

Emerging Politics of Hispanic¹ Education: From Politics to the Courts and Back Again

A HISTORICAL PERSPECTIVE²

Custom has singled out a landmark decision of the U.S. Supreme Court as the catalyst of the modern civil rights movement. In 1954 the Court in the *Brown v. Board of Education I* case declared unanimously that the South's customary separation of black from white systems of education was unconstitutional. This call for the desegregation of American public education provoked overwhelming resistance in the South and only tepid interest in the North. Yet, *Brown* contributed greatly to elevating the civil rights movement from a regional issue in the early 1960s into a national priority.³ This was preceded by Harry S. Truman's providing access to the political system for the civil rights movement as the country's attention returned from a global war to domestic problems. Truman, a border-state president who had never shown any special interest in race relations, moved to solidify a pro-civil rights coalition by establishing the President's Committee on Civil Rights. In thus making civil rights a national issue, Truman gave voice to a significant growth of moral awareness among the nation's elites. Overall, the growing civil rights movement of the twentieth century took off like a multistage rocket: first, just as a great northern migration awakened and disillusioned the mass of southern blacks, the Depression gave their discontent a fresh ideological thrust and World War II expanded it and added elite leadership. In 1954, massive resistance to the *Brown* decision ignited an explosion. In this fourth stage elites and masses merged into a political front.

As the civil rights movement moved into the 1960s, it was given a major push by the unstinting support it received from all branches of the federal government as the executive and legislative branches stepped forward to shatter

the legal defenses of segregation by legislating the *Civil Rights Act of 1964*, which greatly enlarged the federal government's authority to take action on behalf of minority rights

By the mid-1960s the ongoing struggle for school desegregation spread rapidly across the nation, where injustice seemed to be less blatantly formalized and legal remedies therefore less available and efficacious. In the midst of these glowing visions of equal rights and opportunities that carpeted the path of desegregation, however, lower-class nonwhite communities in the fields and cities of the North and West felt an overwhelming deprivation. While their better-off neighbors were joining the exodus to suburbia, they remained behind in decaying neighborhoods and towns. In truth, the urban populations of major cities have become more isolated and more hostile to external authority as we have progressed toward the new millennium.

As we advanced into the 1970s, civil rights advocates pressed on to desegregate the public schools in Northern and Western cities. There the struggle focused on *de facto* segregation that arose from the real estate market—not from laws as in the South. It was a period when many who wanted a more integrated society preferred an indirect approach through education: perhaps residential segregation could be eased and offset by desegregating public schools.

Thus, desegregation in education became a crucial focus of civil rights activity in the late 1960s and early 1970s. The federal judicial system began to rule that segregating public schools by neighborhood was unconstitutional since neighborhood school policies reinforced racial boundaries established through residential segregation. The prescribed remedy was to redistribute the students by busing or other means that would achieve a better racial balance. The resulting turmoil between those fighting for community control and those fighting for uniform standards dramatized the fragmentation of the civil rights coalition of blacks and white liberals. Nevertheless, desegregation lurched forward, driven by lawsuits and court orders or voluntary initiatives of educational leaders. In spite of the intense resistance to busing, it was asserted that classroom desegregation had no ill effects on achievement of whites and had desirable effects on the achievement-test scores of blacks.⁴

Initially, the undesirable outcomes of busing were felt outside of the schools in the associated turmoil that busing created. White neighborhoods fought court orders as assaults on local autonomy and reacted by voting down school taxes, sending children to private schools, or moving away.⁵ As a result, schools suffered.

In addition, an increasingly conservative Supreme Court in 1974 in the *Milliken v Bradley* case called a halt to the pursuit of desegregation as it ruled out enlarging the scope of busing through the large-scale, compulsory transfer of students from inner city schools to suburban schools. Thus in the mid-1970s the advance of school desegregation seemed stymied.

Yet, as residential segregation in cities remained nearly as high as when the Fair Housing Act of 1968 was passed, desegregation continued to advance incrementally on a voluntary basis as school districts developed “choice” programs in strategically located “magnet schools.” Thus school districts induced parents to send their children by bus to racially mixed schools that were not perceived as a threat to segregated neighborhoods.⁶ Thereby, children coming together on “neutral terrain” became widely acceptable.

The widening access of nonwhite communities to better primary and secondary schooling contributed in significant ways to other gains being made in the 1970s and 1980s. The improved schooling opportunities enlarged the pool of minority students who were eligible for recruitment by universities that were now vying with one another to increase the presence of nonwhite students on their campuses. Federal grants were given to universities with high proportions of minority students as corporations developed a serious interest in recruiting minority graduates. As a result, an expanding minority middle class established itself in nonsegregated professions, government bureaucracies, and the business sector.⁷

What was accomplished in the late 1960s and early 1970s in education and politics came at a significant cost, including the break up of the original civil rights coalition and movement, which was based on collaboration between white elites and unified communities of color. The benefits of the later years went disproportionately to a thriving middle class escaping from the inner city instead of organizing it. Simultaneously, nonwhite communities no longer held the particular advantages that had energized them in the previous decades. Charismatic leaders were absent, the group of allies was shrinking, and there was no agreement on what to do. As a result, in the late 1970s, there was disorder in the public schools aggravated by massive “white flight” from large cities. Minority communities were turning inward to familiar sociocultural surroundings.

The 1980s produced little overall improvement. While the discussion of race raged on, economic inequality in the United States, now becoming greater than in any other industrial nation, attracted little notice. Social stability was preserved by retaining publicly disapproved affirmative action policies in spite of contemplated

efforts to reverse affirmative action by two Republican presidents, Reagan and Bush, in the 1980s.⁸ Thus, the civil rights deadlock persisted into the early 1990s in most areas except education.

What came to be called “multiculturalism” in the late 1980s is an educational approach that requires pervasive respect for ethnic and racial groups and formal validation of their distinctive sensitivities and heritages. Its standard is the promotion of “diversity.” This was preceded quietly under a milder label of “pluralism” and thereby spread to all levels of the American educational system since the 1960s. Not until the mid-1980s, however, did multiculturalism blossom into a highly charged crusade. In education, multiculturalism was seen in the short term to be a set of reforms intended to overcome the continuing failure of education to bring the social and cultural gains that ethnic and racial groups had expected from the civil rights movement. The stagnation of civil rights progress in the 1980s was clearly evident in poor performance of nonwhite children in urban school systems which continued to become more segregated.⁹ The supply of nonwhite teachers, those who could be effective role models for nonwhite children, was threatened by statewide competency tests that most nonwhite applicants failed.¹⁰ Simultaneously, a wave of immigration brought into the American public school system for the first time large numbers of nonwhite children from Latin America and Asia whose need of recognition and motivation was no less than the native nonwhite students who continued to be under served.

