

PROMOTING HUMAN RIGHTS THROUGH INDIGENOUS LANGUAGE REVITALIZATION

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I. Introduction

The National Geographic Society's *Enduring Voices* project notes that about every two weeks another language dies, taking millennia of human knowledge and history with it.¹ Writing in *The Wall Street Journal*, John J. Miller declared that the increasing pace of language death is "a trend that is arguably worth celebrating . . . [because] age-old obstacles to communication are collapsing" and primitive societies are being brought into the modern world.² However, many speakers of these languages lament their losses and see their identities threatened, as their mother tongues represent their links to their Creators. In the United States and many other countries of the world, indigenous languages are being threatened; especially by the schools their children attend, which are usually conducted in the national language and suppress, or, at best, ignore indigenous students' mother tongues.

The Universal Declaration of Human Rights adopted by the United Nations in 1948 states in Article 26 that "[p]arents have a prior right to choose the kind of education that shall be given to their

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¹ *Enduring Voices; Documenting the Planet's Endangered Languages*, NAT'L GEOGRAPHIC, <http://www.nationalgeographic.com/mission/enduringvoices/> (last visited Feb. 28, 2008).

² John J. Miller, *How Do You Say 'Extinct'? Languages Die. The United Nations is Upset About This*, WALL ST. J., Mar. 8, 2002, <http://opinionjournal.com/taste/?id=105001735>.

children.”³ Furthermore, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted by the UN in 1992 mandates in Article 1 that “[s]tates 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 affirms in Article 2 that “[p]ersons belonging to national or ethnic, religious and linguistic minorities . . . have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.”⁴

For most of U.S. history, the basic human rights outlined by the United Nations in 1948 and 1992 were denied, and it was the policy of the U.S. Government to assimilate Indian students into the mainstream English-speaking population through enrollment in schools where speaking Native languages was suppressed. Study after study, from the 1928 Meriam Report⁵ on, has shown that this policy was not successful and that the academic achievement of American Indian, Alaska Native, and Native Hawaiian students lagged far behind national averages. Evidence of the continued educational and social failures of government policy towards its indigenous population can be found in the 2005 report, *Status and Trends in the Education of American Indians and Alaska Natives* issued by the U.S. Government’s National Center for Education Statistics. It shows indigenous students are three times as likely as White students to be unemployed, are more than twice as likely as Whites to drop out, have the highest 15-19 death rate, the highest percentage of special education students, the highest rates of

³ Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen mtg., U.N. Doc. A/810 (Dec. 10, 1948), available at <http://www.un.org/Overview/rights.html>.

⁴ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, G.A. Res. 47/135, Annex, U.N. Doc. A/Res/47/135/Annex (Dec. 18, 1992), available at <http://brj.asu.edu/archives/1v21/UN.html>.

⁵ Inst. for Gov’t Research, Johns Hopkins University, *The Problem of Indian Administration* (1928), http://www.alaskool.org/native_ed/research_reports/IndianAdmin/Chapter1.html (last visited Feb. 28, 2008).

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absenteeism, are less likely to have completed core academic programs in their schools, and are most effected by school violence.⁶ This poor academic performance is in spite of the fact that 51% of American Indian and Native Alaskan eighth graders reported in 2003 that they never spoke any language but English at home, and only 22% reported speaking a non-English language half the time or more.⁷

In 1990, President George H.W. Bush signed the Native American Languages Act, affirming the U.S. Government's commitment to uphold the United Nations' ideals expressed in the 1948 United Nations Declaration, and declared it U.S. Government policy to "preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages."⁸ In this Act, Congress found that "there is convincing evidence that student achievement and performance, community and school pride, and educational opportunity is clearly and directly tied to respect for, and support of, the first language of the child or student," and made it government policy to "recognize the right of Indian tribes and other Native American governing bodies to use the Native American languages as a medium of instruction in all schools funded by the Secretary of the Interior."⁹

In 1991, the U.S. Secretary of Education's Indian Nations at Risk Task Force set as its second of ten goals that "[b]y the year 2000 all schools will offer Native students the opportunity to maintain and develop their tribal languages and will create a multicultural environment that enhances the many cultures represented in the school."¹⁰ This admirable goal is still far from being achieved in 2008, in spite of the emergence of evidence

⁶ CATHERINE FREEMAN & MARY ANN FOX, NAT. CTR. FOR EDUC. STATISTICS, U.S. DEPT. OF EDUC. INST. FOR EDUC. SCIENCES, STATUS AND TRENDS IN THE EDUCATION OF AMERICAN INDIANS AND ALASKA NATIVES 26-122 (2005), <http://nces.ed.gov/pubs2005/2005108.pdf>.

⁷ *Id.* at 78.

⁸ 25 U.S.C.A. § 2903(1) (2008).

⁹ 25 U.S.C.A. §§ 2901(6), 2903(5) (2008).

¹⁰ U.S. DEP'T. OF EDUC., INDIAN NATIONS AT RISK: AN EDUCATIONAL STRATEGY FOR ACTION (1991), <http://www.tedna.org/pubs/nationsatrisk.pdf>.

tending to show that schools that start by immersing their indigenous students in their heritage languages and later introduce them to English have English language test scores in the upper grades, which meet or exceed the scores of indigenous students with an all-English education, and also have lower drop-out rates.¹¹

II. *Linguicide?*

A key question for human rights activists is whether the increasing rate of language loss today is really a matter of “primitive societies” voluntarily deciding to join the modern world or a matter of language murder (*linguicide*) by colonial hegemonic powers that often show little interest in allowing minorities rights. Looking at the history of colonized peoples in the United States, Canada, and elsewhere, it is hard to escape the conclusion that it was and is a case of linguicide. Indian activist and author Vine Deloria, Jr. (Standing Rock Sioux) described past U.S. Government educational efforts as resembling “indoctrination more than it does other forms of teaching because it insists on implanting a particular body of knowledge and a specific view of the world which often does not correspond to the life experiences that people have or might be expected to encounter.”¹² As Joy Harjo (Muscogee Creek) notes, “[c]olonization teaches us to hate ourselves. We are told that we are nothing until we adopt the ways of the colonizer, till we become the colonizer.”¹³ A longtime Indian Office employee Albert Kneale found when he started teaching in 1899 in a one room school on the Pine Ridge Reservation that “the Indian Bureau, at that time, went on the assumption that any Indian custom was, per se, objectionable, whereas the customs of whites were the ways of civilization.”¹⁴ English-only government

¹¹ E.g., Florian Tom Johnson & Jennifer Legatz, *Tséhootsooí Diné Bi`ólta`*, 45 J. AM. INDIAN EDUC. 2, 26 (2006); Florian Tom Johnson & Jennifer Wilson, *Navajo Immersion in the Navajo Nation*, NABE NEWS, Mar. 2005, at 30.

¹² Vine Deloria, Jr., *Traditional Education in the World*, 5 WINDS OF CHANGE 10, 13, 16 (1990).

¹³ WILMA MANKILLER, EVERY DAY IS A GOOD DAY: REFLECTIONS BY CONTEMPORARY INDIGENOUS WOMEN 62 (2004) (quoting an interview of Joy Harjo).

¹⁴ ALBERT H. KNEALE, INDIAN AGENT 4 (1950).

policies led to students being punished, sometimes severely, for speaking indigenous languages. Punishments varied from verbal reprimands, to mouths being washed out with soap, and whippings.¹⁵ The suppression of American Indian languages was merely a part of a more general effort to suppress their cultures, including banning religious rites such as the potlatches of the Northwestern tribes and sun dances of the Plains tribes.

III. What Is Being Lost?

American Indians as a group live in poverty today, with all its attendant ills, despite the well-publicized wealth of a relatively small number of tribes benefiting from Indian gaming. Added to the burden of poverty resulting from their loss of land and the poor quality of schooling provided to them, are the psychological ills resulting from their tribal cultures, including their languages, being labeled as “savage” and not worth preserving by the colonizing forces.

Sally Midgette writes, “I have heard several Native Americans speak feelingly about their sense of rootlessness and despair, and how they recovered when their grandmothers taught them to speak Tolowa, or Navajo, and they regained a sense of themselves and their heritage.”¹⁶ Interviewing Navajo elders in their own language, Dr. Evangeline Parsons Yazzie found that, “Elder Navajos want to pass on their knowledge and wisdom to the younger generation. Originally, this was the older people’s responsibility. Today the younger generation does not know the language and is unable to accept the words of wisdom.”¹⁷ She concluded, “[t]he use of the native tongue is like therapy, specific native words express

¹⁵ JON REYHNER & JEANNE EDER, *AMERICAN INDIAN EDUCATION: A HISTORY* 29 (2004).

¹⁶ Sally Midgette, *The Native Languages of North America: Structure and Survival*, in *AMERICAN INDIAN STUDIES: AN INTERDISCIPLINARY APPROACH TO CONTEMPORARY ISSUES* 39 (Duane Morrison ed., Peter Lang 1997).

