On September 24, 2000, the people of South Africa celebrated Heritage Day, a national day of recognition of the country’s diverse cultural heritage. The specific theme chosen for this year’s Heritage Day was “Celebrating Our Multilingualism.” The theme of multilingualism is crucial to the formation of post-apartheid South Africa. As a remedy for past practices of exclusion and oppression, the recent democratic constitution of South Africa explicitly guarantees the rights of people to their own languages. One of the constitution’s founding provisions is that the nation has eleven official languages, representative of the major language groups of the country. As stated in the provision, “Recognizing the historically diminished use and status of the indigenous languages of our people, the state must take practical and positive measures to elevate the status and advance the use of these languages” (Founding 6.2). In effect, the South African constitution establishes multilingualism not as a basic cultural value to be celebrated but as a fundamental right for all citizens that the state is obligated to pursue actively. The language provision of the South African constitution concludes by establishing a Pan South African Language Board (PANSALB) charged to “promote, and create conditions for, the development and use of . . . all official languages” and “promote and ensure respect” for “all languages commonly used in communities in South Africa” (Founding 6.5). In the few short years since the end of apartheid and the adoption of the constitution, much work remains to be done before respect for all languages can be realized. As the journalist Khathu Mamaila observed in a newspaper article printed on Heritage Day, “Although the constitution guarantees equality of the 11 official languages, there is little doubt that English is more equal than the other 10” (9).
Obstacles to promoting and ensuring the development and respect of languages other than English are in large part practical problems of implementing sweeping reforms across South African institutions that also must confront an encroaching globalization (see Webb; Klug). Still less manageable and even more discouraging obstacles confound institutional reform. Non-whites in post-apartheid South Africa can be wary of reforms and can hesitate valuing the use of languages other than English because of attitudes and expectations conditioned through the apartheid system of Bantu education, which required that black South Africans be taught in indigenous African languages as a way of preserving the languages of power, both English and Afrikaans, for use by whites only. As Zubeida Desai, chairperson of PANSALB, observes, attitudes of indifference to less economically viable indigenous languages also discourage multilingual education: “Somehow, people shy away from advocacy work around promoting African languages. The constant refrain ‘Parents want English’ is indicative of this” (175–76).

To complicate matters further, many teachers do not speak the languages of students who are caught between the growing demand for greater access to English and a constitutional commitment to the ten other official languages of South Africa. As South African Minister of Education Kader Asmal explained, the result is that students who do not speak their teacher’s language are alienated and disadvantaged. While the policy implications of the constitution are that teachers are obligated to make changes in their practices to better accommodate rapid inclusion and to redress past practices of exclusion of South African students of color, Asmal describes a general failure to promote the use of indigenous languages in the classroom, with the consequence that, “It is the learner that has to struggle to understand the teacher and not the other way around.” As Asmal put it, “Significant for me about these struggles had been their flawed assumptions and their focus on the protection of language and so-called cultural rights. I am saying flawed because inevitably their focus has turned to narrow nationalism, in some cases outright ethnicism. That is indeed a flawed approach to language development, national development and national identity formation” (qtd. in Mamaila 9).

Asmal’s insight highlights the troubling consequences of attitudes and expectations that give meaning and, here at least, misdirection to the recognition of language difference in educational practices. Attitudes of narrow nationalism and outright ethnicism bifurcate cultural identity formation through individual language development from the process of
national identity formation through an enlarging of civic language practices. The result is that language differences become either incidental to the broad circulation of civic language practices or intractable obstacles to the formation of collective national interactions. As Asmal’s remark suggests, attitudes and practices promoting and preserving a distinct cultural identity through individual language development can contribute to the enlargement of civic language practices and the formation of a diverse national identity. But how?

At least in South Africa, promoting literacy practices of civic inclusion that avoid the extremes of ethnicism and nationalism involves interpreting and enacting constitutional principles in ways that challenge racist attitudes and that legitimate the functionality of all languages (see Carrim and Soudien). In what follows, I trace the dynamics of constitutional assertion and individual attitude that influence the struggle in South Africa to turn a policy of multilingualism into educational practices promoting democratic inclusion. Attention to the struggle for language rights in South Africa provides an interesting contrast to the project of language rights in the United States. In particular, the grounding of language rights in the national constitution of South Africa contrasts with the absence of any constitutional guarantee of language rights—other than the freedom of speech—in the United States. In addition, the active institutional pursuit of equality among languages in South Africa contrasts sharply with the turn away from affirmative action in the United States (see Lee).

