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# Language Rights as a Legacy of the Civil Rights Act of 1964

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# LANGUAGE RIGHTS AS A LEGACY OF THE CIVIL RIGHTS ACT OF 1964

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THE fiftieth anniversary of the Civil Rights Act of 1964 offers an important opportunity to reflect on an earlier moment when civil rights evolved to accommodate new waves of immigration. This essay seeks to explain how civil rights laws evolved to include rights for immigrants and non-English speakers. More specifically, it seeks to explain how policy entrepreneurs in agencies read an affirmative right to language access.[1]

Part I provides theoretical context for understanding language rights as a legacy of the Civil Rights Act of 1964. Part II sets forth the historical trajectory of language rights in schools. Part III concludes with reflections on the lessons of history for today.

## I. LANGUAGE RIGHTS AS A LEGACY OF CIVIL RIGHTS

The puzzle that motivates this essay is the emergence of language rights under the Civil Rights Act of 1964. The U.S. Department of Education Office for Civil Rights (OCR) advanced guidance interpreting these statutes to include concrete legal protections for language minorities in the course of administering the national origin discrimination provision in these statutes.[2] OCR guidance led to the inception of bilingual education in public schools, an ambitious regulatory undertaking that remains in Title VI law.[3] The question is *how* these regulatory conceptions of language rights took hold, absent statutory language clearly providing for them.

Social science accounts of law and social change tend to focus on individual rights and emphasize the role of courts in their creation. The predominant account of civil rights as a case study for understanding the capacity of law to effectuate change, for example, features prominently

* Associate Professor, University of Colorado Law School. Thanks to Rose Cuison-Villazor and the AALS Minority Section and Civil Rights Section for including my essay in their fiftieth anniversary panel discussion.

1. This essay is adapted from Ming H. Chen, *Governing by Guidance: Civil Rights Agencies and the Emergence of Language Rights*, 49 HARV. C.R.-C.L. L. REV. 291 (2014) and Ming H. Chen, Regulatory Rights: Courts and Agencies Constructing "National Origin" Discrimination as Language Rights in Schools and Workplaces, 1965–1980 (June 2011) (unpublished Ph.D. dissertation, University of California, Berkeley) (on file with author) [hereinafter Chen, Dissertation].

2. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241.

3. 28 U.S.C. 2009 (2012).

the landmark Supreme Court decision *Brown v. Board of Education* and the Civil Rights Act of 1964.[4] These accounts neglect regulatory agencies as institutional change actors. In contrast, administrative law scholars consider agencies very seriously. Because of their emphasis on judicial review as the fulcrum of the relationship between courts and agencies, however, they underestimate the political significance of regulatory claims that are not, strictly speaking, enforceable in court.[5] For example, a leading administrative law treatise consists of three volumes, runs over a thousand pages, and spends less than a single chapter discussing guidance. This chapter discusses only their exemption from Administrative Procedure Act (APA) rulemaking procedures for agency rules that carry the force of law.[6] The same balance between rules and exceptions is kept in most administrative law casebooks and courses.[7] The result of this uneven coverage is to create an impression that guidance is an insignificant legal topic, despite its power to shape industry practices and inform the general public.

This essay brings together the virtues of social science and administrative law and tries to cure some of their deficits. The essay's intention is to draw attention to agency guidance as a distinctive breed of policymaking in the modern state. Also, the essay illuminates the civil rights era as a historical moment when the practice of governing by guidance—a practice under attack today—was used to great effect. The next section sets forth the puzzling emergence of language rights in schools as a case study for a theory of policy innovation in agencies.

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4. *See, e.g.*, GERALD ROSENBERG, HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE (Benjamin I. Page ed., 2d ed. 2008); Michael McCann, *Reform Litigation on Trial*, 17 LAW & SOC. INQUIRY 715, 718 (1992).

5. Attention to judicial deference has jumped since the Supreme Court's 2001 decision *Mead* distinguishing the levels of deference afforded legislative and nonlegislative rules. *See, e.g.*, David Franklin, *Legislative Rules, Nonlegislative Rules, and the Perils of the Short Cut*, 120 YALE L.J. 276, 280-82 (2010).

6. RICHARD PIERCE JR., ADMINISTRATIVE LAW TREATISE (5th ed. 2009) (Chapter 6 references guidance only indirectly and as an exception to the APA rulemaking procedures.).

