.

130. Tollefson, *supra* note 4, at 46-47.

131. See Grin, *supra* note 118, at 83-84.

132. *Id.* at 84.

vegetal species to be preserved.”¹³³ The “value” of minority languages is limited to the present context in the same way, as there is no market in which future generations can bid for the preservation of endangered languages.¹³⁴ While future generations might place an extremely high value on preserving the knowledge, history, and aesthetics contained in a particular language, the fact that these desires are not accounted for in present-day transactions gives rise to market failure.¹³⁵ For this reason, the market, which is trusted to meet people’s needs in the most efficient manner, also severely undervalues minority languages and could contribute to a precipitous language decline. While many nations might seek to avoid the upfront costs that would be incurred in taking small measures to preserve linguistic diversity, the potential long-term societal costs of inaction could be drastic,¹³⁶ as many of the world’s languages will likely face extinction.¹³⁷

Lastly, there are important issues regarding the distributive implications of this simple economic model that might be largely ignored in a purely economic analysis.¹³⁸ Movements toward “efficient” language policy arrangements will entail gains and losses for particular groups within society.¹³⁹ Native speakers of English will benefit most from language shifts that promote the global use of English.¹⁴⁰ Native English speakers “need not invest any time or money in learning other languages . . . [and] may profitably invest the resources thus saved in other, growth-enhancing development strategies.”¹⁴¹ Additionally, native English speakers retain the benefits of participating in market negotiations in their own language, while non-native speakers are forced to interact in the market using a secondary language with which they are likely be less comfortable.¹⁴² Some scholars have suggested that a subsidy scheme could be utilized to balance these inequities, in which the winners compensate the losers.¹⁴³ While this notion presents a

133. *Id.*

134. *Id.*

135. *See id.*

136. *Id.* at 88-89.

137. Krauss, *supra* note 92.

138. *See id.* at 86-87.

139. *Id.*

140. *E.g., id.*

141. *Id.* at 87.

142. *Id.*

143. *See, e.g.,* Philippe Van Parijs, *Linguistic Justice*, 1 POL., PHIL. & ECON. 59, 72-73 (2002) (“To make it fair, a simple rule of thumb emerges . . . : whenever a language is the object of asymmetric bilingualism, the linguistic group whose mother tongue it is must pay half the cost of this learning, in a comprehensive sense that should cover both the explicit cost of language tuition and the huge implicit opportunity cost of having to learn a language rather than devoting one’s (children’s and own) time to other activities. Exact

number of interesting theoretical questions, the idea is impractical at best. The benefits of a global Anglophonic hegemony will likely remain in the hands of native English speakers, which could further entrench existing global power dynamics.

III. POLICY SUGGESTIONS FOR PRESERVING LINGUISTIC DIVERSITY GLOBALLY

As language policy continues to develop in the context of ongoing globalization, there could be a tendency to allow market pressures to determine the future of linguistic diversity. As a result of the market failures discussed above, linguistic diversity will likely be drastically undervalued and language decline will continue to accelerate over the course of this century. Blind faith in the power of the global market will only create further imbalance between English and other languages, as native English speakers will continue to be rewarded by the market, and minority languages will continue to be marginalized.

Given the potential for market failure, state-sponsored preventative measures to combat language eradication are not only justified but should be a central element of policy decisions concerning linguistic minorities.¹⁴⁴ Because individual cultural autonomy and equity would not likely be provided by the market, multilingual states must try to provide equally effective support for the ethnolinguistic groups comprising their populations.¹⁴⁵ The United States and other nations can also help provide this support by engaging in actions that: (1) increase awareness that multilingualism is a global norm; (2) provide additive language education utilizing citizens' native tongues; and (3) recognize individuals' positive linguistic rights.¹⁴⁶

To preserve and protect the diverse cultural and linguistic heritage of the world, multilingualism must be viewed as a world norm. Those opposed to state support of multilingualism argue that increased administrative costs render state support unrealistic.¹⁴⁷ These imagined spending increases usually come "in the form of cataclysmic

assessments are, of course, out of reach, but a cost sharing that would charge the wages of language teachers and all the teaching material used to the linguistic group whose language is being learned, while leaving the opportunity cost altogether uncompensated would seem to be a minimum demand—especially as equal cost sharing between the two linguistic groups takes no account of the inequality in interaction and of the other incidental advantages of the free-riding linguistic group. . . .").

