Inside Looking Out: An Application of International and Regional Linguistic Protections to the U.S. Spanish-Speaking Minority

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And the whole earth was of one language, and of one speech ... And they said, Go to, let us build us a city and a tower, whose top may reach unto heaven; and let us make us a name, lest we be scattered abroad upon the face of the whole earth ... And the Lord said, Behold, the people is one, and they have all one language ... and now nothing will be restrained from them, which they have imagined to do ... [L]et us go down, and there confound their language, that they may not understand one another's speech.  

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I. INTRODUCTION

Not since the collapse of the Soviet Union have the subjects of minority and linguistic rights enjoyed such prominence in discussions of the international community. Various legal commentators have suggested several reasons explaining the renewed interest in the subject: the emergence of a multi-polar world politic, the large-scale reappearance of civil and ethnic conflicts, and even the awareness of cultural differences resulting from globalization. The atrocities that came to light after World War II in particular made it painfully clear to the international community the harm that had been committed against individuals because of their membership in a particular group. Largely as a result of that realization, the language of international law post-World War II has sought to specifically prohibit individual discrimination on the basis of group characteristics. Article 2 of the Universal Declaration of Human Rights, for instance, states quite clearly: "Everyone is entitled to all the freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

As such, the principle of non-discrimination is widely accepted as a part of international law. What has not been so clearly included in this sentiment, however, is the protection of the language belonging to such groups, despite the recognition of linguistic difference as a defining feature of almost all political communities. This Article will provide a starting point in the discussion of how, in a post-Soviet globe, different States at varying degrees of linguistic plurality can develop the capacity to live with such differences. Part II begins by offering a summary of arguments in favor of official language policies on the one hand and more expansive State obligations towards the protection of linguistic minorities on the other. Part III looks at the strength of current and past international linguistic protections, specifically examining the trends of individualism versus group rights and negative versus positive obligations over history. Part IV looks at the application of linguistic protections in two case scenarios, Europe and Ca-

nada, that have had widely varied results. Finally, the Article concludes by applying the lessons learned from the international and regional level to the situation of the Spanish-speaking minority in the United States and proposing several considerations for the future of linguistic protections.

II. THE THEORY BEHIND LINGUISTIC RIGHTS AND PROTECTIONS

A. Justifications for “Official” Language Policies

Perhaps the most common response to pleas of official minority language recognition has been the fear that such official recognition will inevitably lead to dissolution of national unity. A language common to all of a nation’s inhabitants has the benefit of maintaining the political stability of the State and represents a core public culture of shared customs, experiences and values. A shared language is crucial in maintaining this commonality. The apprehension of an official recognition of a nation’s linguistic plurality lies in the fear that the toleration of several languages, as opposed to the official promotion of one, will come at the cost of discouraging linguistic minorities from fully learning the majority language and serve to encourage national discord. While divisions of race, politics, or religion challenge the social bonds that constitute a nation, linguistic differences pose a unique problem to national unity because of their importance to communication between individuals. A breakdown in communication inevitably leads to a breakdown in understanding, which in turn is conducive to intolerance and further national disunity—seen in this light, the government has substantial interests in protecting the whole of society from the divisive effects of multilingualism. Thus, many States and nations seek to declare their majority language the “official” language as an assertion of cultural and political hegemony with the message to linguistic minorities being one of implied exclusion.

A second common argument favoring an official language policy is that of economic practicality. Proponents of official language policies argue that the cost of providing services in minority languages justifies granting official status to the language spoken by the majority. Training teachers for bilingual education, printing multiple types of ballots, providing government services in several different languages—all of these adjustments come at a cost, proponents say, a

6. Arthur M. Schlesinger Jr., The Disuniting of America 62 (1991) ("[A] common language is a necessary bond of national cohesion in so heterogeneous a nation as America.").


cost that the State is under no obligation to foot. To the contrary, a State has the obligation to ensure that its citizenry is equipped, to the best extent possible, with a solid education and training for success. Given the direct correlation between ability to speak English and income levels in the United States, proponents of official language policies argue that such policies will serve to broaden opportunities to people not speaking the majority language. In this sense, the argument goes, the promotion of an official language policy would ensure that all members of a State can grow up fluent in the majority language and thus be able to communicate with most individuals residing in the same State. This was part of the fear driving the campaign against bi-lingual education in the Southwestern United States: the idea that the promotion of a language other than English in public schools would lead to generations of students ill-equipped in English language fluency, which would in turn financially and logistically burden other taxpayers. Tibetan schoolchildren have had such an experience. Having graduated from primary schools taught in the Tibetan language, these children (and their parents) years later face the daunting task of stiff competition when attempting to get into Chinese language universities. In effect, providing schooling in the minority language served to leave these Tibetan children in a less advantageous educational—and later economic—position in society.

Similarly, the implementation of an official language policy also has the potential of encouraging newcomers to learn the majority language and culture, which in turn will limit the initial isolation into ethnic/linguistic enclaves and encourage greater participation in society. Recent immigrants in most countries tend to reside in immigrant communities, where their native language is freely spoken and one can almost entirely live without needing fluency in the majority language. Official language legislation would strive to eliminate that linguistic divide by requiring recent immigrants to learn the language of the majority and begin social integration early on. Seen in this light, official language provisions are inclusive rather than exclusive—they would be responsible for easing the integration of linguistic minorities into the mainstream society and encouraging their full political participation.

10. Ruling Classes, ECONOMIST, Jan. 9, 1993, at 34.
11. Id.
12. Id.
B. Arguments for the Protection of Linguistic Minority Rights

It is a fair statement that most countries are not mono-ethnic, nor are they mono-lingual; on the contrary, because the territorial boundaries of the nation-state are often at odds with the delineation of cultural and linguistic groups, most States have a plurality of languages spoken within their borders. For instance, most States belonging to the United Nations have several ethnic groups and two or more spoken languages within their territorial boundaries. So before any discussion on official language policy gets underway, it is worthy to note that the goal of establishing a mono-lingual society through such policies may very well be purely an ideal not necessarily rooted in reality.

Likewise, arguments in favor of officially promoting a majority language to the extreme of restricting the usage of a minority language are often flawed in that they do not consider the unique role that language has in the formation and maintenance of a cultural and/or ethnic identity. One’s choice of language is arguably a choice freely made, since the survival and flourishing of a group’s culture quite often depends on the vitality of its language—which, in turn, depends on the language being spoken. Language is a means, often the only one, with which group members communicate with one another, and a threat to the language is very much a threat to the existence of the culture itself.