Here I am concerned not so much with the language rights of students in the United States who speak English as a second language; instead, I am specifically concerned with the pursuit of language rights of speakers of English varieties, particularly those collected under the category of African American vernacular English. I focus my discussion in this way because recent claims for the language rights of African Americans have appealed directly to the cultivation of attitudes. Comparing the pursuit of language rights developed out of the cultivation of individual attitudes in the United States with strategies for using the constitutionality of language rights to reform attitudes in South Africa demonstrates the limits of each. Geneva Smitherman has noted the merit of the comparison between the language rights of black South Africans and African Americans: “The struggle for language rights in the United States of America (hereafter USA) and the Republic of South Africa (hereafter RSA) have a number of startling parallels. While there are, to be sure, distinct differences between the USA and the RSA, there are also formidable
similarities in terms of political economy, issues of linguistic imperialism, and domination and subordination vis-à-vis the European settler population and African descendents” (314). Acknowledging these similarities, I focus here on the differences, because the differences between pursuit of language rights in South Africa and the United States can be instructive for compositionists working in the United States. I am not suggesting that the South Africans have it all right. Still, they are facing up to difficult problems in bold ways from which we in the United States can learn a great deal. After I explain the tensions between constitutionalized language rights and attitudes toward languages in South Africa, I describe how a lack of legal language rights for African Americans has left us to appeal to attitudes in the search for democratizing teaching practices. Where appeal to the legal structure of language rights in South Africa does not translate directly into changes in language attitudes and practices, critically engaging patterns of language attitudes in the United States has less influence on practices, in large part because of a diminished legal structure of language rights.

**Constituting Language Rights in South Africa**

South African officials such as Asmal and Desai seem to understand their national constitution as an enabling document. It is certainly that. As Hanna Pitkin has explained, a constitution does at least two things: as a founding document, a constitution articulates a people’s sense of who they are; as an act, a constitution guides a people as they negotiate what they would make themselves into. But a tension pulls between the text of a “constitution” and the act of “constitution.” A constitution does not dictate in advance the national identity or civic culture that will emerge out of activities of democratic engagement. Nor does a constitution dictate the limits of what a state may become on the basis of what it is now. In terms of languages generally, it would be undemocratic to insist on the legitimacy of certain languages solely on the basis of current language usage. In South Africa, for example, such undemocratic insistence would mean further asserting the greater equality of English because it is what is now most in demand. At the same time, current language discrimination cannot be allowed to limit the future legitimacy of any other languages. Again, in South Africa, acting out of current language discrimination alone would mean discriminating in the future against a language other than the eleven official languages, no matter how dramatically the status of that language increases. To assert the open limit of language rights, the South African constitution justifies itself to the people of the country
through a set of founding values aimed at guiding them in their efforts to remedy current acts of discrimination, while leaving the way open for unforeseeable changes in language use.

This does not mean that the way is left open for attitudes and interpretations that might reintroduce discrimination. The founding constitutional values of South Africa—human dignity, freedom, and equality—guide policy and practice by both forcing acknowledgment of past discrimination and encouraging greater care regarding all future uses of language (Founding 1.a). Citizens of South Africa are asked to take up these constitutional values in making themselves and to constitute those values through the making of a civic culture and national identity. Grounded in opposition to an apartheid past, language rights enable acts of constituting self and society that are not strictly limited but that are always framed in terms of the cultural and historical legacy of language discrimination. As Pitkin so presciently puts it, “So, although constituting is always a free action, how we are able to constitute ourselves is profoundly tied to how we are already constituted by our own distinctive history. Thus there is a sense, after all, in which our constitution is sacred and demands our respectful acknowledgment” (169).

Providing the principles that guide language policy, instruction, and use, the constitution of South Africa creates a national framework encouraging the flourishing of multilingualism while demanding policies and practices that acknowledge and correct for the inherited diminishment and disregard of indigenous African languages. As stated in the Preamble, “We, the people of South Africa, Recognise the injustices of our past; Honour those who suffered for justice and freedom in our land; Respect those who have worked to build and develop our country; and Believe that South Africa belongs to all who live in it, united in our diversity.” To make the constitutionality of language rights more than an ideal requires garnering collective commitment to the project of securing and maintaining respect for those rights. In practice, this means that policies promoting the multilingual heritage of South Africa must overcome attitudes ingrown during the apartheid years that disproportionately favored uses of Afrikaans and English and that undermined commitment to democratic values of freedom, equality, and dignity.