7. The same pattern is seen in other leading administrative law casebooks. *See, e.g.* KRISTIN E. HICKMAN & RICHARD J. PIERCE, JR., FEDERAL ADMINISTRATIVE LAW CASES & MATERIALS (2010); STEPHEN G. BREYER, RICHARD B. STEWART, CASS R. SUNSTEIN, ADRIAN VERMEMULE, ADMINISTRATIVE LAW & REGULATORY POLICY (7th ed. 2011), WILLIAM F. FUNK, SIDNEY A. SHAPIRO & RUSSELL L. WEAVER, ADMINISTRATIVE PROCEDURE & PRACTICE (5th ed. 2014). *But cf.* LISA SHULTZ BRESSMAN, EDWARD L. RUBIN, & KEVIN M. STACK, THE REGULATORY STATE (2d ed. 2013); JOHN F. MANNING & MATTHEW C. STEPHENSON, LEGISLATION AND REGULATION (2d 2013) (casebooks developed for 1L courses that take into account the broader political context surrounding common law).

## II. THE PUZZLING EMERGENCE OF LANGUAGE RIGHTS FROM TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

### A. BACKGROUND: THE CIVIL RIGHTS ACT MEETS IMMIGRATION REFORM

The convergence of immigration reform with the Civil Rights Act represents a critical juncture in American political development. Against the backdrop of an expanding civil rights state, the Hart-Cellar Act of 1965 lifted national origin quotas and led to increased Asian and Latin American migration.[8] The scope and scale of demographic change was unprecedented.[9] "Third world" immigration and the numbers of non-native English speakers crested and many were excluded from vital institutions and government services because of language gaps.[10] Failing to bridge those gaps meant diminished chances for academic, economic, and political success.[11]

In a break from earlier civil rights struggles, non-English speaking Asians and Hispanics took advantage of institutional channels to redress their concerns.[12] Instead of campaigning in the streets, they complained to the agencies responsible for enforcing civil rights laws.[13] In response, agency officials launched proactive investigations, set demanding compliance standards, and ramped up enforcement.[14] In essence, the administrative response transformed language barriers into a legally redressable problem.[15] Muddling their way through the policy thicket, agencies set out to make legal rights "real" in the administrative state.[16] The development of that administrative response is the heart of this essay.

### B. OCR INTERPRETATION OF TITLE VI NATIONAL ORIGIN DISCRIMINATION

Racial inequities in schools constituted the front line in the struggle for equal opportunity during the civil rights era. Segregated schools that were

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8. *See* DAVID M. REIMERS, STILL THE GOLDEN DOOR: THE THIRD WORLD COMES TO AMERICA 62 (1992).

9. *See id.*

10. *See id.*

11. For more on the effects of language gaps, consult the resources of ethnic minority groups such as the Asian American Justice Center & MALDEF. *See, e.g.*, ASIAN AMERICAN JUST. CTR. & MALDEF, LANGUAGE RIGHTS: AN INTEGRATION AGENDA FOR IMMIGRANT COMMUNITIES (June 2008), *available at* https://www.maldef.org/resources/publications/language_rights_briefing_book_June%202008.pdf; ASIAN AMERICAN JUST. CTR. & MALDEF, ADULT LITERACY EDUCATION IN IMMIGRANT COMMUNITIES: IDENTIFYING POLICY AND PROGRAM PRIORITIES FOR HELPING NEWCOMERS LEARN ENGLISH (2007), http://www.aecf.org/upload/publicationfiles/IM3622H5009.pdf.

12. *See* CHARLES EPP, MAKING RIGHTS REAL: ACTIVISTS, BUREAUCRATS, AND THE CREATION OF THE LEGALISTIC STATE 2-4 (2010). Epp describes 1970s reforms in police misconduct, sexual harassment, affirmative action, and playground safety as taking on a law-styled attempt to bring bureaucratic practice into line with emerging legal norms.

13. *See id.*

14. *Id.*

15. *See id.*

16. *Id.*

identifiably black or white posed the most glaring example of state-supported inequality.[17] Similar practices isolated Mexican and Chinese school children in segregated schools.[18] Moreover, subtle forms of discrimination and benign neglect left many of these school children *functionally* separate within ostensibly integrated schools.[19] In San Francisco's Chinatown, for example, Chinese students enrolled in the San Francisco Unified School District (SFUSD) suffered language isolation.[20] Concentrated numbers of non-English speakers attended segregated schools in Chinatown or were lumped together in English-speaking classrooms with other immigrants who spoke neither English nor Chinese.[21] Most were completely excluded from English-language classroom instruction given the unavailability of Chinese-English bilingual education.

