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# Contested Education, Continuity, and Change in Arizona and New Mexico, 1945-2010

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**CONTESTED EDUCATION, CONTINUITY, AND CHANGE IN  
ARIZONA AND NEW MEXICO, 1945-2010**

by

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DISSERTATION

Submitted in Partial Fulfillment of the  
Requirements for the Degree of

**Doctor of Philosophy, History**

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## **Dedication**

To my parents, David and Agnus Mandrgoc, and my sister Melissa for their constant support and love over this long process; to my chair, Manuel García y Griego for his helpful suggestions and patience; to Dr. Joseph Sánchez for pushing me to stick to it to the end and always having time for thoughts and suggestions about where to go next; and lastly, to my friends who gave me nothing but support in finishing this project.

## **Acknowledgements**

Special thanks to Dr. David Dunaway of the Department of English and Director of the Route 66 Oral History Office and the National Park Service for use of their oral history transcripts.

“Contested Education, Continuity, and Change in Arizona and New Mexico, 1945-2010”

By Stephen Mandrgoc

Bachelor of Arts, Classics	May 1997
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### **Abstract**

Sibling states split from the original New Mexico Territory, Arizona and New Mexico are neighbors geographically but very different otherwise: in how they were founded, in their ethnic makeup, in their sociocultural values, and in the forms of structural racism that are part of this history of both states. Mexican American residents who found themselves suddenly American citizens struggled in response to discrimination aimed at “Mexicans” by their Anglo American neighbors fueled by racist stereotypes built on the Spanish Black Legend and the mythology of the Alamo in Texas. Above all, Mexican Americans contested Anglo Americans for the right for an equitable education for their children.

This study examines the struggles of Mexican American educational activists and organizations, stressing continuity and change, to identify the elements of New Mexico’s and Arizona’s educational policies that were shaped by their pre-1945 history. It begins with a discussion of the antecedents of the states of Arizona and New Mexico during the territorial period until statehood, with the goal of demonstrating the weight of early decisions, experiences and policies (i.e., those of pre-1945) on later policies and practices by comparing the history of educational policies, administration, and activism of both

states between 1945-2010. Chapters alternate between discussions of national events outside New Mexico and Arizona, before examining how events played out within the contemporaneous national environment. Issues that plagued Mexican American education in both states included Americanization/English Only, bilingual education, segregation/desegregation, and the erosion of public support for educational equality from the 1970s onwards. The study also examines several important pioneers of education in either state, such as George I. Sánchez, Georgia Lusk, and Maria Urquides.

The study concludes that the historical sociocultural values and structural racism inherent in Arizona and New Mexico at their founding as states have continued to inform decisions made by state actors post-1945. It tracks a steady erosion of pro-Mexican American court decisions and policies from the end of the 1970s to 2010 and suggests that New Mexico's superior educational attainment for Mexican Americans may be due to a commitment to best practices lacking in Arizona's responses.

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## **Preface**

This dissertation came about from an interest in good education and good educational policies. Following the Recession of 2008, numerous states cut their education budgets as austerity measures, but few of those budgets have been returned to their pre-2008 levels. As someone who aspired to be a college professor, this concerned me, especially given the progressive expansion of university bureaucracies and the commoditization of education. When these cuts threatened to remain seeming permanent for New Mexico and other states, my interest grew – how could New Mexico, which has constantly supported rhetoric of pro-Spanish language and Spanish/Mexican culture be struggling so hard to meet the needs of its students? How was this different from its western neighbor, Arizona, and its blatant attacks on the same cultural elements?

While researching this study, I was fortunate enough to work with Dr. Diane Torres-Velásquez, an associate professor at the Department of Education at the University of New Mexico. Along with Dr. Torres-Velásquez, I was part of a presentation at the New Mexico Association for Bilingual Education (NMABE) in 2013. This presentation, titled “Educational Policy in New Mexico,” laid out a brief history of educational policy in New Mexico and its constitutional protection of Spanish and education in Spanish for its students. This was offered alongside MALDEF’s contemporary explanation for bringing the case known as *Martínez v. State of New Mexico* (2014). MALDEF and the Latino Education Task Force (LETF) successfully sued the State of New Mexico for failing to live up to constitutional requirements for education programs and the education of Spanish-speaking students who were English Language Learners in general, and has renewed the original constitution pledge of New

Mexico to serve its bilingual and multicultural populations by treating them as equals educationally as well as continuing the state's search for what qualifies as "sufficient education.

## **Introduction**

Over a century ago, a series of cultural collisions and political decisions resulted in the carving of two distinct states from what had been New Mexico Territory. These states were Arizona and New Mexico, two states that began as one territory but that have diverged in ethnic makeup, sociocultural structure, and history. This study examines the struggles of Mexican American/Latino activists in both states as they fought for educational equity and compares both continuity and change in how structural racism and discrimination have shaped Arizona and New Mexico's educational systems and policies. Structural racism, alternately known as societal racism, refers to a system in which public policies, institutional practices, cultural representations, and other norms work in various, often reinforcing ways to perpetuate racial group inequity.<sup>1</sup>

In doing so, this study examines the national background in which state struggles over educational equity occurred, placing events in the histories of individual states in context to better describe the social, political, and legal arenas in which struggles over educational equity took place. National debates over educational pedagogy, immigration, and the legal status and rights of Mexican Americans and other minorities had direct impacts on both states and the policy decisions their governments chose to make. This context also drove the actions of Mexican American activists in their resistance to Anglo-dominated attempts to discard their native Spanish language and cultural heritage in favor of Anglo-constructed American values and the English language. This study examines

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<sup>1</sup> Aspen Institute Roundtable on Community Change, "Glossary for Understanding the Dismantling Structural Racism/Promotion Racial Equity Analysis," Aspen Institute, n.d., <https://assets.aspeninstitute.org/content/uploads/files/content/docs/rcc/RCC-Structural-Racism-Glossary.pdf>.

several ongoing threads that have intersected with the needs of Mexican American and Mexican students and that have influenced the ongoing battle for educational and social equity the Spanish-speaking peoples of the Southwest. These threads include historical examinations in both states of bilingual education, immigration, poverty, court decisions, activist Mexican American organizations, and educational funding.

The study is divided into two sections. The first part deals with the history of the New Mexico and Arizona Territories, and their path to statehood, with the second chapter of this first section dealing with the constitutions that both states created, and major court decisions leading up 1945 that created the environment and foundations for the sociocultural viewpoints that existed nationally and, in both states, immediately following World War II. The second section presents alternating chapters between discussions of national and state histories of education. The nationally focused chapters discuss federal social, legal, educational pedagogy, and government decisions and events that form the background for the state-focused chapters that deal with how those national factors played out in Arizona and New Mexico's state and local responses.

At present, these educational issues are a matter of increasing national concern, due to the rapidly rising Spanish-speaking population in the United States. On July 14, 2011, the Pew Research Center released a new report, in which it noted that the number of Latino births within the United States had outstripped population increase from immigration.<sup>2</sup> This was especially true among the largest of the Latino groups studied, Mexican-Americans, whose population had grown 7.2 million from births and only 4.2

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<sup>2</sup> "The Mexican-American Boom: Births Overtake Immigration," Pew Research Foundation Publications, July 14, 2011, <http://pewresearch.org/pubs/2058/-immigration-mexican-immigrants-mexican-american-birth-rate>.

million from immigration in the decade spanning 2000-2010. With the total Mexican American population standing at 31.8 million, Mexican Americans now represented 63% of Spanish-speaking ethnic groups in the United States and 10% of the total United States population, with Latinos making up 16% of the population.<sup>3</sup> This makes Mexican-Americans the fastest growing segment of the population of the United States and guarantees that they will soon become the largest single ethnic group in the United States. In New Mexico, this has already resulted in the total minority population reaching roughly parity to that of the local Anglo population. Arizona is soon to follow given its massive increase in population since the 1990s, which has been fed primarily by Mexican immigration.

As two neighboring states that have divergent histories and that have been notably affected by these changing demographics, Arizona and New Mexico are ideal states for comparison. By 2010 both had developed into states with very public differences in educational policy and the treatment of Latinos and Mexican immigrants. New Mexico is the only state that has ever put protection for Spanish in its constitution, as well as specifically protecting Spanish-speaking students from being discriminated against in its schools in the same document. Its rhetoric has long supported *nuevomexicano* cultural heritage, though its commitment to supporting Spanish language has been less than steady. It has, however, maintained a commitment to bilingual programs that preserve Spanish and multicultural programs that promote Mexican American culture, that has

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<sup>3</sup> "Mexican-American Boom."

culminated in its stated support English Plus, the main opposition to the national English-only movement.

Arizona, by comparison, has consistently supported English language and American values over preservation of the native language and culture of Arizonan Mexican Americans. It has very publicly acted against undocumented immigrants and has recently passed some of the harshest anti-immigrant laws in national history, as well as making itself an English Only state concerning its government and educational system. The two states have arrived at parallax viewpoints of Mexican American education, with both striving to give Mexican and Mexican American students the education needed to become contributing citizens to the United States but seeing entirely different paths for how to reach that goal.

Often both states have faced the same challenges, and even responded similarly. It is a misconception to construe New Mexico's rhetorical support for Spanish language and Mexican American heritage as resulting in unqualified support for both. While Arizona has displayed more public antipathy for both, New Mexico has had the same ongoing need for Mexican American activists as its neighbor, indicating both have levels of structural racism built into their state institutions.

In this study, I argue that the actions taken by Arizona and New Mexico and the Latino peoples living within their borders are built upon an historical foundation created at the founding of the two states and farther back into when they were both New Mexico Territory. This study stresses historical change and continuity concerning the constant struggle by Mexican American and Latino activists against structural racism and discrimination that exists in both states. As part of this discussion, I compare the many

and varied ways such conflicts played out, from civil rights cases in the courts, battles over educational funding, bilingual/multicultural and ethnic studies programs, as well as political decisions by state officials that worked against best practices. A portion of the discussion will be dedicated to the institutions that evolve in both states over time, both local government and outsiders who influence events, either at the federal level or outside agitators with their own agendas.

A second part of the discussion is the evolution of various institutions in both states, most notably their educational systems and especially their educational funding systems, but also the statutes and propositions that have left their mark on both states. I argue that these evolutions are informed by where they began as new states at the beginning of the 20<sup>th</sup> century. They did not remain unchanging, but the weight of past decisions, viewpoints, and fears continued to shape the paths of both states through the sixty-five-year period under discussion. The background of the national milieu, with its shifting tides of cultural moments and pedagogical changes has further shaped the essence of both states, creating the arenas in which educational policies are forged and tested, driven by the will of the people of both states and their fears and dreams.

Both Arizona and New Mexico have been the subject of studies and debates on education, to explain why Mexican American education has shown such dismal results over the past 65 years. Most studies have focused on Arizona, given its prominent anti-Latino and anti-immigrant stance, and have particularly focused on educational language policies in the state, most recently the practice of Structure English Immersion, such as in M. Beatrix and Christian Faltis *Implementing Educational Language Policy in Arizona*, or examining state action against ethnic studies programs, most recently with Julio

Cammarota and Augustine Romero's *Raza Studies*, which examined the case of the Tucson Unified School District's highly successful but short-lived Mexican American Studies Department. Often these studies have focused on Arizona's tactics of assimilation designed to turn Mexican Americans into "proper" Americans, such as Sarah Catherine Moore's case study of Arizona's language policies in 2014.<sup>4</sup> Few of these studies have closely compared Arizona's experiences with that of its neighbor, New Mexico, and none have specifically compared Mexican American educational activism in both states or its results.

In-depth studies on New Mexico are scarce and not based on a historical analysis of the struggles over educational policy, with most oriented to New Mexico's early history rather than recent activism. The best book that discusses New Mexican educational over a long duration is John B. Mondragón and Ernest S. Stapleton's *Public Education in New Mexico*, written by two emeritus professors of education. This is an informative book, drawn from the perspective of two native New Mexicans who have been a part of its public-school system as students and teacher to principals and superintendents. But the citation of sources is lacking, and the discussion of the debates behind the creation of education policy is often brief. Mondragón and Stapleton do refer to sources on New Mexico, but normally not with specific page numbers.

An older but seminal book is *Forgotten People*, written by educational activist and professor George I. Sánchez in the 1930s. This book focuses on the early 20<sup>th</sup> century up to the 1940s rather than into the period this study examines. Sánchez' work is similar

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<sup>4</sup> Sarah Catherine K Moore, *Language Policy Processes and Consequences: Arizona Case Studies*, eBook, Bilingual Education and Bilingualism (Clevedon: Channel View Publications, 2014).



in that it examines the reasons for educational policy decisions that have resulted in a lack of adequate educational funding for New Mexico's students and traces it back to a failure of leadership and a lack of institutional capacity. Sánchez does discuss the underlying demographic and sociocultural realities that created those funding policies. More specific studies have focused on New Mexico's educational spending, such as sociologist Phillip Gonzales's article *A Historical Overview of Public School Financing and Indian Education in New Mexico*, or his study on bilingual education in New Mexico, *Promise and Frustration: The History of Spanish-Language Bilingual Education in New Mexico*. Other studies tend towards chronological descriptive texts of the history of the people of New Mexico, such as Carol Zeleny's *Relations between the Spanish-Americans and Anglo Americans in New Mexico*. While certainly a product of its time, as it was written in the early 1940s, it does provide a good historical discussion of early interactions between the two groups in the title. These secondary sources have greatly informed this study and comparisons between the two states.

Of necessity, this study must use ethnic labels to describe the people of the Southwest as a means of ethnic identification. This is not a simple choice, as numerous nomenclatures have been popularized over the period being discussed and has often changed generation to generation. Writers on ethnic identity like Laura Gómez term those with a Spanish/Mexican heritage Mexican Americans<sup>5</sup>; John Nieto-Phillip terms them Spanish Americans<sup>6</sup>; Nancie González has examined how the terms have changed, from Mexican, to Spanish-American, to Chicano, to Mexican-American, and finally to Latino

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<sup>5</sup> Laura Gómez, *Manifest Destinies*, eBook (New York: New York University Press, 2007).

<sup>6</sup> John M. Nieto-Phillips, *The Language of Blood: The Making of Spanish-American Identity in New Mexico, 1880s-1930s* (Albuquerque, NM: University of New Mexico Press, 2004).

or Hispanic.<sup>7</sup> Ancestors of the early settlers in who arrived in 1598 have historically identified themselves as “*hispanos*,” a term which preceded the word “Hispanic,” which was invented in the United States during the last two decades of the twentieth century. Latino has been used both interchangeably with Hispanic or to refer to individuals from Latin America and includes Cubans, Puerto Ricans and Mexican as three main ethnic subgroups. There are many possible choices.

Sociology professor Phillip Gonzales, in his discussion of ethnic labels in New Mexico, has noted what he terms an “ongoing turnover of many Latino nomenclatures, chief among them being ‘Mexican,’ ‘Spanish,’ ‘Chicano,’ and ‘Hispanic,’” where different nomenclatures “have appeared with varying degrees of prominence and effect without completely supplanting the others.”<sup>8</sup> For example, it is common to refer to the “Mexican American generation” of the 1940s and 1950s, or the “Chicano generation” of the 1960s and 1970s. This follows sociologist Michael V. Miller’s explanation in 1976 that:

Ethnic labels tend to be rooted in historical periods – periods discernable first, in terms of the predominant definitions and images ethnic members have of themselves and their place in the social structure, and second, in terms of those definition conferred by a broader society.<sup>9</sup>

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<sup>7</sup> Nancie L. Solien González, *The Spanish-Americans of New Mexico; a Distinctive Heritage*, University of California, Los Angeles; Mexican-American Study Project; Advance Report (Los Angeles, CA: Division of Research, Graduate School of Business Administration, University of California, 1967).

<sup>8</sup> Phillip B. Gonzales, “The Political Construction of Latino Nomenclatures in Twentieth-Century New Mexico,” *Journal of the Southwest* 35, no. 2 (1993): 158–59.

<sup>9</sup> M.V. Miller, “Mexican Americans, Chicanos, and Others: Ethnic Self-Identification and Selected Social Attributes of Rural Texas Youth,” *Rural Sociology* 41, no. 2 (1976): 235.

An example of this is how the label “Chicano” is associated with ethnic militancy and self-determination, as well as the period covering the height of the Civil Rights movement in the United States in which Chicano activists fought for equality.

Gonzales notes that New Mexico itself is distinguished by the use of Spanish American and Hispano as “the exclusive public designation of the Spanish-surnamed citizen of New Mexico” in the 1920s, as a way of warding off the stigma of being “Mexican” in the early 20<sup>th</sup> century.<sup>10</sup> However, Gonzales rejects the prevailing theory that this was simply an accommodationist stance to be more acceptable to the Anglo majority, arguing that “Latino nomenclatures are creatively elaborated as collective representations under conditions of geopolitical emergence” tied to political ideologies and social change.<sup>11</sup> People choose the terms they identify with based on the sociocultural realities of the period. Moreover, Gonzales notes that these names do not necessarily disappear when new terms are brought into common use, but “may remain in a noncompetitive, purely cultural form to be applied in conservative reaction to emerging competitive nomenclatures...or it can await future revitalization in a new competitive arena.”<sup>12</sup> Thus, any of these terms were commonly used at some point in time in Southwestern history, and all of them have the potential for being used again. Gonzales himself prefers to use the term “Latino” to describe people of Spanish/Mexican descent.

In terms of official nomenclature, the U.S. Census did not count Mexican Americans as a separate ethnicity from White until 1930, when the term Mexican was added as a separate racial category. That term was then removed for the 1940 and 1950

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<sup>10</sup> Gonzales, “Political Construction,” 159.

<sup>11</sup> Gonzales, “Political Construction,” 179.

<sup>12</sup> Gonzales, “Political Construction,” 179.

census, where the Census experimented with other means of tracking Mexican Americans, such as by Spanish surname, language usage, foreign birth, and others., with mixed results. The 1960 census tried the category of “white persons of Spanish surname”, but only in the Southwestern states of Arizona, California, Colorado, New Mexico, and Texas, then added a question about Spanish-speaking people to the 1970 census in attempts to better define their ethnic labels for information purposes. But it was not until 1976 that the Census, on the recommendation of the Census Advisory Committee on the Spanish-Origin Population for the 1980 Census, chose to use Hispanic as a pan-ethnic label, with ethnicities as a subcategory underneath such as Mexican American, Puerto Rican, or Cuban.<sup>13</sup> Latino was also made part of the official U.S. nomenclature, and by the 2010s, the term Hispanic and Latino/a were often used interchangeably in the United States. In 2018, there are entirely new labels being defined, such as Latinx, which attempts to provide an ethnic label that is gender neutral. There is no perfectly “right” term that serves as a pan-ethnic label.

With that in mind, this study will follow the nomenclature used by professor of Law and American Studies Laura A. Gómez, who eschews the terms Spanish, Spanish American, Hispanic, and Hispano in describing the people of the Southwest, preferring to use the terms Mexican American or Mexican. She gives two reasons for this. The first is that Mexican was the term used most consistently used in the 19<sup>th</sup> century “whether the speaker was Mexican or Euro-American and no matter the forum or the language.” Secondly, Gómez argues that these terms more accurately describe the *mestizo* racial

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<sup>13</sup> Gomez, *Manifest Destinies*, 152.

heritage – a mix of Indian, Spanish, and African – that characterizes the people of Mexican heritage who populate the Southwest.<sup>14</sup>

Since this study deals almost exclusively with Mexican immigrants or naturalized citizens of Mexican heritage, this argument is cogent, and the terms Mexican American and Mexican will be used primarily. These labels do not completely describe the populations of Arizona and New Mexico in the period discussed in this study; there are numerous smaller Spanish-speaking groups that also live in the area that have immigrated from Latin American, Puerto Rico, Cuba, and other areas. But the numbers of these groups are negligible compared to that of Mexican Americans and Mexicans, and therefore will not be discussed in this study. When it is necessary to refer to all groups of Spanish heritage in the Southwest as a pan-ethnic group (primarily when speaking of the combined Mexican American and Mexican populations), I will be using the term Latino for clarity, per this use in Gonzales and Gómez' discussions of Latino nomenclature.

This study will also use several unique terms referring to Mexican Americans who live in specific locations, in either states or cities. These terms do not include Mexican immigrants. For example, the term *nuevomexicanos* refers to Mexican Americans living in New Mexico; *tejanos* refers to Mexican Americans living in Texas; and *tucsonenses* refers to Mexican American residents of Tucson, Arizona. I will also be using the term “Anglo” or Anglo American to refer to people of largely white non-Spanish European descent. The exception will be where the term “White” is what is used historically in a discussion, such as when discussing how Mexican Americans defined

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<sup>14</sup> Gómez, *Manifest Destinies*, 11–12.

themselves as “White” to argue for greater equality in education and society. For the same reason, the terms African American and Black will both be used as appropriate.

My research has been hampered by a lack of access to state government educational records from the Arizona Department of Education, starting approximately at the end of the 1960s and continuing until the mid-1990s. These records deal with the State Superintendent of Education’s office but extend to most official state organizations for this period. I have compensated for this by researching newspaper and journal articles and other stories concerning educational controversies and changes in policy that occurred during this period. I have also researched the Chicano/a archive at Arizona State University, which contains a wide variety of ephemera, letters, and documents related to Mexican American experiences in the state. Official documents have been more difficult to find, thus analysis of the thoughts and actions of educational officials in Arizona are more sparse than preferred. Luckily additional documents found in archives as well as media articles have provided a wealth of information to make up for this lack.

As previously noted, the goal of this study is to examine the elements that make up the environment in which political decisions about educational policies are made, and to describe and analyze the continuing struggles and themes associated with those policies over the period of this investigation. This study is on a chronological description of educational policy formation in the political and social arenas of Arizona and New Mexico that were created or changed by those struggles. There is limited discussion of education outcomes, such as graduation rates, or college attainment rates.

I would have liked to test the outcomes of educational policy more, but this is difficult with a changing population of students and the constant influx of new Spanish-

speaking immigrant students into the system. The data available is not organized in a way that lends itself to a macro examination of the outcomes of educational policies without a control cohort that remains the same over time. This study can and does cite data from specific localities and programs that show the benefits of additive bilingual education over subtractive, but it cannot examine how these specific instances might affect educational outcomes in the whole state. This study will instead examine some plausible reasons for outcomes based on examples offered in chapters 3-12. In these specific cases, the examination will look at whether a state abided by best practices when creating a policy, or if they deliberately ignored evidence or results to achieve a political goal.

Finally, while it is outside the period discussed in the main study, I have included in my afterword a discussion of the implications of a dramatic case begun in 2014 and recently resolved in 2018, *Martínez v. State of New Mexico*. This suit is the first successful example of its kind that finally makes use of New Mexico's constitutional protections to argue not just for funding improvements, but for education as a fundamental right for students in the state of New Mexico. While it is too early to tell for sure how great an effect the case will have, it has the potential to be a pivotal case in New Mexico's education history and perhaps for the wider Southwest. Therefore, I would be remiss in not at least discussing the reasons for the case and its outcome, and the possibilities it raises for future hopes, even if it is outside the scope of the main study.