STRUGGLE FOR HISPANIC EDUCATION

While conventional wisdom defined the landmark *Brown* case as the beginning of the modern civil rights movement, the struggle by Hispanic communities for educational equity predates the civil rights movement of the 1960s by decades.¹¹ Although Hispanics have made significant progress in regards to educational inclusion in the last four decades, since the late 1970s hard-won gains have deteriorated. Many of today’s debated educational issues resonate with those discussed in Hispanic communities in the Southwest since early in the twentieth century, such as improving inferior school facilities, removing intolerant teachers and administrators, eliminating tracking, and including Hispanic history, language, and culture in the curriculum. Today’s conditions can be more appropriately understood within a historical analysis that connects the present to earlier periods and links alternative views to the judicial system and public policies (Vigil, 1980).

Several educational issues that were especially prominent throughout the Southwest over the past forty years include: continued school segregation, the struggle for bilingual education, and inclusion in higher education. During this period, school segregation, desegregation and now re-segregation efforts took on a new form and differed greatly from the era of *de jure* segregation that officially ended in 1954 with the *Brown* decision.¹² The bilingual education movement is unique to this period, and Hispanic participation in higher education was very limited prior to the 1950s. Another common thread that runs through this is the active participation of Hispanic communities, including their use of the judicial system in demanding educational equity. Though each of these issues was important throughout the nation, this presentation places an emphasis on California and Texas where the majority of Hispanics live and where much of the research on the education of Hispanics has focused. In addition, the contemporary focus on California at the end of this presentation is purposeful as California is setting a national public policy standard with legislation that negatively impacts the schooling of Hispanics.

The Persistence of de facto School Segregation

In the post-World War II decades of the 1950s and early 1960s, Hispanics saw the elimination of school segregation as the key to full economic and social mobility. Throughout the Southwest, however, judicial decisions outlawing the segregation of Hispanic students were ignored; instead, boards of education purposely overlooked desegregation, and *de facto* segregation of Hispanic students actually increased (Bogardus, 1949; Rangel & Alcalá, 1972; Salinas, 1971). Why were these judicial decisions ignored? One contention is that the prevailing social view about Hispanics braced the many political and economic justifications for their continued segregation. Indeed, the images of Hispanics held by many educators and the judicial system were premised upon political, scientific, and religious theories relying on racial characterizations and stereotypes about people of color that helped support a legitimating ideology and specific “political action” (Tate, 1997, p. 199). The ideologies of Anglo-Saxon superiority, capitalism, and scientific theories of intelligence provided the cornerstones of *de jure* segregated schooling for Hispanics throughout the Southwest during the first half of this century (Gonzalez, 1990; Menchaca & Valencia, 1990). These theories, along with a belief that viewed Hispanics as “culturally deficient” and characterized them as ignorant, backward, unclean, unambitious, and abnormal, were unaffected by major judicial decisions in

California and Texas (see Gonzalez, 1974).

In California, the *Mendez v. Westminster* (1946) landmark case officially ended *de jure* segregation for Hispanic students and cast doubt on the “separate but equal” doctrine. Judge McCormick’s 1946 ruling in favor of the plaintiffs, upheld in the Court of Appeals in 1947, found that the segregation of Hispanic children could be considered arbitrary action taken without due process of the law (Wollenberg, 1974). In Texas, just one year later, in *Delgado v. Bastrop Independent School District* (1948), as in California, the court ruled that placing Hispanic students in segregated schools was arbitrary and discriminatory and in violation of constitutional rights guaranteed by the Fourteenth Amendment (San Miguel, 1987). However, these cases, which ended *de jure* racial segregation for Hispanic students, did not change the existing social view that portrayed nonwhites as inferior.

In Texas, even after the *Mendez* and *Delgado* decisions found *de jure* segregation of Hispanic students of Mexican origins illegal, segregation continued to be widely practiced (Bogardus, 1949; Menchaca, 1995). When state school officials were confronted with evidence of continued school segregation, there was little interest in seriously addressing the problem. For example, representatives from the League of United Latin American Citizens (LULAC) and the American G.I. Forum¹³ found this to be true when they appeared before the State Board of Education in 1950 with a list of twenty Texas cities that were still practicing segregation in spite of the recent judicial decisions (San Miguel, 1987). In response, the State Board of Education proposed a policy statement on the illegality of the segregation of Hispanic schoolchildren but allowed local districts to handle the complaints and grievances of discriminatory treatment. The board’s policy simply created a bureaucratic process that limited the number of grievances that could actually reach the state commissioner of education. As San Miguel (1987) stated, “Between 1950 and 1957 nine local school districts were brought to the commissioner of education for special hearings, although hundreds of school districts throughout the state were segregating Mexican American students” (p. 132).

Belief in the “cultural deficiency” of Hispanics remained in place and supported the public policies that continued to segregate Hispanic students. Simultaneously, school segregation itself perpetuated an ideology of inferiority that, Lawrence (1993) argues, denies equal citizenship based not just on the act of segregation (*de jure* or *de facto*) but also on the defamatory message it sends about nontraditional students:

Brown held that segregation is unconstitutional not simply because the physical separation of Black and white children is bad or because resources were distributed unequally among Black and white schools. *Brown* held that segregated schools were unconstitutional primarily because of the message segregation conveys—the message that Black children are an untouchable caste, unfit to be educated with white children. Segregation serves its purpose by conveying an idea. It stamps a badge of inferiority upon Blacks, and this badge communicates a message to others in the community, as well as to Blacks wearing the badge, that is injurious to Blacks. (p. 59)

Following this line of reasoning the injurious message behind the segregation of Hispanic students was that they were inferior and did not deserve society's investment in their education. For example, in the *Mendez* decision, Judge McCormick stated, “the methods of segregation prevalent in the defendant school districts foster antagonisms in the children and suggest inferiority among them where none exists” (64 Federal Supplement, 1946, cited in Harders & Gomez, 1998, p. 8). Clearly, school segregation itself suggested an inferiority that was greater than any attempt to provide equal school facilities. Thus, even after the end of *de jure* segregation, Hispanic students remained segregated in substandard schools and were labeled as members of an inferior group.

The historic devaluation of the Spanish language also promoted these beliefs. Prohibiting Spanish-language use among Spanish-speaking schoolchildren was a practice used by local and state officials to justify school segregation and to subordinate Hispanics in American society.¹⁴ Bilingualism was seen as “un-American” and considered a “deficiency” and an obstacle to learning. There were no formal bilingual programs for Spanish-speaking students prior to the late 1960s, and it was routine to segregate Hispanic students into “Mexican schools” or “Mexican classrooms” using their perceived language deficiency as justification. Even after the end of *de jure* segregation, it was common to find Hispanic students physically separated from other students within the same classroom.

It was also common to retain Hispanic students back for several years while they learned English. This left them over age for their grade and thereby more likely to quit school before graduating.¹⁵ This perspective viewed bilingualism as a cognitive disability that caused confusion and impeded academic development. During the 1950s and early 1960s, many educators, along with LULAC, a key Mexican American community organization, strongly supported the idea of intensive

English instruction without the maintenance of Spanish as a way of learning English quickly to succeed in school (Crawford, 1992).