¹⁷ Evangeline Parsons Yazzie, *A Study of Reasons for Navajo Language Attrition as Perceived by Navajo Speaking Parents* 3 (1995) (unpublished Ed.D. dissertation, Northern Arizona University) (on file with author).

love and caring. Knowing the language presents one with a strong self-identity, a culture with which to identify, and a sense of wellness.”¹⁸ An elder told her in Navajo, “television is robbing our children of language.”¹⁹ As indigenous children learn English or other “National” languages and cultures through the media and in schools, they increasingly become separated from their heritage, and some cannot speak to their grandparents. As one of Yazzie’s informants told her, “[o]lder people who speak only Navajo are alone.”²⁰ Many American Indians see language as the key to their identity and they question whether one can be Navajo, Crow, Seminole, and so forth, without speaking their tribal language. Richard Littlebear, President of Chief Dull Knife College, concluded that Northern Cheyenne youth learning their language could be an antidote to the forces pulling the youth of his tribe into joining gangs.²¹

In 2005 when an Ojibwe²² high school student on the Red Lake Reservation in Minnesota shot and killed a teacher and seven students, Navajo Nation President Joe Shirley cited a breakdown of traditional tribal culture and poverty as facilitating the conditions on Indian reservations that made such horrendous acts possible. He wrote:

We are all terribly saddened by the news about our relatives on their land in Red Lake in Minnesota. Unfortunately, the sad truth is, these kinds of incidents are evidence of natives losing their cultural and traditional ways that have sustained us as a people for centuries.

Respect for our elders is a teaching shared by all native people. In the olden days we lived by that. When there was a problem, we would ask, “What does Grandpa

¹⁸ *Id.*

¹⁹ *Id.* at 135.

²⁰ *Id.* at 4.

²¹ Richard Littlebear, *Some Rare and Radical Ideas for Keeping Indigenous Languages Alive*, in *REVITALIZING INDIGENOUS LANGUAGES* 1, 4-5 (Jon Reyhner et al. eds., Northern Arizona University 1999).

²² Also spelled Ojibwa, and known as Anishenabe or Chippewa.

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say? What does Grandma say?"

On many native nations, that teaching is still intact, although we see it beginning to fade with incidents like this. Even on the big Navajo Nation, we as a people, are not immune to losing sight of our values and ways. Each day we see evidence of the chipping away of Navajo culture, language and traditions by so many outside forces.

Because we are losing our values as a people, it behooves native nations and governments that still have their ceremonies, their traditions, and their medicine people, to do all they can to hang onto those precious pieces of culture. That is what will allow us to be true sovereign native nations. This is what will allow our people to stand on our own. The way to deal with problems like this one is contained in our teachings.²³

At the 2005 annual meeting of the National Indian Education Association, Cecelia Fire Thunder, President of the Oglala Sioux at Pine Ridge, testified, "I speak English well, because I spoke Lakota well.... Our languages are value based. Everything I need to know is in our language."²⁴ Language is more than communication, "It's about bringing back our values and good things about how to treat each other."²⁵ Students of whatever race or culture who are not embedded in their traditional values are only too likely in modern America to pick up an unhealthy lifestyle of consumerism, consumption, competition, comparison, and conformity. As Vine Deloria once wrote, "[a] society that cannot remember and honor its past is in peril of losing its soul."²⁶

²³ Joe Shirley Jr., *Another Viewpoint: Red Lake Tragedy Points to Loss of Traditional Ways*, NAVAJO HOPI OBSERVER, Mar. 30, 2005, at 5, available at <http://navajohopiobserver.lupsoftware.com/Search.asp> (search "Red Lake Tragedy"; then follow Red Lake Tragedy Points to Loss of Traditional Ways" hyperlink under "Search Results").

²⁴ Jon Reyhner, *Native Educators Gather in Denver*, 21 WINDS OF CHANGE 60, 61 n. 1 (Winter 2006).

²⁵ *Id.*

²⁶ *Id.*

President Shirley and Fire Thunder's views are not new. In the 1970s, the Rock Point Community School Board felt "it was the breakdown of a working knowledge of Navajo kinship that caused much of what they perceived as inappropriate, un-Navajo, behavior; the way back, they felt was to teach students that system."²⁷ To counter the decline in behavior the Board established a bilingual education program that promoted literacy in Navajo and English, along with an extensive Navajo Social Studies component that included the theory of Navajo kinship.

The Rock Point Program²⁸ has been modified and continued in the Window Rock Public School's Navajo Immersion School,²⁹ where it was found that, "[m]ore-traditional Navajo expectations of children were that they would work hard and act responsibly—in adultlike ways. Anglos tend to expect children to act in more childlike ways . . . More-traditional parents tend to perceive such [childlike] behavior as self-indulgent and irresponsible. At worst, children come to exploit the gap between parental and teacher expectations."³⁰

A case study of a Navajo immersion school by Arizona State University's Native Educators Research Project found that Navajo

²⁷ Agnes Holm & Wayne Holm, *Rock Point, A Navajo Way to Go to School: A Valediction*, 508 ANNALS AM. ACAD. POL. & SOC. SCI 170, 178 (1990).

²⁸ See, e.g., Jon Reyhner, *A Description of the Rock Point Community School Bilingual Education Program*, in EFFECTIVE LANGUAGE EDUCATION PRACTICES AND NATIVE LANGUAGE SURVIVAL 95, 95-106 (Jon Reyhner ed., Native American Language Issues 1990), available at <http://jan.ucc.nau.edu/~jar/NALI7.html>.

²⁹ An immersion school teaches a child a second language by "immersing" him or her in that language without translation. In the Navajo Immersion School, English speaking Navajo students are taught completely in Navajo (including subjects like mathematics and science) using second language teaching techniques in kindergarten and first grade. It is only in the upper grades that English is gradually introduced, as the child's Navajo literacy is improved. JON REYHNER, *Native Language Immersion*, in NURTURING NATIVE LANGUAGES 1-6 (J. Reyhner, et al. eds., Northern Arizona University 2003), available at http://jan.ucc.nau.edu/~jar/NNL/NNL_1.pdf.

³⁰ Marie Arviso & Wayne Holm, *Tséhootsooídi Ólta'gi Diné Bizaad Bihoo'aah: A Navajo Immersion Program at Fort Defiance, Arizona*, in THE GREEN BOOK OF LANGUAGE REVITALIZATION IN PRACTICE 203, 209 (L. Hinton & K. Hale eds., Academic Press 2001).

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values were embedded in the classroom pedagogy.³¹ Teachers address their students according to Navajo kinship relations. Commenting on this practice, a parent once said:

I noticed a lot of differences compared to the other students who aren't in the immersion program. They [the immersion students] seem more disciplined and have a lot more respect for older, well anyone, like teachers. They communicate better with their grandparents, their uncles and stuff. It seems like it makes them more mature and more respectful. I see other kids and they just run around crazy. My kids aren't like that It really helps, because it's a positive thing.³²

The Navajo Nation's "*Diné Cultural Content Standards* [for schools] is predicated on the belief that firm grounding of native students in their indigenous cultural heritage and language, is a fundamentally sound prerequisite to well developed and culturally healthy students."³³ Navajo values to be taught include: being generous and kind, respecting kinship, and sacred knowledge.

In an Arizona State University (ASU) case study of a new indigenous teacher, everyone interviewed acknowledged language and culture were important to identity development and academic success, as well as the importance of having Native teachers. An elder stated that the "language and culture class impacts our children by enabling them to learn both the state educational requirements as well as teaching them their culture to help them succeed in the Native lifestyle as well as the 'white' ways of life."³⁴ A school board chairperson in Hawaii felt that the Hawaiian language and culture are needed by youngsters to gain knowledge of whom they

³¹ Jon Reyhner, *Issues Facing New Native Teachers*, in *THE POWER OF NATIVE TEACHERS: LANGUAGE & CULTURE IN THE CLASSROOM* 63, 79 (David Beaulieu & Anna M. Figueira eds., Center for Indian Education, Arizona State University 2006).

³² *Id.* at 79-80.

³³ Office of Dine Culture, Language & Community Service, *T'aa Sha Bik'ehgo Dine Bi Na nitin doo ihoo 'ahh* (2000), http://www.odclc.navajo.org/view_taa_yellow.htm.