At the most basic level and in a somewhat Machiavellian sense, an argument in favor of language rights is supported by a security justification; that is, the idea that prohibiting individuals from engaging in their native language could very well lead to increased internal conflict and reactionary antagonism that would threaten the security of the international community. This decree is best encapsulated in the 1992 U.N. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: “[Considering that] the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live . . . .” From this perspective, a State exchanges allowing linguistic freedom of certain minority groups in return for security of territorial integrity and implied assurances against ethnic conflicts.

The support of language rights from an individual rights perspective views such rights as universal human rights, for which membership in a minority group is not required. While not necessarily contradicting the above security justification, the individual right to one’s own language is here focused on justice for individuals, stressing that even without the possibility of sectarian conflict the denial of an individual’s linguistic rights would be unjust. Individual rights consist of rights that apply to every individual based on his or her State citizenship, upholding the individual as the primary moral unit. The individualist proposes that such linguistic-rights discourse allows for the adequate protection of linguistic minorities, assuming individual rights are granted and properly maintained. For instance, individual rights as to freedom of expression and association should both ensure that linguistic minorities are free to form, maintain and preserve their distinctive groups and identities. Equality in rights presupposes respect for an individual's identity as a human being; given that language is a fundamental dimension of such an identity, respect for individual rights is innately intertwined with respect for a person’s language. This viewpoint is best exemplified in the international community’s change of thought following World War II, discussed infra Part III, that linguistic rights could best be protected through international protection that made such rights universal and not restricted according to group membership.

A third approach that has been advocated by some is the protection of language rights on a group rights basis—that is, that an individual’s right to speak his or her native language is protected because of his or her membership in a particular, protected group. Collective group rights are a new addition to the human rights concept; while far from being accepted by the whole of the international community, they have certainly added a new dimension to the debate over linguis-


17. See, for example, Article 27 of the International Covenant of Civil and Political Rights: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.” International Covenant of Civil and Political Rights, art. 27, Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; see also David Wippman, The Evolution and Implementation if Minority Rights, 66 FORDHAM L. REV. 597 (1997).

tic protections.\textsuperscript{19} Such group rights emphasize "the existence of a group as a political, social and juridical entity independent from the individual and from society as a whole,"\textsuperscript{20} and promote the idea of group protection against external attempts to weaken or replace group-identity.\textsuperscript{21} Like individual rights, group rights also work as a restraint on the majority's ability to disadvantage linguistic minorities; unlike individual rights, however, group rights do so by empowering and protecting the linguistic group as a whole.\textsuperscript{22} On the one hand, language is a personal matter closely associated with personal identity; but on the other hand, it is also a tool of social organization and thus serves a societal purpose.\textsuperscript{23} Promoters of group rights recognize that most modern societies are governed to a significant degree by a dominant group exercising hegemony over minorities within the territorial boundaries of the State and that it is, at minimum, this hegemony that constitutes a threat to the cultural integrity of said groups and thus calls for the protection and preservation of the minority culture.\textsuperscript{24}

Although States have been reluctant to recognize language rights as "group rights,"\textsuperscript{25} there is a recognized, inherent difficulty in addressing a problem that is so tightly wound in the collective experiences of a group solely in terms of the individual. The continued existence of a linguistic and cultural group can often be secured only through the means of allowing enough group members to develop culturally outside the dominant paradigms of the majority culture—for a minority culture to survive in the modern era, the group's language must be one of the languages used in public life. In practice, this means nothing less than permitting courts, legislatures, the education system and even mass media to be conducted with significant deference to the language of the minority.\textsuperscript{26} Seen from this light, individualist prohibitions against discrimination and protections of an


\textsuperscript{23} The Oslo Recommendations Regarding the Linguistic Rights of National Minorities and Explanatory Note, 6 Int'l J. on Minority and Group Rts. 359, 360 (1999).

\textsuperscript{24} Thompson, supra note 18, at 789.

\textsuperscript{25} Id.

\textsuperscript{26} Saban, supra note 21, at 905–06.
individual’s right of association are not enough to prevent the disappearance of a minority language, since economic and cultural pressures to assimilate will do their work to displace the linguistic minority. Because linguistic and ethnic identities are usually so securely intertwined with one another, controversies over the right to use one’s language will inevitably involve issues of collectivity. Individualist rights rhetoric, from this perspective, is thus fundamentally flawed because of its refusal to undertake preventative, group-focused measures to protect linguistic minorities.

Addressing the issue of linguistic rights from a group paradigm has its own flaws, however. For instance, before addressing the question of linguistic protection one must first determine which language needs such protection; given the variety of techniques, criteria and definitions used, it is easy to see how this issue is far from clear. In the wake of globalization even the speakers of some major languages feel that their language may be lost or diluted under free market conditions. Likewise, there is no one characterization that has been universally accepted by international law as the definitive word on what constitutes a minority group, although various observers have made note of the formulation belonging to the Special Rapporteur of the U.N. Sub-Commission on the Prevention of Discrimination and Protection of Minorities:

A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.

While not the official, sanctioned definition, Caportorti’s articulation is certainly the most widely used and concurs with standard sociological notions of minorities as groups ethnically distinct from the majority and under the political and cultural hegemony of the majority culture.

Finally, another relevant question is whether a meritable distinction can be made between historical, established minorities and immigrants. Established linguistic minorities are those individuals that

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28. KYMLICKA, supra note 22, at 110–11.
30. Id. at 445–46 (noting the example of French speakers in Canada).
33. Thompson, supra note 18, at 790.
have been incorporated into the larger political framework of the State, be it by choice or not. Will Kymlicka best describes established linguistic minorities as "historically settled, territorially concentrated and previously self-governing cultures whose territory has become incorporated into a larger State. The incorporation of such groups has typically been involuntary, due to colonization, conquest or the transfer of territory between imperial powers, but in some cases reflects a voluntary federation."  

Immigrant linguistic minorities, on the other hand, have consciously made the decision to leave their country of origin and make a new home in their adoptive country. This distinction between "genuine" national minorities and "immigrants" came up during the drafting discussions of Article 27, and it is a generally accepted notion that the former is entitled to more linguistic rights. Still, from a theoretical perspective, it is not clear that such a distinction is supported from a group-rights standpoint if both established minorities and immigrant minorities are members of the same or similarly protected group. In the United States, for instance, the Hispanic population is comprised of both families having resided in the Southwest years before statehood as well as recent immigrants from Latin America—and yet, restrictions against Spanish in the workplace continue.

Lastly, there is some merit to the preservation of linguistic diversity for its own sake. The motivation behind linguistic and cultural preservation here is the belief that they signify thousands of alternative ways of life that could potentially enrich the human experience for many. The death or extinction of any one of these languages represents a blow to the cultural capital of humanity and leaves a gap in the cultural heritage of mankind. Like the effort towards the environmental protection of endangered species, several notable organizations, such as the Association International Pour la Defense des Langues et Cultures Menacees ("AIDLMC"), have formed to prevent the further extinction of languages. This problem has also been recognized internationally: Article 7 of the Declaration on the Responsibilities of the Present Generations Towards Future Generations bestows

on the present generation the obligation to "take care to preserve the cultural diversity of humankind. The present generations have the responsibility to identify, protect and safeguard the tangible and intangible cultural heritage and to transmit this common heritage to future generations."