A number of Hispanic educators at the time advocated for an English only approach prior to offering their support for bilingual education in the late 1960s. Suppressing the use of the Spanish language was a way to degrade and control a cultural group without explicitly using force. It was one strategy for sustaining a hegemonic relationship between Hispanic communities and the dominant Anglo-Saxon society. Many Hispanics internalized these discrediting views of the Spanish language, and therefore, a disapproving view of themselves and their families in order to assimilate into the dominant Anglo-Saxon society.

Although the relationship between Hispanics and the dominant society is complex, it was clearly a part of school segregation. Hispanic boys and girls continued to be tracked into vocational classes that served an economic purpose and supported the unequal division of power, wealth, and status, just as in the era of *de jure* segregation. Young Hispanic women were tracked into home economics and clerical or secretarial classes, which prepared them for low-paying domestic and subservient work. Throughout the 1960s, the message that Hispanic students were inferior continued to translate into overcrowded and under-financed schools, low graduation rates, and the overrepresentation of Hispanic students in special education classes, including classes for the mentally retarded and the emotionally disturbed (California State Advisory Committee, 1968).

Factors such as the expanding Hispanic school-age population, immigration, urbanization, and white flight also contributed to the increased *de facto* segregation of Hispanic students. In cities such as Los Angeles, San Jose, Phoenix, Denver, San Antonio, and Houston, the picture was especially stark. By 1960, more than 80 percent of California's 1.4 million Spanish-surnamed people lived in urban zones, and the number of Spanish-surnamed children attending inferior segregated schools had increased (Wollenberg, 1974). Nearly half of all Hispanic students in the Southwest attended elementary and secondary schools in which the Hispanic enrollment was over 50 percent of the total student body (U.S. Commission on Civil Rights, 1971). As educational conditions deteriorated, stress and outrage increased, and Hispanics became disillusioned with the "American Dream." In response, many Hispanics in the 1960s embraced a nationalist perspective to bring about reform.

Civil Rights Politics and Public Policy of the Late 1960s

The latter half of the 1960s marked a period where youth played a central role in

shaping movements aimed against social institutions and the “establishment.” Street-level politics and protests marked this period and helped shape broader endeavors for social and political equality (Munoz, 1989). During this period of unrest, Hispanic students were influenced by numerous social and political forces, such as the wider “Chicano Movement,” the Black civil rights movement, the federal government’s War on Poverty, the anti-Vietnam War sentiments, the women’s movement, and political struggles in Mexico and Latin America. At the same time, the primary focus of public policy became expanding economic opportunity for low-income citizens, and education emerged as the fundamental mechanism for combating poverty and the associated inequality (Wise, 1982).

Throughout the Southwest, Hispanic communities struggling for their civil rights called attention to improving the poor quality of public education services offered to them. In March 1968, well over 10,000 Hispanic students walked out of East Los Angeles high schools to protest inferior school conditions. The students boycotted classes and presented a list of grievances to the Los Angeles Board of Education consisting of thirty-six demands, including smaller class sizes, bilingual education, an end to the vocational tracking of Hispanic students, more emphasis on Hispanic history, and community control of schools (McCurdy, 1968). The East L.A. walkouts focused national attention on the elementary and secondary schooling of Hispanics and also set a precedent for school boycotts throughout the Southwest, including those in Crystal City and San Antonio, Texas; Denver, Colorado; and Phoenix, Arizona (Acuna, 1988). At the same time, as social activism and public policies were opening the doors to higher education, a number of social forces were shaping bilingual education.

The struggle by Hispanics to obtain equal educational opportunities through bilingual education in public schools was fueled by the political participation and policies of the 1960s. San Miguel (1985) notes that two views on bilingualism came into conflict and contributed to the formation of integrated education policies. The “assimilationist” view continued to uphold the post-World War II belief that bilingualism is divisive and un-American, a disability rather than an advantage. Shared by school leaders and their supporters, this view held that language and culture were incidental to the teaching and learning processes. It did not recognize the utility of incorporating the language and culture of limited-English speaking students into the public school learning and teaching environment. Prior to the late 1960s there were no bilingual programs for Spanish-speaking students, and it was routine to segregate Hispanic students based on their perceived “language deficiency.”

The assimilationist view left students believing that speaking Spanish in school was an evil they had to avoid at all costs.

A second view of bilingualism, the “pluralist” perspective, accepted the multiplicity of languages as a necessary, albeit insufficient, ingredient in public education. Hispanic communities and political allies embraced this view. Pluralists viewed the home language and culture of the child as essential to the instructional and learning processes. During the late 1960s, a number of educators, sociolinguists, and Hispanic community leaders openly challenged the commonly held assimilationist perspective. Hispanic student activism focused on poor educational conditions, intolerant school policies, and the implementation of bilingual education. Hispanics began to regard language as a matter of self-determination and as a basic human right. For many Hispanics, the right to maintain Spanish was a way of manifesting some control over their lives and destiny. Whatever the justification, bilingual education offered some hope that schooling would be more meaningful and would lead to educational equity.

With much political pressure from Hispanic communities and educators who held a pluralist perspective, the federal government funded bilingual education in 1968 through Title VII of the Elementary and Secondary Education Act of 1965 (Crawford, 1992). The 1968 Bilingual Education Act provided money to train teachers and aides, to develop instructional materials, and to establish parent-involvement projects. The intent of the Act was “... to develop and carry out new and imaginative elementary and secondary school programs ... [for] children of limited English-speaking ability” (Crawford, 1992, p. 85). However, the act did not impose teaching methods or even define the concept of bilingual education. In addition, the bill was viewed as a compensatory educational program in which “linguistically disadvantaged” children were assisted.

It is often argued that civil rights legislation has been very modest in its efforts to eliminate inequalities and often serves those in power as much if not more than those it is actually supposed to serve (Crenshaw, Gotanda, Peller, & Thomas, 1995; Matsuda, Lawrence, Delgado, & Crenshaw, 1993). For example, in many Hispanic communities, bilingual education represented a way to maintain one’s culture and was by definition a rejection of servitude. However, the official goals of bilingual education emanating from federal and state bilingual education mandates from 1968 to the present have never included the maintenance of the student’s home language and culture. An early debate in the House and the Senate revolved around whether bilingual education was simply a better way to teach English or a means to

preserve unwanted ethnic pluralism. In fact, one of the sponsors of the original 1968 Bilingual Education Act was careful to state during the deliberation of the bill, “It is not the purpose of the bill to create pockets of different language throughout the country ... not to stamp out the mother tongue and not to make their mother tongue the dominant language, but just to try to make these children fully literate in English, so that the children can move into the mainstream of American life” (Crawford, 1992, p. 84). Even during the mid-1970s, when bilingual education enjoyed its greatest level of support, native language instruction was only seen as a necessary strategy that allowed a child to achieve competence in English (Roos, 1978). Never has federal or state legislation stated that bilingual education should help students maintain their first language to become bilingual and biliterate citizens. Yet, paradoxically, during the 1960s, the federal government spent millions of dollars trying to ensure a bilingual populace by calling for “foreign language” requirements and well-funded foreign language departments in select high schools and many universities (Crawford, 1992). These efforts supported by the 1958 National Defense Education Act, certainly benefited traditional middle-class non-white students more than those Spanish-speaking students who started school already fluent in a second language.