## **Chapter 1: Historical Foundations of Southwestern Education**

Any meaningful discussion about education should examine the foundations on which those policies were built as well as the communities they serve. It is this context in which educational policy is created and executed, in an environment created by both culture and history. Without understanding the historical foundations of the Southwest, it is difficult to see how a territory developed into two radically different states. The most relevant foundations to Arizona and New Mexico (and to the Southwest and Mexican Americans) are the history of New Mexico Territory, the history of Arizona Territory, and the path to statehood both took. In this history we find experiences of racism, discrimination, and stereotyping that shaped how Anglos in the Southwest viewed their Mexican American neighbors, and the prejudices and practices Mexican Americans would fight to overcome in educational policy. Finally, this study looks at the state constitutions both Arizona and New Mexico wrote, and what each of these promised the citizens of their new states.

Many of the attitudes held towards Latinos by those outside the Southwest began two centuries before any of the area became part of the United States. Anti-Spanish attitudes began in the 17<sup>th</sup> century with the spread of the Black Legend by rivals of the Spanish throne, which painted the Spanish as cruel, vicious, and firmly under the control of the Catholic Church. The term (Leyenda Negra) was first coined in 1914 by a Spanish intellectual named Julián Juderías, when he commented on how the original rivalry between Catholic Spain and Protestant Europe began as propaganda but lingered in the



Spanish Colonial Period in America as stereotypes and distortions.<sup>15</sup> The Legend was an outgrowth of a misrepresentation by the Dominican monk Bartolomé de las Casas from his report written in 1542 on the treatment of Native Americans in the Spanish New World, which twisted reports of abuses against Native Americans into stories of outright extermination and universal cruelty. Historian Joseph P. Sánchez has noted that this propaganda depicted the Spanish as “*uniquely* cruel, bigoted, tyrannical, lazy, violent, treacherous, and depraved... [while] the alleged depravity of Hispanics hinted at some unforgivable Original Sin that preyed upon the legitimacy of Spanish culture throughout the world.”<sup>16</sup> This same viewpoint would be resurrected in later conflicts involving Americans and Mexicans, such as the Texas Revolt of 1836, the Mexican-American War in 1846-1848, the California Gold Rush, the western expansion by American settlers starting around 1849, and the Spanish-American War in 1898.<sup>17</sup> The Black Legend is the foundation of much of the racism and discrimination that formed the seed of Anglo and Latino relations.

Some of the negative views of Mexicans that would later be extended to all Latinos arose when the first Anglo traders and settlers arrived in the Southwest. By the time that the United States claimed the Southwest after the Mexican-American War in 1846, the area had fallen on hard times. While some groups maintained a prosperous lifestyle, such as the powerful ranch-owning *californios* in California and the wealthy residents or *ricos* of New Mexico, most of the population comprised less fortunate

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<sup>15</sup> Joseph P. Sánchez, *Comparative Colonialism, the Spanish Black Legend, and Spain's Legacy in the United States: Perspectives on American Latino Heritage and Our National Story* (Albuquerque, NM: National Park Service, Spanish Colonial Research Center, 2013), 15.

<sup>16</sup> *Ibid*

<sup>17</sup> *Ibid*.

Mexican villagers who lived a humbler life, especially in the herding communities among the northern mountains. American colonists coming into Texas or traveling to California along the Santa Fe Trail primarily encountered these poorer residents, which contributed greatly to a prejudiced view of the Latinos that would color Anglo perceptions for a century or more. The Mexican settlements of the Southwest were seen by many Americans as evidence of a failed culture and state, with poor, uneducated residents held under the thumb of the Catholic lay orders that ministered to the area.

An influential example of these prejudices can be found in Josiah Gregg's *Commerce of the Prairies*, which he wrote while residing in New Mexico from 1831 to 1839. Gregg, who had been a school teacher in Missouri, had traveled to New Mexico on his doctor's advice due to poor health before learning Spanish and becoming a merchant on the Santa Fe Trail. He was present during the 1837 uprising against Governor Pérez, in which the governor lost his life to New Mexican rebels. Gregg's most telling quote about education in the area was that "there is no part of the civilized globe, perhaps, where the Arts have been so much neglected, and the progress of Science so successfully impeded as in New Mexico."<sup>18</sup>

After noting what he saw as the ignorance of the clergy teaching in the area, he described the schools that did exist as providing only basic reading and writing, and that

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<sup>18</sup> Josiah Gregg, *Commerce of the Prairies*, eBook (Santa Barbara, CA: The Narrative Press, 2001), 128-129. Gregg continues: "Reading and writing may fairly be set down as the highest branches of education that are taught in the schools; for those pedants who occasionally pretend to teach arithmetic, very seldom understand even the primary rules of the science of numbers...Although a system of public schools was afterwards adopted by the republic, which if persevered in, would no doubt have contributed to the dissemination of useful knowledge, yet its operations had to be suspended about ten years ago, for want of the necessary funds to carry out the original project. It is doubtful, however, whether the habits of neglect and other carelessness of the people, already too much injured to grope their way in darkness and ignorance, added to the inefficiency of the teachers, would not eventually have neutralized all the good that such an institution was calculated to effect."

at “least three-fourths of the present population can neither read nor write.” This applied primarily to male students, as Greggs further describe female education to be more “universally neglected than that of the other sex” and undertaken only by private tutors, to the point where for a woman to be educated was because she had “extraordinary talent,” with residents viewing such women “almost as a prodigy.” Greggs furthermore saw the Mexican upper class as assuming an education that he did not believe they possessed, which he described as “the flowing garment in which Ignorance decks herself.”<sup>19</sup>

Greggs also implicitly blamed the Mexican government for this failure in education, claiming that it had, in collusion with the Catholic church, worked deliberately “to keep every avenue of knowledge closed to their subjects in the New World; lest the lights of civil and religious liberty should reach them from their neighbors to the North.”<sup>20</sup> Greggs' view reflects both the poor state of education that existed in the area, as well as the slanted view of the clergy and the upper classes that already existed among Anglos in the Southwest, as well as the anti-Catholicism prevalent in the United States at the time.

It is clear from Greggs' portrayal that he believed it was not just a lack of resources and good teachers that led to an uneducated populace in New Mexico. It was a deliberate attempt to prevent the “progress” of the United States from being brought to their people. Presumably, Greggs expected that if Mexicans were to learn of American ideals of liberty and democracy they would of course immediately overthrow their old form of government. This arrogance was endemic to many Americans as they

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<sup>19</sup> Greggs, 199.

<sup>20</sup> *Ibid.*

encountered the Southwest. *Commerce of the Prairies* was an extremely successful book, both in the United States and in Europe (notably England), and was how many readers distant from New Mexico based their view of the area and its people in the absence of personal experience, complete with its assumptions and view of Spanish versus American religion, culture and government.

Indeed, delivering education to the New Mexican populace was challenging. When a newly independent Mexico was born after 1821, there was no federal requirement for education across the country, save for some higher education and military training. Community schooling was left to individual states, and New Mexico as a territory did not have even that status.<sup>21</sup> For example, the 1827 Constitution of Coahuila and Texas included the provision that education should be established throughout the two states:

In all of the towns of the States, there shall be established a competent number of common schools in which there shall be taught reading, writing, and cyphering; the catechism of the christian [sic] religion; a short and simple explanation of this Constitution, and the general one of the Republic; and the rights and duties of man in society, and that which can most conduce to the better education of youth.<sup>22</sup>

This demonstrates that a uniform system of education *was* intended by the newly independent Mexican government, with specific requirements that would be required to be taught by all teachers once New Mexico had become a Mexican state.

For most of Mexico's northern states and territories (save perhaps California, which was much wealthier) there was little monetary support. Under Governor Albino

<sup>21</sup> Frederick Eby, *The Development of Education in Texas*, 1st ed. (New York: The Macmillan Company, 1925), <http://babel.hathitrust.org/cgi/pt?id=mdp.39015048502051;view=1up;seq=10>, 66.

<sup>22</sup> Francis Newton Thorpe, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the State, Territories, and Colonies Now or Heretofore Forming the United States of America*, vol. 1, 2, 5, 6, 7, 7 vols. (Washington: G.P.O., 1909, 3519).

Pérez (1835-1837), policies meant to support education were in place, but there was little actual financial support available for setting up the ambitious school system he proposed. At the time, the Mexican federal system was highly decentralized, and thus states and territories were expected to fund education without federal assistance. It was left to individual states to try and find a way to make public education a reality.

Mexican states in this period did pass laws making *ayuntamientos*, or municipal assemblies, responsible for seeing that what schools could be founded were funded and to create local councils across the Southwest. After Mexico opened the area for colonization by Anglo American immigrants in the 1820s, it was mandated that all such provinces and states must set aside land for schools.<sup>23</sup> This system was not put into place across all Mexican states on this basis, as Mexico left administration of any such schools to local governments, meaning that it varied how schools were funded and run depending on the state.

One interesting outlier was a school opened in San Antonio, Texas in 1828, which could be said to be the first “public” school in the Southwest, in that was designated as a “Public Free Primary School” open to all students. In practice, most of the funding for this school came from private donations, supplemented by some assistance from the local *ayuntamiento*, rather than the other way around.<sup>24</sup> The school was shut down in 1834 and by no means was part of a fully realized system of statewide public schools. Certainly, citizens were far from happy at the time that there was so little financial support being granted to them by the Mexican government, as there was no basis in Coahuila Texas for the support of education.

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<sup>23</sup> Eby, *The Development of Education in Texas*, 67.

<sup>24</sup> *Ibid.*

This is shown by protests held in 1832 about the lack of public schools by a group of prominent Mexican and Anglo citizens in Texas. In their petition, the protesters cited that “no step has been taken to encourage public education, or to create a fund exclusively devoted to that object” and asked that Mexico grant a gift of land to Texas “for the future encouragement of Primary Schools...in which will be taught the Castilian and English languages.”<sup>25</sup> A similar petition, brought by Mexican citizens in San Antonio, asked that the state provide funds for schools in Texas towns “in view of the poverty of the inhabitants and their meager municipal funds.”<sup>26</sup> It is interesting to note that here, at least, there was support for education in both Spanish and English, something that would not continue past Texan independence, save in rural schools as a *de facto* situation, if not a legal one.

In response to the protest, the Texas state government did make changes, granting land and directing that the *ayuntamientos* set aside funds for supporting schools based on fees for renting public land. But the government again left the burden on local municipal governments, rather than as a provision for a true system of public funding across the state. As the towns of Mexico's northern borders were not only poor (or bankrupt) but constantly in danger of native raids or outbreaks of disease, it was never a viable option to create a public-school system despite the desire by elites to promote education or ambitious planning by the state. Eby lists these as reasons why a state system never truly materialized, as well a lack of trained teachers and materials for teaching, a desire by the Catholic Church to be concerned only with religious instruction, and a general disinterest

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<sup>25</sup> Eby, *The Development of Education in Texas*, 71.

<sup>26</sup> *Ibid.*

in education on the part of non-elite citizens (*ricos*).<sup>27</sup> By the time of the Texan Revolution (1835-1836), little progress had been made in public education.

This is not to say attempts to create compulsory public education had not been tried. Local leaders understood the importance, even if they struggled to create a public education system. For example, Albino Pérez, appointed by Mexico as Governor of New Mexico (1835-1837) proposed in 1836 the creation of two primary schools in Santa Fe for children aged 5-12, who would be required to attend on pain of fines levied against their parents and arrest for those who could not pay the fines.<sup>28</sup> This was in an attempt to reduce illiteracy and to deal with children being of “evil dispositions, abandoned to laziness and practicing vices.”<sup>29</sup>

Unfortunately for Pérez, discontent over his stewardship led to a rebellion in 1837 that ended his life. This also disrupted attempts at beginning an actual public-school system, though wealthy New Mexicans would continue to send their children off to private schools, often east to American schools. This period of rebellion and its aftermath left the territory fragmented, despite attempts by Pérez’ successor to restore order, and contributed to the appearance of disorder that created distain in American traders who visited the area.<sup>30</sup>

While the history of education in Texas is not central to this study, it is important to examine the attitudes expressed by the American settlers in Texas who moved there and later rebelled against the Mexican government. These Americans were the first to

<sup>27</sup> Eby, *The Development of Education in Texas*. 74.

<sup>28</sup> Joseph Sanchez, *Between Two Rivers: The Atrisco Land Grant in Albuquerque History, 1692-1968* (Norman, OK: University of Oklahoma Press, 2008), 112.

<sup>29</sup> Ralph Emerson Twitchell, *The Leading Facts of New Mexican History* (Cedar Rapids, Iowa: Torch Press, 1911), 57.

<sup>30</sup> Sanchez, *Between Two Rivers: The Atrisco Land Grant in Albuquerque History, 1692-1968*, 112–15.

consistently encounter the Mexican people of the Southwest, and the first to form opinions of their neighbors that would be disseminated to the rest of the United States. Texas is important for demonstrating the attitudes and myths created about the Mexican people – ethnocentric at best and racist at worst – that would be carried forward by future American politicians and settlers.

The belief that the Mexican government was not doing what it could to support its northern states, combined with Antonio López de Santa Ana's rise to power as a dictator, contributed to the Texas Revolution (1835-1836). A lack of educational support was one of the reasons specifically listed in the Texas Declaration of Independence in 1836, which stated that Mexico “has failed to establish any public system of education, although possessed of almost boundless resources (the public domain) and although it is an axiom in political science, that unless a people are educated and enlightened it is idle to expect the continuance of civil liberty, or the capacity for self-government.”<sup>31</sup> Education was mostly used as a pretext for rebellion, as it was not actually viewed as centrally important compared to other reasons, but it was a contributing factor.

The Texas rebels had already replaced their original Mexican constitution with a temporary one in 1835 (which was never ratified by Mexico) and wrote a new official constitution in 1836. Despite the wording in the Texas Declaration of Independence, the 1836 constitution included little on education. Instead, it was devoted to outlining the basics of the government, the militia, land claims and ownership, and clearly defining the status of African slaves and freemen within the Republic of Texas. Only a brief statement that the Texan Congress should “as soon as circumstances will permit...provide by law a

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<sup>31</sup> Thorpe, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the State, Territories, and Colonies Now or Heretofore Forming the United States of America*, 3529.



general system of education” was included.<sup>32</sup> Considering how strongly Anglo settlers had lobbied Mexico for a public education system, this is surprising, but given the war for independence, it may have simply been seen as something to be added once the republic was fully established.

Also, while Anglo Texans supported education, it did not follow that they were for a public-school system to provide that education. As seen in the mention of Mexico having its wealth in “the public domain” in the Texan Declaration of Independence, Texans expected the government contribution should be in the granting of land currently owned by the state to educational uses, either for construction or gaining funds from rental of those lands. Considering previous attempts by Mexico to provide some support, this seems questionable as the schools that did have land set aside were not particularly stable for long, nor would having property on which to build schools have solved the numerous other problems facing education in Texas at the time.

Eby argues that this contradiction is due to Mexico not understanding the “idealistic conceptions of government, social life, scientific development, literature, and religion which motivated the Anglo American colonists” and that this, along with elements of the Mexican constitution that constrained teaching and free speech (and required that classes be taught in Spanish) gave the Texan rebels legitimate cause to rebel.<sup>33</sup> It is more likely that non-elites simply saw no benefit in education, as it would involve not only additional taxes in most cases, but the loss of child labor for farms and

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<sup>32</sup> Thorpe, 3539.

<sup>33</sup> Eby, *The Development of Education in Texas*. 83. Eby also draws a connection back to an almost mythic view of the educational ideals of the Founding Fathers that he claims were passed on to the leaders of the new Texas republic, yet these views seem to have been confined to the Anglo elites of the period who were somehow not interested in funding the schools on their own. Much like other Southwestern states, non-elites often saw no benefit in education.

businesses that were often doing poorly to begin with. This disinterest was twisted to argue for the inherent inferiority of Mexicans by Anglo observers, in the same vein as the earlier Gregg descriptions.

As previously stated, the Texas Revolt revived the shadow of the Black Legend, primarily through the symbol of the Alamo. Many Texas ballads of the time spoke of cowardly, untrustworthy Mexicans, such as the Ballad of Ben Milam.<sup>34</sup> As part of the propaganda, one verse, for example, declared that “They’re the spawn of hell, we heard him tell. They will knife and lie and cheat. At the board of none of that swarthy horde, would I deign to sit and eat.”<sup>35</sup> Similarly, one described Mexicans in such terms: “They are mostly uneducated in letters, and without ambition to excell [sic] in any of the arts or accomplishments of civilized life...in their habits they are idle and averse to exertion, choosing rather to endure cold and wet, than by industry to erect comfortable cabins. In many respects they seem to resemble the savages from whom most of them are descendants.”<sup>36</sup> Another newspaper article stated “The Anglo Americans and the Mexicans, if not primitively a different people, habit, education, and religion, have made them essentially so. The two people cannot mingle together. The strong prejudices that existed at the first emigrations, so far from having become softened, have increased many fold.”<sup>37</sup> The stereotype of uninterested and lazy Mexican residents was contrasted with the image of industrious, educated Anglos and found wanting by the latter.

However, the Alamo as a symbol of the Texas Revolt was not as important in

<sup>34</sup> Sánchez, *Comparative Colonialism*, 19.

<sup>35</sup> *Ibid.*

<sup>36</sup> A.B. Lawrence, *Texas in 1840; or, the Emigrant’s Guide to the New Republic*, 1973rd ed., Far Western Frontier (New York: Arno Press, 1840), 22-23.

<sup>37</sup> “[Municipality: San Augustin; Texas; Tranquility; Political; Government],” *Telegraph and Texas Register*, January 23, 1836.

Southwestern culture originally as it became in later days. Historian Richard Flores argues strongly that the Alamo was ignored as a symbol in the forty years following the Texas Revolt, unlike other American battlefields that became important symbols almost immediately after their creation, such as Gettysburg.<sup>38</sup> Flores notes that the Alamo did represent a continuation of older stereotypes of Latinos. For example, the phrase “Remember the Armada!” which the English used in their propaganda against the Spanish in remembrance of the Spanish Armada became “Remember the Alamo!” in what Flores terms a “local narrative of displacement against the local *mexicano* population.”<sup>39</sup> In the Spanish-American War of 1898, “Remember the Maine” became a similar war cry.

To Texans, both in Texas and throughout the Southwest as they spread westwards, the Alamo became a symbol that justified their treatment of Mexicans, as a historic score to settle aimed indiscriminately at those of Mexican descent. The deeds of those Mexicans who fought alongside Texas for independence, and even the memory of those Mexicans who fought at the Alamo, were lost in a sea of hatred and racism depicting Mexicans as untrustworthy and treacherous outsiders. This not so coincidentally also solidified the social classes in Texas, with Anglos on top and Mexicans relegated to the lower class. As sociologist David Montejano put it: “Remembering the Alamo kept present the collective memory of ‘Texan heroes’ and ‘Mexican tyrants,’” and served as a public reminder “to keep Mexicans ‘in line’.”<sup>40</sup>

<sup>38</sup> Richard Flores, *Remembering the Alamo: Memory, Modernity, & the Master Symbol*, 1st ed. (Austin: University of Texas Press, 2002), 32.

<sup>39</sup> Flores, 32.

<sup>40</sup> David Montejano, *Anglos and Mexicans in the Making of Texas, 1836-1986* (Austin, TX: University of Texas Press, 1987), 229.

This collective memory did not remain locked away in Texas but spread with Anglo settlers moving westward. Not all Anglos felt this way; many intermarried with existing Mexican families that already lived in the New Mexico territory. But the insidious nature of these selective memories fed existing racial intolerance as part of the lingering if vestigial inheritance of the Black Legend. This belief was at odds with the promise of equality and freedom enshrined in the United States Constitution, a promise that was extended into the territorial, then state constitutions created by New Mexico and Arizona. These stereotypes of Mexicans created intolerance and distrust that carried over to the United States government through its representatives and was exacerbated by the tensions of the Civil War and Reconstruction. Indeed, Black Legend stereotypes and the long shadow of the Alamo extended far westward when the Confederacy occupied created and occupied Arizona during the Civil War.

From the cultural elements that formed the backdrop for their creation, the discussion turns next to the promises of the territorial constitution and laws created for education in the New Mexico territory and later the states carved from it, Arizona and New Mexico. When the United States occupied what would become the New Mexico Territory in 1846 during the Mexican-American War, it inherited an area that was a marginalized northern border. New Mexico had been consistently underfunded, first by the Spanish government then by its successor, the Mexican government following Mexican independence. For most *nuevomexicano* residents, especially in rural areas, education was spotty, as rural residents did not see a point to education beyond minimal religious instruction by local clergy.

When General Stephen Watts Kearny occupied New Mexico in 1846, he established the Kearny Code, which included that: “Schools and means of education shall be forever encouraged in the territory. One or more schools shall be established in each village as soon as practicable, where the poor shall be educated free of all charge.”<sup>41</sup> The reference to the poor specifically was due to the wealthy residents (*ricos*) of the New Mexico territory already having access to sectarian schooling provided by Catholic lay orders, primarily Jesuits and the Sisters of Loretto who taught in Santa Fe and Albuquerque. Many New Mexican upper-class families also sent their children to the east via the Santa Fe Trail, to be educated at schools within the United States.

It should be no surprise, however, that the residents of the newly American territory of New Mexico were not welcoming towards the government Kearny established under Governor Charles Bent. The treatment of local New Mexicans by the American forces brought about a revolt in which Governor Bent lost his life, despite his attempts to stop the misbehavior. In the words of Bent: “...they undertook to act like conquerors...These outrages are becoming so frequent that I apprehend serious consequences must result sooner or later if measures are not taken to prevent them.”<sup>42</sup> The uprising known as the Taos Revolt would be quickly crushed by United States Army, who unjustly hung many of the rebel leaders for treason.

Bent's replacement, provisional Governor Donaciano Vigil, reiterated the dedication of the new government towards educating its citizens. In his address to the legislature in 1847, Vigil stated that:

...[t]he people must be enlightened and instructed...[and] it is particularly

<sup>41</sup> New Mexico, “The Kearny Code,” in *Laws of New Mexico*, vol. Art. V, Sec. 4. (Santa Fe, NM: New Mexico, 1846).

<sup>42</sup> David Lavender, *Bent's Fort* (Garden City, NY: Doubleday and Company Inc., 1954), 251.

important in a country where the right of suffrage is accorded and secured to all, that all should be instructed...The diffusion of knowledge breaks down antiquated prejudices and distinctions, introduces people of all countries to a more intimate and attached acquaintance and is calculated to cultivate those sympathies among the masses of all nations which induce comparison and insure improvement.<sup>43</sup>

In same speech, Vigil admitted that the “available means which could be applied at present to the cause of education are small” but urged the legislature to do more and that he approved of doing more.<sup>44</sup> At the time of this speech, there was only one public school of record in Santa Fe, and repeated attempts by the territory legislature to create a university had failed to succeed.

After the Treaty of Guadalupe-Hidalgo was signed in 1848 and ended the Mexican-American War, an influx of Anglo Protestant settlers arrived in the Southwest. They brought with them a strong interest in universal education, though aimed more at their children than the children of Mexican American residents. These new settlers were interested in establishing a public-school system to replace the existing private schools that served only the wealthiest families.