III. GLOBAL PROTECTION OF LINGUISTIC RIGHTS

A focus on the individual has dominated international rights discourse since World War II, with the slightest hints of change noticeable only in recent years. For instance, both the U.N. Charter and the Universal Declaration of Human Rights promoted a rights discourse based on a conference on individuals, and neither made any mention of minority rights generally. Subsequent international agreements, however, appear to have at least taken note of rights inherent to an individual by virtue of a group membership. There is no question that international law continues to emphasize individual, not group, rights—even where certain rights have been outlined as a result of an individual’s group membership, these rights are, in the vast majority of cases, rights inherent in members of the group rather than the groups themselves. Even so, there is a growing movement to broaden and grow collective group rights from mere issues of debate to inclusion in more substantive international agreements, especially with regard to those group rights aimed at minority and ethnic groups, with the recognition that individualist human rights are simply not enough to protect and ensure the survival of the group’s culture and language.

The United Nations Charter, the document that led to the creation of the United Nations, is perhaps one of the best known international agreements. Signed and entered into force in 1945, it was meant to substitute the League of Nations and originally consisted of representatives of twenty-six nations pledging to fight together against the Axis Powers. Since then it has expanded its aims and goals to become the primary international organization of the post-Soviet world and the foremost agency for achieving world peace. The Charter itself makes extensive note of the protection of individual rights and liberties; section 3 of the first article, for instance, is explicit about securing individual freedoms: "[The purpose of the U.N. is to encourage] respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion." But in this archetypical international document no mention is made of group rights,

38. Id. at 6.
40. See U.N. Charter.
41. Id. art. 1, para. 3.
much less linguistic minority rights. The fundamental freedoms delineated above and throughout the Charter presumably apply to individuals inherently, and not by virtue of any group membership.

Likewise, the Universal Declaration of Human Rights ("UDHR") takes on an individualist, not group-oriented, perspective on the preservation of human rights.\(^4\) Its guarantees of "life, liberty and security of person," as well as protections against "torture or . . . cruel, inhumane or degrading treatment or punishment," are aimed at individuals.\(^4\) It does, however, acknowledge the importance of protecting against discrimination based on group identities such as "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."\(^4\) Even so, it frames such protection against discrimination in individualistic terms, emphasizing that the delineated rights are an entitlement of individuals: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind . . . ."\(^4\) Although not legally binding, the UDHR directly led to the creation of more than sixty human rights instruments that together constitute international human rights discourse.

From 1948 to 1966, the international community struggled to agree on an international covenant on human rights that would turn this declaration into binding international law. In the context of the Cold War, however, the international split along ideologies manifested itself in a political debate over the UDHR's granting of civil, political, economic, social and cultural rights.\(^4\) While the UDHR's provisions outlining both civil and political rights were supported by capitalist nations, its provisions protecting economic, social and cultural rights were more favored by communist nations. This division of support, while paralyzing the UDHR by keeping it nonbinding, also led to the creation of two binding covenants that effectively separated the types of rights neatly along the division of support: the International Covenant on Civil and Political Rights ("ICCPR") and the International Covenant on Economic, Social, and Cultural Rights ("ICESCR").\(^4\) Together with the UDHR, these three covenants comprise the International Bill of Rights.

The ICCPR symbolizes the beginning of a change in international rights rhetoric from one overly focused on protection of linguistic minority rights through individualist principles to one that is more open

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\(^{42}\) UDHR, supra note 5.

\(^{43}\) Id. art. 3, 5.

\(^{44}\) Id. art. 2.

\(^{45}\) Id.


\(^{47}\) Id. at 139-41.
to considering the benefits of group-oriented rights. Based on the ideals and goals of the UDHR, the ICCPR entered into force March 23, 1976 as a way to make the civil and political provisions of the UDHR a binding treaty.

The ICCPR appears to begin with an individualistic perspective. Article 1 of the ICCPR, for instance, is nearly identical to the implicit individual protections set down in the UDHR above: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Article 2 follows suit, requiring States to ensure that the human rights of all individuals within their territory and subject to their jurisdiction will be ensured and respected "without distinction of any kind such as . . . language . . . ." Similarly, Article 26 of the ICCPR attempts to outline linguistic minority protections still within an individualistic framework by securing an individual's right to nondiscrimination. The text of Article 26 explicitly prohibits individuals from being harmed because of their affiliation with certain types of groups, forbidding States from discriminating on the basis of language, national origin, and birth:

All persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The Sub-Commission on Prevention of Discrimination and Protection of Minorities ("the Sub-Commission"), the expert body largely responsible for shaping the tone of the ICCPR, went so far as to define the prevention of discrimination as "the prevention of any action which denies to individuals or groups of people equality of treatment which they may wish" during drafting. To the extent that it offers linguistic minorities any protection, the anti-discrimination protections of Article 26 are still framed in terms of the individual: its anti-discriminatory rights aim to prevent discrimination against individuals, not groups. The protections guaranteeing the freedoms of peaceful assembly and association in Articles 21 and 22 are similarly focused.

48. Id. at 142-45.
49. Id. at 708-09.
51. ICCPR, supra note 17, art. 2.
52. Id. art. 26.
55. ICCPR, supra note 17, art. 21, 22.
Article 25, however, is more specific in ensuring that every member of the State citizenry has a right to full political participation: "[Everyone is entitled to] take part in the conduct of public affairs, directly or through freely chosen representatives; [t]o vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage . . . guaranteeing the free expression of the will of the electors."66 Although at first impression Article 25 looks to imply a limited form of linguistic group rights, various legal commentators have suggested the potential of extending Article 25 to ensure linguistic protections: if a State's elections do not allow the entirety of the electorate to play a meaningful role in the political process, and thus leads to poor representation of the minority population, then it can be argued that the State is affirmatively obligated to ensure proper representation.67 Because the elections do not accurately represent the expressed will of the minority group, an argument could very well be made that a duty lies within the State to take action protecting the political rights of all of its constituents. The same argument could be extended to Article 19's guarantees of freedom of expression, as it includes the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers" as well as the right to do so in the medium or language of an individual's choosing.68

Article 27 of the ICCPR is perhaps the best known provision having a direct bearing on the linguistic rights of minorities. Even so, these protections proved to be a hard task during the drafting of Article 27, with the Sub-Commission settled on the following proposal:

In states inhabited by well-defined ethnic, linguistic or other religious groups which are clearly distinguished from the rest of the population, and which want to be accorded differential treatment, persons belonging to such groups shall have the right, as far as is compatible with public order and security, to establish and maintain their schools and cultural or religious institutions, and to use their own language and script in the press, in public assembly and before the courts and other authorities of the State, if they so choose.