In order to compel school officials to provide bilingual education, Hispanics brought lawsuits under Title VI of the Civil Rights Act, which bans discrimination based “on the ground of race, color, or national origin” in “any program or activity receiving Federal financial assistance.”¹⁶ In the 1974 *Lau v. Nichols* case, the plaintiffs charged that where students were taught only in English, school officials had not taken significant action to provide a *meaningful* education. The Supreme Court unanimously found that by “failing to affirmatively overcome the English language deficiencies of national origin group children with limited English-speaking ability, school officials had violated Title VI of the Civil Rights Act” (Roos, 1978, p. 116). The court handed down this decision even though the school district had made an effort to remedy language difficulties by providing supplemental English instruction to about 1,000 of the 2,856 Chinese students who did not speak English. About 1,800 students however did not receive any special instruction, which was a violation of Title VI of the Civil Rights Act. The decision helped to establish a precedent, though it did not provide a specific remedy to assist students with limited English proficiency.

Hispanics in New Mexico used the *Lau* decision in *Serna v. Portales Municipal School* (1974) under Title VI. Hispanics in the New Mexico community felt that the

school district's English as a Second Language (ESL) remedy was an inadequate response to the educational needs of Hispanic students. Expert witnesses testified that when a child "goes to school where he finds no evidence of his language and culture and ethnic group represented [she/he] becomes withdrawn and nonparticipating" (cited in Roos, 1978, p. 129). Using *Lau* as a precedent, the court held that the district's failure to offer a bilingual and bicultural educational program that provided *Hispanic* students with a *meaningful* education deprived them of their rights under Title VI (Martinez, 1994). It is significant that the court once again decided against the school district even though the school district was making an effort to provide a limited ESL program.

Legal indeterminacy has led to various judicial interpretations. Policies and laws regarding bilingual education are indeterminate in that courts often exercise discretion in rendering vague standards and justifying multiple outcomes to lawsuits (Martinez, 1994). Such was the case in decisions that ignored or interpreted *Lau* and *Serna* differently. For example, *Keyes v. School District Number 1* (1973) although often thought of as a desegregation case, was similar to the *Lau* and *Serna* cases.¹⁷ The Hispanic plaintiffs "alleged that the Denver school board's failure to adopt a bilingual and bicultural program constituted a violation of Title VI" (Martinez, 1994, p. 608). In 1975 the Tenth Circuit Court of Appeals found that the district had implemented various programs to address the needs of students with limited English proficiency (as did the school districts in *Lau* and *Serna*), and therefore was not in violation of Title VI. The *Keyes* decision, made by the same circuit that affirmed the extensive bilingual and bicultural education programs in *Serna*, failed to discuss the *Serna* and *Lau* decisions and did not explain how its ruling was consistent or inconsistent with those cases (Martinez, 1994). The *Keyes* case demonstrates that courts can and have exercised discretion to limit access to bilingual and bicultural education.¹⁸

Rising Conservative Parsimony

The conservative retrenchment that began in the mid-1970s and blossomed during the Reagan and Bush administrations had a negative impact on the schooling of Hispanics. A strong backlash against the social equity programs of President Johnson's War on Poverty was accompanied by increased military spending, reduced educational spending, and a growing recession. The conservatives regained a strong voice, which was reflected in social ideas, educational policy, and judicial decisions. Tension between desegregation and bilingual education intensified as

the funding for bilingual education was drastically reduced and public school finance was restricted for schools serving large concentrations of Hispanic students. This left Hispanic students in under-funded, segregated schools that failed to adequately prepare them for postsecondary education. At the same time, the myth of meritocracy in higher education and a growing attack on affirmative action programs further affected Hispanic students' access to postsecondary education.

School desegregation has generally been thought of as an issue pertinent only to African American communities, with Hispanic students often being omitted in the process and in the educational literature. By the 1970s, more Hispanic students attended second-rate segregated schools than at the time of the 1947 *Mendez* decision. In fact, many Hispanic scholars and activists believe that the *Brown* decision had no effect on the schooling of Hispanic students until the 1970s, when the courts were forced to decide how to treat Hispanic students in the desegregation process (Acuna, 1988). *Cisneros v. Corpus Christi Independent School District* was filed in 1968 by Hispanic labor activists in Corpus Christi, Texas, and was decided in 1970 at the federal district court level. The plaintiffs challenged the legal framework for future desegregation cases and the segregation of Hispanic and African American school children in Corpus Christi. The court ruled that Hispanics were an identifiable ethnic minority and found them to be unconstitutionally segregated in the public schools. It also required that an appropriate desegregation plan that included Anglos, Hispanics, and African Americans be submitted (San Miguel, 1987). Prior to this case, the strategy employed in most successful school desegregation efforts was based on Hispanics' claim to "whiteness."¹⁹

The U.S. Supreme Court reinforced how Hispanic students were to be treated in the school desegregation process in the 1973 *Keyes v. School District Number 1* case. Before *Keyes*, Denver Public Schools, like many schools throughout the Southwest, integrated Hispanic students with African American students and called it desegregation. The court either had to define Hispanic students as, "Caucasians and integrate them with African Americans or redefine their ethnic status (as a protected ethnic minority group) and integrate them with everyone else" (Donato, 1997, p. 124). In *Keyes* the Supreme Court decided that Hispanic students were an identifiable minority group and ruled that they had been denied their constitutional rights by the Denver Public Schools. The court authorized racial-balance remedies and required districts to desegregate African Americans and Hispanics into predominantly White urban schools.

It is important to note that after these decisions and throughout the 1970s,

there was growing disunity between the pursuit of bilingual education and school desegregation. Prior to *Brown*, during the 1930s and 1940s, Hispanics fought school segregation in the courts in such cases as *Alvarez v. Lemon Grove* (1931), *Del Rio v. Salvatierra* (1931), *Mendez v. Westminster School District* (1947), and *Delgado v. Bastrop* (1948). A few decades later, Hispanics began to see bilingual education as key to the quest for equal education, and judicial decisions such as those in *Lau* and *Serna* placed responsibility for meeting the needs of students with limited English proficiency on the schools. After a difficult struggle to obtain the right to bilingual instruction, many Hispanic communities were suspicious of desegregation efforts that might disperse Hispanic students without considering their need for bilingual education.²⁰ Parents and policymakers argued that bilingual education and desegregation might not be fully compatible. Desegregation usually meant “scattering Black students to provide instruction in ‘racially balanced’ settings. Bilingual education, on the other hand, has usually meant the clustering of Spanish-speaking students so they could receive instruction through their native language” (Zerkel, 1977, p. 181). By the mid-1970s, enforcement of both the *Brown* and *Lau* decisions led to more complications than policymakers originally anticipated, as Hispanic students were re-segregated based on language within desegregated schools (Donato, et al., 1991). This was an ironic result of desegregation and bilingual education efforts, and depending on one’s educational philosophy, either desegregation or bilingual education could be openly supported. For example, education policymakers who opposed bilingual education could avoid it by dispersing limited English-proficient students throughout their districts in the name of desegregation. At the same time, someone who opposed mixing White and Hispanic students in the same classroom could use the opportunity to segregate Hispanic students into bilingual classrooms, thus using the same old racially motivated rationale for separating Hispanic children from White students based on their perceived language deficiency (see Donato, 1997). By the early 1980s, the discord between desegregation and bilingual education was receiving increasingly more attention. Though some educators throughout the Southwest were optimistic that the two could work together, there was little time to successfully produce meaningful results in meeting the needs of Hispanic students. During the 1980s, assimilationist educators and politicians gained the upper hand; bilingual education was under strong attack, and financial support for it was being drastically reduced. The 1980s provided a political climate in which community participation was difficult and bilingual education suffered numerous setbacks.