³⁴ Reyhner, *supra* note 31, at 65.

are, in order to gain the confidence needed for success. He declared that the “spirituality of the Hawaiian ancestors must be the foundation of education.”³⁵

Memories of past mistreatment in schools for speaking tribal languages and other infractions can be handed down from generation to generation and influence children’s attitudes toward school today. The district administrator in Wisconsin noted that there was leftover hostility towards schools in the community from being punished in the past for speaking their language. He noted that parents can “view the school as the enemy or an agent of assimilation.”³⁶

While the punishment of students for speaking their Native language in schools has pretty much ended, assimilationist pressures continue and, as brought out in the ASU Native Educators’ case studies, even tribally controlled schools can look like non-Indian schools. In one of the ASU case studies nearly everyone interviewed “agreed that the school does not reflect the community.”³⁷ Even in the Arizona school, with Native language immersion classrooms, a case study researcher noted:

I perceived the familiar characteristics of a mainstream assimilationist education system The portrait of the totally Tribal school was deceptive. The driving forces for the school were from outside the Tribal Community. Although the school philosophy proclaims Tribal ideals and values, the implementation of these ideals and values were situated in the few Tribal language immersion classes.³⁸

As it was noted in the Hawaiian case study “people have realized that they have to revitalize their language and culture for healing to begin.”³⁹ Repeated studies on bilingual education, including bilingual education for Indian students, indicate that

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 66.

³⁸ *Id.*

³⁹ *Id.* at 69.

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students are not held back in English or academic subject matter by such programs.⁴⁰

When I spoke with a parent of a Hawaiian language immersion student a few years ago, he described the curriculum as “a way of life . . . you have to take it home.” It was bringing back the moral values of the culture and helping mend families. The *Punana Leo* mission statement reads:

The *Punana Leo* Movement grew out of a dream that there be reestablished throughout Hawai’i the mana of a living Hawaiian language from the depth of our origins. The *Punana Leo* initiates, provides for and nurtures various Hawaiian Language environments, and we find our strength in our spirituality, love of our language, love of our people, love of our land, and love of knowledge.⁴¹

The Hawaiian immersion schools graduated their first high school students in 1999 and now have more than 3,000 students in grades K-12. At the University of Hawai’i at Hilo, there are now both undergraduate and graduate programs taught in the Hawaiian language.⁴²

Other indigenous peoples share the Navajo and Hawaiian views towards their language and culture. Janine Bowen’s 2004 case study of an Ojibwe language program found that the decline in the

⁴⁰ Stephen Krashen & Grace McField, *What Works? Reviewing the Latest Evidence on Bilingual Education*, LANGUAGE LEARNER 7 (2005), available at <http://users.rcn.com/crawj/langpol/Krashen-McField.pdf>; See also Johnson & Wilson, *supra* note 12; Reyhner, *supra* note 29.

⁴¹ Mission Statement of Aha Punana Leo, http://www.ahapunaleo.org/eng/about/about_mission.html (last visited Feb. 21, 2008).

⁴² Shortly after the Hawaiian monarchy was overthrown in 1893 by a group of American businessmen, a law was passed requiring English-only education. Until the ban was lifted in 1987, Native Hawaiian children had some of the lowest test scores in the United States and the Hawaiian language was well on its way to extinction with only a few children learning it on one small island. Since the lifting of the ban, Hawaiian immersion public schools have been established. See generally William H. Wilson, *Hawaiian Parallels*, 15 NABE NEWS 9 n. 3 (1991), available at <http://jan.ucc.nau.edu/~jar/OtherNABE.html> (providing information on Hawaiian cultural and political history, in an educational context).

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use of the Ojibwe language was correlated “with a loss of Ojibwe traditions, the unraveling of the extended family, depression among Band members, high drop-out rates among Ojibwe students, and an increasing amount of gang activity among youth.”⁴³ It has been argued:

By teaching the language we are building a foundation for a lifetime of productive citizenship Ojibwe values are inextricably linked to the language. These values, such as caring for the environment, healing the body and mind together, and treating all creation with respect are taught most effectively when they are taught in Ojibwe.⁴⁴

In its 2003 report *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country*, the U.S. Commission on Civil Rights noted that, “[c]ommunity responsibility for and ownership of schools are crucial for creating a positive learning environment that respects students’ civil and educational rights.”⁴⁵ It concluded:

As a group, Native American students are not afforded educational opportunities equal to other American students. They routinely face deteriorating school facilities, underpaid teachers, weak curricula, discriminatory treatment, and outdated learning tools. In addition, the cultural histories and practices of Native students are rarely incorporated in the learning

⁴³ Janine Jano’s Bowen, *The Ojibwe Language Program: Teaching Mille Lacs Band Youth the Ojibwe Language to Foster a Stronger Sense of Cultural Identity and Sovereignty*, EXCELLENCE IN TRIBAL GOVERNANCE (The Harvard Project on Am. Indian Econ. Dev., Cambridge, M.A.), Dec., 2004, at 4, available at http://www.ksg.harvard.edu/hpaied/pubs/pub_157.htm.

⁴⁴ *Id.* (quoting William Hemming, who was a Mille Lacs Commissioner of Education).

⁴⁵ U.S. COMM’N ON CIVIL RIGHTS, *A QUIET CRISIS: FEDERAL FUNDING AND UNMET NEEDS IN INDIAN COUNTRY* 87 (2003), available at <http://www.usccr.gov/pubs/na0703/na0731.pdf> (citing William G. Demmert, Jr., *Improving Academic Performance Among Native American Students: A review of the Research Literature*, CLEARINGHOUSE ON RURAL EDUC. AND SMALL SCHOOLS, Dec. 2001, at 42-3; John W. Tippeconnic III, *Editorial... On BIA Education*, 35 J. OF AM. INDIAN EDUC. 1 (1995), available at <http://jaie.asu.edu/v35/V35S1bur.htm>).

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environment. As a result, achievement gaps persist with Native American students scoring lower than any other racial/ethnic group in basic levels of reading, math, and history. Native American students are also less likely to graduate from high school and more likely to drop out in earlier grades.⁴⁶

IV. What Indigenous Nations Want

In 1984, the Navajo Nation's Tribal Council passed educational policies that called for parent involvement, Navajo history and culture courses, and Navajo language instruction, stating:

The Navajo language is an essential element of the life, culture and identity of the Navajo people. The Navajo Nation recognizes the importance of preserving and perpetuating that language to the survival of the Nation. Instruction in the Navajo language shall be made available for all grade levels in all schools serving the Navajo Nation. Navajo language instruction shall include to the greatest extent practicable: thinking, speaking, comprehension, reading and writing skills and study of the formal grammar of the language.⁴⁷

Then-Navajo Tribal Chairman Peterson Zah wrote in his preface to the policies, "[w]e believe that an excellent education can produce achievement in the basic academic skills and skills required by modern technology and still educate young Navajo citizens in their language, history, government and culture."⁴⁸ A similar resolution passed the same year by the Northern Ute Tribal Business Committee declared:

The Ute language is the official language of the

⁴⁶ U.S. COMM'N ON CIVIL RIGHTS, A QUIET CRISIS: FEDERAL FUNDING AND UNMET NEEDS IN INDIAN COUNTRY 114-5 (2003), <http://www.usccr.gov/pubs/na0703/na0731.pdf>.

⁴⁷ NAVAJO NATION CODE tit. 10, § 11 (1984).

⁴⁸ NAVAJO TRIBE, NAVAJO TRIBAL EDUCATION POLICIES vii (Window Rock, Ariz.: Navajo Nation) (1985).

Northern Ute Nation and may be used in the business of government—legislative, executive and judicial—although in deference to, and out of respect to speakers of English, English may be utilized in official matters of government.

We declare that the Ute language is a living and vital language that has the ability to match any other in the world for expressiveness and beauty. Our language is capable of lexical expansion into modern conceptual fields such as the field of politics, economics, mathematics and science.⁴⁹

In 2001, The Navajo Nation reiterated the importance of their language with the passage of the Diné Language Head Start Act,⁵⁰ which in its Purpose section reads:

The Navajo (Diné) language shall be the instrument of education, and reinforcing the importance of the continuation, comprehension and communication of the Navajo (Diné) language within the Navajo Nation department of Head Start The Navajo (Diné) language must be used to ensure the survival of the Navajo (Diné) people and their future, to maintain the Navajo (Diné) way of life, and to preserve and perpetuate the Navajo Nation as a sovereign nation.⁵¹

Fears of a proposed Constitutional amendment making English the official language of the United States and the desire for language revitalization led Native Hawaiians and others to lobby successfully for the passage of the Native American Languages Act of 1990, which declared, “the status of the cultures and languages of Native Americans is unique and the United States has the responsibility to act together with Native Americans to ensure the survival of these unique cultures and languages.”⁵² The Act further

⁴⁹ Northern Ute Tribe, *Ute Language Policy*, 9 CULTURAL SURVIVAL Q. 16 n. 2 (1985).

⁵⁰ NAVAJO NATION CODE tit. 10, § 2002 (2001).

⁵¹ *Id.*

⁵² 25 U.S.C.A. § 2901(1) (1990).