PANSALB articulates the constitutional principles of language rights secured for a future from a past that had denied them by developing language policies to guide reforms of language practices in civic engagement, commerce, education, government, and publication. A PANSALB
position paper describes respect for language rights as a necessity for equality where there had been none: “The issue of language as a right is very important, and one which has to be addressed seriously in this country, precisely because in the past, people’s rights have been violated. One way of ensuring that language rights can be guaranteed is to view language from both the perspectives of language as a right and language as a resource” (4.2). Winning assent to the rights of eleven languages by appealing to notions of language as a resource appears at first to surrender language rights to a calculus of utility: the more valuable the language as a resource, the greater the right to it. But there is more to it than this.

As Denise Réaume argues, the instrumental value of a language, its value as a resource, draws from its intrinsic value. Language is valuable intrinsically because we live our lives and experience our cultural heritage through it. The sense of self and heritage that we derive from our languages may be important to us, but for others to respect our right to our own languages they must come to accept that the lives we live through our languages and heritages are indeed meaningful, satisfying, and worthwhile, and that our languages enable our contributions to broader culture, politics, and society. To constitute language rights in a way that secures from others their recognition for a language’s intrinsic value requires “support for the instrumental usefulness of the language, not merely for the sake of other ends considered extrinsically, but out of respect for the intrinsic value of a life lived within a particular linguistic milieu” (252). Here, instrumental usefulness and intrinsic value are dependent upon, but not reducible to, each other. Broad respect for the intrinsic value of a language enhances the resource value of that language by extending the range of civic and public contexts within which it can become instrumentally useful. Enlarging the spheres of usefulness of a language also enhances the intrinsic value of the language by demonstrating that it expresses a rich culture and deep heritage. The more valuable a language is as a medium for experiencing and expressing beliefs, ideas, and values, the more valuable it becomes as a language of broader usefulness. As Réaume makes the point, the interdependence of meaningfulness and usefulness should caution us not to confuse the intrinsic value of a language with its instrumental worth, even though “battles for the protection of language will revolve around maintaining or improving its usefulness in important domains. However, what motivates this desire to protect the usefulness of one’s language is the attribution to it of intrinsic value independent of its uses. Thus, although we will have occasion to
focus on language as a tool, we must not lose sight of people’s underlying attribution of intrinsic value to their mother tongue” (251). Constitutions can assert the resource value of a language by mandating its use in various settings, such as courts and schools. It is only in this way, expanding possible uses, that a democratic constitution can affirm the intrinsic value of a language. By itself, though, this is not enough. People constitute the intrinsic value of a language by living life through it and attributing meaningfulness to the life lived through that language. I read PANSALB’s discussion of the resource value of language as an attempt to encourage attributions of intrinsic worth by creating opportunities for wider use. The question here is whether and to what extent mandates for the wider use of languages produce among people attributions of intrinsic worth. Considering this question by attending to PANSALB policies provides insights useful for assessing language rights practices in the United States.

In South Africa, as elsewhere, people attribute more intrinsic worth to English because of its value as a tool. People in South Africa also attribute less worth to their own languages because the intrinsic value of those languages has been denied in public in favor of English and Afrikaans (see Mazrui and Mazrui). For PANSALB, thinking of language as a resource is “consistent with the principle of interdependence, where different communities/languages are seen to coexist interdependently. The value of each language and its speech community is acknowledged as part of the whole. Language as a resource includes the notion of language as a right. The view that each language is a resource to the nation carries with it the notion of the instrumental use of languages or functional multilingualism” (“Position” 4.3). PANSALB makes concrete the abstract concept of constituting language rights by responding to policies and practices of language discrimination that have diminished the cultural value and economic capital of the country’s multilingual population. Given the premise that multiple languages are vital resources for the constitution of a South African national identity, the goals of the PANSALB language policy are the following:

To put it plainly, we have to find the ways to ease channels of communication by insisting that our languages are used in public contexts for high level functions in order that their profiles increase and that they are heard to fulfill these functions successfully. Their use as lingua francas at local and even regional levels of economic activity needs to be publicly uncovered. Their usefulness in relation to indigenous knowledge must similarly be uncovered. (“Position” 4.5)
As resources of knowledge and public activity, the multiple languages of South Africans can enrich national culture and enlarge public thought. Indirectly promoting language as a resource, PANSALB policy begins to enhance the intrinsic value of multiple indigenous languages.