In response to linguistic isolation in Chinatown, Legal Aid attorney Edward Steinman challenged the school district's language policies, or lack thereof, in the Northern District of California.[22] His opening brief characterized SFUSD's practices as benign neglect, not borne of intentional discrimination, but nevertheless barring Chinese students from educational instruction.[23] It alleged that the denial of education on the basis of language exclusion violated the Fourteenth Amendment, California's constitution, and a number of city codes and school district policies.[24] The brief's main innovation on past equality law was to claim that ensuring equal opportunity required more than affording the same treatment for differently situated students.[25]

The same year that Steinman launched litigation in district court, the OCR issued policy guidance outlining an administrative response. The OCR accumulated evidence regarding the "systematic lower achievement

17. Goodwin Liu, *Brown, Bollinger, and Beyond*, 47 HOW. L.J. 705, 710, 711, 724 (2004).

18. Kevin R. Johnson, *Hernandez v. Texas: Legacies of Justice & Injustice*, 25 CHICANO-LATINO L. REV. 153, 177–78 (2005); Lau v. Nichols, 414 U.S. 563, 566 (1974).

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

20. *Id.* at 564.

21. *See* L. Ling-Chi Wang, *Lau v. Nichols: History of a Struggle for Equal and Quality Education*, *in* DON NAKANISHI & TINA NISHIDA, THE ASIAN AMERICAN EDUCATIONAL EXPERIENCE: A SOURCEBOOK FOR TEACHERS AND STUDENTS 62–63 (1995). *See also* Interview with L. Ling-Chi Wang, Chinatown activist and U.C. Berkeley Ethnic Studies professor in Berkeley, CA (Dec. 2008).

22. *See generally*, *Lau*, 414 U.S. 563.

23. *See generally*, Brief for Petitioners at 48, Lau v. Nichols, 414 U.S. 563 (1974) (No. 72-6520), 1973 WL 172369 at *48.

24. *Id.* at *20.

25. *Id.* at *41. An overview of the Lau v. Nichols litigation is contained in Rachel F. Moran, *The Story of Lau v. Nichols: Breaking the Silence in Chinatown*, EDUCATION LAW STORIES 111-57 (Michael A. Olivas & Roma Griff Schneider eds.,2007); *see also* GARETH DAVIES, SEE GOVERNMENT GROW: EDUCATION POLITICS FROM JOHNSON TO REAGAN 147-65 (2007) (Chapter 6 cites Shirley Hufstedler papers from Carter Presidential Library in Atlanta, GA); LEON E. PANETTA & PORTER GALL, BRING US TOGETHER: THE NIXON TEAM AND THE CIVIL RIGHTS RETREAT 335-56 (1971); GARY ORFIELD, THE RECONSTRUCTION OF SOUTHERN EDUCATION: THE SCHOOLS AND THE 1964 CIVIL RIGHTS ACT 89 (1969); JOHN D. SKRENTNY, THE MINORITY RIGHTS REVOLUTION 179–229 (2002); SANDRA DEL VALLE, LANGUAGE RIGHTS AND THE LAW IN THE UNITED STATES: FINDING OUR VOICES 235–48 (2003).

of minority group children and the existence of large numbers of segregated ability-grouping and special education classes."[26] In consultation with MALDEF, bilingual educators, and education psychologists, the OCR began to research policy solutions to these problems. On May 25, 1970, the OCR released Guidelines on National Origin Discrimination.[27] The memo set forth highly specific procedures for schools to develop and assess their own bilingual education programs.[28] The Guidelines require a school to take "affirmative steps" to rectify language deficiencies of national origin minority students.[29] These affirmative steps mainly included the implementation of bilingual-bicultural curricula, the installation of bilingual teachers in mainstream schools, or other programs designed to help students quickly attain needed language skills without operating as an educational dead-end or permanent track.[30] In defense of its authority for the guidelines, the OCR pointed to Title VI itself and the Fifth Circuit's announcement that it would give "'great weight'" to the OCR's guidelines in *United States v. Jefferson County*.[31]