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declared, “[t]he right of Native Americans to express themselves through the use of Native American languages shall not be restricted in any public proceeding, including publicly supported education programs.”⁵³

In recent years, Congress has passed legislation to address these concerns. Notable years include 1992, when Congress authorized a few million dollars a year to support the goals of language revitalization, and 2006, when Congress passed the Esther Martinez Native Languages Preservation Act,⁵⁴ which was named in honor of a recently deceased New Mexico language activist. While any aid is appreciated, these gestures provide what many consider to be only token financial support for Indian languages.

V. What Happened to American Indian Languages?

After the Civil War, President Ulysses S. Grant appointed Peace Commissioners in an attempt to end expensive frontier Indian wars. His Commission ignored the role of massive land seizures and concluded that language differences were what led to misunderstandings and that:

Now, by educating the children of these tribes in the English language these differences would have disappeared, and civilization would have followed at once.

. . . Through sameness of language is produced sameness of sentiment, and thought; customs and habits are molded and assimilated in the same way, and thus in process of time the differences producing trouble would have been gradually obliterated. . . . In the difference of language to-day lies two-thirds of our trouble.

. . . [S]chools should be established, which children should be required to attend; their barbarous dialect should

⁵³ *Id.* § 2904.

⁵⁴ *See, generally*, Esther Martinez Native American Languages Preservation Act of 2006, Pub. L. No. 109-394, 120 Stat. 2705 (amending multiple sections of The Native American Programs Act of 1974, 42 U.S.C.A. §§ 2991-2992.)

be blotted out and the English language substituted.⁵⁵

It is ironic that the Peace Commission focused on language as the way to end differences right at the conclusion of America's bloodiest war where both the north and south spoke English. Indian schools were to be the instrument of obliterating Indian languages to end differences in the same way public schools were seen as the great assimilator of immigrants, and there was an early optimism regarding how easy it would be to assimilate Indians into the general population, by giving them a white man's education for a few years in a boarding school.⁵⁶ In 1885, the Indian school superintendent for the U.S. Government's Indian Office confidently predicted:

[I]f there were a sufficient number of reservation boarding-school-buildings to accommodate all the Indian children of school age, and these building could be filled and kept filled with Indian pupils, the Indian problem would be solved within the school age of the Indian child now six years old.⁵⁷

The English-only movement of today, which sees making English the "Official Language" of the United States as unifying America, shares this same naïve optimism.

Much of the early optimism regarding the quick assimilation of American Indians into mainstream American culture was based on the well-publicized apparent success of students at the Indian Industrial School in Carlisle, Pennsylvania, which was founded in 1879 by Lieutenant Richard Henry Pratt. Pratt used before and after photographs of Indians in traditional tribal dress upon entering the

⁵⁵ INDIAN PEACE COMM'N, REPORT OF INDIAN PEACE COMMISSIONERS, H. Ex. Doc. No. 97-2, at 16-7 (2d Sess. 1868).

⁵⁶ See, generally, FREDERICK E. HOXIE, A FINAL PROMISE: THE CAMPAIGN TO ASSIMILATE THE INDIANS, 1880-1920, (Bison Books 2001) (1984) (providing background information on the use of public schools to foster Native American assimilation).

⁵⁷ J.H. Oberly, in Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior, cxiii (1885), quoted in Jon Reyhner, *Rationale and Needs for Stabilizing Indigenous Languages*, in STABILIZING INDIGENOUS LANGUAGES, 1, 4 (G. Cantoni ed., 1996), available at <http://www.ncela.gwu.edu/pubs/stabilize/i-needs/rationale.htm>.

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boarding school and in “civilized” clothing after some months at Carlisle to advertise the school’s success in assimilating Indians. Replacing his students’ tribal languages with English was a large part of the curriculum of Pratt’s school.

In 1880, the U.S. Government’s Indian Office issued regulations that “[a]ll instruction must be in English” in both mission and government schools under threat of loss of government funding.⁵⁸ In 1884, another specific order went to a school teaching in both Dakota and English, which mandated:

English language only must be taught the Indian youth placed there for educational and industrial training at the expense of the Government. If Dakota [an American Indian language] or any other language is taught such children, they will be taken away and their support by the Government will be withdrawn from the school.⁵⁹

In 1887, J.D.C. Atkins, who was the Commissioner of Indian Affairs, reported that the students’ native language was a “barbarous dialect” and that “to teach Indian school children their native tongue is practically to exclude English, and to prevent them from acquiring it.”⁶⁰ The ethnocentric attitude prevalent in the late nineteenth century is evident in Atkins’ annual report, especially when he wrote:

Every nation is jealous of its own language, and no nation ought to be more so than ours, which approaches nearer than any other nationality to the perfect protection of its people. True Americans all feel that the Constitution, laws, and institutions of the United States, in their adaptation to the wants and requirements of man, are superior to those of any other country; and they should understand that by the spread of the English language will

⁵⁸ See, e.g., J.D.C. Atkins, *The English Language in Indian Schools, in AMERICANIZING THE AMERICAN INDIANS: WRITINGS BY THE “FRIENDS OF THE INDIAN,”* 1880-1900, 197, 199 (Francis Paul Prucha, ed., Harvard University Press 1973).

⁵⁹ *Id.*

⁶⁰ *Id.*

these laws and institutions be more firmly established and widely disseminated. Nothing so surely and perfectly stamps upon an individual a national characteristic as language [As the Indians] are in an English-speaking country, they must be taught the language which they must use in transacting business with the people of this country. No unity or community of feeling can be established among different peoples unless they are brought to speak the same language, and thus become imbued with like ideas of duty

The instruction of the Indians in the vernacular is not only of no use to them, but is detrimental to the cause of their education and civilization, and no school will be permitted on the reservation in which the English language is not exclusively taught.⁶¹

Not surprisingly, Atkins often pointed in admiration to German-only language policies for schools in its conquered French speaking provinces of Alsace and Lorraine.

However, just as with the ongoing debate over bilingual education,⁶² not everyone agreed with Commissioner Atkins. Some missionaries strongly objected to not using Indian languages in their schools. Missionary societies engaged in foreign missions were very conscious of the importance of using local languages in their work. In 1887, the President of Dartmouth College declared, “[t]he idea of reaching and permanently elevating the great mass of any people whatever, by first teaching them all a foreign tongue, is too absurd ever to have been entertained by sane men.”⁶³ For example, the mission schools for the Santee Sioux made extensive use of the Dakota language. After the children were taught to read in Dakota, they were given a book with illustrations explained in Dakota and English. The *Annual Report of the Board of Indian Commissioners* noted in 1879, that one of these missionaries thought:

⁶¹ *Id.* at 200-2.

⁶² *See, e.g.*, JAMES CRAWFORD, *HOLD YOUR TONGUE: BILINGUALISM AND THE POLITICS OF ENGLISH ONLY* (1992).

⁶³ S.C. Bartlett, *The Ruling of the Indian Bureau*, INDEP., Oct. 6, 1887, at 39.

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[F]irst teaching the children to read and write in their own language enables them to master English with more ease when they take up that study; and he thinks, also, that a child beginning a four years' course with the study of Dakota would be further advanced in English at the end of the term than one who had not been instructed in Dakota.⁶⁴

However, just because some missionaries favored bilingual education, they did not mean that they did not want to totally assimilate American Indians into mainstream English-speaking Christian America.

A burning topic that hides behind the Official English, Bilingual Education, and Unity debates of both yesterday and today, is whether religious and other differences cause more disunity than language differences. There are many recent examples of this in various countries, including Iraq and Nigeria. An excellent domestic example occurred during the second half of the nineteenth century, when Protestants labeled the Catholic schools for American Indians and urban immigrants as un-American, in contrast with the non-denominational public schools. James M. King, representing The National League for the Protection of American Institutions declared "much Roman Catholic teaching among the Indians does not prepare them for intelligent and loyal citizenship."⁶⁵ Shortly thereafter, Commissioner of Indian Affairs and Baptist minister T. J. Morgan accused Catholics of "treason" and further declared, "[w]e ought to insist that the flag shall float over every schoolhouse, that American songs shall be sung."⁶⁶

With the election of a new President, Commissioner Morgan left the Indian Service, and a policy shift was announced. The new Superintendent of Indian Schools criticized workers in Indian

⁶⁴ BD. OF INDIAN COMM'RS, ANNUAL REPORT OF THE BOARD OF INDIAN COMM'RS 77 (1879).

⁶⁵ BD. OF INDIAN COMM'RS, ANNUAL REPORT OF THE BOARD OF INDIAN COMM'RS 65 (1892).