The finished version became Article 27, although it was a significantly paler shadow of its former self: "In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and

56. Id. art. 25.
57. Wilets, supra note 20, at 219.
58. ICCPR, supra note 17, art. 19. While Article 19(1) grants individuals "the right to hold opinions without interference," Article 19(2) details the right to "seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." Id.
practice their own religion, or to use their own language.\textsuperscript{60} Compared to the proposed version, Article 27 also vested protection rights in individuals, not groups, and imposed only passive obligations upon States.\textsuperscript{61} Even so, Article 27 went a step further than Article 26 did in recognizing the existence of rights inherent to a group and its members, rights surfacing only in relation to membership in a set, pre-defined community. And because of that legal commentators have pointed out Article 27 as the only global provision of a legally binding nature guaranteeing minorities their language and culture.\textsuperscript{62}

Although the ICCPR goes further than previous international decrees in not only directly addressing linguistic rights of minorities but also in asserting the protection of that right, the degree of the obligation conferred on a State is unclear. Are States compelled to just protect minorities enough so that they can freely exercise their native language, or do they have an affirmative duty to encourage and cultivate said language? Does a State fulfill its obligation so long as it does not pass laws restricting the use of the language, or must it affirmatively help enable those minorities to cultivate and use their language? Article 27 above, for instance, says little with regard as to whether it grants minority groups an equal claim on State resources for schools, minority businesses, and/or cultural institutions. More generally still, does the text of Article 27 even require States to assist in the identity formation and maintenance of all minority groups? The ambiguity continues when one sees that there is no definition of what should constitute a linguistic minority, and even more that there remains opportunity for States to deny their very existence still.\textsuperscript{63} However, perhaps linguistic minorities should be thankful for the ambiguity, given the individualistic trend in international rights discourse that is only now, arguably, changing—stronger linguistic protections may have been rejected by the international community outright. As such, the trend in international law towards bestowing more positive obligations on States encourages a broader reading of Article 27, based on the view that affirmative duties going beyond non-discrimination and equality protections are necessary for the functioning of the entire article.\textsuperscript{64}

The third and final treaty that makes up the International Bill of Rights is the ICESCR, which was adopted and opened for signature December 1966 and entered into force January 1976 in accordance

\textsuperscript{60} ICCPR, supra note 17, art. 27.

\textsuperscript{61} Simon, supra note 16, at 135–36.

\textsuperscript{62} Id. at 132.

\textsuperscript{63} See Wilets, supra note 20, at 204–07.

\textsuperscript{64} ICCPR, supra note 17, art. 27 (referring only to "ethnic . . . or linguistic minorities").
with ICCPR's Article 27. Together with the UDHR and the ICCPR, the ICESCR was created with the recognition that an individual's enjoyment of civil and political freedoms is conditioned on his or her ability to also enjoy their economic, social and cultural rights. The Preamble is clear that "the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights . . . ." The ICESCR thus serves to enshrine the economic, social and cultural rights contained in the UDHR in a more developed and legally binding form, and to this day remains the foremost international document on these rights. The ICESCR is explicit in protecting an individual's right to participate in cultural life and to enjoy the benefits of his or her culture, going as far as to outline the duty of the State to preserve, develop and disseminate this culture.

Despite numerous signatories, the ICESCR continues to be handicapped because of the refusal of several influential States to fully recognize individual claims to the recognition and defense of these human rights. The United States, for instance, has in the past limited economic, social and cultural rights to goals that can only be achieved progressively, not guarantees. Therefore, while access to food, health services and quality education are the top of any list of development goals, to speak of them as rights turns the citizens of developing countries into objects of development rather than subjects in control of their own destiny.

Thus, the United States has expressed refrain from ratifying certain significant provisions of the ICESCR, and has expressed reservation on several other economic, social and cultural rights standards. Sadly, although the perspective of the United States is not unique, the ICESCR should be recognized as a step forward in the direction of a more complete protection of linguistic minorities.

The period following the breakup of Yugoslavia, the process of unification in Europe, and the increasing empowerment of indigenous communities throughout the world, among other events, led to a change in international human rights language and subsequently to a more open discourse on group-differentiated rights. Attempting to go

66. ICESCR, supra note 50, at 5.
67. Id. art. 15.
69. Saban, supra note 21, at 917 n.121.
beyond the rights outlined in the ICCPR and seeking to impose more affirmative obligations on nation-states, the U.N. General Assembly adopted the Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities ("G.A. Declaration") in 1992. The first and second Articles bound the joining nation-states to taking the necessary steps towards protecting the linguistic rights of minorities to use their own language and their right to be involved in governmental decision-making. States shall protect the existence and the national or ethnic, cultural, religious, and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity [and] shall adopt appropriate legislative and other measures to achieve those ends.

Article 2(1) articulates that national minorities have the right "to use their own language, in private and in public, freely and without interference or any form of discrimination." Despite the G.A. Declaration's noble effort to expand linguistic rights, it suffered from a flaw all too common to most international agreements: in an attempt to accommodate the different levels of commitment among its signatories, the delineated duties were quite limited and did not even mandate a State to provide the necessary resources for the teaching of and in the minority tongue. Further handicapping any expansion of linguistic rights was the fact that the G.A. Declaration was not legally binding on the member States.

The above international agreements serve as a testament to the changing face of international human rights discourse. While initially human rights were limited to those very basic needs—a right to food, shelter, freedom to live—a new era of international human rights protections expands to include certain social, economic and even cultural protections. However, what makes international documents and institutions the most ambitious is also an inherent weakness: the flexibility granted to States often translates into a limited reach and a document without much enforcement power. For instance, the Universal Declaration of Linguistic Rights ("UDLR") is perhaps the most impressive and forward-thinking document on the protection of linguistic rights, and it was drafted with the belief that such a declaration was necessary in order to correct linguistic inequality and endangerment. Signed in 1996 by several non-governmental organi-
zations, the UDLR is based on the recognition of language's importance to individual identity and aims to protect all languages, endangered or otherwise, from extinction; however, because its only signatories are non-governmental organizations, the UDLR is considerably limited in its effectiveness. Even so, there are certainly benefits to an internationally-agreed upon minimum standard of language rights, as they serve as a guide to the regional application of linguistic protections discussed infra Part IV.