Under the Reagan administration, as the government spent billions of dollars on the military, Title VII Bilingual Education funding was cut from \$167 million in 1980 to \$133 million in 1986, representing more than a 20 percent reduction (Loya, 1990). This, at a time when the number of English learners was greatly increasing. In California alone, students with limited English proficiency increased nearly 75 percent, from 326,000 in 1980 to 568,000 in 1986 (California State Department of Education, 1993).

The End of Progressive Change: Educational Inequity in the 1970s and Beyond

At the same time that bilingual education was attacked and suffering reduced financial support, the conservative retrenchment also attacked public school finance. In order to compel school officials to provide educational equity, Hispanics brought lawsuits under the equal protection clause, such as *San Antonio School District v. Rodriguez*, a class-action suit filed in 1968 by Demetrio Rodriguez and other parents on behalf of their children who were students in the Edgewood School District, which was poor and 96 percent non-White. At the time, San Antonio had several school districts segregated along class and racial/ethnic lines. Edgewood was among the poorest, while Alamo Heights, with a predominately White student population, was the richest (Acuna, 1988). The Mexican American Legal Defense and Educational Fund (MALDEF) argued on behalf of the Edgewood parents that the Texas finance system taxed residents of the poor Edgewood district at a higher rate than it taxed residents of Alamo Heights. In addition, per pupil spending was much lower in Edgewood than in the wealthier district. Even with the minimum provided by the state, Edgewood spent only \$231 per pupil, while Alamo Heights was able to spend \$543 on each pupil. The state public school financing practices were challenged and presented as a violation of the federal equal protection clause of the U.S. Constitution. The district court ruled in favor of Rodriguez and the other parents, and found that Texas was in violation of the equal protection clause. However, the U.S. Supreme Court overruled the decision in 1973. The Court's five-to-four decision in *Rodriguez* is especially noteworthy because it signaled the end of an era of progressive change and set the tone for educational inequity during the 1980s and 1990s.

In Colorado, plaintiffs in *Lujan v. Colorado State Board of Education* (1979) charged that the Colorado school finances system violated the equal protection clause of the U.S. and Colorado Constitutions because of the extreme funding disparities among school districts in the state. Lower per-pupil expenditures existed in districts with high Hispanic student enrollment. Though the district court ruled in

favor of the plaintiffs, in 1982 the State Supreme Court of Colorado held that the financing system was constitutionally permissible, thus leaving the system virtually unchanged.

In another key school finance case, *Serrano v. Priest* (1971), John Serrano sued the California state treasurer on the grounds that his son received an inferior education in East Los Angeles because the state school finance system was based on financing schools through local property taxes. He alleged that, due to the differential property values and resulting tax base, children were given unequal treatment and resources in poor districts that did not have as high a tax base and funding as wealthier districts (Acuna, 1988). In 1971 the California Supreme Court ruled in his favor, finding that “financing primarily through local property taxes failed to provide equal protection under the law” (Acuna, 1988, p. 389). The U.S. Supreme Court upheld the *Serrano* decision in 1976, but limited its decision to California, stating that the finance system violated the state’s equal protection clause by denying equal access to education. *Serrano*, however, brought few changes to the schooling of Hispanics because wealthier districts still had better facilities, more experienced teachers, and less overcrowding. Soon after, in 1978, California’s Proposition 13 applied a taxation cap that in effect restricted funding for all districts in California. By the late 1980s, California ranked eighth nationally in per capita income, but spent only 3.8 percent of its income on public education, placing it forty-sixth among the fifty states. Although educators and researchers do not agree about whether there is a causal relationship between educational expenditures and the quality of education, there is widespread agreement that Hispanics are generally subjected to inferior educational conditions in poorly funded schools (De La Rosa & Maw, 1990; Valencia, 1991).

A number of other factors promoted the educational inequity of Hispanic students in the 1980s and into the 1990s. For example, schools with large proportions of Hispanic student enrollment that were among the most severely underfunded were also the most overcrowded, offering a limited curriculum with few resources (Achievement Council, 1984; Assembly Office of Research, 1990). Hispanic students were disproportionately retained for at least one grade and were seldom exposed to enriched curricula or pedagogy (Achievement Council, 1984; Assembly Office of Research, 1985). There were few Hispanic teachers and administrators in California’s schools (California State Department of Education, 1985, 1988). Throughout the Southwest, Hispanic students were highly unlikely to have

Hispanic teachers as mentors, since Hispanics made up only 2.9 percent of all public school teachers in the nation (De La Rosa & Maw, 1990).

Hispanics and other nonwhite high school students continue to report that they feel their teachers, school staff, and peers neither like nor understand them. Many of their teachers admit to not always understanding ethnically diverse students (University of California Latino Eligibility Task Force, 1995).

In addition, the continued school tracking of Hispanic students into vocational programs and into special education programs for learning-disabled students has promoted educational, social, and economic inequities for such students and has limited their access to higher education (Aguirre, 1980; Oakes, 1985; Gonzalez, 1990; Mitchell, Powell, Scott, & McDaid, 1994). Throughout the Southwest, Hispanic students in elementary and secondary schools have been systematically tracked into courses that do not provide an environment or curriculum that prepares them for the postsecondary level (Aguirre & Martinez, 1993; Oakes, 1985). Indeed, 75 percent of all Hispanic high school seniors in 1980 had been enrolled in a curricular program that made a college education improbable. For those Hispanics who enrolled in a postsecondary institution, half attended a community college instead of a four-year institution (Astin, 1982; Duran, 1983).

The pre-college experience of Hispanics continues to differ vastly from that of middle-class white students: college access and successful college participation for Hispanic students is severely limited by an inferior secondary education.²¹ By tracking Hispanic middle and high school students into low-ability classes, they are not given enough exposure to the academic subjects, critical thinking skills, and writing skills that are needed to do well on college entrance exams or in a college classroom (Duran, 1983). Access to college by Hispanic students today is also limited by the myth of meritocracy and the attack on affirmative action.