⁶⁶ BD. OF INDIAN COMM'RS, ANNUAL REPORT OF THE BOARD OF INDIAN COMM'RS 130 (1893).

schools for knowing “little about the Indian as an Indian.”⁶⁷ He went on to say that the change in view from the Indian as a savage, to the Indian as a human being had led to greater use of native languages in schools.⁶⁸ Nevertheless, in 1898, when a new set of Rules for Indian Schools was issued, rule number 198 reiterated that, “[a]ll instruction shall be in the English language. Pupils shall be required to converse with employees and each other in English. All school employees must be able to speak English fluently.”⁶⁹

This rule was a slap in the face to recent immigrants who worked in the schools, as well as Indians and went against the views of William Hailmann, Superintendent of Indian Schools from 1894 to 1898, who spoke against the “unintelligent warfare against the Indian idiom.”⁷⁰ In 1915, the Secretary to the United States Board of Indian Commissioners declared, “Canada has not made the mistake that we have often made, of attempting to destroy the native Indian languages and arts In no instance has the government laid the axe at the root of Indian languages.”⁷¹

Students sent to boarding school, sometimes voluntarily and sometimes by force, often did not return home for years. James McCarthy once recalled that in 1912, when he was seventeen:

Kids from all the tribes were like brothers. Those who came here to school with me in 1909 forgot about their parents at home in Arizona. Our parents were poor and could not send us money. Sometimes I thought about my parents and felt badly. However, during the six years I was at school, I never wrote them a letter and I never got one

⁶⁷ BD. OF INDIAN COMM'RS, ANNUAL REPORT OF THE BOARD OF INDIAN COMM'RS 119 (1896).

⁶⁸ *Id.* at 120.

⁶⁹ RULES FOR THE INDIAN SCHOOLS 25 (U.S. Government Printing Office 1898).

⁷⁰ William Hailmann, *Education of the Indian*, in EDUCATION IN THE UNITED STATES 942 (N.M. Butler ed., J. B. Lyon 1910).

⁷¹ FREDERICK H. ABBOTT, THE ADMINISTRATION OF INDIAN AFFAIRS IN CANADA 27 (1915).

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from them.⁷²

While some students went voluntarily to off-reservation boarding schools, this certainly was not always the case. Willard Beatty, director of the U.S. Government's Office of Indian Affairs Education Program from 1936 to 1952, described how Navajo students were "recruited" to attend boarding schools on "orders from Congress," when she stated:

He [the Superintendent of Albuquerque Indian School] and a Navajo policeman had started out in a buckboard drawn by two horses and went from hogan to hogan looking for children. As they got in sight of a hogan and the Indians recognized who they were and guessed at their purpose, the children could be seen darting out of the hogan and running into the brush. Whereupon the Navajo policeman stood up in the buckboard and fired a shotgun into the air to scare the children and make them stop running—if possible. Then he jumped out of the wagon and ran after the children. If he caught them (and many times he didn't), he wrestled them to the ground, tied their legs and arms, and with the help of Mr. Blair put them in the back part of the wagon, where they lay until Blair had gathered in the quota for the day. Then they returned to the Albuquerque school and enrolled the children they had captured.⁷³

These children spoke no English and could not understand what was happening. Furthermore, according to Beatty there were neither Navajo matrons, nor teachers who could speak Navajo at the Albuquerque Indian School to explain to children what was happening. He also noted that "[t]he average Navajo parents felt a school education was a relatively useless thing, so far as they could see . . ." and they would send their children to school in rotation,

⁷² JAMES MCCARTHY, *A PAPAGO TRAVELER: THE MEMORIES OF JAMES MCCARTHY* 45 (John G. Westover ed., 1985).

⁷³ Willard W. Beatty, *History of Navajo Education*, 21 *AMÉRICA INDÍGENA* 7, 12 (1961).

keeping some home to herd sheep.⁷⁴

Testimony before the Senate Subcommittee of the Committee on Indian Affairs in 1929 included the following:

I am making a brief statement of my experience with what I consider the greatest shame of the Indian Service—the rounding up of Indian children to be sent away to government boarding schools. This business of “kid catching,” as it is called, is rarely discussed with outsiders, either by the Indians or by the government employees, but during my numerous visits to the Navajo Reservation I have picked up the knowledge of its working.

In the fall the government stockmen, farmers, and other employees go out into the back-country with trucks and bring in the children to school. Many apparent come willingly and gladly; but the wild Navajos, far back in the mountains, hide their children at the sound of a truck. So stockmen, Indian police, and other mounted men are sent ahead to round them up. The children are caught, often roped like cattle, and taken away from their parents, many times never to return. They are transferred from school to school, given white people’s names, forbidden to speak their own tongue, and when sent to distant schools are not taken home for three years.⁷⁵

Dr. Ruth Underhill, who happened to be a student of the “father” of American anthropology, Columbia University Professor Franz Boas, served as the U.S. Indian Office’s Assistant Supervisor of Indian Education from 1934 to 1942 and then supervisor from 1942 to 1948. In her book for Indian Office employees and Indian school students, *Here Come the Navaho!*⁷⁶, she wrote:

⁷⁴ *Id.* at 14.

⁷⁵ DAVID H. DEJONG, *PROMISES OF THE PAST: A HISTORY OF INDIAN EDUCATION IN THE UNITED STATES* 117-118 (1993).

⁷⁶ RUTH UNDERHILL, *HERE COME THE NAVAHO!: A HISTORY OF THE LARGEST INDIAN TRIBE IN THE UNITED STATES* 228 (1953) The current spelling is Navajo, but Navaho was still being used well into the 1970s by some writers. Today there is a movement to use Diné, which translates “the people.” The tribal college

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[A]s late as 1928, trucks arrived at Fort Apache [where chronic runaways were sent] with the [Navajo] children shackled together to prevent their jumping out. When they were once inside the school, scarcely a week passed with some group attempting to run away They were brought back by a Navaho policeman and, as punishment, were dressed for weeks in girls' clothes. In their free time, they had to carry heavy logs round and round the parade ground of the old fort as punishment.⁷⁷

While some people may consider this all ancient history, it is part of the oral history Navajos pass down from generation to generation, which justifiably influences their views towards school and the dominant, colonizing society.

Progressive educational changes in the middle of the twentieth century led to a softening of assimilationist and English-Only schooling for American Indians. Franklin Delano Roosevelt's Commissioner of Indian Affairs from 1933 to 1945, John Collier, concluded in his memoirs, "[a]ssimilation, not into our culture but into modern life, and *preservation* and *intensification of heritage* are not hostile choices, excluding one another, but are interdependent through and through. It is the ancient tribal, village, communal organization which must conquer the modern world."⁷⁸

Under the Collier administration, some bilingual education was experimented with in Indian schools. However, after World War II there was a conservative reaction to Roosevelt's "New Deal," which led to more assimilationist policies as well as a concerted attempt to terminate Indian Reservations in the United States in the 1950s.⁷⁹

In spite of Collier's liberal policies, language suppression continued well into the twentieth century. In 1975, Dillon Platero,

became Diné College in 1997, but the tribal government is currently sticking with Navajo.

⁷⁷ *Id.* at 228.

⁷⁸ JOHN COLLIER, FROM EVERY ZENITH: A MEMOIR 203 (1963) (emphasis in original).

⁷⁹ *See, e.g.,* REYHNER & EDER, *supra* note 15, at 110-1.

the first director of the Navajo Division of Education, described the experience of “Kee,” a typical Navajo student:

Kee was sent to boarding school as a child where—as was the practice—he was punished for speaking Navajo. Since he was only allowed to return home during Christmas and summer, he lost contact with his family. Kee withdrew from both the White and Navajo worlds as he grew older because he could not comfortably communicate in either language. He became one of the many thousand Navajos who were non-lingual—a man without a language. By the time he was 16, Kee was an alcoholic, uneducated, and despondent—without identity.⁸⁰

Believing that Kee’s story was more the rule than the exception, Platero emphasized the need to use the Navajo language more frequently in teaching Navajo students. The first Navajo woman surgeon described in 1999 the effects of assimilationist schooling on her family, when she wrote:

In their childhoods both my father and my grandmother had been punished for speaking Navajo in school. Navajos were told by white educators that, in order to be successful, they would have to forget their language and culture and adopt American ways. They were warned that if they taught their children to speak Navajo, the children would have a harder time learning in school, and would therefore be at a disadvantage.

A racist attitude existed. Navajo children were told that their culture and lifeways were inferior, and they were made to feel they could never be as good as white people. This pressure to assimilate, along with the physical, social, psychological, and economic destruction of the tribes following the Indian wars of the 1800s . . . combined to bring the Navajo people to their knees.

⁸⁰ Dillon Platero, *Bilingual Education in the Navajo Nation*, in *PROCEEDINGS OF THE FIRST INTER-AMERICAN CONFERENCE ON BILINGUAL EDUCATION* 56, 58 (Rudolph C. Troike & Nancy Modiano eds., Center for Applied Linguistics 1975).