Consequently, a public-school system was resisted heavily by *ricos*, who saw it as an intrusion designed to undermine their traditional religion. *Rico* residents also saw no reason to submit to additional taxation for a public-school system when they already had a private system in place that served their children. As a result, it took time for public-school systems to be realized throughout the Southwest. All states, however, professed a desire to educate their citizens to varying degrees. These attempts were more wishful thinking and promises rather than concrete and effective plans for the territorial

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<sup>43</sup> Ralph Emerson Twitchell, *The History of the Military Occupation of New Mexico, 1859-1925: Facsimile of Original 1909* (Santa Fe, NM: Sunstone Press, 2007), 150.

<sup>44</sup> *Ibid.*

governments and later new states, due to a lack of funding, lack of organization or teachers, or simply a lack of interest.

When war ended with Mexico's surrender, the Mexican authorities did what they could to ensure their former citizens would have the same rights as any other citizen of the United States, through the Treaty of Guadalupe-Hidalgo. This treaty promised the United States would honor and guarantee all land grants in New Mexico, as well as ensuring New Mexico would be “admitted as soon as possible” as to the Union. The treaty ensured that any Mexican citizen who chose to remain in the territory for a year would automatically acquire U.S. citizenship unless they chose to retain their Mexican citizenship.

In 1848, New Mexico convened its first attempt at a constitutional convention to become a state. Delegates echoed Governor Vigil's earlier comments concerning education:

We have neither the means nor any adopted plan by the government for the education of the rising generation...Resolved, that he (our delegate to the United States Congress) urge upon Congress the imperative necessity for the establishment of a sufficient fund or resource for the education of the people.<sup>45</sup>

Congress, however, turned a deaf ear to repeated requests for educational funding for a system of public schools, as it was not common for the federal government to subsidize state education., Education was the province of the states, not the federal government. The first convention in 1848 and a second one in 1849 failed to create a state constitution, but in 1850 a full constitution was drafted and approved by voters 8,371 to 39. A governor, lieutenant governor, and representative to Congress were elected as well

<sup>45</sup> Quoted in W.H.H. Allison, “Santa Fe in 1846,” in *Old Santa Fe: A Magazine of History, Archeology, Genealogy, and Biography* (Santa Fe, NM: Old Santa Fe Press, 1913), 402-403

as two U.S. senators. At the time, however, Congress was embroiled in a bitter debate over the Compromise of 1850 and uninterested in seating the New Mexican senators or approving the drafted constitution; thus, it never went into effect, as New Mexico was instead made a territory under the Compromise of 1850 and blocked from statehood.<sup>46</sup>

The commitment of the convention's delegates to some sort of public educational system, however, can be seen in the language of the abandoned constitution, which included an Article specifically dealing with education. In Article VII: Education, the 1850 constitution stated:

**Section 1.** A general diffusion of knowledge being essential to the preservation of the rights and liberties of the people, it shall be the duty of the Legislature of this State to make suitable provisions for the support and maintenance of Public Schools.

**Section 2.** The Legislature shall, at as early a day as practicable, establish Free Schools throughout the State, and shall furnish means for their support by taxation; and it shall be the duty of the Legislature to set apart not less than one-twelfth of the annual revenue of the State, derived from taxation, as a perpetual fund, which fund shall be appropriated to the support of Free Public Schools, and no law shall be made diverting said fund to any other use.

**Section 3.** The supervision of public instruction shall be vested in a State superintendent and such other officials as the Legislature may direct; the powers and duties of which officials shall be prescribed by law. The Secretary of State shall, by virtue of his office, be the State superintendent, for which he shall receive no extra compensation under any pretence [sic] whatever.<sup>47</sup>

Through these stipulations, the convention would have created a school system funded in perpetuity by a fixed amount of tax monies and specified the position of superintendent would not receive any extra funding, to avoid it becoming a political prize. While this

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<sup>46</sup> Jack D Rittenhouse and Office of the State Historian, New Mexico, "New Mexico's First Constitution 1850," New Mexico History.org, 1965, <http://newmexicohistory.org/people/new-mexicos-first-constitution-1850>.

<sup>47</sup> Rittenhouse and Office of the State Historian, New Mexico.



constitution was abandoned, it demonstrates that New Mexicans were already considering a public-school system early on, before they were even part of a U.S. territory.

At roughly the same time in 1851, Catholic Bishop (later Archbishop) John B. Lamy arrived in New Mexico and began a series of reforms to rebuild the abandoned churches in the area. Lamy considered education to be of primary importance to revitalizing the Church in New Mexico; thus part of these reforms were aimed at establishing new Catholic schools, as at the time there were no Catholic schools left in the region.<sup>48</sup> Shortly after arrival, Lamy established a free English school in Santa Fe, and the following year in 1852 brought five Sisters of Loretto to the region to establish both new convents and academies for education.<sup>49</sup>

Despite its failure to respond to New Mexico's request for educational funding, Congress did pass the Organic Act of 1850, that allowed for the sale of land in each township to be set aside for a public school, though this was not as helpful as it seemed. Robert Moyers has pointed out in his study of education in New Mexico that these lands could not be sold at the time anyway, as they were federal lands that had not yet been surveyed, which made the Organic Act an empty gesture.<sup>50</sup> Governor James S. Calhoun (1851-1852) echoed this in his message to the first territorial legislature, commenting on the unavailability of these lands; thus the lawmakers in New Mexico seem to have

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<sup>48</sup> John H Vaughan, *History and Government of New Mexico* (State College, NM: C.L. Vaughan, 1931), 214-215.

<sup>49</sup> *Ibid.*

<sup>50</sup> Robert A. Moyers, "A History of Education in New Mexico" (Thesis/dissertation (M.A.), George Peabody College for Teachers, 1941).

reached the same conclusion.<sup>51</sup> Because of this, the territory of New Mexico lacked the federal financial support necessary to set up a public schooling system..

Since it was unable to gain assistance from Congress, the territorial legislature turned to other methods of creating a public-school system and the educational bureaucracy needed to administer it. Unfortunately, these attempts were unsuccessful. The territorial legislature attempted to pass an act in 1856 entitled “Providing and Establishing Means for the Education of the Youth in the Territory of New Mexico.”<sup>52</sup> The act attempted to pay for public education through an annual tax of one dollar from every male in the territory. Along with this, the act created a school board consisting of people of “the greatest ability; learning and integrity in each precinct” along with a treasurer to handle the new funds, all selected by the probate judge for the county, who would also be the president of the county board.<sup>53</sup> When the vote was put to the people of the territory, however, it was soundly defeated 5,053 to 37, with the school law later repealed as unworkable without funding.<sup>54</sup>

New Mexican residents likewise strongly resisted any attempt by Anglo lawmakers to establish English as the official language instead of Spanish. Both were in widespread use in the territory at the time. Governor William Lane (1852-1853) proposed converting the state to only English for efficiency's sake in the early 1850s, but the territorial legislature solidly voted down the proposal. In 1856, Anglo legislators

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<sup>51</sup> James S. Calhoun, “Message of James S. Calhoun to the First Territorial Legislature of New Mexico, Santa Fe” (J.L. Collins and W.J. Kephard, 1851).

<sup>52</sup> When translated from the Spanish, which was *Proporcionando y estableciendo el modo de educar la juventud del territorio de Nuevo Mejico*.

<sup>53</sup> New Mexico, *Laws of the State of New Mexico* (Santa Fe, NM: Secretary of State, 1912), 76.

<sup>54</sup> C.E. Hodgin, “Early School Laws of New Mexico,” *Bulletin University of New Mexico*, Publications of the University of New Mexico, 1 (1906): 11.

attempted to propose an English-only public-school system, which was likewise soundly defeated by New Mexican voters.<sup>55</sup> This was a pattern in territorial politics, as Anglos were appointed to government positions by Washington D.C., but Mexican Americans controlled the territorial legislature and outnumbered Anglo residents. Thus, it was almost impossible for Anglos to force new laws on the territory, just as it was impossible for Mexican Americans to get their own people appointed to the territorial government.

A more effective law, passed in 1860, made the local justice of the peace responsible for recruiting teachers for the basic education of local children. It included that the justice should pay said teachers 50 cents per student. Children were required to attend if they were not already being taught at home or needed for farming or herding seasons.<sup>56</sup> This was followed by the creation of a territorial Board of Education to administer the system in 1863, instead of a superintendent selected by the governor.<sup>57</sup> A law passed in 1872 required a 1% tax on all property, to allow the anemic public-school system to finally begin to expand beyond the bare scattering of schools that existed. A weakness of this law was that it lacked any funding for construction or maintenance of school buildings. The system also lacked a centralized territorial superintendent, as the position had been created but was not currently funded. Congress declined to respond when New Mexico again requested funding assistance for the shaky public-school system.<sup>58</sup>

While these laws were unsuccessful in creating anything resembling an organized

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<sup>55</sup> David Martin Eiband, "The Dual Language Policy in New Mexico" (Thesis (M.A.), University of Texas at Austin, 1978). 72.

<sup>56</sup> Hodgin, "Early School Laws of New Mexico," 18–19.

<sup>57</sup> Hodgin, 20–22.

<sup>58</sup> Hodgin, 29–30.

public system of education, they were honest attempts that failed primarily due to lack of funding and the reliance on using local officials who were already holding other positions. While some officials may have been interested in contributing to public education, the extra burden to their office meant they could not devote the time and energy necessary to do a good job. But this also outlined other conflicts inherent in the existing school system.

Part of the failure of the early public-school system was due to resistance on the part of residents, especially wealthier residents who had no interest in paying the additional taxes necessary to fund it. Public schooling was an outside intrusion imposed on the population rather than chosen by them. S.P. Nanninga, one of the first to study educational history in New Mexico, explains this sense of intrusion was the major reason for the difficulty of founding a New Mexican public-school system:

The schools were established for a people and not by them. The founders of [Protestant] mission schools had to meet much opposition...to combat language difficulties and generations of illiteracy. Free schools, apart from the church, were considered...a means of educating children away from the church. There was a native disinclination to pay taxes [by the wealthy] who did not wish to be taxed to educate the poor...There was a lack of desire on the part of the masses for learning...<sup>59</sup>

Another problem (at least, to many Protestant citizens) was leaving membership of school boards to local community control. It meant that those who had been traditionally looked to as educational leaders were given priority for membership, and led to boards staffed by local churchmen, particularly Catholic clergy and lay brothers. For example, a Catholic lay brother named Brother Patrick was elected to the school board in Santa Fe, but later resigned because the rest of the board was “opposed to the continuance

<sup>59</sup> S.P. Nanninga, *The New Mexico School System, a Textbook for Use in the Course Entitled “The Problems of Education in New Mexico”* (Albuquerque, New Mexico: University of New Mexico Press, 1942), 19.

of religious instruction in the public schools” and refused to use the Sisters of Loretto to staff public schools, despite the sisters being responsible education in the territory for the previous 40 years. Catholics were also resistant to the idea of boys and girls being taught side by side in the same school.<sup>60</sup>

As a result, the conflict between *nuevomexicano* resistance to Anglo cultural assimilation, and Anglo Protestant missionaries attempting to force that assimilation, meant any attempts to create a public education system or policies supporting that goal were attempts to undermine local culture and religious belief. It was not until the last decade of the 19<sup>th</sup> century that the prevailing attitudes in the New Mexico territory against public schooling began to shift towards approval. With no concrete support from Congress and strong resistance within the territory itself, New Mexico had only a poorly organized system of public schools until the 1890s, though several larger communities did maintain small public schools of their own administered by clergy or the Sisters of Loretto.

The reason for improvement of schools in 1890 was the influence of Governor L. Bradford Prince (1889-1893). When Prince took office in 1890, he issued a clarion call for greater education in his message to the legislature, claiming that “No subject calls for more immediate and careful attention than that of education.”<sup>61</sup> Prince was instrumental in creating an effective state board of education in 1891 as part of his drive for public education. He argued persuasively for comprehensive changes in both teaching and school funding within the territory, including increasing the authority of educational

<sup>60</sup> Moyers, “A History of Education in New Mexico.” 284.

<sup>61</sup> L. Bradford Prince, “Message of Governor L. Bradford Prince to the Twenty-Ninth Legislative Assembly of New Mexico, December 1890” (New Mexican Printing Company, Santa Fe, 1891).

administrators and requiring proof of competence for teachers and administrators.

Part of this required competence was that teachers dealing with primarily Spanish-speaking children should be fluently bilingual. As Nanninga states: “It was claimed that in over four hundred country schools the language of the pupils was principally Spanish and that the pupils needed Spanish-speaking teachers to teach them English, and that this required the preparation of a sufficient number of native Spanish-speaking teachers in sympathy with their students.”<sup>62</sup> One result of this was the establishment of the Spanish-American Normal school in El Rito, a very successful school for bilingual instruction of New Mexican teachers until it burned down in 1912.

The most effective part of the 1891 laws by far was that local school boards could levy school taxes and issue bonds. Previous legislative attempts had always failed due to a lack of funding for actual school facilities and teachers. With this new authority, the local boards were at last able to gather funding to begin construction of school buildings in their communities. This, combined with a strengthening of the authority of the territorial and county superintendents, meant real progress could be made. The school laws passed in 1891 formed the foundations for effective public-school systems in Arizona and New Mexico as they exist today.

In 1878, Governor Lewis Wallace (1878-1881) addressed the problem of New Mexico education, claiming that it was a failure of creating a course of study; because there was no definition of what should be taught, or what textbooks should be used; because of a lack of the prohibition of sectarian influence; and because of a lack of definition for what amount of school funds should be used for paying teachers,

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<sup>62</sup> Nanninga, 93.

maintaining school houses, or spent on other educational needs. In short, Wallace pointed out that the existing system was unfocused in how to go about giving an education to the children of New Mexico as well as lacking both the funding and structure to make it all work.

In 1862, during the Civil War, a group of New Mexicans attempted to take the southern area of New Mexico as a new state for the Confederacy, up to the 34<sup>th</sup> parallel; not surprisingly this was also the area with the highest Anglo immigrant population that included many Southerners, as it was both where gold was discovered and where the Southern Pacific Railroad ran. The territory was now split, with Santa Fe in the northeast as New Mexico's capital, and Tucson in the Southwest as Arizona's new capital, though a second Union-loyal capital for Arizona was installed in Prescott in 1864 by the U.S. government. The rebel state of Arizona was short-lived, as Union forces quickly recaptured the territory. But the Civil War Congress did create a separate Arizona Territory from the western side of the New Mexico territory, following the Confederate government declaring Arizona a state.<sup>63</sup> Tucson became the capital after the war, before the it relocated back to Prescott in 1879, which moved it away from the strongholds of Mexican settlement near Tucson and gave Anglos greater control over the government, until in 1889 a permanent capital was constructed at Phoenix, midway between Tucson and Prescott.

After it was made a separate territory in 1863, unlike Texas or New Mexico, Arizona's original territorial government as established had no provisions for education, though since it had previously been part of New Mexico it would have been under the

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<sup>63</sup> John D. Leshy and Arizona, *The Arizona State Constitution*, eBook, The Oxford Commentaries on the State Constitutions of the United States (Oxford: Oxford University Press, 2011), 8.

same dedication to education expressed in 1850 by the New Mexico territorial government. Its population was even lower than that of the rest of New Mexico territory, which would have made it difficult to fund a public school. In 1850, when New Mexico was organized as a territory, there had been over 60,000 people in the territory, but under 600 had been Anglos.<sup>64</sup> When Arizona was split off into its own territory in 1863, the census reported approximately 1000 people in the entire territory of Arizona.<sup>65</sup> By the time of both states convened to create their state constitutions in 1910, the population of New Mexico had climbed to 329,000, with 119,406 of those, primarily Anglo Americans, born in other parts of the United States.<sup>66</sup>

This split, and the paths both territories took to statehood provide insight to the sociocultural factors in both territories that would make them so distinct when it came to later views of Mexican Americans and Anglos. For one, New Mexico was overwhelmingly populated by Mexican Americans, who were in the majority in the late 19<sup>th</sup> century, while Arizona was almost all Anglo and had a very small population. Many Arizonans had been among those who supported the Confederate takeover of the area, and likely were settlers who had arrived in the area from Texas and the American South and carried with them the racial viewpoints inherent in those areas.

Attempts by both territories to become states were resisted, though for different reasons. The man at the head of this resistance was U.S. Senator Albert Beveridge of

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<sup>64</sup> Robert W. Larson, *New Mexico's Quest for Statehood 1846-1912* (Albuquerque, NM: University of New Mexico Press, 1968), 65.

<sup>65</sup> U.S. Census Bureau, "State Intercensal Tables: 1900-1999" (Population Distribution Branch, 1996), Retrieved from <https://www.census.gov/data/tables/time-series/demo/popest/pre-1980-state.html>. According to the U.S. Census, the population in New Mexico territory dropped from 93, 561 to 91, 874 after Arizona was split off.

<sup>66</sup> U.S. Census Bureau, *Population 1940 Vol II* in Carol Zeleny, "Relations Between the Spanish-Americans and Anglo Americans in New Mexico" (Ph.D. Dissertation, Yale University, 1944), 137.



Indiana (1899-1911, R-IN), who became chairman of the Senate Committee on Territories in 1901. A Progressive politician, Beveridge was resistant to statehood for Arizona due to its low population (of Anglos), but also because he was suspicious of the influence of mining and railroad interests in Arizona.<sup>67</sup> For New Mexico, it was the prevalence of the Spanish language and culture in New Mexico that concerned Beveridge, which he testified to in later hearings on statehood.

The official reason given in these Congressional hearings for denying New Mexico was also a low population, though in reality it was because the Mexican American majority would promptly gain control over the state government given their voting numbers compared to Anglos. If New Mexico remained a state, the federal government could continue to directly appoint Anglos to territorial positions, while Mexican Americans favored statehood to give them back political control of their land.<sup>68</sup> Writer Michael J. Trinklein notes that part of this antipathy towards statehood was also due to regional politics, as Northern and Southern state coalitions were already at odds in the U.S. Congress at the time. Trinklein illustrated the reason for the failure of initial statehood being due to one handshake by a New Mexican representative with a senator perceived as anti-Southern being enough to sink any attempts to reach statehood among Southern congressmen for years.<sup>69</sup>

With this Southern bloc of votes, Beveridge was able to successfully keep either state from achieving statehood for nine years, starting with an attempt at joint statehood

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<sup>67</sup> Leshy and Arizona, *The Arizona State Constitution*, 9.

<sup>68</sup> Michael J. Trinklein, "Montezuma: A Two-For-One Sale and An Ill-Advised Handshake." *Lost States: True Stories of Texplahoma, Transylvania, and Other States That Never Made It*, eBook (Philadelphia, PA: Chronicle Books, 2010).

<sup>69</sup> *Ibid.*

in 1902 that proposed combining both territories into a new state called Montezuma. Arizona territorial delegate Marcus Smith attacked this idea, claiming the two territories had different histories, legal systems and major physical barriers separating their most inhabited areas, making it unreasonable to combine the two into one government. The initial bill failed, but returned in 1906, when another joint statehood bill was proposed to make both territories the combined state of Arizona. While low population was again given as the main reason for this second bill's failure, it is interesting to examine reactions among Arizonan representatives and educators that show the cultural differences between the two territories.<sup>70</sup>

A major concern of Anglo Arizonans was their fear of losing control of the proposed state government due to be the minority population. Thus, an Arizonan coalition of Anglo-controlled railroad and mining interests, cattle ranchers, the state bar association, territorial newspapers, and teachers strongly rejected the proposal.<sup>71</sup> The Arizona Territorial Teachers Association passed a resolution against the union of the territories in 1906. Arizona schools at the time taught classes exclusively in English and refused to accommodate Spanish-speaking classrooms.<sup>72</sup> In "A Protest Against Union of Arizona with New Mexico" presented to Congress, the writers gave their primary reasons for opposing the bill as:

...the decided racial difference between the people of New Mexico, who are not only different in race and largely in language, but have entirely different customs, laws and ideals and would have but little prospect of successful amalgamation ... [and] the objection of the people of Arizona, 95 percent of whom are Americans, to the probability of the control of

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<sup>70</sup> *Ibid.*

<sup>71</sup> Leshy and Arizona, *The Arizona State Constitution*, 8–9.

<sup>72</sup> U.S. Commission on Civil Rights, "The Excluded Student: Educational Practices Affecting Mexican Americans in the Southwest," Mexican American Education Study (Washington, D.C.: U.S. Government Printing Office, 1972), 76-82.

public affairs by people of a different race, many of whom do not speak the English language, and who outnumber the people of Arizona two to one.<sup>73</sup>

Note that “Americans” is apparently only applied to Anglo immigrants, not Mexican American residents granted the same citizenship years before. Other lesser reasons included that the New Mexico legislature and its courts made use of Spanish interpreters rather than being held only in English, and that Spanish-speaking residents of New Mexico would not agree to lose their right to sit on juries.<sup>74</sup>

By speaking of a lack of “successful amalgamation”, the residents of Arizona who opposed the union effectively argued that territorial residents who spoke a different language or had a different culture than Anglo culture would never become truly American if they held on to their rights to speak a different language and retained their Spanish/Mexican culture. This is the core of the differences between the two states, that would color the perceptions of residents for years to come. The racism inherent in the idea that Mexican American Spanish-speakers could not be the same as Americans became an accepted part of Arizona’s social structure as the norm. This was not the case in New Mexico. If the constitutions of Arizona and New Mexico were the foundations for statehood, this overt discrimination was the keystone for Arizona’s foundation.

Though the 1906 joint statehood bill was passed by Congress, when it went to the territories to ratify, New Mexicans voted overwhelming for the bill, but the residents of Arizona voted against it, ending attempts to unify the two territories into one state. It became clear through their continued resistance that the residents of Arizona had no interest in merging with New Mexico, primarily due to the *nuevomexicano* racial,

<sup>73</sup> “U.S. Senate Document 216” (1906), 1-2.

<sup>74</sup> U.S. Commission on Civil Rights, “The Excluded Student.” 76-82.

linguistic, and cultural heritage of most New Mexico's residents. Instead of joint statehood, the two territories would follow their own paths to becoming separate states, so that Anglo Arizonans could preserve their political power and English-only sensibilities.