The litigation-based and administrative challenges converged on appeal in the Ninth Circuit and United States Supreme Court. Steinman and Stanley Pottinger (representing the OCR) split their oral argument into two parts: Steinman argued that SFUSD practices violated the Equal Protection Clause of the Fourteenth Amendment, and Pottinger argued that they violated Title VI as interpreted by the OCR.[32] At the urging of the Justices, statutory issues overshadowed constitutional ones during oral argument.[33] The OCR pleaded that Title VI is "neither dependent upon nor necessarily coincident with the Equal Protection Clause of the Fourteenth Amendment."[34] The OCR then defended its regulatory authority in several ways. First, the OCR built the case for agency deference by citing prior instances in which its rulemaking authority had been upheld.[35] Second, it alluded to the origins of the May 25 memo in compli-

26. Plaintiff's Response to Defendant's Motion for Reconsideration and Conditional Motion to Stay at 7, United States v. G. 1. Forum, No. 6:71-CV-5281 WWJ (E.D. Tex. Filed July 10 2005) (containing statement of Martin Gerry, Acting Director of OCR).

27. Identification of Discrimination & Denial of Services on the Basis of National Origen, 35 Fed. Reg. 11595–96 (July 17, 1970).

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*; United States v. Jefferson Cnty. Bd. of Educ., 372 F.2d 836, 847 (5th Cir. 1967). *Jefferson* was the culmination of judicial review over a series of cases evaluating agency authority in school desegregation under Title VI.

32. Oral Argument, Lau v. Nichols, 414 U.S. 563 (1974) (No. 72-6520), *available at* http://www.oyez.org/cases/1970-1979/1973/1973_72_6520.

33. *Id.*

34. *See* Memorandum Bf. for the United States as Amicus Curiae at 15, Lau v. Nichols, 414 U.S. 563 (1974) (No. 72-6520), 1973 WL 172359.

35. The petitioner brief cites United States v. Jefferson Cnty. Bd. of Educ., 372 F.2d 836 (5th Cir. 1966), a parallel lawsuit defending OCR's desegregation strategy, and Trafficante v. Metro. Life Ins. Co., 409 U.S. 205 (1972). Brief for the Petitioners at 47-48, Lau v. Nichols, 414 U.S. 563 (1974) (No. 7206520), 1973 WL 172369, at *47-48.

ance reviews as evidence of the agency's expertise in the matter.[36] Third, it justified its threat of cutting off funding to public schools under the statutory provision upon which the guidance relied.[37] The OCR's interpretations of its own authority were backed by the National Education Association, which stated in an amicus brief that the OCR "regulations have the 'force of law.'"[38]

In response, the SFUSD conceded the factual record and argued good faith.[39] They claimed to offer "equal educational opportunities" to English speakers and non-English speaking students.[40] However, neither the Equal Protection Clause nor Title VI of the Civil Rights Act required them to provide "special assistance" in the absence of discriminatory intent.[41] The school district characterized the case as involving "students with a language difficulty which is directly related to the accidents of birth— national origin, native tongue of parents, and exposure to ambient verbal communications in other tongues than English. It is a difficulty not of the school district's making."[42] Therefore, no affirmative duties applied.[43]

The Supreme Court sided with the students: "Under these state-imposed standards there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education."[44] It concluded, "'Where inability to speak and understand the English language excludes national origin-minority group children from effective participation . . ., the district must take *affirmative steps* . . . to open its instructional program to these students."[45] With regard to regulatory authority, the Court said, "By § 602 of the Act [the Department of Education] is authorized to issue rules, regulations, and orders to make sure that recipients of federal aid under its jurisdiction conduct any federally financed projects consistently with § 601."[46] Without questioning whether the Department of Education acted pursu-

36. Brief for the Petitioners, *supra* note 23; *see also* Jorge C. Rangel & Carlos M. Alcala, *Project Report: De Jure Segregation of Chicanos in Texas Schools*, 7 HARV C.R.-C.L. L. REV. 307, 370 (1972) (linking migration study to OCR compliance reviews and OCR's May 25 memo).

37. Section 601 tasks OCR with interpretive authority over Title VI of the Civil Rights Act. Section 602 provides the agency with substantive rulemaking authority to effectuate those purposes. Brief for the Petitioners, *supra* note 23, at *13.

38. *See* Brief for the Nat'l Educ. Ass'n & the Cali. Teachers Ass'n as Amici Curiae Supporting Petitioners at 19, Lau v. Nichols, 414 U.S. 563 (1974) (No. 72-6520), 1973 WL 172366.