IV. THE REGIONAL ALTERNATIVE

A. Canada

The protection of linguistic minority rights has only recently been introduced in international human rights discourse, but development of the concept has been hampered by a variety of factors: definitional problems, selective application, weakness inherent to international institutions, and the competing ideals of sovereignty, nationalism and assimilation. Canada provides an excellent example of where the official recognition of more than one language has lead to internal conflict along linguistic lines. The uneasy union of English and French offers a context in which to observe how effective linguistic accommodation measures by a State government can be.

The origin of Canada's linguistic troubles comes from its colonial founding by Great Britain and France. Initially sharing the territory that would later become Canada, the 1763 Treaty of Paris granted French territories in the North American continent over to Great Britain. The British English-speaking population soon spread over most of the Canadian territory, while the original French-speaking minority remained concentrated near the shores of the Great Lakes and the land that would later become Quebec. Early efforts to recognize the bilingual status of the Canadian territories took the form of territorial partitions, with Britain's Constitution Act of 1891 dividing up the country into Upper and Lower Canada. The partition left Canada with British-Protestant and French-Catholic regions, respectively, and granted official status to both languages in the legislature of


This effort was unsuccessful, however, and only encouraged disturbances along linguistic and cultural divides. Ultimately, the bilingual character of the Canadian nation was incorporated into the British North America Act ("BNA"), but still the language rights of minorities varied from province to province, with some expressing tolerance and others repression.79

The 1960s only made the linguistic divide more apparent, as a renewed government commitment to bilingualism clashed visibly with Quebec's developing nationalism. The implementation of the Official Languages Act ("OLA") in 1969 embodied the idea that Canadian individuals be allowed to choose the language of their choice and that such a choice should not be restricted to the language being used in a particular region.80 The goal was to fix the problems of separatism by "making French-speaking Canadians at home... in Vancouver and Toronto as well as Montreal."81 Even with such official encouragement, however, English-speakers continued to dominate the financial and commercial capital of Montreal and served to drive the fear of English as a threat to the preservation of French culture within Canada. More and more political activity focused on language issues in the 1960s and 1970s, and eventually the popular consensus in Quebec was the protection of the French language in view of the assimilative power of English. The voters of Quebec expressed their support of official unilingualism by passing Bill 22, which purported to revoke the official recognition of English as the national language, required all laws and regulations to be in French, and targeted the assimilation occurring in English-language schools.82 The French Language Charter (Bill 101), passed in 1977, represented a further circumvention of federal language policy, as it required the legislature to take a variety of affirmative measures to ensure the continued French Nature of the Quebec province.83

Perhaps in part because of the Quebec population's circumvention of bilingual legislation, the English provinces have been resistant to implement the goals of the OLA and hesitant to implement the bilingual public services it outlines. The general sentiment among most of Canada's English speakers has been a feeling that "they, the majority,
were being asked to bear all the material and symbolic costs of a program that they did not consider necessary, in order to buy support for Canada from an unreasonable and undeserving minority.\textsuperscript{84}

The future of Canada's linguistic divide can perhaps be gleaned from the late demise of the Meech Lake Accord, a constitutional compromise drafted in 1987 to assuage Quebec's fears of a diminishing French character.\textsuperscript{85} The Accord failed to ratify because of two key provisions: one recognizing Quebec's right to protect its status as a "distinct society" and another restricting English-language rights.\textsuperscript{86} Because Newfoundland and Manitoba rebuked the provisions of the accord that allowed Quebec to control language use within its territory, the rest of the agreement—which included immigration, senate reform, and the amendment process, among other topics—was eventually scrapped. On a greater level, the failure of the Accord symbolized something with much greater implications on Canadian society: the interpretation of the Accord's rejection as symbolic of Quebec's rejection by the rest of English-speaking Canada.\textsuperscript{87} The Human Rights Committee was even asked to intervene in the Ballantyne case, where the government of Quebec refused to allow nation English speakers living in Quebec the right to advertise their business with English-only signs.\textsuperscript{88} Currently the status of the debate is one of an impasse, although the internal politics of Quebec have been marked by a marked increase in the incorporation of separatist sentiments, once reserved to the radical fringe, in mainstream political dialogue.\textsuperscript{89} Quebec's newfound interest in considering secession options, in conjunction with an increased weakening of national unity among all the provinces has led some scholars to propose that the dissolution of the Canadian confederacy is only a question of time.\textsuperscript{90}

The experience of the Canadian nation provides an important lesson for nations considering any kind of linguistic protection for their minority populations but wary of the real risk of political division and national disunity. Even after centuries of official state-sanctioned bilingualism policies attempting to establish political parity between

\textsuperscript{84} Esman,\textit{ supra} note 80, at 54–55.
\textsuperscript{85} Peter W. Hogg,\textit{ Meech Lake Constitutional Accord Annotated} 3 (1988).
\textsuperscript{86} Lowrey,\textit{ supra} note 77, at 253–54.
\textsuperscript{87} Id. at 258.
the English and French languages, only sixteen percent of Canadians consider themselves bilingual. While Canada is still at heart a bilingual nation, the nature of its bilingualism continues to be structured around territorial lines, and the result is several unilingual provinces under one divided country’s flag.

B. Eastern & Central Europe

The creation of the League of Nations following World War I was motivated, at least in great part, by the recognition that escalating minority tensions in Eastern Europe had contributed significantly to the War and with the goal of preventing similar conflicts in the future. As what some authors have aptly called the “first truly international system of minority protection,” the League worked as a system of minority protection that sought to promote the right to be free from discrimination and even implied affirmative duties upon the State towards minority groups though a system of treaties. But the emergence of World War II clearly marked the blatant failure of the League of Nations in preventing further international hostilities, and with the demise of the League in 1946 came the end of its minority protections.

On a grander scale, however, the Nazi Party’s promotion of group rights and its pursuit of racial purity during its European invasion led the international community to be increasingly wary of protectionist rhetoric that could be similarly abused in the future, and thus more cautious about any support of group rights. International rights rhetoric thus underwent a fundamental change after World War II, and became one focused on protecting the rights of individuals through a universal system not predicated on any type of group membership. The philosophy behind international rights discourse now became directed universally at all individuals in all countries, and not limited by group or country. Europe followed suit, and most of its post-World War II agreements and institutions have demonstrated the same commitment to a universally-applicable system of human rights.

Adopted by the Council of Europe on November 4, 1950, the European Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention”) continued the trend of the

91. Peter Brimelow, Divorce to the North?, FORBES, June 11, 1990, at 56, 60.
93. Wilets, supra note 20, at 204–07.
94. LERNER, supra note 92, at 11–14.
protection of the individual.95 Group rights are largely ignored, protected only to the extent that individual group members are able to exercise their enumerated rights—groups, per se, have no legal status before the European Court, as petitions must be filed by a "person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention . . . ."96 In addition, the protection of minorities is further hurt by the lack of any similar counterpart to Article 27 of the ICCPR. Although Article 14 of the European Convention safeguards against discrimination97 and Article 10 protects an individual's freedom of expression,98 this does not add up to an affirmative protection of an individual's right to enjoy his or her culture, language or religion.