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My father suffered terribly from these events and conditions.⁸¹

Dr. Alvord concluded that, “[t]wo or three generations of our tribe had been taught to feel shame about our culture, and parents had often not taught their children traditional Navajo beliefs—the very thing that would have shown them how to live, the very thing that could keep them strong.”⁸²

VI. Human Rights and Self-Determination

Reacting to the horrors of World War and Nazi atrocities, the victors of World War II and other countries gathered together in 1945 to form the United Nations, in an effort to ensure continued peace. A purpose of the newly formed United Nations as stated in its charter, is “[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.”⁸³ On December 10, 1948, the United Nations’ General Assembly adopted the Universal Declaration of Human Rights. As indicated previously, Article 26 of the Declaration states that “everyone has the right to education” and that:

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.⁸⁴

The United Nations General Assembly called upon all member countries to publicize this declaration and “to cause it to be disseminated, displayed, read and expounded principally in schools

⁸¹ DR. LORI ARVISO ALVORD & ELIZABETH COHEN VAN PELT, *THE SCALPEL AND THE SILVER BEAR* 86 (1999).

⁸² *Id.* at 88.

⁸³ U.N. Charter art. 1, para. 2.

⁸⁴ Universal Declaration, *supra* note 3, art. 26.

and other educational institutions”⁸⁵ However, a quick search of high school level U.S history books reveals no mention of the declaration.

In 1966, the United Nations adopted an International Covenant on Civil and Political Rights⁸⁶ that went into force in 1976 in which article one states, “[a]ll 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.” While the United States ratified this treaty, it declared the Covenant to be non-self-executing. Still, it is clear from Indian legislation adopted in the same time period that the United States was sensitive to the issue as it moved from a policy of termination to self-determination.

United Nations Secretary General Boutros Boutros-Ghali wrote in his forward to the 1994 book *Voice of Indigenous Peoples: Native People Address the United Nations*:

A few months before his death, French historian Georges Dumazil noted with bitterness that, on the eve of the year 2000, the number of languages and dialects spoken throughout the five continents was only half what it had been in 1900. The modern world will therefore prove to have been a great destroyer of languages, traditions, and cultures. The latter are being drowned by the flood of mass communications, the instruments of which all too often remain in the service of a handful of cultures. Today, cultures which do not have powerful media are threatened with extinction.

We must not stand idly by and watch that happen. Diversity is another name for the world. What would the world be like if there were no differences? What would the world be like if there were only one language? It is true

⁸⁵ *Universal Declaration*, <http://www.un.org/Overview/rights.html>.

⁸⁶ International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No 16, U.N. Doc. A/6316 (Dec. 16, 1966), available at http://www.unhcr.ch/html/menu3/b/a_ccpr.htm.

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that, as Paul Valéry said, civilizations are mortal. But just because civilizations are mortal, that does not mean that we must kill them.

Allowing native languages, cultures, and different traditions to perish through “nonassistance to endangered cultures” must henceforth be considered a basic violation of human rights. An inadmissible violation. We might even say that there can be no human rights unless cultural authenticity is preserved.⁸⁷

The United Nations declared 1993 as the “International Year of the World’s Indigenous People.” It took more than a decade after Boutros Boutros-Ghali’s call for the protection of Indigenous rights to be realized by the adoption on September 13, 2007, of the UN Declaration on the Rights of Indigenous Peoples, by a vote of 143 to four with only Canada, Australia, New Zealand, and United States voting against it. This Declaration affirmed in article 2 that “[i]ndigenous peoples have the right of self-determination,” in article 8 “indigenous peoples and individuals have the right not to be subject to forced assimilation or destruction of their culture,” in article 13 “the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons,” and in article 14 “the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.”⁸⁸

The United Nations General Assembly has declared 2008 as the International Year of Languages.⁸⁹ UNESCO Director-General

⁸⁷ Boutros Boutros-Ghali, *Forward* to ALEXANDER EWEN, VOICE OF INDIGENOUS PEOPLES: NATIVE PEOPLE ADDRESS THE UNITED NATIONS, 9, 13-14 (Alex Ewen ed., 1994).

⁸⁸ United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

⁸⁹ Press Release, *General Assembly, General Assembly Proclaims 2008 International Year of Languages, In Effort to Promote Unity in Diversity, Global Understanding*, U.N. Doc. GA/10592 (May 16, 2007), available at <http://www.un.org/News/Press/docs/2007/ga10592.doc.htm>.

Koïchiro Matsuura notes, “[l]anguages are absolutely vital to the identity of groups and individuals, and their peaceful coexistence. They are a strategic factor in advances towards sustainable development and the harmonious coordination of the global and the local” and that the Ninth International Mother Language Day (February 21, 2008) will have a special significance, as he vowed to launch a new initiative to promote “linguistic diversity and multilingualism to be acknowledged everywhere, in education, administrative and legal systems”⁹⁰

In colonized countries where the indigenous populations remained in the majority, as in Africa, the indigenous populations have been able to take back their sovereignty. But, where they became a very small minority, as in the four countries voting against the 2007 Declaration (coincidentally all dominant English-speaking countries) they have remained in many ways second-class citizens. As Tove Skunabb-Kangas notes, “[m]any governments applaud of human rights, as long as they can define them in their own way, according to their own cultural norms.”⁹¹ She notes that as of May 1998, the United States had only ratified fifteen of fifty-two universal human rights instruments, which puts it on par with Somalia, just below Saudi Arabia, but embarrassed by Norway, with no less than forty-six ratifications.⁹²

In fact, the United States is moving in the opposite direction, with more and more states adopting English as their official language. Thirty states now have some form of “Official English” law, with almost half of them passed since 1990.⁹³ The current renewed interest in such laws can be attributed mainly to the relatively recent upsurge in immigration from Spanish-speaking countries. The courts of the several states have struck down some of

⁹⁰ Koïchiro Matsuura, *Message from Mr. Koïchiro Matsuura, Director-General of UNESCO, on the Occasion of International Mother Language Day* (Feb. 21, 2008), <http://unesdoc.unesco.org/images/0015/001568/156825e.pdf>.

⁹¹ TOVE SKUTNABB-KANGAS, *LINGUISTIC GENOCIDE IN EDUCATION—OR WORLDWIDE DIVERSITY AND HUMAN RIGHTS* 492 (2000).

⁹² *Id.* at 494.

⁹³ *See, e.g.*, U.S. English, Inc., *States with Official English Laws*, <http://www.us-english.org/inc/official/states.asp> (last visited Feb. 27, 2008).

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these laws. But, this may all change if a currently proposed U.S. Constitutional amendment were to be adopted, making English the official language of the United States.

In the United States, the ideals expressed by the United Nations and the rising U.S. Civil Rights Movement led to a legislative shift away from the assimilationist and racist immigration policies of the 1950s. For American Indians, a significant factor in beating the congressional attempt to terminate Indian reservations was the increasing number of well-educated American Indian leaders,⁹⁴ who were ironically products of assimilationist government and/or religious schooling, voicing their opposition to termination and assimilationist policies. Increasing concern over the lack of academic achievement of Indian students led to two major studies of American Indian education in the 1960s. The National Study of American Indian Education, under the direction of University of Chicago Professor Robert J. Havighurst, involved a comprehensive examination of Indian schools and students from 1967 to 1971, and Estelle Fuchs and Havighurst summarized its findings in the 1972. In their book, the authors concluded that, historically, American Indian education consisted of the “transmission of white American education, little altered, to the Indian child as a one-way process,” which proved to be “minimally effective,” but was nevertheless designed to assimilate the child into the dominant, white culture, which only provided a “record of absenteeism, retardation, and high dropout rates.”⁹⁵ They also found that most Indian students and parents approved of their schools, but Indian community leaders were “overwhelmingly in favor of the school doing something to help Indian students learn about their tribal culture.”⁹⁶

The second study by a Special Senate Subcommittee on Indian Education originally chaired by Senator Robert F. Kennedy

⁹⁴ In 1944, these well-educated American Indians formed the National Congress of American Indians, to give voice to their concerns.

⁹⁵ ESTELLE FUCHS & ROBERT J. HAVIGHURST, *TO LIVE ON THIS EARTH: AMERICAN INDIAN EDUCATION* 19 (1972).