The resistance to Spanish-speaking residents was echoed by many U.S. senators who opposed statehood for Arizona and New Mexico, who claimed the state was not ready for self-governance. New Mexico was singled out, due to its high population of Mexican Americans and the widespread use of Spanish as a language. When statehood was proposed again for the territories in 1910, the chairman of the Congressional committee, Beveridge, made it clear that speaking another language was an impediment to statehood. Beveridge stated:

The purpose of that provision, both with reference to New Mexico and Arizona, and particularly to the former is to continue the thing that has kept back the speaking of English and the learning of English, to wit: that because they may conduct the schools in other languages, in many of those Spanish-speaking communities, particularly in New Mexico, they will do so. Everybody knows ... one of the difficulties down there ... [is] the curious continuance of the solidarity of the Spanish-speaking people. It would be well ... if at last the men who make the laws could speak the language which all of the rest of us speak.<sup>75</sup>

In keeping with this view, when Congress passed the Enabling Acts in 1910 to allow the territories to create constitutions, it included the unusual requirement that both territories submit their proposed constitutions to the President and Congress. Congress also added two anti-Spanish language stipulations as requirements for statehood:

That provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all children of said state and free from sectarian control, and that said schools shall always be conducted in English. That said State shall never enact any law restricting or abridging the right of suffrage on account of race, color, or previous

<sup>75</sup> Albert Beveridge, "Congressional Record" (1910).

conditions of servitude, and that ability to read, write, speak, and understand the English language sufficiently well to conduct the duties of the office without the aid of an interpreter shall be necessary qualification for all State officers and members of the State legislature.<sup>76</sup>

Public schools would not be allowed to teach in any language but English, and the only elected officers of the state that would be allowed would be English-speaking representatives.

Even some members of Congress felt this went too far, with Rep. George Legare of South Carolina stating:

These people come to us from New Mexico, both Republicans and Democrats, and say that in the Enabling Act passed last year we have taken them by the throat and told them that they must enact an irrevocable ordinance whereby no Spanish-speaking person can hold office in their State. They tell us, both factions, that some of the best people of their State and some of their most brilliant men are Spanish-speaking people.<sup>77</sup>

Thus, even before statehood, resistance to the use of Spanish and an attitude of superiority to Mexican American culture were prevalent, both among Anglo American immigrants in the territories and by the government in Washington, D.C. Both Arizona and New Mexico would seek their own way of dealing with these requirements, which would set them apart in ways that would drive educational policy in noticeably different directions in the future, as politicians in both territories charted their own path for statehood and for educational policy. But this joint history, and the bitter contest leading up to statehood, reflects the continuity of Anglo discrimination and various forms of racism that underlaid later educational decisions in the 1940s and beyond.

<sup>76</sup> U.S. Commission on Civil Rights, "The Excluded Student," 76-82.

<sup>77</sup> George Legare, "Congressional Record" (1911), 1251.

## **Chapter 2: Legal Foundations of Southwestern Education**

At the beginning of the 20<sup>th</sup> century in 1910, the Arizona and New Mexico Territories were engaged in the final stages of admission as states to the United States. The path to joint statehood had been bitterly contested by Arizona Anglos, who had no interest in being part of a Mexican American majority state. Instead, Arizonan Anglos sought their own state, based on their own culture and prejudices built on years of looking down on the Mexican residents of the Southwest as a failed state and a culture inferior to that of America. New Mexico's *nuevomexicanos*, for their part, had been forced to remain a territory despite repeated appeals for statehood. If New Mexico remained a territory, Anglos in that territory could have a say in the appointment of their territorial government officials, leaving Mexican Americans with only control of the territorial legislature with their ethnic majority. For Mexican Americans, the chance to achieve statehood was a chance to take control of their own lands again and put their own people in positions of authority. In the different documents each territory created for its state constitution the history of its ethnic makeup and sociocultural views can be seen. Views regarding language, identity, and education were shaped of both. Arizonans preferred to make their state much more like that of other American states in culture and values, where New Mexican *nuevomexicanos* wanted to protect their people and culture from Anglo intrusion and control. The results had important implications for the future state policies, including educational policy.

Arizona was first to convene a Constitutional Convention in 1910 after President William Howard Taft (1909-1913) signed the Enabling Act of the same year. Of the fifty-two delegates selected to serve, all identified as Anglo American, except for a single

Mexican-born merchant from Tucson in Pima County, Carlos C. Jácome.<sup>78</sup> Only three delegates were Arizona natives; the remainder were immigrants from all over the country, drawn to the territory by the growing mining and railroad industries.<sup>79</sup>

Arizona's convention was a mix of Progressive movement ideals and labor interests that were new at the time, leading to many innovations in Arizona's constitution.<sup>80</sup> The convention was also devoted to racial equality, despite the large number of delegates from Southern states that favored various Jim Crow laws and statutes. Both public racial segregation and bans against racial intermarriage were defeated, while a literacy test for voting was also rejected.<sup>81</sup>

The Arizona delegates devoted an entire section, Article XI, to education, founded on many of the Progressive educational ideas of the time. Section I of Article XI specified that the legislature "shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public-school system" and mentions the education of special needs students, such as the disabled or "deaf, dumb, and blind."<sup>82</sup> It also identified types of schools, such as kindergarten, high school, and a variety of technical schools.<sup>83</sup> It assigned supervision and general conduct of the public-school system to a State Board of Education, a State Superintendent of Public Instruction, county school superintendents, and state supervisors that would be appointed by law as needed, giving a degree of flexibility and independence from state control. Regarding funding, Section 6

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<sup>78</sup> Mary Dale Palsson, "The Arizona Constitutional Convention of 1910: The Election of Delegates in Pima County," *Arizona and the West*, no. 2 (1974), 120.

<sup>79</sup> Leshy and Arizona, *The Arizona State Constitution*, 12–13.

<sup>80</sup> Leshy and Arizona, 16.

<sup>81</sup> Leshy and Arizona, 16–20.

<sup>82</sup> Leshy and Arizona, *The Arizona State Constitution*.

<sup>83</sup> William F Swindler, *Sources and Documents of United States Constitutions* (Dobbs Ferry, NY: Oceana Publications, 1973).

of Article XI required that:

The legislature shall provide for a system of common schools by which a free school shall be established and maintained in every school district for at least six months in each year, which school shall be open to all pupils between the ages of six and twenty-one years.<sup>84</sup>

The limits of what could be considered a “free” school would be open to debate throughout much of the 20<sup>th</sup> century, however.<sup>85</sup> Sections 8 and 9 of Article XI created a state school fund but also allowed the legislature to set aside additional money if that fund was inadequate to fund the public school system in each county for a minimum of six months, or (in Section 10) to levy additional taxes for funding specific state educational institutions or programs.

Arizona did specifically include anti-Spanish language sections, mostly at the urging of Congress which had required English be used in government and education. In Section 20 of the Enabling Act for statehood, Congress had encouraged Arizona to make provisions for public education in the fledgling state but had included the restriction that all teaching must be in English. These requirements were taken from the Enabling Act and added to Article XX of the Arizona Constitution as a series of ordinances. Regarding education, Section 7 of Article XX reads:

Provisions shall be made by law for the establishment and maintenance of a system of public schools which shall be open to all children of the state and be free from sectarian control and said schools shall always be conducted in English. The state shall never enact any law restricting or abridging the right of suffrage on account of race, color, or previous condition of servitude.<sup>86</sup>

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<sup>84</sup> *Ibid.*

<sup>85</sup> Regarding universities, the wording was “as nearly free as possible”, to allow for reasonable fees to be charged.

<sup>86</sup> Swindler, *Sources and Documents of United States Constitutions*.



Similar restrictions requiring English were placed on holding government office in Section 8 of Article XX:

The ability to read, write, speak, and understand the English language sufficiently well to conduct the duties of the office without the aid of an interpreter, shall be a necessary qualification for all state officers and members of the state legislature.<sup>87</sup>

Overall, Arizona's constitution was an interesting (and unusual) combination of Progressive and labor ideas, including a strong democratic bent through the Progressive ideas of the initiative, referendum, and recall. It established both public schooling and funding for it, though it left normal funding to the individual counties, while reserving additional taxes for more funding for state associated institutions, such as universities, technical schools, and schools for the deaf, blind, or mute. Arizona, however, let itself be pressured by Congressional requirements to ensure English-only education, likely due to the almost complete lack of Mexican American delegates and the majority population of Anglos that existed in the sparsely populated Arizona Territory at the time. The requirements on using English were not a surprise given Arizona's stubborn refusal to have anything to do with Spanish language or *nuevomexicano* culture, but it was surprising that a state with such a high population of Southern settlers was willing to ensure suffrage would never be refused due to race, color, or former servitude. However, it is plausible that this was aimed at African Americans alone, and Mexican Americans were not really considered separately, as at the time under the law Latinos were considered "White" rather than colored.

New Mexico had a very different reaction to the same requirements from Congress. The New Mexico Constitutional Convention possessed the opposite ethnic

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<sup>87</sup> *Ibid.*

makeup to Arizona's convention, as it included a majority of Mexican American members, many of whom were New Mexican natives. With the resistance of congressmen such as Senator George Legare (1903-1913, D-SC), Congress had eventually removed the prohibition on holding state office only if one spoke English that had been part of the Enabling Act of 1909. But the requirement to teach in English remained, and the convention reluctantly let it stand. The Enabling Act also granted New Mexico 5% of the proceeds of the sale of public lands in the state. This included sections intended for schools that had been otherwise appropriated or sold to be replaced with an equal amount of land. This provided much needed funding for the money-starved New Mexico educational system as well as a location to build their public schools.

In direct response to the ultimatum barring Spanish from classrooms, however, New Mexico defiantly included in its proposed constitution three separate provisions protecting the rights of Spanish-speaking students and residents.

**ARTICLE VII Section 3:**

The right of any citizen of the state to vote, hold office or sit upon juries, shall never be restricted, abridged or impaired on account of religion, race, language or color, or inability to speak, read, or write the English or Spanish Languages.

**ARTICLE XII Section 8:**

The legislature shall provide for the training of teachers in the normal schools or otherwise so that they may become proficient in both the English and Spanish languages, to qualify them to teach Spanish-speaking pupils and students in the public schools and educational institutions of the state, and shall provide proper means and methods to facilitate the teaching of the English language and other branches of learning to such pupils and students.

**ARTICLE XII Section 10:**

Children of Spanish descent in the state of New Mexico shall never be denied the right and privilege of admission and attendance in the public

schools or other public educational institutions of the state, and they shall never be classed in separate schools, but shall forever enjoy perfect equality with other children in all public schools and educational institutions of the state, and the legislature shall provide penalties for the violation of this section. This section shall never be amended except upon a vote of the people of this state, in an election at which at least three-fourths of the electors voting in the whole state and at least two-thirds of those voting in each county in the state shall vote for such amendment.<sup>88</sup>

Article VII, Section 3 of the constitution further reasserted all the rights guaranteed by the Treaty of Guadalupe-Hidalgo, including that New Mexicans will not be discriminated against based on their race, ethnicity or language and would be treated as full citizens with all attendant rights and privileges. New Mexico was entirely unique as a state for having a language other than English enshrined and protected in its constitution.

While on the surface this was to protect Spanish and Spanish speakers, this addition was a direct response to Anglo interference and legal theft of land that had been taking place in the late 19<sup>th</sup> century. *Nuevomexicanos* had reason to distrust Anglo residents after decades of being treated as second-class citizens and discriminated against due to their race and culture. They had long chafed under appointed Anglo government officials as part of the territorial government and seized the chance to put protections for their people, language, and culture in the new constitution to ward against future Anglo pressure to conform to American culture.

Despite these articles being included, President Taft agreed with the changes and approved the constitution, though the Senate resisted ratification. This was due to the convention setting the requirements for constitutional amendment too high in a separate provision. Once this was altered and a twenty-year requirement added that all laws would

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<sup>88</sup> New Mexico, "New Mexico Constitution," New Mexico Secretary of State, 2013, [http://www.sos.state.nm.us/Public\\_Records\\_And\\_Publications/2013nmconst.pdf](http://www.sos.state.nm.us/Public_Records_And_Publications/2013nmconst.pdf).

be printed in both English and Spanish, the New Mexico State Convention resubmitted the constitution. President Taft signed the bill that made New Mexico a state on January 6<sup>th</sup>, 1912.

In its constitution, the New Mexican legislature was given an active role in education as a participant in crafting state educational policies. One of the legislature's permanent interim committees, the Legislative Education Study Committee (LESC), was intended as a bipartisan committee chaired by the majority party that oversaw drafting educational legislation as well as the educational budget for the state, which would then be approved by the state legislature. As nearly half of the state budget was traditionally being set aside for education until the late 20<sup>th</sup> century, this represented a significant budgetary duty.<sup>89</sup> When New Mexico became a state, the Board of Education was specifically made part of the constitution in Article XII, section 6a:

The State Board of Education shall control all public schools. It shall consist of the governor, the state superintendent of public instruction, and five other members appointed by the governor with the consent of the senate, including the head of a state institution of higher education, a county superintendent of schools, and another person actually engaged in educational work.<sup>90</sup>

In effect, the Board of Education was placed in charge of law, policy and regulation, finance, instruction, and strategic educational planning throughout the state of New Mexico.

Spanish language teaching continued to be on the minds of school boards and

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<sup>89</sup> John B. Mondragón and Ernest S. Stapleton, *Public Education in New Mexico* (Albuquerque, New Mexico: University of New Mexico Press, 2005). 39-40. Specifically, the budget for education varies from 46% to 50% of the total budget, according to numbers compiled by Sharon Ball in her dissertation proposal quoted in Mondragón and Stapleton's book. These numbers seem consistent for previous decades back to the 1940s.

<sup>90</sup> *Ibid.*

legislators following ratification of the constitution. New Mexico law provided that, with the approval of a majority of the local school board, Spanish could be taught as a separate subject, or that English textbooks could be used so that “Spanish may be used in explaining the meaning of English words.”<sup>91</sup> By 1917, in fact, it was illegal for a county superintendent to force teachers to teach Spanish and English side by side if a majority of residents preferred to simply teach in Spanish in Spanish-speaking communities.<sup>92</sup> Historian Robert Moyers argues that this was a way to sidestep the requirements of the Enabling Act that required teaching classes in English, as Spanish was often used as the primary classroom language with English being “incidental” rather than a requirement in many rural schools.<sup>93</sup>

Ultimately, educational policies rest on law: local, state, or federal. Those laws, in turn, draw from the constitutional promises for what education should be, as legislators and legal experts interpret the language of the constitution in response to real-life situations and federal decisions based on the supremacy of the U.S. Constitution. In discussing the course of Mexican American education in the Southwest, it is also important to examine issues such as educational equality, desegregation, and bilingual education, among other practices. From early in its history, the courts were the ally of Mexican Americans, and a place where they could legally challenge the state government over *de facto* discrimination. This was necessary, because following statehood numerous Anglos had moved into New Mexico and had appropriated control of the government from the former Mexican American majority.

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<sup>91</sup> New Mexico, *Laws of the State of New Mexico*. 88.

<sup>92</sup> *Ibid.*

<sup>93</sup> Moyers, “A History of Education in New Mexico,” 284–86.

This early period saw an intensification of the requirement that Mexican Americans prove their patriotism during the Mexican Revolution (1910-1920) after the discovery of the Plan of San Diego in 1915 fed fears of many American citizens that Mexican American were disloyal.<sup>94</sup> It had called for a rebellion by Mexican Americans, Blacks, and Japanese to declare the independence of Texas, New Mexico, Arizona, Colorado, and California “robbed in a most perfidious manner by North American imperialism” from Mexico, and the execution of “every North American over sixteen years of age” save for aged men, women, and children, as well as any “traitors to our race.”<sup>95</sup> The plan was a reaction by militant Latinos and Blacks to the influx of Anglo Americans brought into the Rio Grande Valley with the coming of the railroads, which were rapidly changing the demographics of the area. The plan was crushed by the U.S. Army and the Texas Rangers before it could be set in motion (killing between 300-5000 Mexicans, *tejanos*, and others). But the fears it fed were part of the existing narrative of Mexicans as untrustworthy enemies for many Anglo Americans in Texas and the Southwest, that tied back to historically earlier stereotypes of the Black Legend or from the Alamo.

This antipathy towards Mexican descent in the 1920s and 1930s led Mexican Americans in that period to distance themselves from the caricature of the “Mexican” that existed in the minds of many Anglos. For example, Nancie Solien González points out that it was after World War I that the term “Spanish-American” (or *Hispano*) came into use in the Southwest. The term was used to distinguish long-term residents descended from the original Spanish settlers of the region. Previously, “Mexican” had sufficed as a

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<sup>94</sup> Charles L. Harris and Louis R. Sadler, *The Plan de San Diego: Tejano Rebellion, Mexican Intrigue.*, eBook, *The Mexican Experience* (Lincoln, NE: University of Nebraska Press, 2013), 195–97.

<sup>95</sup> Harris and Sadler, 16–18.

term for all those of Spanish/Mexican heritage in the Southwest.<sup>96</sup> González expanded on this idea by dividing Spanish-speaking residents into three categories according to how they reacted to nativism and antipathy towards Mexicans.

The first reaction was a complete disassociation from Mexicans and a denial of any historical relationship or similarity with Mexicans. Instead, residents created an identity connected to the “glory and grandeur of the way of life of the Spanish conquistadores” from whom they claimed direct descent.<sup>97</sup> This first choice González identifies with the upper class and urbanites over rural residents.

The second by Mexican Americans in the Southwest was acceptance of Americanization, where residents abandoned some aspect of their cultural heritage in favor of assuming an Anglo way of life, including speaking English primarily. She associated this with the middle-class. In both the first and second case, González reported that members labelled lower class Latinos as “Mexican” and associated them with lesser morals and behavior; putting all the unpleasant stereotypes aimed at Mexican Americans into the category of Mexican and away from their own self-identification.

Finally, the third pattern was the more common reaction of lower or working-class Mexican Americans. These people took the opposite approach to choosing to be Mexican or Spanish-American. They either did not have the resources to adopt Anglo ways or refused to do so. Many considered themselves one people of Latino heritage united in resistance towards Anglo American intruders (and especially Americanized Mexican American residents, termed *agringados*).

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<sup>96</sup> González, *Spanish-Americans*, 80.

<sup>97</sup> González, *Spanish-Americans*. 81.

The first major legal argument that Mexican Americans fighting for educational equality made was based on the property of “whiteness,” thus relying upon an interpretation associated with the first and second type of reactions. It also relied on the way *nuevomexicanos* had become citizens when the U.S. occupied the Southwest. After the end of the Mexican-American war, the Treaty of Guadalupe-Hidalgo (1848) left the United States with a problem of promises made by treaty versus Anglo cultural views of Mexicans as a whole. The Treaty had specified that all former Mexican citizens who did not leave the newly occupied territories in the Southwest or who did not specifically declare their intention to remain Mexican citizens would be granted the full rights and privileges of U.S. citizenship. However, current U.S. immigration law at the time only allowed those defined as “White” to become citizens, and Mexicans (as many in the U.S. viewed all Latinos as Mexican) were not viewed as white or as equal to Anglos in that respect. For example, in 1855 the California state legislature decreed that public funds for education could only be appropriated “in proportion of the number of white children”<sup>98</sup> and in 1864 had had passed a statute stating that the children of "Negroes, Mongolians, and Indians" must attend separate schools.<sup>99</sup> By 1896, *Plessy v. Ferguson* made the idea of “separate but equal” facilities for White and Black students the law of the land. This would not be challenged until 1947, in *Mendez v. The Westminster Board of Education*, which would also contribute to *Brown v. The Board of Education of Topeka* in 1954,

<sup>98</sup> Shirley Ann Wilson Moore, “‘We Feel the Want of Protection.’ The Politics of Law and Race in California, 1848-1878,” *Lost LA*, October 10, 2017, <https://www.kcet.org/shows/lost-la/we-feel-the-want-of-protection-the-politics-of-law-and-race-in-california-1848-1878>.

<sup>99</sup> California State Assembly, “An Act Amendatory of, and Supplementary to, ‘An Act to Establish, Support, and Regulate, Common Schools, and to Repeal Former Acts Concerning the Same,’ Approved May Third, One Thousand Eight Hundred and Fifty-Five,” Statutes of California § Ch. 239 (1864).



which finally overturned *Plessy v. Ferguson*. These cases will be discussed in the following chapter.

To return to the consequences of the Treaty of Guadalupe-Hidalgo, if Mexicans were legally allowed to naturalize under the treaty, then they would legally have to be considered White. Courts in the Southwest often struggled to define the rights of Mexican Americans as a result. Historian George A. Martínez has pointed out that the official definitions invoked in a law case relied on the Encyclopedia Britannica, which defined the residents of Mexico as 1/5ths White and 2/5ths Indians, with the remaining being of “mixed blood.”<sup>100</sup> Therefore, Martínez argues that normally Mexicans and by extension Mexican-Americans would normally have difficulty being seen socially as White, despite the legal designation.

An important early case, *In re Rodríguez* in 1897, changed this through political decision rather than legalization.<sup>101</sup> This case was brought by Ricardo Rodríguez, a Mexican American man who applied for citizenship and requested final approval of his application at the federal district court in San Antonio, which would also give him the right to vote. Since Texas had not been part of the territory ceded by the Treaty of Guadalupe-Hidalgo, however, but had declared independence from Mexico then been annexed by the United States, Rodríguez did not qualify for citizenship by treaty, and a Texan statute mandated that “only Caucasians and Africans could become U.S. citizens. Under Texas law, a *tejano* (Texan Latino) was neither, and could not qualify, though the

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<sup>100</sup> George Martínez, “The Legal Construction of Race: Mexican-Americans and Whiteness,” *Harvard Latino Law Review* 312 (1997).

<sup>101</sup> 81 F.337, No. 81 F.337 (W.D. Tex. 1897).

law did not specifically bar those of Mexican descent. There was a strong movement in Texas to disenfranchise *tejanos* that dated back to the Texas Revolution in 1836.

In a Texas district court case that took a year to complete, Judge Thomas S. Maxey ruled that Rodríguez had the right to become a citizen. Maxey noted that both the United States and the Republic of Texas “had by various collective acts of naturalization conferred upon Mexicans the rights and privileges of American citizenship,” and specifically cited the Treaty of Guadalupe-Hidalgo, the Constitution of the Republic of Texas (which had granted citizenship to Mexicans living in Texas on the Texan Independence Day), and a congressional resolution from 1845 that had extended citizenship to Mexicans in Texas after annexation into the United States.<sup>102</sup> Maxey also declared at the Fourteenth Amendment granted citizenship to all people born or naturalized in the United States, no matter their ethnic background, concluding that what “forces itself upon the mind [is] that citizens of Mexico are eligible to American citizenship, and may be individually naturalized by complying with the provisions of our laws.”<sup>103</sup>

Martínez argues this defined the concept of whiteness by politics, as he lists two other case examples (*In re Camille* and *In re Young*) where the children of a White Canadian and Indian mother, and a German father and Japanese mother were declared to be mixed race and thus not legally White that had not had the benefit of treaties or annexation to confer citizenship. This was not the case for Mexican Americans in the Southwest, despite their “mixed race” heritage: they would be considered White after this

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<sup>102</sup> Teresa Palomo Acosta, “IN RE RICARDO RODRÍGUEZ,” Handbook of Texas Online, June 15, 2010, <http://www.tshaonline.org/handbook/online/articles/pqjtw>.

<sup>103</sup> *Ibid.*

decision, where whiteness was a measurement of naturalized citizenship. In fact, before the 1930 population census, Mexican American and Mexican immigrants were not formally distinguished from White citizens.