In its current form, the only linguistic rights that can be interpreted from the European Convention can perhaps best be divided into two categories: rights of criminal procedure and education.99 Article 5(2), first and foremost, guarantees an arrested individual's right to be promptly informed of the charges against him or her in a language the arrested party understands,100 while Article 6(3) goes even further in providing for an interpreter, free of cost, if the arrested individual "cannot understand or speak the language used in court."101 However, it must be noted that these rights are certainly limited to rights of procedure, meant to alleviate any discrimination or disadvantage that a linguistic minority might face as a result of language but not extending to, say, a substantive right to be heard in one's own language.102

A linguistic minority’s right to an education is likewise restricted under Article 2, which provides that "[n]o person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity

96. Id. art. 25. For more on the petitioning process, see Furtado, supra note 39, at 342-46.
97. European Convention, supra note 95, art. 14.
98. Id. art. 10.
99. Furtado notes that, in addition to criminal procedure and education rights, language rights are also "implicated by the 'right to private and family life' under Article 8, freedom of religion under Article 9, and the right to freedom of expression under Article 10." Furtado, supra note 39, at 350.
100. European Convention, supra note 95, art. 5, para. 2.
101. Id. art. 6, para. 3.
102. Furtado, supra note 39, at 350.
with their own religious and philosophical convictions.” Although providing for an individual’s right to an education, European Court decisions have not interpreted Article 2 to include a right to education in an individual’s native language. In one case, for example, a group of Belgian French speakers challenged the fact that State-provided education did not allow for teaching in the group’s native language (French, as opposed to Flemish). While the Court reiterated that the State was required to educate minorities like other citizens, it found the State free of any requirement to respect the parent’s linguistic preferences, even in enclaves where a minority language constituted a considerable percentage of the population.

Continuing the European trend of broad linguistic protections is the Framework Convention for the Protection of National Minorities (“Framework Convention”). Signed in February 1995 by twenty-two members of the Council of Europe, the Framework Convention broadly aimed at guaranteeing certain freedoms in relation to minority languages as the first international convention on minorities. Although the regional nature of the Framework Convention has been widely noted as one of its strengths, it is worthy to note that its regional focus has potentially limited its significance on a global scale. Setting out the Framework Convention’s basic protection for linguistic minorities, Article 10(1) stipulates that States recognize the right of persons belonging to national minorities “to use freely and without interference his or her minority language, in private and in public, orally and in writing.” When this right is encroached upon, the Framework Convention compels the State to “adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority.” States are also obligated to “create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.”

The Framework Convention’s linguistic protection extends to a choice of language in the arena of business and administration, with
Article 11(2) providing that "every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public." Article 11(2) prohibits the State from any restrictions on the use of a minority language as a means of communication; it does not, however, prevent the State from requiring the additional use of the majority language in circumstances where it sees fit, as in where it would affect the enjoyment of the rights of others in the citizenry. Paragraph 69 of the companion Explanatory Report to the Framework Convention for the Protection of National Minorities says as much, allowing the State to, on the basis of a legitimate public interest, require the additional and supplementary use of an official or majority language. And because Article 10(2) obligates the States to "make . . . possible the [use of] minority language in relations [with] administrative authorities," these Framework provisions allow not just for the linguistic respect and cultural maintenance of the minority group, but also permit the group's full participation in political, economic and social life.

The European Charter for Regional or Minority Languages ("ECRML") was adopted in 1992 for the protection and promotion of historical regional and minority languages in Europe. Article 7(1) compels its signatories to base their laws and legislation on "the recognition of the regional or minority languages as an expression of cultural wealth" with the goal of engaging in "resolute action to promote regional or minority languages in order to safeguard them." Article 7(2) of the ECRML takes care to note that the attention paid to linguistic survival does not constitute reverse discrimination towards the linguistic majority:

[The adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions is not considered to be an act of discrimination against the users of more widely-used languages.]

The ECRML lends support to the idea of providing a significant share of State financial resources to the goal of supporting, maintaining and promoting the linguistic survival of its minority groups, a task that can be easily accomplished through a variety of means: through gov-

111. Id. art. 11, para. 2.
113. Framework Convention, supra note 106, art. 10, para. 2.
115. Id. art. 7, para. 1.
116. Id. art. 7, para. 2.
ernment subsidies, public benefits, and even targeted tax benefits, for instance. On this basis, Article 9 of the ECRML pushes for the conducting of all judicial proceedings, to the extent possible and feasible, in the regional or minority language.117

The Organization for Security and Cooperation in Europe ("OSCE") was initially established as the Conference on Security and Cooperation in Europe ("CSCE") in 1973 as way to further economic cooperation among communist countries.118 The collapse of communism, however, required a redefinition of the CSCE's role in the international community, as well as a renaming. Thus, the OSCE was born in 1995 as a regional arrangement under the United Nations Charter (Chap. VII) that has, in recent years, taken on an increasingly international dimension with member States from Europe, Central Asia and North America.119 The OSCE proved to be instrumental in establishing important commitments for the linguistic protection of minorities, such as the Copenhagen Document of 1990 and the Vienna Declaration of 1993.120 For instance, paragraph 32 of the Copenhagen Document promoted the idea of linguistic rights for minorities using their native language in both the public and private sphere, being as specific as outlining the right to have access to and exchange information in said language: "The participating States will protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity."121

Paragraph 31 goes a step further in obligating the States to "adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms."122 And Paragraph 35 bestowed even more affirmative duties upon the signatories:

The participating states note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means

117. Id. art. 9. See also Article 7(3) of the Parliamentary Assembly of the Council of Europe's Recommendation 1201, which provides: "In regions in which substantial numbers of a national minority are settled, the persons belonging to a national minority shall have the right to use their mother tongue in their contacts with the administrative authorities and in proceedings before the courts and legal authorities." EUR. PARL. Ass., Recommendation 1201, art. 7, para. 3, 44th Sess. (Feb. 1, 1993).

118. STEINER & ALSTON, supra note 46, at 791–94.

119. Id.

120. Id. at 792.


122. Id. para. 31.
to achieve these aims, appropriate local or autonomous administrations corre-
sponding to the specific historical and territorial circumstances of such minor-
ities and in accordance with the policies of the State concerned.123

The evolution of European linguistic protections largely parallels
that of the international community—an early focus on individualistic
protections against nondiscrimination and freedom of expression have
given way in recent years to the recognition of the value of linguistic
diversity and the need for its protection. European linguistic protec-
tions are the cutting-edge of linguistic rights discourse, and serve as
an example of how a plurality of languages can be supported under
regional agreements without resulting in political division.