144. Tollefson, *supra* note 2, at 51 (citing STEPHEN MAY, LANGUAGE AND MINORITY RIGHTS: ETHNICITY, NATIONALISM, AND THE POLITICS OF LANGUAGE (2001)).

145. Schmidt, *supra* note 2, at 106.

146. See Pennycook, *supra* note 87, at 69.

147. See Torres, *supra* note 17, at 601-02.

expectations of uncontrollable expenditure.”¹⁴⁸ However, research figures tend to demonstrate that increased institutional support of multilingualism is quite possible.¹⁴⁹ The added expenses entailed in moving from a monolingual to a bilingual education system, for instance, are usually lower than what is expected, as evaluators have estimated that this transition results in increased costs of only three to four percent.¹⁵⁰ Additionally, if multilingualism is specifically developed and comes to be viewed as the norm both within the United States and elsewhere, the maintenance of cultural and intellectual diversity could be viewed as a key component that adds value to society rather than creates a burden.¹⁵¹

To offer greater institutional support for linguistic minorities, the United States and other nations should provide systems of language education that prepare their citizens to engage in the global marketplace, yet allow them to maintain autonomy over their own linguistic culture. The state should not operate under the pervasive myth of linguistic exclusivity, which refers to the belief that the promotion of a majority language has to come at the expense of all other languages.¹⁵² As this misconception plays out in systems of education, it is believed that students will *replace* their native language skills with the preferred language. In order to achieve this goal, students are isolated from their native language and then immersed in the preferred language, an approach that is illustrated in the sheltered English immersion programs that have become popular in the United States. However, this assumption about linguistic exclusivity should be rejected, and additive approaches to language education should be used instead.¹⁵³ In additive learning approaches, students’ growth is fostered in both languages as “high levels of majority-language skills are added to high levels of mother-tongue skills.”¹⁵⁴ Under this approach, students learn advanced skills in both languages, and their native language is afforded legitimacy in the public sphere.

Lastly, proper integration of linguistic diversity in a multilingual society is best achieved if the state recognizes positive linguistic rights.¹⁵⁵ While international agreements like the Universal Declaration

148. Grin, *supra* note 118, at 88.

149. *Id.*

150. *Id.*

151. See Rodriguez, *supra* note 12, at 694.

152. May, *supra* note 6, at 266.

153. Skutnabb-Kangas, *supra* note 74, at 280-81.

154. *Id.* at 280.

155. *Id.* at 284.

of Linguistic Rights¹⁵⁶ make strong positive statements regarding language rights, these documents are hampered by definitional problems and the weakness inherent in international institutions' ability to enforce their ideals.¹⁵⁷ Although it has been said that the state's former monopoly on power has been broken, the state is still in the best position to recognize and enforce positive rights for linguistic minorities that create affirmative obligations beyond non-discrimination.¹⁵⁸ Negative, toleration-oriented rights, like those at work in the United States, do not offer sufficient protection and autonomy to linguistic minorities and cannot prevent forced assimilation.¹⁵⁹

CONCLUSION

Over the past few decades, the posture of U.S. law and linguistic culture has created and maintained an English-speaking hegemony that threatens the cultural destiny of linguistic minorities both domestically and globally. While the natural tendency, in the context of an increasingly globalized world, might be to allow market pressures to determine the fate of the languages of the world, this propensity for market control would be ill-advised in the context of language policy. The existence of various market failures, most notably the market's inability to fully account for the costs of language extinction, justify state intervention in protecting linguistic diversity. A monolingual globe is not preferable to a multilingual one, and the United States has the potential to play a pivotal role in making multilingualism a global norm.

156. Universal Declaration of Linguistic Rights, June 6, 1996, available at <http://www.unesco.org/cpp/uk/declarations/linguistic.pdf>.

157. Torres, *supra* note 17, at 615.

158. Skutnabb-Kangas, *supra* note 74, at 283-84.

159. *Id.* at 284.