The early struggles by Mexican Americans against segregation began in reaction to the result of two previous cases that occurred in the late 19<sup>th</sup> century: *Plessy v. Ferguson* (1896), where the principle of “separate but equal” segregated facilities was first advanced, and *Cumming v. Richmond County Board of Education* (1899), which made legal the idea of *de jure* segregation of students within school districts. Based on these decisions, school districts across the Southwest used various rationales to argue that Mexican American children should be segregated, usually from districts with high numbers of Anglo students and with a higher socioeconomic level. Reasons ranged from lack of socialization, inability to speak fluent English, or lack of ability in working with other students of the same age group. This trend had not gone unnoticed by Mexican American parents, but few legal challenges were presented in the early 20<sup>th</sup> century.

The first case that did challenge this occurred in Arizona, *Romo v. Laird* (1925), filed in the small agricultural town of Tempe, in the Maricopa County Superior Court.<sup>104</sup> The suit was filed after the parents of four children already the Tempe Eighth Street School, Adolph Romo and his wife Joaquina Jones, were told their children could not transfer to the newer Tenth Street School. This was because the Tempe school district had designated the Tenth Street School for “children of the white race” and the Eighth Street School had been segregated for Mexican American children since 1915.<sup>105</sup> Moreover, the

<sup>104</sup> Laura K. Muñoz, “*Romo v. Laird*: Mexican American Segregation and the Politics of Belonging in America,” *Western Legal History: The Journal of the Ninth Judicial Circuit Historical Society* Vol. 26, no. 1&2 (2013): 97–99.

<sup>105</sup> *Ibid*, 104.

Eighth Street School was not using certified teachers for its students. Instead, Tempe had a contract that designated the Eighth Street School as a Mexican training school for the Tempe State Teachers College (later Arizona State University). Students at the Teacher's College could teach there with the oversight of college faculty members as a training opportunity to work with Spanish-speaking students. Because the Eighth Street School was allowing uncertified teachers to teach his children, they were not receiving an equal education compared to children attending the Tenth Street School. The judge agreed, noting in his decision the defendants "had failed in their duty to the plaintiff in not providing teachers of as high a standard of ability and qualifications."<sup>106</sup>

Historian Laura K. Muñoz has defined *Romo v. Laird* as an event tells a great deal about the local community, especially for using for what she terms "local notions of belonging;" and a "common knowledge of race" in establishing a social order within the town.<sup>107</sup> She notes the case is important because while in "the realm of daily life, the Romos and many Mexican Americans gained admission for their children to the Tenth Street School...in the legal infrastructures of education and politics, Mexican American segregation was not outlawed." Muñoz thus argues that because Mexican Americans who challenged discrimination in Tempe were blackballed, "many people simply did not have the economic or psychological resources to transgress the racial codes. As a result, many parents sacrificed integrated education for economic welfare."<sup>108</sup>

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<sup>106</sup> Laura K Muñoz, "Separate but Equal? A Case Study of 'Romo v Laird' and Mexican American Education," *OAH Magazine of History*, Desegregation, Vol 15, no. 2 (Winter 2001): 28.

<sup>107</sup> Muñoz, "*Romo v. Laird*: Mexican American Segregation and the Politics of Belonging in America," 98–99.

<sup>108</sup> Laura K. Muñoz, "*Romo v. Laird*: Mexican American Segregation and the Modern Pedagogy of the Tempe Normal School" (American Studies Association Annual Meeting, Renaissance Hotel, Washington D.C., 2014), 131–32.

Muñoz’s point speaks to the structural racism that was inherent in Arizona in the 1920s. This can be seen in the aftermath of the case, where Muñoz notes that Tempe “had intended to have one ‘Mexican School’ but in the eyes of white parents, they now had two.”<sup>109</sup> The very presence of Mexican American students was sufficient to taint the entire school as Mexican for some Anglo parents. Mexican Americans did not have the power to demand educational equality easily and were both discriminated against and retaliated against for trying to declare themselves equal to Anglos in Arizona. The courts were a new arena in which this struggle took place, and *Romo v. Laird* was the first known example, but it was not a victory for desegregation so much as a precursor that provided a useful strategy for other early cases. This strategy was the idea of claiming whiteness to qualify for equal protection under the law. Muñoz notes that Romo’s lawyers had very deliberately shaped their presentation of Romo’s racial identity “to emphasize race-based segregation without exempting them from white privilege.”<sup>110</sup> While *Romo v. Laird* did not lead to desegregation, it did lead to the strategy of declaring whiteness in to qualify for equal protection under the law. This would be used in other early cases as an effective strategy, though it had its weaknesses in that it did nothing to challenge structural racism and discrimination that was part of the status quo.

After *Romo v. Laird*, several other cases followed along similar lines, with plaintiffs protesting the segregation of Mexican American students by arguing they were white, as only African American students could be legally segregated at the time. The

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<sup>109</sup> *Ibid*, 131.

<sup>110</sup> *Ibid*, 129–129.

next major case came in 1930 with *Del Rio Independent School District v. Salvatierra* in Texas.<sup>111</sup>

Del Rio was part of a general trend among Texas schools to segregate students by ethnicity. Originally this had been aimed at Black and White students and codified in the Texas Constitution of 1876, but had grown after 1920 to include schools aimed specifically at *tejano* children. In this case, the Del Rio school was separated into two parts, with the Anglo students taught in the larger building to the east, while a much smaller two-room building to the west across the school athletic field was for the education of Mexican American students. This had been accepted as the status quo until 1930.<sup>112</sup>

That year, the Del Rio school district sold bonds with the intent of constructing a new senior high school building. A larger, central building would have been logical. Instead, the district made it clear it intended to continue to segregate Anglo and Mexican American students, by announcing plans for constructing a new building for the Anglo students, while simply expanding the existing West End building by five rooms for the Mexican American students.<sup>113</sup>

The district assumed that the status quo would be maintained. They were unpleasantly surprised to discover the parents of their Mexican American students were unwilling to allow them to continue as they had been. Local parents sued the district, arguing that the school board was depriving Mexican American children of the benefits

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<sup>111</sup> Cynthia Orozco, "DEL RIO ISD V. SALVATIERRA," The Handbook of Texas Online, Texas State Historical Association (TSHA), 2010, <https://tshaonline.org/handbook/online/articles/jrd02>.

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

and resources being spent on other schools, those provided to “other white races.”<sup>114</sup>

While Texas law at the time legally allowed the segregation of Anglo and African American students, Mexican American students were considered White by law, making segregation for them illegal. The superintendent of the district argued that the students at the West End school were not being segregated because of race but because of poor English skills and attendance.<sup>115</sup>

The League of United Latin American Citizens (LULAC) became prominent during this case, while forming their first chapters in Marfa, Ozona, San Angelo, and Sonora. LULAC was highly visible due to their articles condemning Mexican American segregation, their general support for the case and expertise in organizing, and even the assistance of one of their members, M.C. Gonzales, who joined the case free of charge. They worked in alliance alongside other groups dedicated to fighting for an end to Mexican American segregation, notably the Del Rio Comite Pro-Defensa Escolar, which was created specifically to campaign against it in Del Rio. LULAC will be discussed further in the next chapter.

*Del Rio* was ultimately decided in favor of the district, after an appeal to the Texas Court of Civil Appeals in San Antonio. While unsuccessful in ending the segregation of Mexican American students, *Del Rio* had a large impact on campaigns to give Mexican American students, classified as White, the same rights as other students. *Del Rio* contributed several important elements to the growing Mexican American campaign for equality. One was that it provided a rallying cry for Mexican American parents and students and their supporters against the status quo. The Del Rio district had

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<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*

not expected significant resistance to its policy. Mexican American students and their parents had not spoken out nearly so strongly or publicly to previous attempts at defining Mexican American students as lesser students, unworthy of the same consideration as Anglo students. The long simmering resentments against this mistreatment had finally found an outlet as Mexican American citizens began to publicly protest the treatment of their children throughout the Southwest.

Just as importantly (if not more so for later cases), the *Del Rio* case provided a powerful starting point to mobilize the Southwestern Mexican American community against educational inequality and segregation. This was the case that made LULAC a force to be reckoned with, in its ability to mobilize and provide support for local parents, students, and their supporters. Because of this case, LULAC united many different organizations, such as *mutualistas*, women's groups, church groups, and business associations, all in support of educational equality. Many Mexican American organizers learned a great deal about fundraising and mobilizing support from protesting the Del Rio case, and would form the core for future organizations and campaigns.<sup>116</sup>

Finally, many of the arguments first presented in the *Del Rio* case would be used as a foundation for later cases arguing for equality and desegregation. While *Romo v. Laird* may have been the first case where Mexican American segregation was legally considered, *Del Rio* was the first case in which a court in Texas was asked to rule specifically on the constitutionality of the treatment of Mexican American students by school districts, and thus expanded the idea of whiteness as a means of equal protection under the law for Mexican Americans.

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<sup>116</sup> *Ibid.*



Another important case in the early 1930s arose in Southern California, for many of the same reasons that had created the *Del Rio* case. But unlike *Romo*, this case directly challenged the policy of the segregation of Mexican American students. It occurred in San Diego County in 1931 in the suburb of Lemon Grove and was known officially as *Roberto Alvarez v. Board of Trustees of the Lemon Grove School District* but is often referred to as the *Lemon Grove* case.<sup>117</sup>

On January 5<sup>th</sup>, 1931, Principal Jerome T. Green of the Lemon Grove Grammar school refused entry to Mexican American students enrolled at the school by physically standing at the door to prevent them from entering. Instead, he directed the students to a nearby two-room building that had been constructed specifically to house the Mexican American students at the school. The building was derisively referred to as *la caballeriza* or “the barnyard” by the school’s Mexican American students, which provides an idea as to the quality of construction of the building.<sup>118</sup> Principal Grove, and the board of trustees that had quietly approved the maneuver had expected that their Mexican American students would quietly submit.

As Robert Álvarez Jr. reveals in his unique discussion of the case, this would have been normal and part of the general anti-Mexican sentiment of the time driven by the Depression, when Latinos were made the scapegoats for the continuing meltdown of the American economy.<sup>119</sup> Mexican Americans had been useful labor for agriculture, mining,

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<sup>117</sup> Robert Alvarez Jr., “The Lemon Grove Incident,” *Journal of San Diego History* Volume 32, Number 2, no. Spring 1986, accessed April 23, 2015, <http://www.sandiegohistory.org/journal/86spring/lemongrove.htm>.

<sup>118</sup> “Interviews with Roberto Álvarez, Sr. and Mary Smith Álvarez, February 1981, San Diego, California” in Robert Álvarez, Jr. “The Lemon Grove Incident” *Journal of San Diego History* (online: <http://www.sandiegohistory.org/journal/86spring/lemongrove.htm>) Accessed: 1/13/14

<sup>119</sup> Álvarez provides a unique perspective on a relatively unknown but important case, partially due to his own father being the named plaintiff who represented the Lemon Grove Mexican American community.

and other industries in the area. But with the blame for the downturn in the economy came a desire to remove Mexican American residents now seen as aliens contributing to the joblessness of many Americans.

Álvarez argues that this was no casual decision on the part of the school board, but a deliberate attempt to separate the Mexican American students. The special board meeting that had “wanted a special school for the Mexican children” was conducted quietly, and no attempt was made to inform Mexican American parents or students of the coming change. In fact, Álvarez notes that the board specifically decided to not provide any official notice of their decisions or the reasons behind it, which suggests the board was aware of the trouble that might come of officially endorsing the segregation of Mexican American students.<sup>120</sup> The board and Principal Green preferred a *fait accompli* by simply moving all of the students' desks and belongings the day before, with Green directing the students to the new building the following day. Instead, as in *Del Rio*, the response was anything but docile. The students refused outright to enter the school and instead returned home to inform their parents, who were outraged at the treatment of their children. Not only did they mobilize to oppose the order, they appealed to the Mexican consulate, who provided a lawyer and additional support for them to sue the Lemon Grove school district.<sup>121</sup>

Álvarez relates that, in response, the school board appealed to sentiments of the time that painted those of Mexican descent as outsiders, claiming that the resistance to the move was brought about by nationalistic Mexican forces, not the local Mexican

<sup>120</sup> “Lemon Grove School Board Minutes, July 23, 1930” in Álvarez, “Lemon Grove.” Álvarez notes that the only reason these minutes survived was due to his grandmother Ramona Castellanos, who saved them along with old San Diego County newspaper accounts of the case.

<sup>121</sup> Álvarez Jr., “The Lemon Grove Incident.”

American community. What started as a local attempt at segregation quickly became an appeal to the wider anti-Mexican sentiment in the state. Rather than Mexican Americans being citizens who were offended by their treatment and wanted their legal rights, they were portrayed as docile residents encouraged by outsiders, simultaneously reducing them to objects of manipulation while suggesting a dark conspiracy created by vague but threatening forces from outside the community. This tactic involved the entire state in the case, with state legislatures in other state also attempting to act against this perceived “threat.”<sup>122</sup>

Specifically, Álvarez points out one of the statewide responses to *Lemon Grove* was for a California Assemblyman, George R. Bliss, to propose a law in January of 1931 that would legally allow Mexican Americans to be segregated by classifying them as Native American rather than Anglo in ethnicity. This became known as the infamous Bliss Bill, and was based on a law he had already succeeded in passing in his home town of Carpinteria.<sup>123</sup> The bill decreed that “children of any degree of Mexican ancestry, including those American born” would be among those who could legally be segregated into these schools.<sup>124</sup> By attempting to define Mexican Americans “Indians”, Mexican Americans could be safely cut away from Anglo society and marginalized by removing their legal protections as Whites, just as Native American residents had been. The growing antipathy of the public towards the foreign “outsider” was fertile ground for such laws.

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<sup>122</sup> *Ibid.*

<sup>123</sup> Álvarez, “Lemon Grove”; more specifically, Bliss wanted to create schools for “to establish separate school for Indian children and children of Chinese, Japanese and Mongolian ancestry.” rather than just targeting Mexican Americans, as Francisco Balderrama quoted Bliss in his 1934 book *In Defense of La Raza* (Los Angeles: University of Southern California Press, 1934): 61. Still, Balderrama notes that Bliss did mention the Lemon Grove case specifically when presenting the law, meaning it was public enough to draw statewide attention.

<sup>124</sup> “More Mexican Baiting,” *Los Angeles Times*, April 4, 1931.

While the Bliss Bill was ultimately defeated, it portrayed an ominous view of Mexican American students echoed in the voice of an anonymous Lemon Grove school board supporter of the school segregation: "If this fails, we will slip a bill through the state legislature, so we can segregate these greasers."<sup>125</sup>

When pressed for their reasons for the decision during the trial, the Lemon Grove school board gave rationalizations similar to those expressed in previous cases: Mexican American students required separate accommodations due to their poor English; they had limited academic ability; and lacked acculturation to American society. This was not a completely unreasonable idea; it was true that many immigrant students, for example, had poor English skills when they first arrived, and that it was more difficult for them to learn when they had to learn a new language as well as new educational concepts.

However, the school board began with the idea that not some, but *all* Latino children were deficient, whether they were Mexican immigrants or Mexican Americans who had grown up in the United States. This mindset was laid bare under cross examination by Judge Chambers when he asked the board whether other children who were educationally deficient were also going to be sent to the school. The board representatives could not answer. Nor could they provide a reasonable response for why it would not be better to keep English and Mexican speaking students together so those students with poor English skills would be better able to practice them.

Judge Chamber's response is telling:

I understand that you can separate a few children, to improve their education they need special instruction; but to separate all the Mexicans in one group can only be done by infringing the laws of the State of California. And I do not blame the Mexican children because a few of

<sup>125</sup> Francisco Balderrama, *In Defense of La Raza, the Los Angeles Mexican Consulate, and the Mexican Community, 1929-1936* (Tucson, AZ: University of Arizona Press, 1982), 64.

them are behind (in school work) for this segregation. On the contrary, this is a fact in their favor. I believe that this separation denies the Mexican children the presence of the American children, which is so necessary to learn the English language.<sup>126</sup>

On March 30<sup>th</sup>, 1931 Judge Chambers ruled in favor of the plaintiffs, noting that California law did not allow for such segregation. Álvarez notes that following the decision, the school board seems to have done little or nothing to acknowledge the case, with only a brief note in the following board meeting stating:

All members of the board present. On account of having lost the court decision there was some discussion about the return of Mexican (children) pupils but only a spirit of good will prevailed, and it was decided that everything was to continue exactly as it did prior to January 5<sup>th</sup>.<sup>127</sup>

*Lemon Grove* was the first successful desegregation case for Mexican American students that challenged the idea of segregation, unlike *Romo v. Laird* that was successful but involved no decisions on the legality of segregation. However, as Álvarez points out, it was an isolated and local event, rather than a flashpoint of Mexican American resistance, as *Del Rio* had been. This was due to the lack of support by a large organization such as LULAC, and the resulting lack of publicity. Also, the case was not appealed by the school board, as other desegregation cases in favor of Mexican American plaintiffs had been, which contributed to it being largely forgotten, or at least for why it was never used as a precedent for later desegregation cases in the Southwest. Finally, the outbreak of World War II disrupted society enough that the previous climate of antipathy towards Mexicans lessened, especially due to labor needs which were served by *braceros* (Mexican migrant workers) that was created by the draft, as well as the fact that many

<sup>126</sup> Álvarez, "Lemon Grove"; Álvarez translated Judge Chamber's response from the *Secretaria de Relaciones Exteriores. Tomo I-II, 1930-31*, pp. 1786-1787.

<sup>127</sup> Ibid. Álvarez attributes the quote to: Byron L. Netzley's "A Personal History of the Lemon Grove School District," Unpublished Manuscript, Lemon Grove Historical Society, 1966.

young Mexican Americans were volunteering to serve and thus focused on other matters overseas.

Mexican Americans thus developed two main strategies legally to seek educational equality. The first logical response was to claim the classification of White and equal protection under law. At the time, arguments against equality were leveled at African American students, such as various Jim Crow era laws, that were based on defining separated but equal as White versus Black. The Treaty of Guadalupe-Hidalgo and prevailing legal opinions declared the Mexican American residents of the Southwest to be White, so it made sense to use this argument. The problem was that just because Mexican Americans could legally prove themselves to be White, they were still being treated unequally regardless, due to bigotry and racism in American society. Thus, this initial argument was fundamentally flawed in the long term since the idea of whiteness could not include a Mexican American identity, and equal protection under the law only worked if they continued to be considered White. Canny legal representatives from LULAC and other organizations seeking equality for Mexican Americans still were quick to use this legal definition to allow Mexican Americans to avoid the harsher segregation aimed at African and Asian Americans, and it was effective for a time. But it was a temporary solution, one that would be replaced in court cases of the 1940s and 1950s, first with the idea of Mexican Americans being a distinct class of White, then with Mexican Americans being considered separate minorities protected under the Fourteenth Amendment from discrimination. Only by identifying as a distinct group were Mexican Americans able fully overcome the *de jure* institutionalized problems of segregation.

The state constitutions of Arizona and New Mexico were written in very different environments, one Anglo dominated that promoted only the use of English and American values, the other majority Mexican Americans that acted to protect Spanish language and *nuevomexicano* culture heritage. While both states shared the structural racism inherent in American society towards Latinos, New Mexico was noticeably friendlier to the idea of maintaining a separate language and culture. These discriminatory attitudes that existed in the Southwest can be seen in the early Mexican American desegregation cases that occurred before 1945. which was where the concept of declaring equal protection under the law based on whiteness was first used effectively. These anti-Mexican attitudes still existed in 1945, and Mexican American activists would continue to fight for equality built on these early legal cases. The changes would not be easy, and both states would struggle with some of the same issues but respond differently in the pursuit of educational equity.

These two chapters lay out an existing foundation of institution and organizational behavior that will be part of an ongoing continuity into the main period of discussion, 1945 to 2010. The first chapter demonstrated the structural racism of American society regarding Mexicans that had colored Anglo American perceptions for several generations. Stereotypes of Mexicans drove much of Anglo American reactions, particularly in Arizona, where a lack of Mexican American settled presence and racist attitudes inherited from Texan and Southern society influenced their reactions to create a society different at its core than that of New Mexico's population gave it.

This chapter builds on this idea, but by looking at the foundational state constitutions for Arizona and New Mexico and the Mexican American court cases dealing

with education and desegregation that are important for understanding Mexican American choices and strategies post-1945. These initial values, as represented in their constitutions, resulted in two different state attitudes towards Mexican American, Spanish, and Mexican American culture that colors their reaction, and provides continuity that informs both states decisions in the main period studied in this discussion, from 1945-2010. The historical realities of both states and the ways they diverged when they became states are what creates their reactions in the future.

Thus, this discussion of Arizona and New Mexico's development into states drives continuity for their future decisions after 1945 and provides a balance to the rapid changes taking place following World War II. These future actions will relate back to decisions and history of these two states that occurred before their founding and that continue to affect decisions at the state level going into the new millennium.



### **Chapter 3: Education in the Post-War Southwest**

One of the most transformative periods for American society, culture, and education followed World War II. By necessity the war forced changes by necessity on the country, but nationally, the needs of the war and the realities of the post-war period were hard on education. The Southwest was no different, save that in terms of education, it had started off worse than many other areas of the West. Aside from local trends, several major national themes affected struggles for Mexican American educational equity in Arizona and New Mexico from 1945 to the early 1960s.

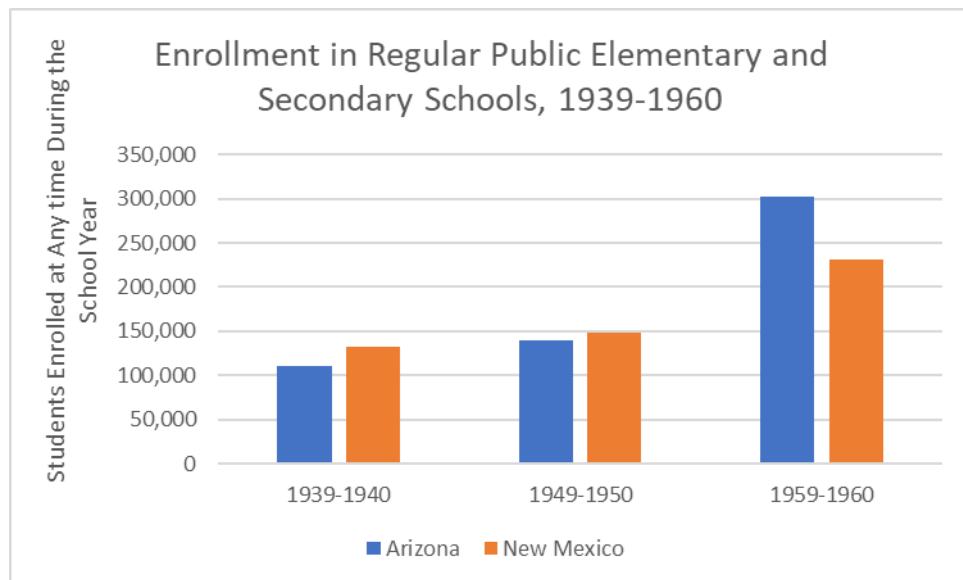


Figure 3.1: 120 Years of American Education, Table 11. Enrollment in regular public elementary and secondary schools, by state: 1870–71 to fall 1990, p.42.