WHERE WE ARE TODAY

Today, there is evidence that points to, at best, some progress. More Hispanics are going to college, most major universities in the Southwest offer some type of Hispanic Studies courses, and more Hispanic scholars are writing about and documenting the life experiences of Hispanics. In California, more Hispanic students are graduating from high schools, more are taking the SAT and ACT tests, and more are becoming eligible for the California community college and state university system (University of California, Latino Eligibility Task Force, 1995). These improve-

ments are modest, however, particularly when contrasted with the proportional growth of the Hispanic population over the last fifty years. Moreover, attacks continue on the educational opportunities and the quality of education offered to Hispanic students. Presently, Hispanics are still considered to be the most unlikely racial/ethnic group to finish high school, attend college, and graduate from college (Chapa 1991; Gandara, 1994). From the 1960s to the present, it is safe to say that public schools have continued to consistently fall short of providing for the success of Hispanic students at every point in the educational pipeline. The current anti-civil rights, anti-Hispanic, and anti-immigrant beliefs manifested in California's Propositions 187, 209, and 227 continue to shape public policy that directly affects Hispanic communities' educational, economic, political, and social well-being. Although such legislation and policy initiatives seem to issue primarily from California, it is significant for all Hispanics in the United States because California appears to be setting a national public policy standard as it stimulates a new politics of civil rights (Garcia, 1995).

California's Proposition 187: An Extended Form of School Exclusion

Even the educational statistics of the late 1980s and the prediction that "the segregation of Hispanic students will intensify in the years ahead" (Valencia, 1991, p. 7) did not prepare us for California's public referendum that attempted to push Hispanic school resegregation toward Hispanic school exclusion. In the early 1990s, then Governor Pete Wilson and a group of "concerned" California citizenry began the Save Our State (SOS) movement, which put Proposition 187²² on the 1994 California ballot. Proponents of 187 argued that "illegal aliens" were unfairly benefiting from state resources and were crowding children out of public schools. Proposition 187 attempted to extend the segregation of Hispanic students by denying public education to anyone attending a public elementary, secondary, or postsecondary school who was "reasonably suspected" to be an "illegal alien" in the United States. In addition, Proposition 187 required teachers and other officials to report those who were *suspected* of being in this country without proper immigration documents. These educational sections of the initiative were in direct conflict with the Supreme Court's 1982 decision in *Plyler v. Doe* which held that the state of Texas could not bar undocumented children from public elementary schools because doing so violates the Equal Protection Clause of the Fourteenth Amendment. The authors of Proposition 187 put forth the initiative knowing *Plyler* was a legal precedent that provided protection for undocumented students to attend public

schools. In fact, one of the goals of the proposition's authors was to call on a more politically conservative Supreme Court to overturn the *Plyler* decision.

Supporters of Proposition 187 also contended that the measure had nothing to do with race/ethnicity, arguing that it was merely an attempt to save scarce state resources. However, opponents viewed the initiative as an attack on ethnic minorities, and saw it as part of a historical persistence of race-based immigration and education policies (Garcia, 1995). For example, using the term "illegal alien" marks undocumented immigrants as evildoers. Just as *de jure* segregation conveyed an idea of the inferiority of particular members of a community, Proposition 187 criminalized undocumented immigrants and those who are suspected of being "illegal aliens": "If we assume that undocumented immigrants are a criminal element, then we are automatically accepting that the existing ... laws are just and fair" (Bosco, 1994, cited in Garcia, 1995, p. 118). Indeed, Proposition 187 was not a race-neutral law and would have disproportionately affected Hispanics and other people of color who are stereotyped as "illegal aliens." Though the initiative passed by a margin of 59 percent to 41 percent, there was a tremendous amount of community mobilization against it. Students all over the state engaged in demonstrations, walkouts, and protests. The 1994 student resistance to Proposition 187 echoed the student resistance of the 1960s. In both cases, students were motivated to transform existing conditions that devalued their experiences and limited their access to quality education. California's passage of Proposition 187 reflected the essence of the educational segregation that Hispanics have historically contested in efforts to gain their constitutional right to an equal public education. The passage of Proposition 187, in part, was an attempt to exclude Hispanic students from public education. Similar measures followed in other states, as did calls for reduction in funding for bilingual education and the implementation of English-only policies (Garcia, 1995). In California, MALDEF and the American Civil Liberties Union (ACLU) were key in pursuing legal action against the proposition, and the five lawsuits filed against the state were consolidated into one federal action. U.S. District Judge Mariana Pfaelzer ruled that the proposition was "unconstitutional from top to bottom" because the state has no power to regulate immigration. The 1994 student rallies and assemblies in disapproval of Proposition 187 and the state and federal lawsuits filed against its passage, illustrate the various actions taken by Hispanics to obtain equal access to public education. Certainly the legal challenges to Proposition 187, and its defeat in the courts, indicates that these political and legal strategies can be successful and continue to be crucial in Hispanics' pursuit of educational equity.

California's Proposition 209: A Resurgence of Anti-Civil Rights Sentiment

Today, California leads the national movement to dismantle affirmative action programs. In 1996, California voters passed Proposition 209, the *California Civil Rights Initiative*.²³ Proposition 209 adopts the language of early civil rights legislation to eliminate, in essence, all affirmative action in California. It states that California shall not use "race, sex, color, ethnicity, or national origin as criterion for either discriminating against, or granting preferential treatment to any individual or group..." While the legislation outlaws considerations of race/ethnicity in university admissions, outreach, and recruitment, it also ignores current societal inequalities. The legislation to dismantle affirmative action and its proponents adopted a narrow interpretation of the equal protection clause, embracing a notion of a color-blind constitution and the myth of meritocracy. Thereby, supporters are able to argue simultaneously that they strongly support equal opportunity for people of all color and that affirmative action policies violate a White man's right to equal protection, resulting in "reverse discrimination."

Proposition 209 legislates restricted access for Hispanics and other people of color at a time when university campuses remain racially stratified. Throughout the Southwest at least 50 percent of all Hispanics who go to college go to a community college rather than a four-year institution (Astin, 1982; Olivas, 1986; Villalpando, 1996). The proposition is a specific anti-civil rights initiative supported by a meritocracy myth, which validates subjective and highly selective processes that keeps the gates to institutions of higher education guarded. The selection policies at the "gatekeeper" institutions exert a powerful and controlling influence over who enters certain professions and who has access to positions of influence and economic and social rewards.

Proposition 209's attack on civil rights policies applies to the state's system of public employment, public education, or public contracting. Astin (1982) warns, however, that we should not confuse university admissions with employment and must acknowledge that discrimination in college admissions is often based on something other than a racial/ethnic classification, such as athletic ability or musical talent.

Most significant is that Proposition 209 limits access to higher education just as an increasing number of Hispanic students are attending elementary and secondary schools. In 1995, California's Hispanic student population was 2.3 million, and it is projected to reach 3.1 million by the year 2005 (University of California Latino Eligibility Task Force, 1997). Yet only 3.9 percent of all Hispanic high school

graduates were fully eligible for admission to the University of California, and the proportion of those admitted to four-year colleges appears to be declining nationally (University of California Latino Eligibility Task Force, 1997). These factors combine with the passage of Proposition 209 to create a great need for an overhaul in policies that guard access to all levels of education.