V. CONCLUSION: LESSONS FOR THE UNITED STATES

Compared to both Europe and Canada above, the linguistic history
of the United States provides an interesting case scenario in which to
examine the potential linguistic protections have of success. The
United States prides itself highly in its immigrant origins and plural-
istic background, in its ability to welcome and accept people of all cul-
tures into its melting pot. The Constitutional Congress, for instance,
made a conscious decision to issue several of our country's most histor-
ically significant documents, like the Articles of Confederation, in Ger-
man and French.124 Unlike the Canadian example above, the
population of the United States has never doubted the reign or legiti-
macy of the English language. Although language diversity was an
issue since before the American Revolution,125 the dominion of En-
glish has never seriously been threatened. And yet, in the eyes of
many, the United States is in the midst of a cultural war, a linguistic
invasion of sorts where our very way of life is endangered by a Span-
ish-speaking minority.

Despite the impression that this is a recent phenomenon, this
Spanish-speaking constituency has a historical presence that predates
the United States' claim of sovereignty over said population. What
has coincided with the presence of the official English movement, how-
ever, has been a rapid rise in low-wage labor immigration from Mex-
ico, primarily, but also from Central America. Immigration analysts
disagree as to whether this immigration will continue to increase—
some suggest the economic development in Mexico will lead to less
migration to the U.S., while others see the U.S. demand for cheap la-
bor remaining stable, if not increasing, which would continue to at-

123. Id. para. 35.
124. Juan F. Perea, Demography and Distrust: An Essay on American Languages, Cul-
tural Pluralism, and Official English, 77 MINN. L. REV. 269, 285–86 (1992);
125. James C. Stalker, Official English or English Only, in 66 THE REFERENCE SHELF,
tract labor from Mexico.\textsuperscript{126} The link between proponents of a stricter immigration policy and official English legislation appears to be relatively strong, so an increase in immigration is likely to lead to more organizational and legislative opinions on whether to institute official English policies. Regardless of whether Hispanic immigration increases, the historical presence of Spanish-speakers, recent immigration and the survival of ethnic/linguistic enclaves will serve to ensure that the language issue continues to be a political issue.

Unlike the linguistic assimilation that generally characterized previous generations of immigrants, current linguistic minorities have generally been successful in ensuring the survival of their language. The 1980 census had Spanish-speakers constituting nearly half of all of the minority population,\textsuperscript{127} and the numbers are only increasing as a result of a high level of Hispanic immigration\textsuperscript{128} and a high birth rate among the Hispanic community.\textsuperscript{129} While previous immigrants had to cross vast stretches of ocean, the geographical proximity of Mexico ensures that the largest Spanish-speaking minority bloc will continue to enjoy easy access to the country’s culture.\textsuperscript{130} But on the whole, the U.S. Spanish-speaking population has in common with previous immigrants its eventual assimilation, albeit at a slower pace—first generation Hispanic immigrants incur the cost of learning English as a second language (reading fluently in roughly ten years and speaking fluently within fifteen), the second generation tends to be successfully bilingual, and the third generation is generally monolingual.\textsuperscript{131}

And yet, a movement to make English the “official language” of the United States has gained rapid speed—already several States and the federal government have begun drafting and, in some cases, already succeeded in passing legislation to restrict linguistic minorities from using their native tongue. The push to have English officially sanc-

\begin{itemize}
\item \textsuperscript{127} Dorothy Waggoner, Language Minorities in the United States in the 1980s: The Evidence from the 1980 Census, in LANGUAGE DIVERSITY 79–80 (Sandra Lee McKay & Sau-ling Cynthia Wong eds., 1988).
\item \textsuperscript{129} Pear, supra note 128.
\end{itemize}
tioned as the national language began relatively recently in 1981 with Senator S.I. Hayakawa's introduction of his English Language Amendment to the Constitution. After the amendment's failure, various state legislatures took up the cause of "Official English" to varying stages of success. Federal interest in the matter revived in the early 1990s with the election of a Republican Congress, and several proposals have been submitted since. The most restrictive of these proposals would lead to the dissolution of current laws mandating Spanish-language election ballots and supporting Spanish-language education, while the least restrictive would require English to be used in federal services and operations. The United States got closest to a federally-sanctioned language on August 1996, when House Bill 123, the English Language Empowerment Act of 1996, was passed. Although the bill eventually died in committee in the Senate, the fact that official English legislation had enough support in the first place to win House approval is a testament to society's support of an official language policy.

If eventually passed, official English legislation runs the risk of undermining important linguistic protections that currently safeguard the rights of minorities. For instance, the Voting Rights Act of 1965 contains provisions requiring ballots in languages other than English when (1) a minority group consists of more than five percent of citizens of voting age and (2) the jurisdiction illiteracy rate exceeds the national rate. Likewise, the Equal Employment Opportunity Commission ("EEOC") has interpreted Title VII of the Civil Rights Act of 1964 to include language restrictions in a workplace environment. As a result of the Fifth Circuit's confusion over the matter in Garcia v. Gloor, the EEOC created the "Guidelines on Discrimination Because of National Origin," which explicitly prohibit workplace regulations on language as discrimination based on an individual's national origin:

The primary language of an individual is often an essential national origin characteristic. Prohibiting employees at all times, in the workplace, from speaking their primary language or the language they speak most comfortably, disadvantages an individual's employment opportunities on the basis of national origin. It may also create an atmosphere of inferiority, isolation and

136. 618 F.2d 264, 268, n.1 (5th Cir. 1980).
137. 29 C.F.R. § 1606.7 (1980).
intimidation based on national origin which would result in a discriminatory
working environment.  

Likewise, federal statutes and case law currently impose an affirm-
ativaive obligation on school districts to provide some degree of instruction
in a language other than English to students whose primary language
is not English on the theory that the failure to do so denies certain
students a "meaningful opportunity" to public education, as required
by Title VI of the Civil Rights Act.  

While Congress has not yet enacted any kind of official English
legislation, the majority of States have responded to the sentiment by
drafting, proposing and/or passing legislation officially endors-
ing—the use of English. At latest count,
twenty-three states have passed some sort of legislation declaring En-
glish the official language.  

Similar to the proposed federal legis-
lation, state statutes and constitutional amendments vary widely as to
the restrictions placed on the speakers of minority languages. On the
one hand the Kentucky, Illinois, Indiana and Missouri statutes, to
name a few, constitute little more than an official endorsement of the
English language.  

At the other extreme is legislation following
California's footsteps, broadly requiring the state to do all that is nec-
essary and feasible to enhance and preserve the role of English as the
official language.  