39. Brief of Respondents at 1–2, Lau v. Nichols, 414 U.S. 563 (1974) (No. 72-6520) 1973 WL 172357.

40. *Id.* at 4.

41. *Id.* at 9, 15-16 ("This is the extent of the regulations application. Should they be interpreted to extend beyond regulating constitutional violations, then they have been adopted in excess of the congressional delegation of authority and are invalid.").

42. *Id.* at 2.

43. *Id.* at 8.

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

45. *Id.* at 568 (emphasis added).

46. *Id.* at 567.

ant to its substantive rulemaking authority when issuing its Guidelines, the Supreme Court deferred to the OCR's substantive interpretation of Title VI as requiring extra efforts to accommodate non-English speaking students. The OCR Guidance upheld in *Lau* remains in effect today, although in a somewhat altered state.[47] What is unchanged, however, is the regulatory framework for investigating and ensuring compliance with Title VI.

## III. CONCLUSION

Some will question the persistence of the language rights described in this essay given the weakening of bilingual education in many states. Others will question the vitality of the regulatory rights described in this essay on the grounds that they are cast in guidance, not even binding regulations. In this concluding section, I would like to suggest—perhaps optimistically—that language rights and agency policymaking remain persistent and vital legacies of civil rights.

First, on its own terms, it is true that implementation of the Title VI national origin clause has been altered by intervening developments in state and federal law.[48] However, the legacy of language rights under Title VI extends beyond bilingual education. Courts transformed Title VI from a judicial enforcement mechanism for protecting constitutional rights into a statutory vehicle for regulatory rights. The elevation of statutes displaced longstanding reliance on the Constitution for the protection of civil rights, and it enabled broader reach for regulation. While the broadest application of the regulatory strategy has attracted critics, the use of agency action—anchored in federal civil rights statutes and safeguarded by courts–endures in moderated form.[49] Modern administrative agencies define and gather evidence about "discrimination" in a variety

47. While the legal principle initiated in the 1970 Guidelines then buffered in *Lau v. Nichols* and in the EEOA remains good law on the books and in action, the remedy of bilingual education provided for in the internal memorandum was eroded by a competing legal precedent. A Fifth Circuit case, Castañeda v. Pickard, 648 F.2d 989, 1010 (5th Cir. 1981), lowered the burden on school districts to demonstrate that their educational plan could meet regulatory standards for compliance. The current framework guiding the court's analysis looks to whether the school district took "appropriate action."

48. In addition to changes in federal law, some states have enacted legal barriers to bilingual education as a specific remedy for language barriers. California's Proposition 227, for example, requires public schools to enroll LEP students in intensive language courses taught almost exclusively in English and to transfer them to mainstream classes within one year. English Language in Public Schools Initiative Statute, Proposition 227 (1998), http://primary98.sos.ca.gov/VoterGuide/Propositions/227text.htm.

49. Essentially, under this model, courts deciding Title VI civil rights complaints have shifted from reviewing an agency's interpretation of the *underlying statute* to reviewing an organization's fidelity to the *regulation itself.* Justice Stevens, in his dissent for the seminal case reviewing Title VI since *Lau*, laments a loss of the interdependence between agency rulemaking and judicial enforcement after *Lau* as an "integrated remedial scheme." Alexander v. Sandoval, 532 U.S. 275, 304 (2001) (Stevens, J., dissenting). *But cf.* Rose Cuisor Villazor, *Language Rights and Loss of Judicial Remedy: The Impact of* Alexander v. Sandoval *on Language Minorities*, *in* AWAKENING FROM THE DREAM: CIVIL RIGHTS UNDER SIEGE AND THE NEW STRUGGLE FOR EQUAL JUSTICE 142 (2005).

of contexts. They monitor the compliance of thousands of public and private organizations and redress noncompliance costing millions of dollars. The scope of the regulatory enterprise makes many of us dependent on administrative agencies, even though the agency's statutory interpretations and regulatory policies are not legally binding *per se.*

Second, Title VI enforcement extends beyond schools. Its radiating effects can be seen in policies and laws extending language access to virtually all public institutions,[50] providing lawful immigration status to undocumented students, and amending the Voting Rights Act.