California's Proposition 227: The Latest Challenge to Educational Equity

In June 1998, California voters passed Proposition 227, the *English Language Education for Immigrant Children* initiative.²⁴ The proposition was cosponsored by a wealthy Silicon Valley businessman, R. Unz, who unsuccessfully ran for governor of California in 1994, and Gloria Matta Tuchman, who failed in her first attempt to be elected State Superintendent of Public Instruction.²⁵ The proposition espouses the values of a just society while calling for the elimination of bilingual education in the state of California. The proposition mandates that within sixty days of its passage, 1.38 million limited-English-speaking students be put into separate classrooms regardless of age, language background, and/or academic ability (Citizens for an Educated America, 1997). In these separate classrooms, these students will be taught English by a teacher who will be restricted, under the threat of a lawsuit, from speaking to them in their primary language.

Advocates of Proposition 227 claim to have in mind the best interests of children “regardless of their ethnicity or national origins” (Article I: b, c, f). However, Article 21, the crux of the proposition, requires a 180-day English-only approach and states that, “all children in California public schools shall be taught English by being taught in English during a temporary transition period not normally intended to exceed one year.” This requirement counters educational research demonstrating that, unlike dual language immersion approaches, English immersion is one of the least effective ways to teach children with limited English proficiency (Cummins, 1981; Gandara, 1997; Krashen, 1981; Wong Fillmore, 1991). The initiative does away with all bilingual education and English-language development programs that do not meet its rigid 180-day English-only approach. It also allows local schools “to place in the same classroom English learners of different ages but whose degree of English proficiency is similar” (Article 2). This means, for example, that twelve-year-old boys and six-year-old girls of any language group can be placed in the same classroom for a full year (180 days) to study English, without any instruction in content areas such as math, science, and social studies. Educators know from experience that placing all English-language learners into a separate classroom,

regardless of age and academic abilities, and using rote memorization to teach English without academic instruction will fail because it was the standard process that failed miserably in the era of *de jure* segregation. Indeed, its failure was the reason why the federal Bilingual Education Act²⁶ was passed just thirty years ago.

Today, Proposition 227 represents a distinct cultural attack on Hispanics, imposed on Hispanic students, and creates yet another educational barrier. For example, although Proposition 227 proponents presented themselves as the voices of Hispanics, arguing that Hispanics supported the measure by an overwhelming majority, the actual Hispanic vote on the proposition was 63 percent “No” and 37 percent “Yes” (Pyle, McDonnell, & Tobar, 1998). The proposition was carried by a two-to-one vote among Whites in an electorate in which Whites represent a larger percentage than they represent in the general population. The victory of Proposition 227 will be a victory imposed on Hispanics despite their opposition. In fact, Hispanic students will be disproportionately affected if the new law goes into effect because 80 percent of California’s limited-English-proficient students are Spanish speakers (Gandara, 1997). There is, however, hope that the new law will not be enforced, as a coalition of civil rights groups filed a lawsuit in federal court to challenge Proposition 227 the day after it was passed by voters. Their lawsuit contends that Proposition 227 violates the U.S. Equal Educational Opportunities Act of 1974, Title VI of the Civil Rights Act of 1964 and the constitutional right to equal protection. Thus we see the rekindling of the historic tradition of Hispanic community action in their pursuit of an equitable and just education.

CONCLUSION: WHAT IS THE FUTURE?

The story of civil rights in the twentieth century, as Higham (1997) notes, can be seen as having the shape of a wave moving up a beach: a low swell, moving slowly, gaining momentum. At a certain point it surges to a mighty crest that crashes with a roar. A wash of water flows onward, but the force is gone. The water is receding. This is the pattern of the civil rights struggle: a gradual improvement in the 1920s and 1930s, accelerating power after the Second World War, a breath-taking climax in the 1960s, and an aftermath of persistence and stagnation from the 1970s through the 1990s.

The stagnation of today in the civil rights movement can be seen in a longer perspective as a phase of spiraling history. Each major advance loops backward before another spiral arises. Yet, the backward turn never returns us to the starting point of the previous phase. Both the surging gains and bitter disappointments of the civil rights movement in the twentieth century have occurred before, and each

time some advance toward social equality has survived. Whether the spiral can recur in the new millennium, as it has in the present and past millenniums, is for each of us to judge.

What has been provided is an overview of the particular struggle for the educational equity for Hispanics from the 1950s through the 1990s and demonstrated a relationship between popular societal views, judicial decisions, and educational policies and practices. Continued school segregation, pre-collegiate educational equity, Bilingual Education, and access to higher education have all been at the forefront during this period. While it has been asserted that schooling for Hispanics has indeed improved since the era of *de jure* segregation, since the late 1970s there has been a decline and deterioration of educational gains. Many of today's most important educational issues are similar to those voiced in Hispanic communities prior to the 1950s. The improvements in the schooling of Hispanics have been modest at best and have not really kept pace with the demographic growth of the Hispanic population.

Hispanics have a rich historical legacy that includes active struggles to gain equal access to quality education. A focus of the Hispanic student movement was improving the quality of education at various points in the educational pipeline. Over the past four decades, Hispanic families have used the judicial system to fight educational practices that have limited the education of their children. They have utilized the courts to fight for bilingual education and to fight against school segregation and related schooling inequities. Today, Hispanic students and their families continue to struggle in the pursuit of quality education through political participation and legal recourse. History is repeating itself. Exclusionary laws such as California's Propositions 187, 209, and 227 contribute to a stagnating civil rights climate that fosters the intolerant practices of the *de jure* segregation era. Inasmuch as the education of all Hispanic students is threatened, it is crucial that educators, policymakers, and Hispanic communities continue to engage in strategies that combat this antagonistic civil rights climate as they pursue educational equity.

As we look forward to the civil rights struggle of the new millennium, history seems to suggest to us that a restoration of cooperation and trust between leaders on all sides will have to rank high in the leadership exercised. Each one of us will need to risk unpopularity while holding firmly to a popular following. On all sides leaders will need to have a flexible, loosely bound identity, be undefensive and therefore willing to incorporate something of the "others" who are different from themselves.

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ENDNOTES

¹ “Hispanic” is used when referring to individuals from Spanish language origins living in the United States irrespective of immigration or generation status. “Latino” is sometimes used when referring to contemporary issues in order to be more inclusive of all mestizo peoples whose families might originate in Central America, South America, the Caribbean, and Mexico, and who share geographic and sociopolitical space with others from Spanish language origins. “Hispanic” is also used when data have not been disaggregated for Spanish language origin groups.

² See John Higham, ed., *Civil Rights and Social Wrongs: Black-White Relations Since World War II—How the Civil Rights Movement Led to Affirmative Action, Multiculturalism and Stalemate*, (University Park, PA: Penn. State University Press, 1997).

³ Michael J. Klarman, “How Brown Changed Race Relations: The Backlash Thesis,” *Journal of American History* 81 (1994): 81–118.