⁹⁶ *Id.* at 187.

was completed in 1969. Senator Edward Kennedy, who took over as chair of the Special Senate Subcommittee after his brother Robert was assassinated, wrote a scathing criticism of Indian education in his preface. He found Indian drop-out rates double the national average, achievement levels two to three years below those of white students, only one percent of Indian children having Indian teachers or principals, a quarter of elementary and secondary school teachers preferring not to teach Indian children, and Indian children, more than any other ethnic minority group, believing themselves to be “below average” in intelligence.⁹⁷

The two studies led the Senate Subcommittee staff to write what would become The Indian Education Act of 1972.⁹⁸ However, the initial reaction from Indian country to this new legislation was negative because of the lack of Indian voices in its drafting. Through their national organizations established since World War II, they demanded more input. The idea of involving and listening more to Indians when crafting Indian policy gained impetus from President Lyndon Johnson’s “War on Poverty.” One part of that war was the passage of the Economic Opportunity Act in 1964, which established the Office of Economic Opportunity (“OEO”) that called for “maximum feasible community participation” in its anti-poverty programs, leading to its effort to develop community leadership, including Indian leadership. The OEO helped fund two pioneering efforts to develop locally controlled Indian education, the Rough Rock Demonstration School founded in 1966, and Navajo Community College founded in 1969. Navajo Tribal Chairman Raymond Nakai described the Rough Rock Demonstration School as

the nation’s most unique and exciting experiment in the field of Indian education. It is proving conclusively that Navajo parents do care and are able to provide both leadership and control over the education of their children.

⁹⁷ SPECIAL SUBCOMM. ON INDIAN EDUC., COMM. ON LABOR AND PUB. WELFARE, *INDIAN EDUCATION: A NATIONAL TRAGEDY – A NATIONAL CHALLENGE*, S. Doc. No. 91-501, at ix (1969).

⁹⁸ Indian Education Act of 1972, Pub. L. No. 92-318, 86 Stat. 235, 334-45 (1972).

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It is thrilling to witness the involvement of Navajo parents in all aspects of the school and its program. This is what we want for the Navajo people throughout the reservation.⁹⁹

It was an experimental project, a joint effort of President Lyndon Johnson's "War on Poverty," the OEO, and the Bureau of Indian Affairs ("BIA"). Starting with 220 students, its bold mission was, according to one observer, to "correct a hundred years of Native American mis-education."¹⁰⁰

Robert Roessel, Jr., the school's first director, felt that Navahos should have a major role in determining the educational objectives and programs for Navaho children, and criticized the fact that most schools with Indian students taught little or nothing about Indians.¹⁰¹ Roessel saw the key features of RRDS as local control and "cultural identification."¹⁰² Rough Rock instituted a Navajo/English bilingual program that included teaching Navajo history and language. According to Roessel, the school had a "'both-and' approach to Indian Education—taking the best of the dominant culture and the best of the Indian culture and putting these together in the classroom so the child grows up with a positive sense of well-being, a positive self-image, with pride in his heritage."¹⁰³

The Indian Education Act of 1972 was the first major legislative enactment respecting American Indian human rights through a government policy of Indian self-determination and was a direct response to the findings of the National Study and Kennedy reports. Following Lyndon Johnson's lead, President Richard Nixon declared in a special message to Congress in 1970:

⁹⁹ BRODRICK JOHNSON, *NAVAJO EDUCATION AT ROUGH ROCK* 21 (Rough Rock Demonstration School 1968).

¹⁰⁰ John Collier, Jr., *Survival at Rough Rock: A Historical Overview of Rough Rock Demonstration School*, 19 *ANTHROPOLOGY & EDUC.* 253 (1988).

¹⁰¹ See, e.g., Robert A. Roessel, Jr., *The Right to be Wrong and the Right to be Right*, 7(2) *J. AM. INDIAN EDUC.* (1968), available at <http://jaie.asu.edu/v7/V7S2right.html>.

¹⁰² *Id.* at 2.

¹⁰³ *Id.* at 5.

[T]he story of the Indian in America is something more than the record of the white man's frequent aggression, broken agreements, intermittent remorse and prolonged failure. It is a record also of endurance, of survival, of adaptation and creativity in the face of overwhelming obstacles. It is a record of enormous contributions to this country—to its art and culture, to its strength and spirit, to its sense of history and its sense of purpose.

It is long past time that the Indian policies of the Federal government began to recognize and build upon the capacities and insights of the Indian people. Both as a matter of justice and as a matter of enlightened social policy, we must begin to act on the basis of what the Indians themselves have long been telling us. The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions.¹⁰⁴

However, President Nixon opposed the Indian Education Act, and only reluctantly went along with the Democratic majority in Congress.

The Indian Self-Determination and Education Assistance Act of 1975 came shortly after the Indian Education Act. Its purpose clearly states:

An Act to provide maximum Indian participation in the government and education of the Indian People; to provide for the full participation of Indian Tribes in programs and services conducted by the Federal Government and for Indians and to encourage the development of human resources of the Indian People; to establish a program of assistance to upgrade Indian education; to support the right

¹⁰⁴ President's Special Message to the Congress on Indian Affairs, PUB. PAPERS 213 (July 8, 1970), *available at* <http://www.presidency.ucsb.edu/ws/index.php?pid=2573&st=&st>.

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of Indian citizens to control their own educational activities; and for other purposes.¹⁰⁵

This act regularized the federal funding of locally controlled schools like Rough Rock and other Indian programs and legislatively reversed the policy of terminating Indian tribes that was tried in the 1950s.

In 1978, Congress passed two laws that further established the basic rights of Indian peoples to practice their traditional religions and keep their children. The first one was the American Indian Religious Freedom Act.¹⁰⁶ Upon signing this legislation, President Jimmy Carter noted:

It is a fundamental right of every American, as guaranteed by the first amendment of the Constitution, to worship as he or she pleases. This act is in no way intended to alter that guarantee or override existing laws, but is designed to prevent Government actions that would violate these constitutional protections. In the past, Government agencies and departments have on occasion denied Native Americans access to particular sites and interfered with religious practices and customs where such use conflicted with Federal regulations. In many instances, the Federal officials responsible for the enforcement of these regulations were unaware of the nature of traditional native religious practices and, consequently, of the degree to which their agencies interfered with such practices.

This legislation seeks to remedy this situation.¹⁰⁷

The Indian Child Welfare Act of 1978, recognized group rights to children by recognizing children as collective resources,

¹⁰⁵ Indian Self-Determination and Education Assistance Act of 1975, Pub. L. No. 93-638, 88 Stat. 2203 (1975).

¹⁰⁶ American Indian Religious Freedom Act of 1978, Pub. L. No. 95-341, 92 Stat. 469 (1978).

¹⁰⁷ American Indian Religious Freedom Statement on Signing S.J. Res. 102 Into Law, PUB. PAPERS (Aug. 12, 1978), *available at* <http://www.presidency.ucsb.edu/ws/index.php?pid=31173>.

which were essential to tribal survival, thusly making it very difficult for non-Indians to adopt Indian children, and it stands in sharp contrast to the emphasis on individualism in American law.¹⁰⁸

At the same time, a similar re-evaluation of Indian policy was going on in Canada. In 1972 Canadian Minister of Indian and Northern Affairs Jean Chrétien declared that Indian education remained, “a whitewash, . . . a process to equip him (the Aboriginal student) with white values, goals, language, skills needed to succeed in the dominant society. [Which served] no purpose in the child’s world Rather it alienates him from his own people.”¹⁰⁹

The most recent reauthorization of the Indian Education Act occurs in sections 1042 through 1045 of the No Child Left Behind Act of 2001.¹¹⁰ While rhetoric about the need for culturally appropriate Indian education remains in the No Child Left Behind Act, the overall thrust of the Act is for a one-size-fits-all education that emphasizes academic accountability through the use of high stakes tests focusing on English language literacy and mathematics.¹¹¹ The result is a shift in focus from equal opportunity for America’s minorities, to closing the achievement gap by bringing up scores on tests that currently focus only on English literacy and mathematics.¹¹² This narrow focus puts pressures on schools to narrow their curriculum and to exclude “extras,” such as instruction in indigenous languages.

¹⁰⁸ Indian Child Welfare Act of 1978, Pub. L. No. 95-608, 92 Stat. 3069 (1978).

¹⁰⁹ JOHN MILLOY, *A NATIONAL CRIME: THE CANADIAN GOVERNMENT AND THE RESIDENTIAL SCHOOL SYSTEM, 1879 TO 1986* 199 (1999).

¹¹⁰ See, e.g., No Child Left Behind Act of 2001, Pub. L. No. 107-110, §§ 1042-5, 115 Stat. 1425 (2001).

¹¹¹ Jon Reyhner & Denny Hurtado, *Reading First, Literacy, and American Indian/Alaska Native Students*, J. AM. INDIAN EDUC. (forthcoming 2008).

¹¹² See James Crawford, *A Diminished Vision of Civil Rights: No Child Left Behind and the Growing Divide in How Education Equity is Understood*, 26 EDUC. WEEK 31 (2007).