First was the struggle of U.S. public school systems to accommodate the sudden surge in enrollment following the end of World War II. The Southwest was already stressed by a surge of Anglo American immigration following expansion of industry, military facilities, and scientific laboratories during the war period. This had accelerated a trend of migration from rural farm areas to urban city areas begun in the 1930s during the

Great Depression. The flood of Mexican American veterans taking advantage of the G.I. Bill would allow many to attend higher education for the first time. But having dealt with the austerity of the Great Depression and the needs of the war, American schools were in poor shape to welcome them after these veterans returned home. Educational funding systems that had been sufficient for smaller student populations were sudden inadequate, and often inequitable, requiring that Southwestern school systems change the way they funded their education. As Figure 3.1 demonstrates, between 1950 and 1960 there was a surge of enrollment in elementary and secondary schools as the generation of baby boomers hit school age.

Increasing pressure to assimilate and Americanize was a second development. Americanization was the process of stripping away “foreign” elements to conform to Anglo American values and culture, along with the inculcation of patriotism for the United States and reverence for its culture. There had always been a constant pressure on Mexican Americans by the Anglo American majority to abandon their language and culture in favor of English and Anglo American culture since the earlier territorial period of New Mexico. This had taken the form of mandating English use in education when Arizona and New Mexico had become states in 1912. In educational terms, this had resulted in “sink-or-swim” immersion course being taught to Mexican American students to transition them to the English language.

The pressure to inculcate patriotism increased during the war itself in a surge in patriotic fervor, much as with the beginnings of the Cold War in the 1950s and fears of Communism. A marker proving one was truly “American” was to speak English. This, along with the influence of Anglo Americans flooding into the Southwest, meant a

setback dealt to bilingual Spanish-English education and pressure for the cultural heritage of Mexican Americans in the Southwest to be discarded.

Finally, Mexican American activism challenged existing laws in court and laid the foundation for the blossom of the civil rights era in the late 1950s and into the 1960s with important early court decisions, such as *Del Rio v. Salvatierra* in 1930 and *Mendez v. Westminster* in 1947. This set the stage for the continuity of Mexican American activism and political solidarity through the rise of activist groups such as the League of United Latin American Citizens (LULAC). These early decisions paved the way for the most important case for civil rights in the 1950s, *Brown v. Board of Education* in 1954. The age of desegregation had come, and with it came changing tactics on the parts of educational activists in how they sought to bring their students greater educational equity. These conflicts from 1945 to the end of 1950s set the stage for the educational battles of the 1960s.

Before World War II, most industries remained in the Eastern U.S., with the West being relatively undeveloped save for California. There was little interest in industrializing the Southwest, as like the rest of the West it was seen as a rural backwater, having what Western historian Gerald Nash called “a colonial status.”<sup>128</sup> While the West supplied numerous raw materials and resources, it had been prevented from expanding its own industry by Eastern interests who used their ownership of the railroads to impose prohibitive freight costs on transporting raw materials via railroads anywhere but back

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<sup>128</sup> Gerald D. Nash, *The American West Transformed: The Impact of the Second World War* (Bloomington, IN: Indiana University Press, 1985), 4–5.

East. By 1940, only 5% of the region's income was from industry, with the majority coming from agriculture and mining.<sup>129</sup>

In addition, the West was still recovering from the Great Depression, which had ended in 1939, but further contributed to a lack industrial growth. Most states in the West had seen a pronounced drop in population, as people moved from rural areas to urban areas in search of jobs, mostly to the West Coast or eastwards. Mexican immigration over the border had slowed to a trickle with the end of the Mexican Revolution in 1920 and the Great Depression. Population growth in the 1930s up to the beginning of World War II was the smallest it had been in decades for the Southwest.<sup>130</sup>

Mexican Americans and Mexicans remained the most populous ethnic minorities in the Southwest, though they lived in their own towns and neighborhoods apart from high Anglo populations, particularly in Arizona. In New Mexico, Latinos made up approximately 40% of the population, something that Nash notes was why the median income in the state was well below the national average. Mexican Americans were still a “economically disadvantaged minority with their own distinct cultural traditions” but a group with a “close-knit” society that was already beginning to foster a sense of “political solidarity.”<sup>131</sup>

The needs of the Pacific Front during the war required a massive, government-sponsored industrial expansion along the West Coast. This brought with it an end to discriminatory institutional pricing on railroad freight, making Western industry economical and competitive. The needs of the new military-industrial complex in the

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<sup>129</sup> *Ibid*, 5.

<sup>130</sup> *Ibid*, 9–10.

<sup>131</sup> *Ibid*, 11–12.

West attracted workers from all over the country and enhanced the national trend towards. The U.S. Highway system had connected the country via U.S. Highway 66 (the famous Route 66) in the 1920s and 1930s and improved the road further in the 1940s to handle vastly increased traffic for military convoys and the transportation of goods and materials. This provided new economic opportunities in tourism and service industries, along with improved freight transportation.

This created rapidly changing populations in the Southwest and put strain on its shakily funded educational system. Anglos poured into the West to be part of this expansion of industry and military capacity, rapidly shifting the ethnic makeup of states like Arizona and New Mexico. The federal government nationalized many state lands to expand or build military bases and scientific laboratories, removing them from property tax rolls and school district revenues while creating an influx of new students in schools around them. While the Impact Aid offered by the U.S. government, such as the Lanham Act in 1940, could make up for a small percentage of these lost revenues, it exacerbated inequities in educational funding:

Property-rich districts could raise significant school funds through property taxation, but poorer communities could not. Children in communities blessed with railroads, oil wells, mines, and commercial enterprises attended schools far better built, equipped, and staffed than did children from communities less well-endowed.<sup>132</sup>

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<sup>132</sup> David L. Colton and Luciano Baca, "Governing New Mexico's Schools," in *New Mexico Government* (Albuquerque: University of New Mexico Press, 1994), 222.

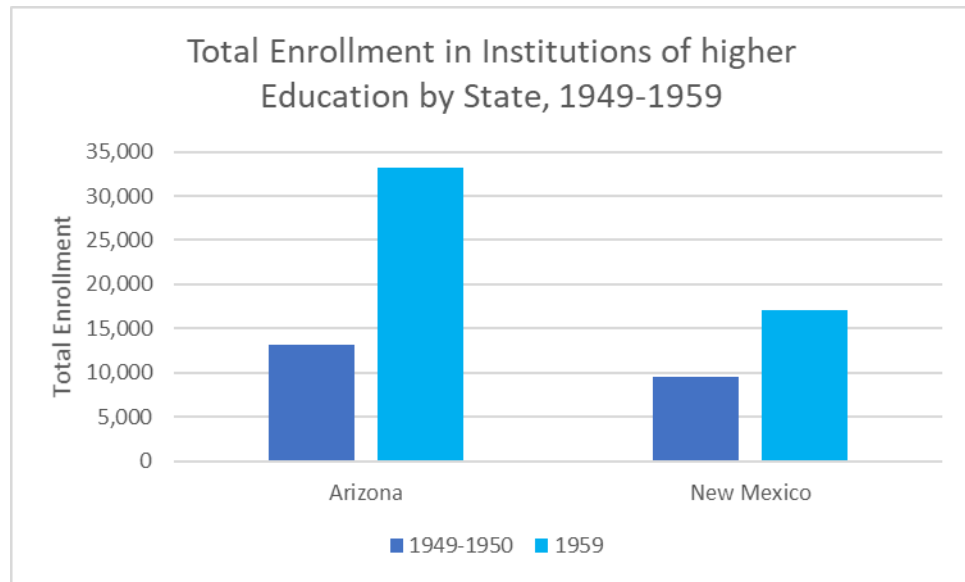


Figure 3.2: 120 Years of American Education, Table 25. Enrollment in institutions of higher education, by state, p. 78

Moreover, school systems in the United States were already struggling between the austerity measures of the Great Depression and the loss of numerous teachers to the war effort. Southwestern states already faced challenges with funding and retaining good teachers and were in worse condition than other school systems nationally. There had also been limited funds for maintenance and construction of school buildings during the war; consequently, many physical school buildings were in poor shape. Adding to this was an influx of adults returning to school in higher education. After the war, Mexican American veterans had a powerful tool to educate themselves and to improve their position in society: the Serviceman's Readjustment Act of 1944, known informally as the G.I. Bill. This bill provided funds and loans for returning soldiers, allowing many Mexican American veterans to purchase or invest in businesses or automobiles and to pay for their education.

The flood of returning soldiers of all ethnicities enrolling in higher education came in vastly greater numbers than colleges and universities expected, as figure 3.2

demonstrates, to the point where educators grew alarmed at the rapidly increase in the higher education student population.<sup>133</sup> Robert M. Hutchins, chancellor of the University of Chicago, expressed concern about the rising enrollment, stating the G.I. Bill “threatens to demoralize education and defraud the veteran.” Hutchins was concerned that these new students “do not want education unless they cannot get jobs. And the education they want, if they cannot get jobs, is not education at all, but vocational training which they think will get them jobs.”<sup>134</sup> Hutchins further believed that vocational training was a “fraud,” in that most jobs did not require a college education. Thus, the new system would inevitably lead to more graduates than there were skilled jobs. Hutchins was concerned that the lure of federal money would cause colleges to sacrifice intellectual education in favor of vocational training to attract more subsidized students.<sup>135</sup>

As has been mentioned, the Southwest’s educational systems were poorly prepared for the new surge in the student population during and after World War II into the 1950s and lacked the educational funding to respond effectively. This changed in the late 1950s, with the launch of Sputnik in 1957. The launch of the satellite and fears over Soviet technical superiority led to what one historian termed a “hysterical cry about the inadequacy of the [general] school program” and fears that the educational system of the U.S.S.R. was superior to that of the United States.<sup>136</sup>

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<sup>133</sup> Diane Ravitch, *The Troubled Crusade: American Education, 1945-1980* (New York: Basic Books, 1983), 13.

<sup>134</sup> Robert M. Hutchins, “The Threat to American Education,” *Collier’s Weekly*, December 30, 1944, 20–22.

<sup>135</sup> *Ibid.*

<sup>136</sup> Tom Wiley, *Public School Education in New Mexico; [Administrative and Financial Controls over Public Education in New Mexico]*, vol. 69, Publications of the Division of Government Research, University of New Mexico (Albuquerque, NM: Division of Government Research, University of New Mexico, 1965), 86–89.

In response to this uproar, in 1958 to promote a four-year plan that increased funding for science, the National Defense Education Act (NDEA) was passed, which promoted, mathematics, and modern foreign languages. Unfortunately, with this change came a corresponding neglect for other subjects that did not relate to closing this perceived gap in technological ability. Subjects like music, art, the humanities, and vocational training were left by the wayside. The NDEA and its supporters focused on the “gifted” child rather than assisting those with special needs, such as Spanish-speaking students. Instead of educational assistance, Latinos were faced another consequence of this fear of Communism, a renewed focus on Americanizing the Southwest.

The purpose of Americanization was not new in and of itself in the 1940s and 1950s, nor was the distrust of Mexican Americans as unpatriotic, disloyal, or just outsiders in the minds of many Americans. It had been happening since the territorial period, and most recently had been revived by the Mexican Revolution of 1910-1920 and the Plan de San Diego in 1915, which were discussed in Chapter 2. This had caused Mexican Americans in New Mexico to begin using the term “Spanish-American” to differentiate themselves from Mexican, which was at peak use in the 1920s. As sociologist Phillip Gonzales notes: “Spanish nomenclature thus originally served to herd Latinos within a civil fold while leaving the foreign and threatening sense of “Mexican...,” though he expanded on this standard explanation to demonstrate how the idea of the Hispano had existed as far back as statehood for New Mexico in his wider discussion.<sup>137</sup>

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<sup>137</sup> Gonzales, “Political Construction,” 161.



It is noteworthy that even activist organizations in the 1950s separated Latinos along these lines. The League of United Latin American Citizens (LULAC) divided Latinos into Mexican-American and Mexican, rather than seeing both as part of one whole. Alternately, El Congreso de Pueblos de Habla Española (El Congreso) considered all Latinos part of a greater whole. Bert Corona, the labor activist better known as *El Viejo* in the 1950s, recalled: “El Congreso opposed such differentiations and instead stressed the unity of all the Spanish-speaking, U.S. citizens or not. An attack on one Spanish-speaking group was an attack on all. That sense of unity was one of the beautiful things about El Congreso and was why it captivated so many people even though it was a relatively small movement with very little money.”<sup>138</sup> This tactic had positive and negative impacts on how Mexican Americans viewed bilingualism and support for their cultural heritage.

By the late 1940s, the American distaste for Spanish language and culture and Americanization was given new life in the hostile environment created for any who strayed from dogmatic Americanism under McCarthyism. McCarthyism was a symptom of the “Red Scare” created by fear of communism, spies, and the U.S.S.R. that existed from the late 1940s to the mid-1950s. While inculcating patriotism was prevalent during the war, McCarthyism attacked anyone who had the appearance of being soft on communism or who might have questionable loyalty to the United States. While Mexican Americans were not the primary targets of the House Committee on Un-American Activities investigations, it is undeniable that the national mood did not allow for easy

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<sup>138</sup> Mario T. García, *Memories of Chicano History: The Life and Narrative of Bert Corona* (Berkeley, CA: University of California Press, 1994), 112.

acceptance of those different in language and culture. By the time the NDEA was created in 1958, McCarthyism had run its course, though it left its mark on American society.

Bert Corona remembered McCarthyism by its nature promoting the exploitation and exclusions of Latinos from the rest of American society. Corona stated that: “Our fellow Hispanics have been excluded by Anglos over the course of American history. They see our values, culture, and traditions as inferior traits.”<sup>139</sup> Mexican Americans were often in danger of unjust deportation if they were suspect of being unpatriotic, which meant that proving their patriotism outwardly was important as a survival trait. While many Mexican American veterans rightly felt they had proved their loyalty and patriotism through service, many Mexican American parents felt that sacrificing their cultural heritage for the good of their children was a worthwhile goal.

As shown in previous chapters, these historical events inculcated a distrust of Mexican American and Mexican culture in the Anglo American population, which was mixed with an American education system focused heavily on patriotism and promotion of America’s democratic heritage. This was true even before World War II, due to the influence of progressive education. Progressive education was part of the larger Progressive movement in the late 19<sup>th</sup> to early 20<sup>th</sup> century, which had been responsible for many of the unusual aspects of Arizona’s state constitution. Progressive education focused on experiential learning, problem solving, and critical thinking over rote memorization that had been popular previously. It emphasized intrinsic motivation

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<sup>139</sup> Michael J. Lynch and Carlos Larralde, *McCarthyism: Memories of a Blacklisted Bert Corona*, ed. Heidi L. Fuss, eBook (Sentia Publishing Company, 2016), i-vi

(teaching what children were interested in) as opposed to extrinsic motivation (grades, prizes, etc.).

John Dewey (1859-1952), one of the foremost champions of progressive education, called the purpose of education the “participation of the individual in the social consciousness of the race.”<sup>140</sup> By race, Dewey meant the Anglo race, but the concept could easily be applied to any race. Progressive pedagogy promoted education to prepare students for democracy, and to enculturate a sense of social responsibility. Thus, this promotion on democratic ideals and patriotism existed even before World War II. Before 1941 and Pearl Harbor, the U.S. Commissioner on Education, John Studebaker, called for these democratic values to be emphasized on in classroom teaching to prepare students for a “war-torn” world to come, and to give them an appreciation for their democratic heritage and an understanding of “the nature and menace of totalitarian regimes.”<sup>141</sup>

As a result, however, in part this patriotism meant acting to discard what was considered non-American. To many Americans, to be truly Americanized meant speaking English, not Spanish. Latino students were problems for the American classroom, due to a perceived lack of education and an inability to speak English fluently. It became the practice in many schools to separate Latino students from the general student body to be properly taught. Teachers and administrators viewed Latino students being fluent in English as necessary before they could be put in the same rooms with Anglo students, though many felt this was impossible due to a belief that Latinos were inherently

<sup>140</sup> John Dewey, “My Pedagogic Creed,” *School Journal* 54 (January 1897), 77–80.

<sup>141</sup> Lynne Marie Getz, “Lost Momentum: World War II and the Education of Hispanos in New Mexico,” in *Mexican Americans and World War II*, ed. Maggie Rivas-Rodríguez (Austin, TX: University of Texas Press, 2005), 97.

deficient academically and culturally. It was common for schools to follow an English-only instruction model where speaking Spanish at school was punished; examples of this will be discussed in the following chapter in the words of Mexican Americans who experience it.

A secondary issue was vocational tracks in education. Latinos were characterized as unable to reach the intellectual level of Anglo students and were routed into high school vocation tracks that led to the industrial arts or agriculture, to supply workers for major industries in the area. This was pushed heavily during the war to keep American industry and agriculture working and continued afterwards.

In the late 1950s, encouraged by the NDEA, the attention of educators was focused on the “gifted child” who would go on to college for a career in science, math, or modern foreign languages. Poorly educated Latinos were apparently seen as belonging in the laboring class rather than a group from which such students might emerge. In addition, many Mexican workers remained transient, crossing over the border or moving from state to state, following the harvesting seasons of different crops or where mining jobs were available. This meant their children were also transient, and rarely could stay in a classroom for an extended period before following their parents to the next job.

This focus on instruction only in English these and stereotypes of Mexican and Mexican Americans led to widespread educational ethnic segregation by the 1950s, where origin and ethnicity were enough to place Latino students in separate classrooms, regardless of their English ability or general educational experience. While law permitted the segregation of Black pupils prior to 1954, segregation in different rooms or schools

for Mexican Americans was not recognized as segregation by race, but as segregation due to different educational needs.

In response, Mexican American activism based around community organizations rose to fight this educational segregation. Mexican American parents, students, teachers, administrators and politicians intensified their active campaigning for desegregation along language and ethnic based lines. Some of these organizations had existed before the war but were energized by the return of Mexican American veterans, while others were born from the turmoil of segregation and racially motivated inequalities that existed in the 1940s and 1950s. Many were created by Mexican Americans who wanted to distinguish themselves from poorer Mexican immigrants. This was especially true after the National Origins Act of 1924 had cut off Asian immigration, making Mexicans the largest remaining non-European group entering the United States regularly. For American nativists, any Mexican American was “Mexican,” even those who were long-term citizens. Resident Mexican Americans found it advantageous to separate themselves from newcomer immigrants in the minds of mainstream Anglo America by promoting Americanization as the path to success through patriotism that had brought them their own middle-class status. One of the foremost examples of this kind of organization was the League of United Latin American Citizens (LULAC).

Previous Mexican American generations had focused on *mutualistas* for community support. LULAC was part of a new type of fraternal organizations that built on the mutualistas of previous generations, promoting patriotism and emphasizing Mexican-American rights as citizens alongside what they saw as the responsibilities of citizens. This allowed them to battle discrimination in Texas and beyond as such groups

spread to other states, as well as creating a new generation of Mexican American citizens focused on their relationship to the United States over their ties to Mexico.

One of the problems these groups faced was splintering over differing goals and leadership. For example, the Order of the Sons of America broke apart over differences of leadership into the Sons of Texas, then fractured again to create the Knights of America and the Latin American League. It was not until 1927 at the Harlingen Convention that these disparate groups were united as a single organization again as the League of United Latin American Citizens, or LULAC. Over the course of the next five years, the organization coalesced amid spirited arguments over name, purpose, and leadership.<sup>142</sup>

LULAC was officially founded in Corpus Christi, Texas, in 1929. Despite constant resistance and harassment over its presence by Anglos, the group expanded with new councils and spread to neighboring the states of New Mexico and California during the 1930s. Educational equality was a prime focus of LULAC, which it made an early priority in Texas communities it served. In Texas, English only education was strongly enforced, alongside the general lack of funding and the segregation of Spanish-speaking children into substandard school facilities. Texan Mexican Americans (*tejanos*) found their children were in danger of being denied their legally protected right to an education.

LULAC had mostly been successful in opposing de jure discrimination under the presidency of Ezequiel Salinas in 1939, though districts engaged in de facto discrimination and desegregation existed in Texas schools. Salinas found a powerful ally

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<sup>142</sup> Amy Waters Yarsinske, *All For One & One For All: A Celebration of 75 Years of the League of United Latin American Citizens (LULAC)*, eBook (Virginia Beach, VA: The Donning Company Publishers, 2004), 50.

in the state superintendent of schools, L.A. Woods. Woods was sympathetic enough to act against egregious examples of discrimination, with the argument that Mexican-Americans were “White” like Anglos and therefore deserving of the same rights. This is most notable in his response to the Ozona School District, in a letter that Moises Sandoval highlighted in his history of LULAC:

Complaints from the Latin American people of your district have been coming to this office for some three or four years...the constitution of this state and nation as well as the statutes require that no partiality be shown with reference to school facilities to any individual because of race, color, or previous condition of servitude....children of Latin American extraction are classified as white and therefore have a right to attend the Anglo American schools in the community where they reside.<sup>143</sup>

Wood’s support was an isolated case, however, as many district administrators searched for ways around the requirement. The most common method found support in an opinion by Texas attorney general Price Daniel, who served from 1947 to 1953. While Daniels had publicly stated that there was no legal justification for segregation of Mexican American students, he qualified this by adding that they could be placed in special classrooms based on their educational needs. Daniel was also a strong opponent of the desegregation of Black students, something he continued to oppose in his career as a U.S. Senator. This gave Texas school districts the ability to place any student of Latino descent in special Mexican schools based on poor English skills or general education, whether this was the case.<sup>144</sup>

<sup>143</sup> Moises Sandoval, *Our Legacy: LULAC 50th Anniversary* (Washington, D.C.: League of United Latin American Citizens (LULAC), 1979), 34.

<sup>144</sup> Charles Waite, “Price Daniel, Texas Democrats, and School Segregation, 1956-1957,” *East Texas Historical Journal* 48, no. 2 (2010): 110–22.

Despite the obvious discrimination, parents were slow to join with LULAC in opposing these practices in Texas. When they did, however, LULAC was essential in organizing many early boycotts against Texan school districts such as the Missouri district in 1944, where LULAC helped organized a boycott of the school as well as donating time from its members to teach children who were not attending school during the boycott.<sup>145</sup> It was a common tactic for LULAC to work through boycotts of businesses and schools or community level protests rather than taking districts to court, save in particularly egregious cases. But as the 1940s continued, Mexican Americans also turned to the courts to seek equality.

Previous victories in courts before 1945, such as *Del Rio Romo v. Laird*, or *Lemon Grove*, set the stage *Mendez v. Westminster* in 1945. This case was heavily influential to later cases in New Mexico and Arizona. The *Mendez* suit was brought in California before the District Court of Orange County by Gonzalo Méndez, a resident of Westminster, California and four other plaintiffs from other Orange County school districts on behalf of their children (Thomas Estrada and William Guzman from Santa Ana, Frank Palomino from Garden Grove and Lorenzo Ramírez from El Modena).

As a young man, Méndez had grown up in Westminster after immigrating to the United States in 1919 with his mother and siblings and had become a citizen in 1943 at age 30. He, his wife Felicitas (a Puerto Rican) and their three children had recently moved from Santa Ana, where they had owned a cafe and had become successful tenant vegetable farmers on a ranch they leased from Japanese owners.<sup>146</sup> The Méndez were one

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<sup>145</sup> Yarsinske, 54.