So, while PANSALB can make choices for language use widely available by creating a policy mandating the conduct of all legal proceedings in indigenous languages, it simply does not have the authority in a democracy to tell people which language they should choose once a real choice among languages is made available. Here, the problem is that created by the dual meaning of constituting language rights. Policies that directly advance the rights of languages indirectly influence attitudes toward the right to languages, but those policies do not decide the attitudes toward language that people will choose. People may simply choose for economic usefulness against intrinsic meaningfulness.

The members of PANSALB are aware of this problem and sensitive to its implications: "The perception that people who are not proficient in English are somehow deficient must be dispelled if we are to move successfully towards a democratic society where diversity is embraced and the interdependence of communities and different knowledges is cherished" ("Position" 4.3). Dispelling conceits of deficiency are minimally required for advancing a multilingual society, and attitudes of embracing and cherishing need to be nurtured. But PANSALB can dictate neither attitude nor perception. As a document constituting what language rights can become, the South African constitution leaves the right to language open to decisions South Africans make as they constitute themselves as citizens and as a people. They may simply choose against the equality of languages, or they may choose, as Mamaila put it, to make English more equal than the other languages. In either case, of course, the constitution fails, because South Africans would have constituted language rights in a manner inconsistent with the democratic values of human dignity, freedom, and equality. Yet, the constitution fails as well if it dictates just how it is South Africans ought to constitute themselves and their language rights.

While the limit of the South African constitution is the point at which the people of South Africa invoke it, the constitution is valuable because it does provide a framework for people to express attitudes invoking democratic values and enacting principles such as language rights. A survey commissioned by PANSALB revealed that even though English
is the home language of only eight percent of the population, it is the language of instruction eighty percent of the time. In terms of language attitudes, the survey found that only twelve percent of the population believed that it was more important for English to be the language of instruction. At the same time, eighty-one percent responded that students should have the opportunity to learn English and their home language equally well or that they should learn through both English and their home language ("Language" 7). Despite its status as a minority language in South Africa, English is still preferred by a majority because of its value as a resource in a global economy. At the same time, that same majority responded that they wanted greater inclusion of home languages, either as a medium of instruction or as a subject of study. These survey results suggest both a desire to extend multilingualism and an openness to full language rights. PANSALB can draw on such widespread perception to enact policies that give people incentives for choosing one language over another, but people don’t make such choices in a vacuum. The kinds of choices people make regarding how they will constitute themselves as individuals and as a nation are functions of their legal culture, how they use documents like a constitution to live their lives. Therefore, whether South Africans fully exercise their language rights depends on the cultivation of a robust democratic culture.

Mandla Seleoane, chief researcher on the South African Human Sciences Research Council, highlighted the importance of a democratic culture to the pursuit of language rights through a comparison of South Africa with the United States. In an article published on Heritage Day, Seleoane explained, "I do not think the failure rate among African learners would be this high if they were taught and tested in the mother tongue. If we had a litigation culture as in the United States, somebody would have taken the Education Department to court for testing children in a language that was foreign to them" (Mamalia 9). It is easy to understand the longing for a litigation culture in a country where years of legalized apartheid engrained widespread mistrust of the law. Even though it is a function of deeply felt commitment to individual rights, the litigation culture of the United States is probably not the best source for successful legal appeals for language rights. Seleoane is certainly correct to identify in the culture of the United States a dependence on legal remedies. As Mary Ann Glendon has argued, the rights articulated in the Bill of Rights have expanded in scope, grown in significance, and evolved into a collective faith in individual freedoms that has overtaken American culture. For Glendon, as well as others—including Robert Bellah, Amitai
Etzioni, and Michael Sandel—Americans understand and enact their rights in ways that dissociate individual benefit from social responsibility. Where in South Africa Asmal warns against a narrow pursuit of rights that would diminish collective creation of a multilingual national identity, Glendon explains how in the United States “our stark rights vocabulary receives subtle amplification from its encoded image of the lone rights-bearer, our weak vocabulary of responsibility is rendered fainter still by our underdeveloped notion of human sociality. Neglect of the social dimension of personhood has made it extremely difficult for us to develop an adequate conceptual apparatus for taking into account the sorts of groups within which human character, competence, and capacity for citizenship are formed” (109).