VII. *Other Threats to Indigenous Languages*

Besides the threat to American Indian and other minority languages of a proposed constitutional amendment making English the official language of the United States, is the anti-bilingual education movement. For example, 63% of Arizona voters in 2000 supported ending bilingual education under a proposition marketed using the slogan “English for the Children” despite the opposition to of the state’s major newspapers, university presidents, and experts in language education. Notably, only one-third of students learning English in Arizona were enrolled in some kind of bilingual program, even though these bilingual programs were blamed for the low test scores of all students learning English, and provided considerable data supporting the advantages of bilingual education.¹¹³ Today, under all English instruction, Arizona students learning English are still struggling with academic achievement despite the claims of the Arizona Department of Education.¹¹⁴

“English for the Children” propositions starting in California in 1998, Arizona in 2000, and Massachusetts and Colorado in 2002, were spearheaded and financed by Ron Unz, a computer millionaire with political ambitions. Only the Colorado initiative failed to pass. Unz sees himself as “a strong believer in American assimilationism.” In an article appearing in the 1999 issue of *Commentary*, Unz wrote about the “social decay and violence” in the new multi-ethnic California and how Proposition 227 would help save America from ethnic divisiveness.¹¹⁵ While immigrants, especially those from Mexico, are Unz’s targets, American Indians were not exempted from the provisions of his initiatives.

¹¹³ See, e.g., Kellie Rolstad et al., *Weighing the Evidence: A Meta-Analysis of Bilingual Education in Arizona*, 29 BILINGUAL RESEARCH J. 43 (2005).

¹¹⁴ See, e.g., Wayne E. Wright & Chang Pu, *Academic Achievement of English Language Learners in Post Proposition 203 Arizona* (Educ. Policy Studies Lab., Arizona State Univ.) Sept. 2005, available at <http://epsl.asu.edu/epru/documents/EPSSL-0509-103-LPRU.pdf>.

¹¹⁵ Ron Unz, *California and the End of White America*, 108 COMMENT. 17 (1999), available at <http://www.onenation.org/9911/110199.html>.

Arizona's Indian Nations viewed Arizona's "English for the Children" Proposition 203 as an attack on their attempts at language revitalization and strongly opposed it. In a September 2000 press release, Navajo Nation President Kelsey Begaye declared that the "preservation of Navajo culture, tradition, and language" is the number one guiding principle of the Navajo Nation writing:

The Navajo Way of Life is based on the Navajo language. By tradition, the history of our people and the stories of our people are handed down from one generation to the next through oral communication. Naturally, the true essence and meanings for many Navajo stories, traditions and customs cannot be fully transmitted, understood or communicated as told through non-Navajo languages.¹¹⁶

VIII. Conclusion

Sociolinguist Joshua Fishman notes that supporting indigenous languages needs to be part of a more general effort to maintain indigenous cultures. He asserts that minority-language activists, "should view local cultures (all local cultures, not only their own) as things of beauty, as encapsulations of human values which deserve to be fostered and assisted (not merely 'preserved' in a mummified sense)."¹¹⁷ Fishman further asserts that the maintenance and renewal of native languages can be voluntary, "[m]inority rights' need not interfere with 'majority rights,'" and "bilingualism is a benefit for all."¹¹⁸ He continues his enlightened commentary, when he states:

The denial of cultural rights to minorities is as disruptive of the moral fabric of mainstream society as is the denial of civil rights. Civil rights, however, are focused on the

¹¹⁶ Kelsey Begaye, *Guest Commentary: President Begaye Addresses English Only Proposition*, 19 *NAVAJO HOPI OBSERVER* 4 (2000).

¹¹⁷ JOSHUA A. FISHMAN, *REVERSING LANGUAGE SHIFT: THEORETICAL AND EMPIRICAL FOUNDATIONS OF ASSISTANCE TO THREATENED LANGUAGES* 33 (Derrick Sharp ed., 1991).

¹¹⁸ *Id.* at 82, 83.

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individual, while cultural rights must focus on ethnocultural groups. Such groups have no recognized legal standing in many Western democracies where both establishment capitalist thought and anti-establishment Marxist thought prophesies the eclipse of culturally distinct formations and the arrival of a uniformized, all-inclusive 'modern proletarian' culture.¹¹⁹

Fishman also argues for the need to recognize "cultural democracy" and to see efforts to preserve and restore minority languages as societal reform efforts that can lead to the appreciation of the beauty and distinctiveness of other cultures as well as one's own. He emphasizes that efforts to restore minority languages should be "facilitating and enabling," rather than "compulsory and punitive." Bilingualism should be viewed as life enriching and a bridge to other cultures. While democratic forms of government have lots of advantages for citizens, it unfortunately appears as though the rights of minorities can become subject to the tyranny of the majority in those democracies, and the fact that the "English for the Children" laws were passed by voters in three of the four states where they were introduced, provides an excellent example of that tyranny.

The rise and fall of support for English-only instruction in this country follows closely the rise and fall of immigration and the concurrent perceived threat to the "American way of life" these immigrants present. In the late nineteenth and early twentieth centuries, the perceived threat was from immigrants from Southern Europe and Ireland that the science of the time declared to be racially inferior;¹²⁰ plus many of them were Catholics. This led to extremely restrictive immigration laws that staunched the flow of immigrants until the Civil Rights Movement of the 1960s highlighted their racist nature. This enlightenment further led to the passage of the Immigration and Nationality Act amendments, which ended national-

¹¹⁹ *Id.* at 70.

¹²⁰ *See, e.g.*, STEVEN J. GOULD, *THE MISMEASURE OF MAN* (W.W. Norton 1996) (1981).

origin quotas, leading to a rapid increase in immigration.¹²¹ Today, the perceived threat is from increased immigration from Latin America and Asia.

Proponents of English as the United States' official language see its dominance threatened by these new immigrants and consider the English language the "glue" that holds their country together and a panacea to the problems of poverty faced by many ethnic minorities in the United States. The argument is, if immigrants would just learn English, they can assimilate and get good jobs. U.S. Representative Tom Tancredo from Colorado declared, "[t]he preservation of the English language is important for us for a lot of reasons, not the least of which is because it is what holds us together. It is the glue that keeps a country together—any country. Bilingual countries don't work, and we should not encourage it."¹²²

What is the glue that holds the United States or any other country together? It seems a small step to move from legislating an official language to legislating an official religion, considering how disunifying religious differences have been across the globe. Is the "glue" holding this country together English, or is it a respect for human rights as embodied in the Declaration of Independence, the U.S. Constitution, and other key documents of the democratic experience, including United Nations documents? The definitions of "freedom," "liberty," "free speech," and "human rights" in those documents should include group as well as individual rights to heritage, languages, and cultures. Government suppression of minority languages and cultures in the U.S. violates repeated United Nations declarations and covenants and the liberty of American Indian, Hispanic, and other language minority citizens. Forced conformity that devalues minority or other non-European heritages, is still being imposed on ethnic minorities in the United States through assimilationist, English-only schooling, much to the

¹²¹ Hart-Celler Act of 1965, Pub. L. No. 89-236, 79 Stat. 911-22 (1965).

¹²² *Transcript: Third G.O.P. Debate*, N.Y. TIMES, June 5, 2007, http://www.nytimes.com/2007/06/05/us/politics/05cnd-transcript.html?_r=1&adxnnl=1&pagewanted=5&adxnnlx=1204232410-5jLB9+eVHVmGpaXj0n30iA. People opposed to this view could wisely argue that Switzerland has survived quite well as a multilingual country for several centuries.

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detriment of full and equal citizenship.

It is ironic that the same political conservatives who oppose minority rights in the name of national unity are often the very same people challenging global unity through their opposition to the United Nations, despite the growing global economic connectedness and the shared threat of global climate change. There is an obvious tension between liberal American tendencies supporting freedom going back at least to the Declaration of Independence and the dread that the “American Way of Life” will be submerged under a tidal wave of immigration. However, research repeatedly shows that immigrants are learning English faster now than they ever have before, and the dominance of English in the United States is in no way threatened.¹²³ On the contrary, it is America’s indigenous and immigrant languages that are threatened. As law professor Lani Guinier and others note, minorities through the initiative process are being subjected to democracy’s “tyranny of the majority.”¹²⁴ Immigrants who still can’t vote as citizens and American Indians, comprising less than two percent of the U.S. population, are defenseless in the face of the majority. In his book, *Democracy Derailed: Initiative Campaigns and the Power of Money*, David Broder details how Ron Unz and others use the initiative process in California and other states to submerge minority viewpoints and offer slogan-driven panaceas to deep-rooted societal problems.¹²⁵ Clearly, there is much enlightenment which has yet to be achieved.

¹²³ See, e.g., JAMES CRAWFORD, *HOLD YOUR TONGUE: BILINGUALISM AND THE POLITICS OF “ENGLISH ONLY”* (1992).

¹²⁴ LANI GUINIER, *THE TYRANNY OF THE MAJORITY: FUNDAMENTAL FAIRNESS IN REPRESENTATIVE DEMOCRACY* (1994).

¹²⁵ See DAVID S. BRODER, *DEMOCRACY DERAILED: INITIATIVE CAMPAIGNS AND THE POWER OF MONEY* (2000).