<sup>146</sup> The owners of the ranch, the Munemitsu family, were rounded up with other Japanese-American citizens and interned at a camp in Poston, Arizona. That they were able to have the Méndez work their



of few Mexican American families to live in a primarily Anglo area. Gonzalo had attended the Westminster Main School growing up, which was the school district he lived in, and had finished his schooling just as the Great Depression was beginning. But when the Méndez children went to enroll in 1945 with their aunt and three cousins, they discovered things changed, and not for the better.

At enrollment, the aunt was told that her own children, who had a French surname and were relatively light-skinned, would be allowed to enroll at Westminster, but that the Méndez children, who were darker skinned and bore a Spanish surname, would have to register at the Hoover School. The Hoover School was ten blocks away in a completely different school district from where the children lived, and only had Mexican American students. Gonzalo protested to the superintendent, to the Westminster School board, and even to the Orange County school district, to no avail.

In the process he discovered his children were not alone. Many other school districts in Orange County regularly dumped their Mexican American students into specific schools rather than allowing them to mingle with Anglos. It is unclear how long this was going on, considering that many of the Mexican American-only schools were in primarily Mexican American school districts. The Méndez children were unusual in that they lived in a primarily Anglo area, which is why they were singled out specifically to be sent to the Hoover School.

Nor was California law on the issue of educational desegregation completely neutral aside from the separate but equal stance towards African Americans. California

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ranch rather than simply losing it as many other Japanese-Americans did during their imprisonment is worthy of note.

law allowed for segregation of children of ethnicities. California educational code section 8003 and 8004 read:

(8003) Schools for Indian children, and children of Chinese, Japanese, or Mongolian parentage: Establishment. The governing board of any school district may establish separate schools for Indian children, excepting children of Indians who are wards of the United States Government and children of all other Indians who are descendants of the original American Indians of the United States, and for children of Chinese, Japanese, or Mongolian parentage.

(8004) Same: Admission of children into other schools. When separate schools are established for Indian children or children of Chinese, Japanese or Mongolian parentage, the Indian children or children of Chinese, Japanese, or Mongolian parentage shall not be admitted into any other school.<sup>147</sup>

Initially Méndez hired civil rights lawyer David Marcus to file a suit solely on his own behalf. Upon discovering that the problem was widespread, Marcus suggested bringing the other plaintiffs as part of a class action lawsuit against the Westminster school district. He suggested this would make a better, more persuasive case since it would show this was a widespread problem. Like previous legal cases about Mexican American segregation, the argument hinged on the idea of claiming equality based on whiteness. The plaintiffs argued that:

...a concerted policy and design of class discrimination against persons of Mexican or Latin descent or extraction of elementary school age by the defendant school agencies...resulted in the denial of the equal protection of the laws to those persons.<sup>148</sup>

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<sup>147</sup> "Westminster School Dist. of Orange County v. Mendez, 161 F. 2d 774 - Circuit Court of Appeals, 9th Circuit," Google Scholar, 1947, <http://scholar.google.com/>.

<sup>148</sup> *Ibid.*

The last element, calling on the “equal protection of law,” was a specific appeal to the Fourteenth Amendment. *Lemon Grove* had argued for equality in the absence of a state law mandating segregation, and Méndez argued this as well. However, *Mendez* also argued for equality by declaring that any segregation was unconstitutional by federal law, regardless of state laws, by making it a class action lawsuit based on the Fourteenth Amendment and setting the stage for the results of *Mendez* to be applicable throughout the nation.

The plaintiff’s witnesses argued that students were being sent to Mexican-only schools regardless of their academic or English ability. Nine-year-old Sylvia Méndez was a star witness who testified in perfect English that she was ready to attend Westminster Main School. Another witness for the plaintiffs was George I. Sánchez, who argued against segregation for any reason based on educational principles, as segregation was inherently detrimental to the segregated student, while Dr. Ralph Deals, head of the UCLA Anthropology department, testified as to how segregation made Latino children out to be inferior, and even drew parallels to Nazi Germany and its treatment of Jews and gypsies overseas.<sup>149</sup>

The defense made no attempt to hide what they were doing. Westminster superintendent James L. Kent made it clear in his testimony that he considered all Mexican children to be inferior in hygiene, academic ability and generally poor and likely to remain poor, and that he would refuse any Mexican child to be allow in an all-White school regardless of their academic ability. Marcus promptly compared him directly to

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<sup>149</sup> See his wider discussion in George I. Sánchez, *Concerning Segregation of Spanish-Speaking Children in the Public Schools* (Austin: University of Texas, 1951), 16-47.

Hitler, drawing on the vehement anti-Nazi feelings brought on by the war to make his point.<sup>150</sup> Another superintendent, Frank Henderson of the Santa Ana school district, testified that segregation was done primarily by surname; anyone with a Spanish last name was sent to one of the segregated schools. It appeared this would be damning evidence against such segregation. The district's defense, however, did not challenge these arguments. Rather, it relied on the idea that the federal court lacked jurisdiction, with the argument that the actions of a local district school board did not qualify as state action.

In his initial injunction against the district, Judge McCormick agreed with Sánchez in viewpoint, and stated:

A paramount requisite in the American system of public education is social equality. It must be open to all children by unified school association regardless of lineage... commingling of the entire student body instills and develops a common cultural attitude among the school children which is imperative for the perpetuation of American institutions and ideals...It is established by the record that the methods of segregation prevalent in the defendant school districts foster antagonism in the children and suggest inferiority among them where none exists.<sup>151</sup>

Despite an appeal by the school district, his decision was ultimately upheld by the Ninth Circuit Court. This decision created one of the foundations of desegregation precedent: the idea that federal law and the Constitution forbade it. While other districts chose to appeal the decision, Westminster school district chose to desegregate after the initial injunction rather than waiting on the appeal to be decided.

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<sup>150</sup> "Lesson Learned on School Discrimination," *Los Angeles Times*, September 9, 1996.

<sup>151</sup> "*Mendez et al. v Westminster School District of Orange County*, 64 F. Supp. 544 (1946), Conclusions of the Court."

The appeals to the Ninth Circuit Court drew attention from numerous civil rights organizations who filed amicus briefs, including the NAACP, which planned to use the case as a test case for eventually challenging *Plessy v. Ferguson* directly. Ultimately, the injunction was upheld, with the Ninth Circuit Court ruling that segregation in the absence of a specific state law for segregation was unlawful, echoing the original injunction. Originally, it was a case dealing with Mexican American student segregation, but it became part of the foundation for the case that would profoundly change education and the rights of minorities within American society.

The results of *Westminster* also inspired another case in Texas, brought by an alliance between LULAC and the G.I. Forum a year later in 1948. This case, *Delgado v. Bastrop ISD*, challenged state law in Texas over the linguistic segregation of Anglo and Mexican American children in the Bastrop Independent School District. In it, District Judge Ben Rice ruled that separating children by language in Bastrop was “arbitrary and discriminatory” but stopped short of suggesting that all language segregation was discriminatory.<sup>152</sup> Instead, Judge Rice clarified that such segregation via language could occur, but only where clearly defined scientific based testing had determined the need. While the Texas superintendent of public instruction made a concerted effort to encourage school districts to use standardized tests and to take measures to ensure fairness and equality, this flaw in the decision led to many districts either ignoring the superintendent's decision or to design tests that were inherently unfair to Spanish speakers, allowing them to discriminate without penalty.

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<sup>152</sup> “*Minerva Delgado et Al v. Bastrop Independent School District*,” The Portal to Texas History, June 15, 1948, <http://texashistory.unt.edu/ark:/67531/metaph248859/>.

As demonstrated in the previous chapter, Mexican Americans had found legal success by claiming whiteness. But this tactic had its limitations. It did nothing to challenge the essential institutional discrimination inherent in many school districts that treated Mexican Americans as lesser students, even while supposedly granting them the same rights as White Anglo students. A new tactic was created that would replace “whiteness” in *Hernández v. Texas* (1954).

*Hernández v. Texas* (1954) had nothing to do with education or desegregation but was vital for establishing Mexican Americans as a minority distinct from White Anglos. Pedro Hernández, a Mexican agricultural worker, had been convicted for a murder by an all-Anglo jury. His defense had argued that such a jury could not be considered impartial with no non-Caucasian members, as no jury where the case was being tried, Jackson County, had had a Mexican-American member for 25 years.

After Hernández' conviction, his defense appealed, first to the Texas Supreme Court, then to the U.S. Supreme Court. The defense argued that the Fourteenth Amendment protections applied not just on race, but to classes within a defined race. The case was supported by the G.I. Forum, which saw it as an important precedent for later cases.<sup>153</sup> George I. Sánchez and Carlos Cadena, a lawyer for the plaintiff in *Hernández v. Texas*, were credited with coming up with the idea of a “class apart” that became part of the defense argument; the idea that a distinct class could exist inside a category like White.<sup>154</sup>

<sup>153</sup> Vernon Carl Allsup, *The American G.I. Forum: Origins and Evolution*, Mexican American Monographs, No. 6 (Austin, TX: Center for Mexican American Studies, University of Texas at Austin, University of Texas Press, 1982).

<sup>154</sup> M.M. Tevis, “George I. Sánchez: ‘The’ Pioneer in Mexican American Equity,” *Journal of Philosophy and History of Education* 57 (n.d.): 198–99.

The Earl Warren court unanimously accepted a difference in class between White Anglo and White Mexican American, and therefore that the guarantee of equal protection under the Fourteenth Amendment had been violated. Hernández was granted a retrial by a jury not composed by a single ethnicity, and the case became a major precedent that weakened the use of a “whiteness” argument in later Mexican American cases, as Mexican Americans were now a distinct class – only a legal step away from being defined as an identifiable minority.<sup>155</sup> *Hernández v. Texas* was decided just two weeks before the *Brown* decision, which would further cement the legal tactic of Mexican Americans representing a distinct and disadvantaged ethnic class.

In terms of landmark cases however, there is none so important to desegregation as the one that began an era of increasing civil rights and educational equality: *Brown v. Board of Education of Topeka (Kansas)*. *Brown* consolidated five separate desegregation cases before being heard before the Supreme Court. While it was focused on equality of opportunity and education for African American students, the ramifications from its decision provided the foundation for cases against desegregation for Mexican American students as well and was the death knell for state laws promoting segregation.

The first case that would become part of *Brown* was *Briggs v. Elliott* (1949), a case brought forward in Clarendon County, South Carolina. The case grew out of a 1947 request for a bus for Black students to use when traveling to school, as many had to walk nine miles to and from school. By comparison, White students in the district made use of

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<sup>155</sup> Carlos M. Alcala and Jorge C. Rangel, “Project Report: De Jure Segregation of Chicanos in Texas Schools,” *Harvard Civil Rights-Civil Liberties Law Review* Volume 7 (March 1972).

thirty-three buses. Parents and faculty at the Black schools had attempted to supply transportation on their own, but maintenance had proven too costly.

The superintendent of the district, R.M. Elliot, refused the request because he believed that Black residents did not pay enough in taxes to support a bus of their own, and that it would be unfair to require White residents to pay to help support one. This, combined with the admittedly poor and unequal facilities at Black schools, led to the NAACP filing suit in 1949 for educational equality in the district. Many Black Claredon residents signed a petition in support of the suit, despite retribution through being fired from their jobs or other harassment.

The case was initially brought to the Supreme Court but remanded back to the district courts when Claredon showed progress toward desegregating its schools, before the case was merged into *Brown* to be heard as a unified case against segregation. *Briggs* is interesting in that it was one of the first cases to argue not just for desegregation on the grounds of by unequal facilities and opportunities. It also used a study by African American psychologists Kenneth and Mamie Clark to demonstrate that segregation badly damaged the self-esteem of Black students.

The second case, *Davis v. County School Board of Prince Edward County* (1951), was set in Farmville, Virginia. Like many schools of the time, Black and White students were segregated in the community, with Black students attending R.R. Morton High School. The school was underfunded, lacking essentials such as a cafeteria or gym, and so overcrowded that some students were forced to attend classes in an immobilized school bus parked on the property.



Despite this, the local school board repeatedly denied additional funding for the school. As an act of resistance, one 16-year-old student, Barbara Rose Jones, organized a walkout. She is forged notes to teachers to bring their students to the school auditorium, then gave an impassioned speech against the school's conditions. Four hundred and fifty students walked out with her in protest, followed by a walk to the homes of school board members to protest in person. The walkout lasted two weeks, and resulted in two NAACP lawyers, Spottswood Robinson and Oliver Hill, filing suit arguing for the integration of the Prince Edward County schools on behalf of the students. It was the only Black/White desegregation case brought forth by student protest.

The third case was the combination of two cases, *Belton v. Gebhart* and *Bulah v. Gebhart*. *Belton* was filed in the town of Claymont, where Black students were being shipped to another town rather than being allowed to attend the local high school. The *Bulah* case was filed in the town of Hockessin, where Black students were denied the use of the modern local high school. Instead, they were confined to a one-room schoolhouse, while being denied the use of the school bus. Of the five cases combined in *Brown*, this was the only case where the state district court ruled in favor of desegregation of the schools, overturning segregation mandated in the state constitution as well as Jim Crow laws currently in effect.<sup>156</sup> It is also striking to note that the school districts were given no official mandate by the court to desegregate, but chose to do so on their own following the decision.

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<sup>156</sup> "Decision by the Delaware Court of Chancery," Illinois Brown v. Board.org, accessed February 12, 2014, <http://www.illinoisbrownvboard.org/BrownDBDocsWeb/46.htm>.

The fourth case, *Bolling v. Sharp*, was brought to court in Washington, D.C., by parents of Black students following the refusal by the Anacostia school board to open the newly constructed John Phillip Sousa High School to both Black and White students. A group called the Consolidated Parents Group, led by Gardner Bishop and Nicholas Stabile, attempted to get eight Black students enrolled at the school, one of which was the soon-to-be plaintiff, Spottswood Bolling. When they were denied, a professor of law at the nearby Howard University, James Nabrit, filed the suit on their behalf. While the case was promptly dismissed by the local court, the plaintiffs were able to file a writ of *certiorari*, applying for judicial review of the case by the Supreme Court. Unlike *Brown*, *Bolling* argued for the federal unconstitutionality of segregation as opposed to presenting evidence that the principle of “separate but equal” led to substandard facilities for Black students.

Finally, in *Brown v. Board of Education* itself, the plaintiff had sued the school district for making his daughter attend a school with Black students far from their home instead of a much closer White school. In the *Brown* decision, the Earl Warren court unanimously judged that “separate educational facilities are inherently unequal” and ruled that all schools should be integrated “with all deliberate speed.”<sup>157</sup> Earl Warren had been governor of California during the *Mendez* case and had supported that decision as well and signed the bill that ended school segregation in California. This landmark case paved the way for other cases aimed at destroying segregation across the nation but did not set a rapid pace of desegregation quite yet. Many states resisted desegregation and

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<sup>157</sup> “*Brown v. Board of Education of Topeka*: 347 U.S. 483 (1954),” Justia U.S. Supreme Court Center, 1954, <https://supreme.justia.com/cases/federal/us/347/483/case.html>.

delayed if possible, some well into the 1960s. Following the *Brown v. Board of Education* case, Mexican Americans as legally “White” provided a way for school districts to claim to be desegregating by putting Black and Mexican American students in schools together as Black and “White” students. This effectively ended the use of the argument of whiteness as a tactic for Mexican American activists for future cases.

The follow up to the *Brown* case, *Brown II* (1955), was brought by school districts to the Supreme Court seeking relief over the implementation of desegregation. The Court's decision was to delegate authority for the speed of segregation to federal judges with the ambiguous phrase “with all deliberate speed.” For those who opposed segregation, this was taken to mean that any judge who did not believe in complete and immediate segregation could continue to allow school segregation by resorting to token desegregation or shutting down school systems rather than allowing actual desegregation for an area.

This was illustrated shortly thereafter in Prince Edward County in Virginia, which had been involved in one of the cases that was folded into *Brown*. Plaintiffs filed a new case, *Griffin v. County School Board of Prince Edward County*, when the Prince Edward County school system in Virginia deliberately appropriated no money for their public-school systems.<sup>158</sup> This meant the public schools would be shut down for five years. The county then offered vouchers to students to attend private schools instead. However, there were no private schools for Black students, only for Anglo students, as private schools were still able to remain segregated. *Griffin* reversed this decision as a violation of the Fourteenth Amendment and required that the county reopen all public schools.

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<sup>158</sup> *Griffin v. County School Board of Prince Edward County*, No. 592 (U.S. Supreme Court 1964).

Three years later in 1958, attempts by Arkansas to reverse and delay desegregation led to another case defining desegregation. Based on the hostility generated by state resistance and with support of residents, plaintiffs turned to the Supreme Court again, with the case *Cooper v. Aaron*. The *Cooper* decision asserted the supremacy of the court and federal law over state laws that were attempting to undermine or override *Brown*. The continued resistance of many Southern states to desegregation eventually forced the Supreme Court to modify the language of its mandate for desegregation in *Alexander v. Holmes County Board of Education* (1969).<sup>159</sup> The language was changed from the ambiguous “with all deliberate speed” to “at once” to undercut attempts by school districts to delay desegregation. For the future, school districts and states would no longer be able to passively resist through this argument.

The post-World War II period in the nation was a difficult time for national education, as well as for Mexican Americans and other minorities. The population of Southwestern states had changed dramatically; the influx of Anglo Americans into the area meant an Anglo majority was guaranteed. With them, these new residents brought a pronounced preference for English and American culture and weakened attempts by Mexican Americans to both preserve their cultural heritage and to create truly bilingual programs. It was a time of enforced patriotism, where the needs of the war, then the threat of McCarthyism and the Soviet Union strongly encouraged schools to focus on Americanization over equality. Many Mexican American parents joined with them, concerned that their students would not succeed in that climate without giving up their cultural heritage for English fluency and the ability to pass as fully American in behavior.

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<sup>159</sup> *Alexander v. Holmes County Board of Education*, No. 632 (U.S. Supreme Court 1969).

The struggles in this decade were about challenging segregation rethinking the focus on patriotism that had been a hallmark of the post-war period for Mexican Americans. Educational activists were given new tools for the fight, successfully arguing that Mexican Americans were a distinct class of disadvantaged minority. Organizations like LULAC and El Congreso grew in experience in organizing their actions and directing protests over segregation, while *Brown* ended *de jure* segregation, *de facto* segregation would continue in one form or another. The climb towards greater equality would be difficult, but the civil rights movement that was sparked in the 1950s would provide new opportunities in the fight for Mexican American education in the decades to come.

## **Chapter 4: Post-War Education in Arizona and New Mexico**

The post-war period from 1945 to 1960 was a difficult time for education in Arizona and New Mexico. World War II brought great changes to the Southwest as new industries were built and military bases were expanded. A flood of Anglo newcomers was drawn to the burgeoning new industries created by the war effort, giving Anglos a majority throughout the Southwest, along with their children. Both states were not ready for the increase in student population and struggled with funding the new influx of students. Despite the pro-Spanish language in its state constitution, New Mexico had similar problems as Arizona, including persecution of its Spanish-speaking students for using Spanish at school. This institutional discrimination was endemic to both states and inspired educational activists and group to fight back in a prelude to the civil rights battles of the 1960s.

The demographic change in Arizona and New Mexico was significant overall, but also for the sharp climb in the Anglo population in both states. New industry provided opportunities that drew workers to the Southwest, while modern advances such as air conditioning made the climate more livable.<sup>160</sup> New Mexico experienced modest but steady growth, from a state population of approximately 531,000 in 1940 to 689,000 in 1960. Arizona's state population started out below that of New Mexico's in 1935 at approximately 434,000 people, but rapidly overtook its neighbor, growing to nearly 756,000 by 1950, with a sharp spike in 1943 to 692,000 likely due to the numbers of armed forces stationed there. Phoenix, Arizona, alone grew from approximately 65,000

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<sup>160</sup> Darius V. Echeverría, *Aztlán Arizona: Mexican American Educational Empowerment, 1968-1978*, eBook (Tucson, AZ: University of Arizona Press, 2014), 13–15.

residents in 1940 to a population of 439,000 by 1960. In New Mexico, the Anglo population had been just under 51% of the population in 1940; by the next time a census on Latinos versus Anglo population was taken in 1970, this had climbed only to 53%.<sup>161</sup> Anglo Americans in Arizona, on the other hand, represented over 70% of the total population by 1950 though Mexican Americans remained the largest ethnic minority in Arizona and New Mexico.

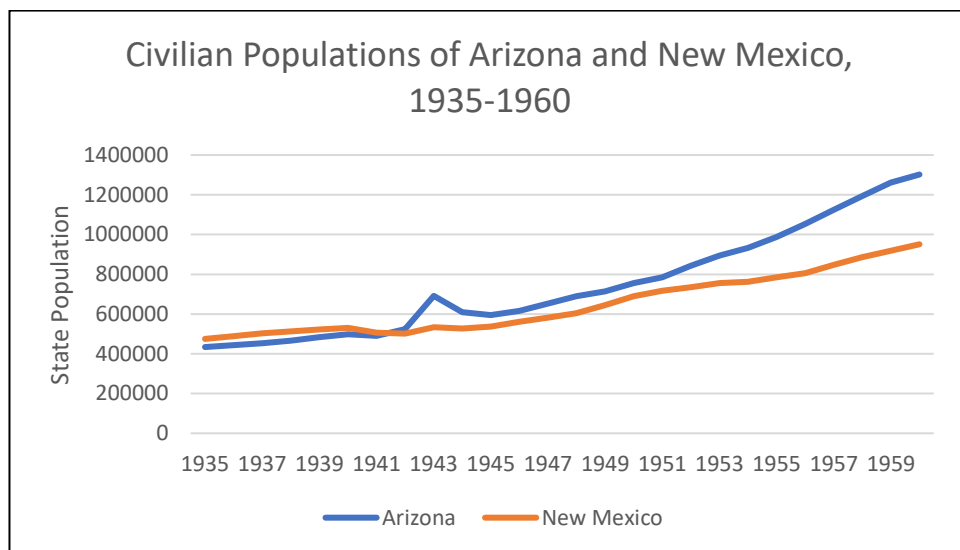


Figure 4.1: Data adapted from U.S. Census Bureau, State Intercensal Tables 1930-1939, 1940-1949, 1950-1960. Retrieved from <https://www.census.gov/data/tables/time-series/demo/popest/pre-1980-national.html>

These population figures do not include armed forces members and their families stationed in either state, as the armed forces population in general increased dramatically during and the war, from a total armed forces population of 334, 473 in 1939 to one of 12, 209,238 by 1945.<sup>162</sup> This population was what caused the most difficulty for Arizona and New Mexico, as the expansion of military bases in both states meant a large increase

<sup>161</sup> Campbell Gibson and Kay Jung, "Historical Census Statistics on Population Totals by Race, 1790-1990, and by Hispanic Origin, 1970-1990, for the United States, Regions, Divisions, and States," Working Paper (Washington, DC: Population Division, U.S. Census Bureau, 2002).