It is perhaps because our rights vocabulary in the United States is skewed in the direction of the rights-bearer that Seleoane points to the United States as a place where people would take schools to court for violating their language rights. Anyone familiar with decisions in language rights cases in the United States knows that a litigation culture and a collective commitment to individual rights are no guarantees of success. As I describe in the next section of this essay, the lack of constitutional commitment to language rights and linguistic diversity has left education advocates, researchers, and teachers in the United States to find the imperative for respect of language rights outside of the law where, as Glendon puts it, we inadequately account for the value of groups and so the inherent value of a life lived through any given culture or language. The logic of this position has been demonstrated most recently in the Oakland ebonics controversy, when the Oakland Unified School District proposed remediating the failure of African American students by addressing the attitudes of teachers toward the students’ dialect. Absent legal appeal and widespread respect for difference, researchers in composition studies have turned their attention directly to the attitudes of teachers who are the practitioners of language policy. As teacher attitude has been theorized in composition studies, attitudes directly shape pedagogical practices and student-teacher interaction—so much so, in fact, that researchers have argued that better articulation of attitudes can have positive consequences in teaching practice. My claim here is that the pursuit of language rights through attention to attitudes—the opposite of the South African strategy—disconnects the cultivation of literacy dispositions from issues of national identity formation and collective civic practices.
Attitudes that Constitute Language Rights in the United States

Where in the previous section I began with the legal constitution of language rights and worked toward the problems of attitude faced by the project of constituting language rights, in this section I work in the opposite direction: from the constitution of attitudes about language rights in composition studies back to the legal language that constitutes such attitudes. I proceed in this fashion because the formation of legal culture and the lack of articulated language rights in the United States drives language scholars to cultivate collective respect for language diversity out of individual practices and personal dispositions. Arnetha Ball and Ted Lardner have argued for teacher education in composition studies in terms of a formation of disciplinary knowledge that situates what we know about teaching and how we teach in the context of attitudes and expectations that give the teacher-student encounter its meaning and value. On the basis of their claim for the need to restructure student-teacher interactions, Ball and Lardner argue for teachers to retrain their affective responses to student language so as to promote language rights. Ball and Lardner are significant not only because they theorize attitudes, but because they theorize those attitudes in the direction of the legal constitution of language rights in the case of Martin Luther King Junior Elementary School Children v. Ann Arbor School District Board. Attention to their argument and to what has become known as the Ann Arbor Black English Case reveals the gap that persists between the constitution of individual attitudes and the legal constitution of collective commitments to language rights in the United States.

Ball and Lardner explain that the need in composition studies to revise knowledge construction about teaching derives from the persistent need and constant failure of writing pedagogy to respond to the language learning dilemmas of minority students, particularly African American students. As disciplinary knowledge, composition pedagogy is maintained and regulated through institutionalized practices. The limitations of composition pedagogies to productively engage African American students are the limits of formal knowledge and practical understanding that result from institutionalization. Ball and Lardner propose that formal knowledge and practical understanding are determined largely by unaccounted-for attitudes that teachers bring as people to the teaching of writing. For compositionists collectively to account for these attitudes in teacher training, Ball and Lardner propose theories of writing pedagogy grounded in teacher efficacy. Teacher efficacy
reconfigures the representation of pedagogical theory. In particular, instead of seeing writing pedagogy as determined by a general theory of writing (in whatever versions this general theory might appear), the alternative we propose would place the teacher, the student, and the site of literacy instruction at the center, each exerting its influence on the others, each influencing an orientation toward the activity of the course, each in relationships with the others which are at best dialogical and, as some scholars have pointed out, often contradictory and conflictual. The construct of efficacy does not subordinate pedagogy to a teacher's "substantive" knowledge, nor does it place teacher knowledge in dialogue with its situation, as the postdisciplinary view would have it. The construct of teacher efficacy locates pedagogical theory in relation to three intersecting points of view: the institutional context of the writing course, the teacher's sense of herself as an actor within that institutional site, and the dialogizing, ambivalent, often resistant perspectives of students. (482–83)

Ball and Lardner describe teacher efficacy as an improvement on previous constructs of teacher knowledge that have proven inadequate to the challenges of education defined in the Ann Arbor Black English Case. In that case, the parents of African American elementary school students sued the Ann Arbor school district, claiming that it did not provide their children an equal educational opportunity and that the obstacle to their education was the language barrier created by teachers' attitudes toward black students. The significance of the Ann Arbor case according to Ball and Lardner is that "it raised then and continues now to pose the question of how educators accomplish the necessary but complicated task of assimilating new knowledge about race and language in order to translate that knowledge into classroom practice" (470). On the one hand, Ball and Lardner celebrate the case as having "disrupted the institutional status quo by holding the school district accountable for the inadequate educational progress of the Black children involved." On the other hand, they recognize that the case has had minimal legal significance, not having been cited and having not set any precedent. They acknowledge as well that "the overriding theme of the Court's ruling was to uphold existing linguistic, educational, and social arrangements" (471).