Likewise, Nebraska's Constitution requires that
"all official proceedings, records and publications shall be in such lan-
guage, and the common school branches shall be taught in said lan-
guage in public, private and denominational and parochial
schools."  

Perhaps most extreme of all is Article XXVIII of the Ar-
izona Constitution, passed in 1988 as a ballot initiative, which prohib-
ited the "state from using or requiring the use of languages other than
English."  

The constitutionality of the amendment was challenged
by a bilingual Hispanic employee in the Department of Administra-
tion who had to refrain from speaking Spanish to her unilingual Span-
ish-speaking clients.  

The Ninth Circuit struck down the Arizona
amendment as a violation of the First Amendment, but the Supreme
Court reversed the decision on mootness because Yniguez had left her
job.  

While the legal state of Article XXVIII is uncertain, it clearly

138. Id. § 1606.7(a).
140. Lori A. McMullen & Charlene R. Lynde, The "Official English" Movement and the
Demise of Diversity: The Elimination of Federal Judicial and Statutory Minority
141. Id. at 795-96 n.56.
142. CAL. CONST. art. III, § 6; see also ALA. CONST. amend. 509 (1990); ARIZ. CONST.
art. XXVIII (1988).
143. NEB. CONST. art. 1, § 27.
144. ARIZ. CONST. art. XXVIII.
145. Yniguez v. Arizonans for Official English, 69 F.3d 920, 924 (9th Cir. 1995).
stands as representative of the most restrictive official English provisions currently enacted.

The face of linguistic minority protections has changed, at both the international and regional levels, within the past several decades. While throughout history human rights law has been framed in individualistic speech and focused on universal protections, the breakup of the Soviet Union, the increasing globalization of the world's economies and the empowerment of ethnic minorities has made the world reconsider a more active State role when it comes to the protection of linguistic minorities. At the international level this is perhaps best represented by an increasingly popular reading of ICCPR's Article 27 to include an affirmative duty of the State to promote, support and ensure the survival of a minority community's language. Even so, the international agreements discussed herein, as forward-thinking as they may be, suffer from the same illnesses that plague most international documents and institutions—the strength of their implementation is directly tied to the commitment of the signatories. As such, while the evolution of the international human rights agenda can be seen with promise, international linguistic protections offer little more than a guide as to where minority protections should go next.

At the regional level the examples of Canada and Europe offer a compelling insight as to how far linguistic protections have been created and implemented, and with what consequences. While Europe has been much more successful in protection of linguistic minorities in recent years, an application of the European model to the United States must be somewhat tempered by the recognition that what works in an association of European nation-states might have different consequences when applied to one nation. Likewise, while Canada's bilingual founding best mirrors the pluralistic origins of the United States, policymakers should be wary of avoiding the same outcome—a nation divided along linguistic lines. Applying the Canadian approach to the United States without accounting for the differences in culture and politics could very well lead to exactly the outcome feared by proponents of Official English policies.

The current status of the Official English policies appears to resemble a blend of European and Canadian aims along a tiered system of protections at the federal and state level. Federal laws like the Voting Rights Act represent the first tier of linguistic protections and are applicable to all the states within the Union without fail. The second tier of protections is at the state level, where states differ as to the degree of protection given to linguistic minorities: some states simply give a nominal endorsement of the English language while others go as far as restricting the use of non-English languages to the point of having their constitutionality questioned. So far, the United States has avoided the serious political divide that characterizes the Cana-
dian situation, perhaps because linguistic concerns cannot so easily be divided along territorial lines, or perhaps as a result of a stronger sense of national unity. Whatever the cause of the differences, the two-tiered system has so far worked for the United States.

In planning for the future of linguistic protections in the United States, policymakers and legislators should consider the possibility of a third route when choosing between an official language policy and the protection of linguistic minority rights—one where neither is necessarily exclusive of the other. This perspective would allow for the sharing of public space between a plurality of languages; in education, for instance, minority languages could share public space with the “official” language through efficiently implemented bilingual or multilingual programs. Something similar is implemented in a three-step fashion and appears to be working in the heavily multi-lingual State of India: state organizations operate in a state-sanctioned language, while a number of national languages have official status in certain territories, and yet more regional languages are used for a variety of other purposes. Similarly, the United Nations has recognized six languages as “official” languages but makes the distinction of “working” languages: while English and French are the working languages of the Secretariat, English, French and Spanish are the working languages of the Economic and Social Council.

But the alternative third path above leaves the question of national unity unanswered. India, for instance, is multi-lingual to the degree that it can be said to suffer from communication paralysis: with over eight hundred languages spoken nationwide, individuals residing in the same state are often not able to communicate with one another. Additionally, the method by which certain languages are selected over others, as well as the varying level of official recognition, is far from being universally agreed upon—for instance, some states select those languages spoken by a numerically significant portion of the population, while others choose to correlate significance with the group's political power. While definitely an option worth considering, one should also be careful not to neglect the flaws that accompany it.

147. Addis, supra note 35, at 784–786.
148. Id. at 786 (citing T.N. Dhar, Language Planning and Development: Problems of Legislation Amidst Diversity, in PROCEEDINGS OF THE INTERNATIONAL COLLOQUIUM ON LANGUAGE PLANNING 238, 238–54 (Lorne Laforge ed., 1986)).
149. Id. at 786–87 (citing Rules of Procedure Concerning Languages, G.A. Res. 2(1), U.N. GAOR 1st Comm., 1st Sess., Annex, at 5 (1946)).
Historically, the international community has been hesitant in addressing the protection of linguistic minority rights and, when it has done so, has left enough flexibility to the States to the extent that it renders such protections merely nominal and ineffective. While international agreements have served as useful guides for the drafting of regional linguistic protections, the regional approach has fared much better in implementing said protections. In proposing a regionally-focused approach to the protection of linguistic minority rights, such rights should be examined with the context of the minority group’s greater and larger participation in society. I do not propose a solution where the end result would lead to the sectionist conflict that characterizes the Canadian situation, but rather one that would better encourage, promote and support linguistic protections while ensuring the full political and social involvement of the minority group.

The United States should strive to balance being cognizant of the contributions of the linguistic minority community and striving to protect the nation’s linguistic diversity, on the one hand, while on the other making sure to provide the training and opportunities linguistic minorities need to learn English. The most restrictive official English policies focus only on one side of the equal and forget the other; while there is certainly some value to recognizing the importance of a common language, it is ignorant to think that unilingual linguistic minorities refuse to learn English and participate in American society. On the contrary, most immigrants learn the majority language within one or two generations when given the proper support and educational tools. The promotion of the English language and American culture is certainly a worthwhile goal, and one that should be pursued further—but not at the cost of the protection and promotion of language diversity in the United States.