Executive Order 13166. Following a contraction of civil rights and increasing hostility toward language rights from 1980–1990, the federal government's commitment to extending meaningful access to Limited English Proficiency (LEP) persons through civil rights agencies revived in 2000. In 2000, President Clinton issued Executive Order 13166, which renewed and extends the federal framework for providing LEP persons meaningful access to regulatory programs to virtually every agency that administers federal funds.[51] President Bush maintained Executive Order 13166, and President Obama has expanded it, which illustrates the entrenchment of a regulation-based approach toward language access that cuts across political parties.[52] Moreover, President Obama's use of executive orders has been used to the benefit of undocumented students in the Deferred Action for Childhood Arrivals (DACA) program.[53]

Votiing Rights Act. Civil rights norms governing educational opportunity for national origin minorities also seeped into the justifications for Voting Rights Act Sections 4(f) and 203. Congress declared it "patently unfair" to require literacy from the same minority voters to whom educational opportunities had been denied; after all, many of these language barriers resulted from "unequal educational opportunities having been

50. U.S. GOV'T ACCOUNTABILITY OFFICE, REPORT TO CONGR., LANGUAGE ACCESS: SELECTED AGENCIES CAN IMPROVE SERVICES TO LIMITED ENGLISH PROFICIENT PERSONS (2012).

51. The order entrusts agencies to evaluate their own practices as well the practices of schools, workplaces, and other regulated institutions. To provide a concrete illustration using a familiar example: under EO 13166, the Department of Education (federal agency) must comply with Title VI, the DOJ regulations, and its own policy guidance because it administers K-12 schooling (federal financial assistance) to school districts (recipient) and oversees the actions of public school teachers (sub-recipients.) An audit of EO 13166 compliance documents revealed that, as of February 2010, twenty-two agencies had completed and posted online policy guidance for their beneficiaries to bear in mind when interacting with LEP persons. Fifty-eight agencies had submitted their own plans to ensure meaningful access to their services. U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 50 at 73.

52. Memorandum from the Atty. Gen. on Fed. Gov't's Renewed Commitment to Language Access Obligations Under Executive Order 13166 at 2 (Feb. 17, 2011).

53. Nearly 500,000 applications have been approved since DACA's issuance in 2012, and the beneficiaries are now considered lawfully present. *Top Five Immigration Stories from 2013*, IMMIGRATION IMPACT (Dec. 24, 2013), http://immigrationimpact.com/2013/12/24/top-five-immigration-stories-from-2013/. Renewals for the two-year program are underway. *See* U.S. CITIZENSHIP & IMMIGRATION SERVICES, RENEW YOUR DACA, *available at* http://www.USCis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/renew-your-daca.

afforded these citizens."[54] The establishment of legal requirements for language access in schools enhanced the government's obligations at the polls: whereas benign neglect of non-English speaking students was previously permissible, the failure to bridge language barriers now constituted a failure of the public schools to prepare future citizens to vote. On the basis of accumulated evidence that more "catching up" was necessary, the DOJ accepted its responsibility "'to take action to ensure that minority citizens whose usual language is not English receive adequate election materials and necessary assistance in the usual language to' meaningfully participate."[55]

So what do these lessons of history portend for the modern moment? Reflecting on 1960s civil rights laws, the US Commission on Civil Rights accurately observed that "[c]ivil rights laws now apply in almost every area in which the federal government has responsibilities. It is not so much new laws that are required today as a strengthened capacity to make existing laws work."[56] It was true then, and it is *mostly* true now. In areas ranging from voting rights to immigration reform, the nation awaits federal action. This essay suggests that policy reformers might helpfully shift their gaze from Congress to regulatory agencies within the executive branch as the guardians of civil rights. Agencies can reinterpret the promises of civil rights statutes without needing to directly confront the hurdles of partisan politics in Congress, and they are relatively more insulated from politics than in the White House. In essence, the lesson of language rights emerging on the fiftieth anniversary of the Civil Rights Act of 1964 is that agencies enable the law to keep pace with changing circumstances and assist the ongoing quest for equal opportunity. Undoubtedly, agencies can do more with the cooperation of their co-equal branches. But we would be left with less in their absence.

54. Chen, Dissertation, *supra* note 1, at 67; *see also* Ming H. Chen, Remarks at 40th Anniversary of Lau v. Nichols: National Conference on the Rights of Linguistic Minorities (Sept. 12, 2014).

55. *Id.* at 68.

56. U.S. COMM'N ON CIVIL RIGHTS, VOTING RIGHTS ACT: TEN YEARS AFTER (1975).