Ball and Lardner celebrate an otherwise disappointing experience in the courts by concentrating on the direct implications of the ruling for teachers: "At the heart of the Ann Arbor decision was the recognition of the need for teachers to become sensitive to students' uses of African American English, to move into a way of being in the classroom which
is responsive to and informed by recognition of racial and linguistic difference" (473). In other words, the success of the case is the direct impact of the judge's ruling on the realm of social action that lies between legal imposition and individual initiative. The judge in the case, Charles Joiner, limited the court's role in deciding how best to overcome language barriers in schools, leaving it up to teachers to decide the appropriate remedies. While a responsible use of legal authority, this ruling has the consequence of disconnecting teacher authority from constituting institutional and legal structures. This diminished authority is evident in Ball and Lardner's discussion of the Ann Arbor case as, at its heart, a need for individual sensitivity responsive to and informed by recognitions of racial and linguistic difference. The tension Ball and Lardner note between the legal limits set in the Ann Arbor decision and the pedagogical possibilities suggested by the case are worth considering further. The tension between language barriers as a legal matter and the construct of language barriers in the classroom, understood as a pedagogical matter, is worth considering here because it is a difference through which we locate attitudes that constitute language rights in the United States, creating and constraining possibilities for institutional intervention.

The plaintiffs in the Ann Arbor case alleged that the King school failed to consider that the learning difficulties of a group of African American students resulted from "cultural, social, and economic deprivation" and that the school therefore also failed to provide those students the kinds of programs they needed in order to overcome that deprivation in school. The plaintiffs originally claimed that this failure violated their right to equal protection of the laws under the Fourteenth Amendment and 42 U.S.C. §§ 1983 and 1985, their right to be free from discrimination (according to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d), and their right to equal educational opportunity (provided by the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1703(f)). Judge Joiner excluded all these claims except the last, those derived from the Equal Educational Opportunities Act, which reads in part, "No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by . . . the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs" (20 U.S.C. § 1703(f) [1976]). While the Equal Educational Opportunities Act, 1703(f), explicitly requires removal of language barriers, Judge Joiner's appeal to 1703(f) involved a novel interpretation of language barrier. As summarized in the Michigan Law Review, "The barrier
alleged in *King* was not a lack of comprehension, but rather a tendency of teachers to treat black English dialect, and the children who spoke it, as inferior. Embracing the children's claim, the King court held that the scope of 1703(f) was not limited to comprehension barriers arising from foreign language differences, and that Congress intended the statute to apply to *any* impediments caused by language differences, including dialect differences, if such impediments are severe enough to interfere with students' equal participation in a school's instructional program" (281).

As novel as the interpretation of language barrier was, it was not an inconsistent or even illogical extension and application of 1703(f). The Equal Educational Opportunities Act was legislation designed to extend the fourteenth amendment duty forbidding discrimination in schools as that duty was described by the Supreme Court in its landmark *Brown v. Board of Education* decision. Specifically, the overall purpose of the Equal Educational Opportunities Act was to shift the pursuit of equality in education away from busing (a remedy that only desegregated schools) to the actual improvement of neighborhood schools themselves. As described in the *Michigan Law Review*,

To achieve this, the Act seeks to limit the use of busing remedies to achieve racial integration while requiring local educational agencies to improve educational programs and make them accessible to all students. These requirements are set out in section 1703. Most of section 1703's subsections, however, simply forbid school districts from intentionally segregating their schools, a duty school districts already have under the fourteenth amendment. Only section 1703(f) imposes an affirmative duty on school authorities to improve students' access to educational programs. Because Congress was fully aware that blacks constituted a major group suffering from inequality of educational opportunity, and because the Act was designed to offer alternatives to busing, it seems reasonable to apply the Act's only compensatory provision, section 1703(f), to language barriers disadvantaging blacks. (283-85)

Judge Joiner found that teacher attitude did produce a language barrier that perpetuated African American student exclusion from standardized practices, thereby disadvantaging those students as a group. Judge Joiner ruled that Ann Arbor schools had an affirmative duty to remove the language barrier that denied African American students equal educational access. In the remedy, he ordered a series of teacher training
sessions to sensitize teachers to black English and to better prepare them to teach African American students. Limiting the reach of the courts into the classroom, he did not dictate the nature or the content of the sessions. Distinguishing the legal issue from the pedagogical resolution, Judge Joiner left it to Ann Arbor schools to decide what constituted “appropriate action.”