⁴ Rand Corporation, *Student Achievement and the Changing American Family: An Executive Summary* (MR 535, Santa Monica, CA, 1994), 11–25.

⁵ Howard Husock, “Boston: The Problem That Won’t Go Away,” *New York Times Magazine*, November 25, 1979, 32–34, 90–100.

⁶ James S. Liebman, “Three Strategies for Implementing Brown Anew,” in *Race in America: The Struggle for Equality*, eds. Herbert Hill and James E. Jones Jr. (Madison: University of Wisconsin Press, 1993), 113–15.

⁷ Richard D. Kahlenberg, *The Remedy: Class, Race and Affirmative Action* (New York: Basic Books, 1996), 45.

⁸ James F. Simon, *The Center Holds: The Power Struggle Inside the Rehnquist Court* (New York: Simon and Schuster, 1995).

⁹ See Gary Orfield et al, 1997.

¹⁰ On indifference among teenagers, see Jon Wiener, *Professors, Politics and Pop* (London: Verso, 1991), 136–51

¹¹ See James D. Vigil, *From Indians to Chicanos: The Dynamics of Mexican American Culture* (Prospect Heights, IL: Waveland Press, Inc., 1980), for a history of the Hispanic Community in the Southwest and their struggle for inclusion.

¹² *De jure* segregation refers to that which is supported by official policy or law, while *de facto* segregation refers to that which exists in reality but without lawful authority.

¹³ LULAC was founded in Texas in 1929 by middle-class English-speaking Hispanic Americans who stressed American patriotism. As a civil rights organization, LULAC led the fight for school desegregation in the 1930s and 1940s. In 1948 the American G.I. Forum was founded in Texas as a Hispanic veterans organization that was interested in the welfare of veterans and their families. The organization became interested in fighting discriminatory practices in all public institutions, and educational issues were of primary importance. Today, LULAC and the G.I. Forum are national organizations that have often joined forces in their struggles for educational and social equity.

¹⁴ A colonized relationship in general is one of economic, political, and cul-

tural domination and subordination of one group by another. The dominant and subordinate groups are defined along ethnic and/or racial lines, and the relationship is established to serve the interests of the dominant group. See Mario Barrera (1979) for a discussion of Hispanics and internal colonialism, a form of colonialism in which the dominant and subordinate groups are within a single society and there are no clear geographic boundaries of a “colony.”

¹⁵ For historical and contemporary discussions of Hispanic grade retention and risk factors for dropping out, see California State Advisory Committee, 1968; Assembly Office of Research, 1985; and De La Rosa & Maw, 1990.

¹⁶ These lawsuits include *Serna v. Portales Municipal Schools*, (1974); *Otero v. Mesa County Valley School District*, (1975); and *Guadalupe Organization v. Tempe Elementary School District*, (1978). For more on these cases see Martinez, 1994.

¹⁷ In *Keyes v. School District Number 1*, plaintiffs alleged that the school board was practicing *de jure* segregation. The Supreme Court then ruled that the school board had an unconstitutional policy of deliberately segregating Park Hill area schools and granted review to determine sufficiency of proof that school authorities have pursued an intentional policy of segregation in a substantial portion of the school district.

¹⁸ Later in 1981, the *Castaneda v. Pickard* case put forth a three-prong test that the federal courts continue to follow today when evaluating a school district’s actions in overcoming the language barriers of students. In *Castaneda*, a group of Hispanic children and their parents challenged the practices of a Texas school district under the Fourteenth Amendment, Title VI, and the Equal Educational Opportunity Act. The plaintiffs charged that the district failed to offer adequate bilingual education to overcome the linguistic barriers of students. The court ruled in favor of the plaintiffs and set forth the three-prong analysis for courts to follow: 1) a court must determine whether the district is pursuing a program that is based on sound educational theory; 2) the court must establish whether or not the programs and practices effectively implement the educational theory adopted; and 3) the court must determine if the school’s program actually results in overcoming language barriers of students.

¹⁹ In other words, since federal and state policies prior to 1954 had allowed for the segregation of Blacks and Whites and had not referenced Hispanics, the strategy had been to have Hispanics classified as part of the White race. If Hispanics were declared White, then segregating Hispanic students from White students in the absence of a law allowing for their separation would be illegal. The *Cisneros* case was the first time a court officially recognized Hispanics as an identifiable minority group, thereby allowing them to use the equal protection strategy used in Black desegregation cases rather than the claim to “Whiteness” strategy.

²⁰ See Donato, 1997, for documentation of the discord between bilingual education and desegregation.

²¹ The complex relationship between race/ethnicity, class, and gender, and how each of these categories contributes to the marginalization of Hispanic students, cannot be fully dealt with here. However, it should be noted that even middle-class

Hispanic college students often experience a sense of marginalization, particularly when they are first-generation college students. These students may lack the kind of “cultural capital” valued by higher education systems. As Bourdieu has stated, “academic performance is linked to cultural background ... and is more strongly related to parents’ educational history than to parents’ occupational status.”

²² In “Proposition 187- Illegal Aliens,” 1994 California Voters: 1) made illegal aliens ineligible for public social services, public health care services (unless emergency under federal law), and public school education at elementary, secondary, and postsecondary levels; 2) required various state and local agencies to report persons who are suspected illegal aliens to the California Attorney General and the United States Immigration and Naturalization Service; 3) mandated the California Attorney General to transmit reports to Immigration and Naturalization Service and maintain records of such reports; and 4) made it a felony to manufacture, distribute, sell, or use false citizenship or residence documents. U.S. District Court Judge Mariana Pfaelzer struck down many of Proposition 187’s provisions on the grounds that immigration is “unquestionably, exclusively a federal power.” California cannot deny benefits such as social services, public education, and many other benefits if the federal government provides support. Only a few programs covered under Proposition 187 would be unaffected. Also, California is not permitted to make independent determinations of an individual’s immigration status.

²³ Proposition 209, a constitutional amendment by initiative, was passed by the California electorate by a 54 to 46 percent vote on November 5, 1996. It is now Article I, Section 31 of the California Constitution. The key operative provision of this measure states:

The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

²⁴ Proposition 227, English for the Children Initiative, was voted into law by California voters on June 2, 1998. This law mandates that California public schools implement the “Sheltered English Immersion” approach sixty days following the date it was enacted into law.

²⁵ In California’s June, 1998, primary election, Gloria Matta Tuchman ran for the position of State Superintendent of Public Instruction. She came in second with 25.5 percent of the votes, behind the incumbent Delaine Eastin with 43.3 percent of the votes. The two had a runoff in the November, 1998, state election which Eastin won.

²⁶ On January 2, 1968, Lyndon B. Johnson signed into law the Bilingual Education Act and thereby signaled the federal government’s first commitment to address the needs of students with limited English skills. The new Title VII of the Elementary and Secondary Act (ESEA) authorized resources to support the implementation of Bilingual Education. The law’s focus was explicitly compensatory, aimed at children who were both poor and “educationally disadvantaged” because of their inability to speak English.

About the Author

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