The effectiveness of any action requires precisely the kind of local agency provided by Judge Joiner in his ruling. Yet, leaving to the schools any decision about appropriate action limits impact to a local level, thereby limiting the potential of that action to transform systematic inequalities. Still, the decision was reasonable in one sense. For democracy to be meaningful, people must be free to choose how to respond to their circumstances. Unfortunately, in the current legal culture of the United States at least, this freedom leaves people without any obligation to address the structural inequalities that produced their attitudes and circumstances in the first place. The decision to allow the schools to decide what counts as appropriate action is justified, at the same time that its consequences are clarified, in the *Michigan Law Review*: “Such a standard seems logical because language barriers that arise from dialect differences stem largely from cultural and socio-economic inequality and isolation. It is unlikely that such barriers can be completely eliminated until the underlying inequality and isolation are eradicated, and this eradication is beyond the unilateral power of the schools” (293).

Changes that are beyond the power of the schools (because they are local entities) are beyond the power of the courts as well (because they are not strictly local entities). Neither courts nor schools in the United States can sustain an agenda of economic, political, and social activism precisely because democratic commitments to an agenda for change must arise from citizens themselves. Hesitancy toward imposition taken together with valorization of the individual make it easy for Americans to characterize systematic inequalities as personal inadequacies of attitude or effort. So John Dudley, a member of the team that represented the Ann Arbor School System in the black English case, responded to the Oakland ebonics resolution of 1996 by quoting from the Coleman Report on Equality of Educational Opportunity, saying “that the strongest ‘sources of inequality of educational opportunity appear to lie first in the home itself and the cultural influences immediately surrounding the home,’ and that the nation’s schools were largely ineffective in freeing academic achievement from the impact of the home” (A18).
Whether we agree with Dudley's claim or not, it is indicative of a legal culture of opportunity that makes it easier for people to accept inequalities as natural consequences of poor ambition and weak effort. Arguing against someone like Dudley from within a legal culture of opportunity precludes getting much past issues of individual blame. Ball and Lardner's argument counters claims such as Dudley's by not grounding inequalities in the constituting power of law but in the attitudes and awareness of teachers. They get past blame by articulating individual responses with social inequalities. Attending to teacher attitude, they turn individual blame into a structural relationship between the unconscious dispositions that perpetuate language barriers and the disciplinary interests of pedagogical knowledge. In this way, they are proposing to fill in where the law in the Ann Arbor case left off. What they are filling in is the space left open by a constituting of rights in the United States that requires greater commitment among individuals without providing them the fully elaborated legal framework they need to enact that commitment.

In place of the principles or claims of law, Ball and Lardner hold out hope for language rights in a reconstitution of affect, changing the institution from the point of view of the individuals within it. But just as the plaintiffs in the Ann Arbor case expected too much from law, perhaps Ball and Lardner expect too much from individual teachers. The difference between a court decision that limits the role of law in directing inclusionary institutional practices of schooling and a proposal for anti-discriminatory disciplinary practices in the construction of teacher knowledge raises issues of how law relates to classroom practice, how law and practice are bound up with attitudes, how intervention in attitudes changes institutions and practices, and how changeable attitudes themselves are. Because people in a democracy constitute the law in the process of constituting themselves, these issues are best addressed through an articulation of language instruction in relation to laws, practices, institutions, and attitudes that all participate in structuring relationships of differential power that are, or are not, discriminatory. As a consequence of the relationships among institutions, practices, and individuals, language discrimination is more than prejudicial attitudes and not simply a matter of legal definition. It is both, and yet it is neither. So, in the United States, constituting a remedy for language discrimination is crowded out by a concern for preserving the space reserved for individual discretion, a space in which racism is allowed to persist (see Ross).
Toward a Policy of Reconstitution: Theories of Reconstitution in Composition Studies

The institutional organization of language practices through laws and public policy has value for theories of literacy, rhetoric, and writing in composition studies. While theories in composition studies cannot directly change laws, those theories can provide reasoned alternatives for constituting ourselves within the limits of the law, so attention in composition theory to the possible constitution of language practices points out our greatest areas of need. As I have argued here, the legal constitution of language rights together with individual acts of constituting legal language rights circumscribe that area within which we act on our commitments to each other. The amorphous shape that this area takes is highlighted by the contrast between South Africa and the United States.

The major difference between the pursuit of language rights in the United States and in South Africa is that in the United States the goal of language rights is to promote the learning of English. The United States pursues a single national linguistic identity. Pursuit of a single linguistic identity creates the need in the United States for language rights to protect the inherent value of language differences against the tyranny of the majority as well as the overwhelming use value accorded to standardized English. The result is that while protecting these differences requires public obligations, the differences protected remain primarily personal and private. In South Africa, the pursuit of language rights does not preclude the learning of English by a majority of the country’s population. Instead, it enables policies for expanding the public use of languages other than English. South African language rights aim at a multilingual nation and a multicultural national identity as a way of constructing the nation in more inclusive, antiracist terms after a period of brutal and overt racial tyranny.

Despite differences in goals, in legal culture, and in conceptions of language rights, both South Africa and the United States find that the greatest obstacle to making language rights meaningful is in the attitudes of the people themselves. In South Africa, a radical reconstitution of the legal culture exposes the intractability of historically ingrained inequalities. The new constitution provides guidelines for the citizens of South Africa to reconstitute themselves and their nation through the language choices they make in public settings. Still, constitutional imperatives of multilingualism stop short of telling people what it means to always choose among all languages equally. Nothing in their constitution stops the people of South Africa from choosing English for its economic value
and the other languages for their intrinsic value, with such choices having consequences for which languages get use and respect. In the United States, preserving a legal culture that sustains individual freedoms involves sacrificing legal rulings and institutional arrangements that might expose some of the more troubling inequalities developed out of this nation’s racist history, such as the language barriers faced by black children in schools. As the ruling in the Ann Arbor case made clear, the deep structural inequalities that become manifest as language barriers are outside the scope of any actions that can be taken without a dramatic reconstitution in the legal culture of the United States.

The comparison of South Africa to the United States shows that we cannot simply legislate language rights. Rights to a language take on the quality of rights, replete with entitlements and obligations, to the extent and in the manner in which people enact those rights. How, when, and why people claim a right depends on their being constituted as members of a specific legal culture. Because their specific character is so contingent, we cannot expect language rights to be anything more than our given culture of rights makes available. And while the legal cultures of South Africa and the United States each in their own way make rights available, rights remain somehow open. Neither national constitution can dictate how people can or should experience and live those rights. The legal cultures of constitutions do, nonetheless, create contexts and encourage choices. It is here that South Africa and the United States differ most, in their respective acknowledgments of what Smitherman characterizes as the political economy of linguistic imperialism. In South Africa, individual choices made for or against any one language in any one setting are choices made in a legal culture that sets that choice within the larger context of the country’s struggle to realize an inclusive democracy. People may be hesitant to choose multilingualism now, but the culture leaves open the real possibility for that choice in the future. In the United States, legal culture removes language rights from the conditions that sustain democracy, leaving little hope for choices of language use to emerge out of and contribute to a stronger understanding of language entitlements and obligations.

Because it remains unlikely that the people of the United States would embark on a crusade to amend the constitution—as a way of shifting the legal culture toward multilingual language rights—attempts to enrich language rights must reconstitute those rights at the point where they are exercised by individuals. It is in their initial outline of affective reconstitution that Ball and Lardner are most instructive. Reconstituting our
attitudinal responses as a way of reconstituting the meaning and value of
language rights requires us to discuss attitudes developed through inter­
actions in institutions such as schools. Because the rhetoric of rights in the
United States is, as Glendon so accurately portrays it, a thin discourse of
individual entitlement, discussions reconstituting our language attitudes
would need to elaborate the current rights culture itself. Here, the
example of South Africa is instructive. If we can discuss language rights,
following South African Minister of Education Kader Asmal, as crucial
to an identity formation that avoids narrow nationalism, then perhaps we
can talk ourselves out of the impoverished culture of rights that limits our
civic conceptions. If we can discuss language rights, following PANSALB,
as an entitlement to ways of life that are intrinsically valuable and
economically viable, ways of life to which we are all obligated, then
perhaps we can talk ourselves into broader regard for linguistic differ­
ence. For language rights to have any more meaning in the United States,
we would have to learn from the experiences of other countries, such as
South Africa, to understand better how we might reconstitute the legal
culture within which we constitute ourselves.

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