<sup>162</sup> "Research Starters: US Military by the Numbers," The National WWII Museum, November 21, 2018, <https://www.nationalww2museum.org/students-teachers/student-resources/research-starters/research-starters-us-military-numbers>.

in the number of children of service members joining local school districts. The “baby boom” between 1940 and 1950 also led to a massive increase of almost 75 percent in young children under the age of 5 the prewar population, while the number of older students, including many veterans taking advantage of the GI Bill to return to school, increased by 35 percent between 1940 and 1950. Between 1950 and 1955, the number of enrolled students in Arizona increased by over 62 percent, and by 1955, half of the state’s Mexican American population was of school age and was mostly concentrated in urban schools.

Rapid demographic change had several consequences. Unlike New Mexico, where Mexican Americans were a large, settled population and entrenched throughout the state, or Texas, where they were concentrated in larger cities or in a distinct region along the border, Latinos were scattered and in the minority throughout Arizona. This was due to most being recent Mexican immigrants drawn to Arizona’s mining and agriculture industries. The change in demographics created by the increase in Anglo immigration in both states affected educational policies, by increasing the financial burden of education and affecting bilingual education.

By 1945, it was already clear to New Mexican educators that the public school system had suffered during the war years, and that additional funds were needed “to finance the current program to be returned to normal conditions” following the war.<sup>163</sup> In 1945, 38,781 out of 142,741 children (or 27%) did not attend school in the state; 69% of elementary school students dropped out before the 4<sup>th</sup> grade, and only 5% made it to 12<sup>th</sup>

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<sup>163</sup> “Financial Requirements for Education,” *Clovis News-Journal*, March 19, 1945.



grade.<sup>164</sup> In an article in 1945, the Superintendents' Section of the New Mexico Educational Association listed how additional funds were needed to repair and expand existing structures and to improve teacher salaries, which were too low to retain qualified teachers.<sup>165</sup> District superintendents also blamed a lack of modernization for curriculum from traditional education in the state, and a lack of remedial education for special needs children.<sup>166</sup>

New Mexico's "eclectic school funding scheme," which both capped property tax rates for schools and emphasized state revenue sources after 1933, was not sufficient in the face of these demographic and economic changes.<sup>167</sup> These existing funding problems were only made worse by the surge of new students added to school districts due to the enrollment of federally connected children, such as families of serving military or students living on Tribal Federal Trust lands. But the surge of Anglo students also disrupted New Mexican attempts to create a truly bilingual schools system – an ongoing and often stymied process.

By 1940, English language instruction was already standard throughout New Mexico, with Spanish courses prohibited outside of high school. Since few Spanish-speaking students reached high school, however, this gave almost no opportunity for most to learn proper grammar in their native tongue.<sup>168</sup> A bill submitted in 1941 by State Senator Joseph M. Montoya (D-Bernalillo), SB3, required Spanish instruction for 5<sup>th</sup>-8<sup>th</sup>

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<sup>164</sup> Getz, "Lost Momentum: World War II and the Education of Hispanos in New Mexico," 104–5.

<sup>165</sup> "Financial Requirements for Education."

<sup>166</sup> Getz, 104–5.

<sup>167</sup> David L. Colton, "The Weighting Game: Two Decades of Fiscal Neutrality in New Mexico," *Journal of Educational Finance*, no. 1 (Summer 1996): 30.

<sup>168</sup> Rosina A. Lozano, "Managing the 'Priceless Gift': Debating Spanish Language Instruction in New Mexico and Puerto Rico, 1930-1950," *Western Historical Quarterly* 44 (Autumn 2013): 280.

graders in schools with at least three teachers or ninety regular students. While on the surface this was an improvement, it meant that the critical K-4 grades would have no Spanish instruction. Teachers were required to have an increasing number of semester hours of Spanish education themselves, up to ten hours. But the bill was opposed by educators and the presidents of four state universities, due to the need for effective teacher training, financial support and earlier elementary school Spanish instruction to make the proposal successful.<sup>169</sup> Joaquín Ortega, the director of the School of Inter-American Affairs at the University of New Mexico, stated that “though plausible in its aims, [SB3] is ill-timed and fraught with dangers for the ‘hispanos’” due to the lack of trained teachers, educational funding, and the dangers of being seen as un-American during World War II.<sup>170</sup>

Another major opponent of Spanish instruction was the League of United Latin American Citizens (LULAC), which was focused on English instruction and assimilation at the time. LULAC only favored Spanish instruction in higher education for prospective diplomats and considered something to be used and taught in the home rather than the schools.<sup>171</sup> While LULAC stood for equality in education in the 1940s and 1950s, as their support for previous cases like *Del Rio* showed, that did not mean it supported bilingualism. Nor was LULAC in agreement with many local educational activists, some of which quit their membership over LULAC’s opposition.<sup>172</sup>

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<sup>169</sup> “Spanish Proposal Meets Opposition: Educators Object to Compulsory Classes,” *Albuquerque Journal*, February 28, 1941.

<sup>170</sup> “Spanish Proposal Meets Opposition.”

<sup>171</sup> Lozano, “Managing the ‘Priceless Gift’: Debating Spanish Language Instruction in New Mexico and Puerto Rico, 1930-1950,” 281.

<sup>172</sup> *Ibid*, 281–82.

SB3 was passed in 1941 after U.S. Senator Dennis Chávez threw his support behind the bill. Chávez was a complex man, as a Mexican American politician who championed knowledge of being bilingual for international dealings with Latin America but usually promoted English only instruction in his home state of New Mexico.<sup>173</sup> This was because Chávez supported learning Spanish in high school or beyond as opposed to maintaining *nuevomexicano* Spanish in early grades through bilingual education. Chávez, like many Mexican Americans of the time, saw knowledge of English as critical for native Spanish-speaking children seeking greater opportunity; it was how he perceived his own advance from a Spanish-only household growing up to becoming a U.S. Senator. As he stated in a subcommittee hearing in 1943: “I insist that any language should be secondary to the English whenever the United States predominates or controls.” R.A. Lozano, in discussing Chávez and his Senate hearings on Puerto Rico, has noted that while Chávez claimed Spanish was a “priceless” part of New Mexico’s cultural heritage, he did so only in terms of its usefulness to foreign policy; to him, it was never a part of an American identity.<sup>174</sup> Despite his own heritage, Chávez was always a politician who supported learning English, modernizing, and improving the national status of New Mexico as important to the Union over maintaining culture heritage and language when the choice was presented.

SB3 created a situation where Spanish was taught, but not as bilingual education, and the surge of new Anglo students brought into the state did not encourage this to change. New Mexico’s schools were more concerned on just accommodating the

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<sup>173</sup> *Ibid*, 271.

<sup>174</sup> *Ibid*, 271–72.

unexpectedly large student population than putting funding into bilingual programs. As part of the war effort, Getz noted that New Mexico State Board of Education also recommended that schools make “adjustments in the curriculum necessary to meet the war needs of the nation” which included switching to a focus on English for instruction as well as math, science, and industrial training.<sup>175</sup> This encouraged a standardized curriculum based on English, and with the general support for assimilation and willingness to “sacrifice certain aspects of their own cultural heritage,” *nuevomexicano* parents often supported children learning fluent English to gain the opportunities it provided in American society.<sup>176</sup> While this did not mean that all *nuevomexicanos* were against bilingual education, it did mean attempts to expand or improve bilingual programs were limited.

Because of these realities, starting in the mid-1940s and through much of the 1950s many New Mexican schools made a sharp and noticeable turn towards a policy of English only in the public schools, and discouraged and in some instances punished students who used Spanish on school grounds.<sup>177</sup> Speaking Spanish resulted in corporal punishment or detention for many Mexican American students. There are numerous instances of students remembering how Spanish was denigrated along with those who spoke it. One interviewee, Dan Flores, remembered:

...in the schools back to the early '50s, we had to speak English. Sometimes you'd get in trouble for speaking Spanish. I'm not blaming the teachers for doing that. I think the real reasons it doesn't get brought up

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<sup>175</sup> Getz, 98.

<sup>176</sup> Wiley, *Public School Education in New Mexico*, 109.

<sup>177</sup> Phillip B. Gonzales, “Promise and Frustration: The History of Spanish-Language Bilingual Education in New Mexico, 1846-1975” (Unpublished paper, 2018), 29.

often enough is that some of the teachers didn't speak Spanish, so they wanted to be able to know what was going on.<sup>178</sup>

Richard Sandoval recalled his first experiences with learning English:

I grew up speaking Spanish. The only exposure I had to English was when I started school. The little English I knew was what I picked up from my older brother and sister and from the radio. There weren't many Anglos living in Nambé then. I started school when I was six in pre-first grade. We were told not to speak Spanish in school. We were punished if we were caught speaking it.<sup>179</sup>

Another interview, Josephine Gutiérrez, recalled:

In Roswell [New Mexico] Hispanic customs and traditions were looked down on and often ridiculed. Speaking Spanish in school was very much discouraged or even squelched. Knowing more than one language was seen as an oddity and something that one would probably be better off not admitting.<sup>180</sup>

Dolores Fuentes Guzmán, who grew up in the small town of Truchas, New Mexico, remembered not just the English only policies in school, but the outright stereotypes applied to her family as "Mexicans" rather than *nuevomexicanos*:

I had never considered myself Mexican. For untold generations, both sides of my family have been born in New Mexico... We had all spoke Spanish first and English second and we were never ashamed of it. Pat [her brother] would say some words in Spanish while in school and the teacher would become annoyed with him. Finally, one day she called my parents in. When Mom and Dad got home that day I remember they made a decision not to speak to us in Spanish and not allow us to speak it... Eventually we spoke nothing but English."<sup>181</sup>

<sup>178</sup> Dan Flores, Interview with Dan Flores by David Dunaway, Audio transcript, September 2015, Route 66 Oral History Office/National Park Service.

<sup>179</sup> Michael Miller, *A New Mexico Scrapbook: Memorias de Nuevo Mexico* (Huntsville, AL: Honeysuckle Imprint, 1991), 125.

<sup>180</sup> *Ibid*, 35.

<sup>181</sup> *Ibid*, 40.

Aside from her neighbors, there was outright discrimination among some of Guzmán's teachers as well:

While in junior high school I had a teacher, who told the class that, "if any of you Mexicans thought you were going to get better than a C average in her class they were wrong." This caused me much distress, but no more confusion. Somehow, I began to feel the state of a lower-class citizen and began to accept it. The teacher was right, it didn't matter how hard I worked for her class. I got a D.<sup>182</sup>

In addition, Anglo students were as likely to single out Spanish-speakers as were members of the school administration. Guillermo Lux remembered:

Language was another area of cultural conflict. Many of the Anglo children called all Spanish-speaking children Greasers, so we avoided speaking Spanish on the school grounds and tried very hard to speak English without a Spanish accent.<sup>183</sup>

Though many *nuevomexicano* parents were willing to sacrifice their children's native tongue if they perceived it would give them what they needed to succeed in American society, many of those children resented and regretted this scorn of their language and their culture. One writer put it in blunt terms: "Children have been taught to forget the 'foreign' ways of their fathers. Children have been cajoled, enticed, threatened, and punished for speaking Spanish. Children have been beaten."<sup>184</sup> Despite Spanish and *nuevomexicano* cultural heritage being entrenched for centuries in New Mexico, it did not overcome demographic and assimilationist pressure for the 1940s and most of the 1950s.

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<sup>182</sup> *Ibid*, 40.

<sup>183</sup> *Ibid*, 55.

<sup>184</sup> Stan Steiner, *La Raza: The Mexican Americans* (New York: Harper & Row, 1967), 209.

Arizona Anglos were even more sharply against the cultural heritage of Mexican American Arizonans and were predisposed towards seeing Latinos as a “Mexican Problem” as most of the Latino population were Mexican immigrants. This Anglo view of Mexican Americans was fueled not only by ethnic stereotypes and myths such as the Black Legend, but also a previous history of mining protests in Arizona by Mexican workers, such as the Bisbee Deportation in 1917. Tom Sheridan, in his study of *tucsonenses* in Arizona, argued that “Anglos undoubtedly viewed Mexicans through the racial and ethnic stereotypes of the time as well, stereotypes that made it easier for them to create a society based upon the institutionalized subordination of their largest and most accessible source of cheap labor, the Mexican working class.”<sup>185</sup>

Historian Maritza de la Trinidad noted in her research that transiency was a major issue in Arizona, in addition to population growth and funding shortfalls. This was due to the large number of Mexican children whose parents were seasonal laborers who moved from field to field across Arizona as the seasons changed. School districts and educators needed to rely on a process that would provide at least a minimum education no matter the disruption caused by moving between schools, because it was very difficult to track what a migratory student had learned in a previous school. Migrant children were difficult to integrate into existing classrooms, as their level of knowledge often varied greatly from that of local students who remained in the same classroom all year.<sup>186</sup> These

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<sup>185</sup> Thomas E. Sheridan, *Los Tucsonenses: The Mexican Community in Tucson, 1854-1941*, eBook (Tucson, AZ: University of Arizona Press, 1986), 121.

<sup>186</sup> Maritza De La Trinidad, “Collective Outrage: Mexican American Activism and the Quest for Educational Equality and Reform, 1950-1990” (PhD Thesis, University of Arizona, 2008), 58.

difficulties may have contributed to negative view of Latino and especially migrant students by Arizona district administrators.

Arizona education held as its primary focus, as Echeverría puts it, that:

“...Arizonan-Mexicans were educable only to the extent that they could conform to such an ideal [of the Anglo middle-class in Arizona]. If they did not meet the expectations and standards of the ideal Anglo-like student...then Arizonan-Mexican students were solely accountable for their inability to succeed, and not the education system or the individual schools.”<sup>187</sup> To Arizona, Latinos – and not the public-school system – were responsible for the need to segregate in Arizona schools. This followed the theory of cultural deficiency in education: the culture of the student interfered with education due to a lack of interest from parents or students, or due to a history of poor education in a family group. Arizona’s educational purpose was to convert every Mexican American to a “true-blue Arizona citizen as white, assimilated, culturally linked to European ancestry, and racially devoid of Mexican, Native American, Asian American, African American, and Hispanic Caribbean heritage.”<sup>188</sup> Latino students were made to take Americanization courses that “concentrated on civics, hygiene, home economics, and anything else associated with making Arizonan-Mexicans disciplined, domesticated, and docile.”<sup>189</sup>

The growth of the Anglo population in Arizona intensified existing segregation of Latinos via laws mandating separate facilities in the 1940s and 1950s. The Arizona Supreme Court had given Arizona school districts the authority to “classify and segregate groups of pupils for any reason” in 1934, meaning Arizona schools could justify

<sup>187</sup> Echeverría, *Aztlán Arizona: Mexican American Educational Empowerment, 1968-1978*, 20–21.

<sup>188</sup> Echeverría, 19–20.

<sup>189</sup> *Ibid.*



segregation however they wished. A common tactic was to cite instructional purposes based on Latino students' lack of English fluency. "Beginning English" courses were often used to separate Arizonan Latinos from Anglo students well into the 1950s. Some communities did separate non-English fluent Latinos students specifically, but many simply put all Latino students in the same class.<sup>190</sup> Echeverría noted that even where rules creating *de facto* segregation in Arizona schools were not in effect, "schools nevertheless habitually harassed Arizonan-Mexican children for associating with Anglo students" through separate seating arrangements for school events, separate playgrounds, prohibitions against mixing during dances, and other rules designed to prevent possible relationships. Rules designed to separate Arizonan Latinos from Anglos served to remind them that "they were not only different, but also unworthy of equal status with Anglos."<sup>191</sup>

Retaining skilled teachers was an issue in Arizona as in New Mexico, but the state also had an issue with the ethnicity of teachers who were hired. In 1947, Dr. Roy C. Rice, a professor at Arizona State University (ASU), conducted an independent study of teacher ethnicity, in which he concluded:

...In Arizona there are definite objections to the hiring of members of the minority groups...Fifteen percent of the schools object to the hiring of Spanish-Americans (or Mexicans) as Spanish teachers, while 21% of the schools object to members of this group teaching in other areas of instruction.<sup>192</sup>

<sup>190</sup> Floyd Pierce, "Letter to Tempe School District Regarding Questions of Office of Civil Rights," March 27, 1973, ME Ephemera, Chicano/a Research Collection (CRC), Hayden Chicano Research Collection, Arizona State University.

<sup>191</sup> Echeverría, 19.

<sup>192</sup> National Coalition for Language Freedom, "Education and the Mexican-Americans" (1970), ME Ephemera, Chicano/a Research Collection (CRC), Hayden Chicano Research Collection, Arizona State University.

A second study, conducted in 1950 by Raymond J. Flores, found only 20 Spanish surnamed instructors employed at 14 of the 70 high schools in the state, with eight of those instructors teaching something other than Spanish. In addition, only 58 of 3582 elementary teachers had Spanish surnames. Mexican Americans made up only 1.6% of the total educators in the state. These low numbers held steady until the beginning of the 1960s when they started to rise, though they had barely reached 3.4% by 1969.

Discriminatory practices in both Arizona and New Mexico led to a steady rise in educational activism in response, both individual and through organized groups. Here, this study will highlight resistance efforts by two individuals in New Mexico and two groups in Arizona that had an important impact on the ongoing struggles for educational equality in the Southwest.

A major figure for New Mexican and Mexican American education was George Isidore Sánchez. He was one of the first Mexican American academics in the early 20<sup>th</sup> century to speak out about the problems of funding and segregation in New Mexican education. Born in Albuquerque, New Mexico in 1906, Sánchez lived in Jerome, Arizona for most of his childhood. His family returned to Albuquerque in 1921, where Sánchez finished high school.<sup>193</sup> He took a position as a teacher in the village of Yrrisarri to the southeast of Albuquerque, and taught there until 1930, when he finished his bachelor's degrees in Education and Spanish at the University of New Mexico<sup>194</sup>. He then became a graduate student at the University of Texas, earning master's degrees in Educational

<sup>193</sup> Carlos Kevin Blanton, *George I. Sánchez: The Long Fight for Mexican American Integration* (New Haven, CT: Yale University Press, 2014), 17–18.

<sup>194</sup> *Ibid*, 20–22.

Psychology and Spanish in 1931, then a doctorate in Education in 1934 at the University of California, Berkeley.<sup>195</sup>

Throughout his graduate life and beyond, Sánchez sought to bring attention to the problems of the Spanish-speaking, starting with his master's thesis, which questioned the use of standardized testing with Spanish-speaking children. His professional career began at the Division of Information and Statistics in the New Mexico State Department of Education. He then moved to a field study in rural education in New Mexico. He explored a second study on rural and Black education in the American South, before becoming the Director of the *Instituto Pedagógica Nacional* in the Venezuelan Ministry of Education until 1938.<sup>196</sup> When he returned to teach at the University of New Mexico that same year, he began researching in the area around Taos and writing what would be one of his most famous works, *Forgotten People: A Study of New Mexicans*.<sup>197</sup>

In *Forgotten People*, Sánchez criticized those in the United States who romanticized New Mexican culture while simultaneously ignoring the grinding poverty and lack of education that many *nuevomexicanos* lived under. His ire was aimed especially at the federal government, which he felt had consistently failed to reach out to residents of New Mexico in need of education. At the same time, he applauded the work of educators in Taos over the previous fifteen years, especially given the uneven state funding provided to them. As Sánchez pointed out, Taos had 5% of the school census for the state in terms of students, but only 2% of state school expenditures.<sup>198</sup> Sánchez knew

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<sup>195</sup> *Ibid*, 24.

<sup>196</sup> *Ibid*, 31–55.

<sup>197</sup> *Ibid*, 13–46.

<sup>198</sup> George Sánchez, *Forgotten People: A Study of New Mexicans* (Albuquerque, New Mexico: Calvin Horn Publisher, Inc., 1967), 71.

that poverty was central to New Mexico's problems in terms of education and larger problems, stating that “A full stomach and economic security are the prerequisites of social progress.”<sup>199</sup> Lack of state funding for schools in particular exacerbated the problem.

In addition to calling for more assistance through the sale of public lands and lowered taxation on poorer New Mexican farmers, Sánchez urged that education be adapted to the needs, culture, and traditions of *nuevomexicanos*. Specifically, he argued those responsible for administering such programs should be educated in the cultural attributes of those they sought to teach and assist. However, he believed that New Mexico could not sustain the level of funding needed for sufficient education without federal financial support, though he strongly supported a more equitable method the state funding for school districts.<sup>200</sup> This foreshadows future educational funding difficulties New Mexico would experience up to the early 2000s.

While Sánchez won major victories in his pursuit of funding for higher education, he made enemies in the New Mexico state government. This likely resulted in his being denied tenure at the University of New Mexico in 1938. Sánchez surveyed Taos County in New Mexico for the Carnegie Foundation, which would result in his book *Forgotten People* that he published through the University of New Mexico Press in 1940, the same year he accepted a position at the University of Texas in Austin. While in Texas, Sánchez accepted the position of national president of the League of United Latin American Citizens (LULAC).<sup>201</sup> He served as an important educational activist throughout the rest

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<sup>199</sup> *Ibid*, 89.

<sup>200</sup> *Ibid*, 89–95.

<sup>201</sup> Blanton, *George I. Sánchez: The Long Fight for Mexican American Integration*, 75.

of his life, fighting against standardized testing, segregation, and general discrimination against Mexican American students through his writings, his teaching, and his knowledge of laws affecting Mexican Americans. Though he left New Mexico in body, he left his mark in spirit on what education in New Mexico should be and remained a powerful advocate of Mexican American students both in Texas and across the nation in his later career.

Above all, Sánchez claimed, the goal of his work was “the proper incorporation of the New Mexican into the American fold...[his] filial respect, his love of home and country, and his fortitude in the face of adversity are potential resources to Americanism.”<sup>202</sup> Sánchez believed that New Mexicans could make a powerful contribution to America without having to abandon their language or culture in the process. His beliefs stood in contrast to contemporaries like Sen. Dennis Chávez, who saw discarding cultural legacy and language in favor of learning English and conforming to traditionally American values as the way to bring opportunity to *nuevomexicanos*. Sánchez’s view was one that conformed roughly to LULAC and other moderate organizations of the time, up to the late 1950s, that saw assimilation into American society as a good thing that education could bring but stopped short of believing that a complete rejection of Spanish and cultural heritage was needed.

Other public figures were similarly conflicted about the use of Spanish in education. One of these was a woman connected to educational policy in the 1930s and later the 1950s as New Mexico’s Superintendent of Public Instruction and later the state’s congressional Representative, Georgia Lusk. Lusk was instrumental in improving

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<sup>202</sup> Sánchez, *Forgotten People*, 97–98.

funding for public schools in New Mexico, as well as beginning a series of programs that benefited Mexican American children across the state in the 1930s. She had originally worked as a teacher in southern New Mexico in Eddy and Lea counties, before running for school superintendent. She then served as the Democratic candidate for the Superintendent of Public Instruction in 1931, running on a platform of separating politics from education, as well as improving rural schools and equality of educational opportunity for all children in the state.<sup>203</sup>

Faced with the financial and language issues confronting New Mexico educators, Lusk focused on increasing the funds and improving resources available to public schools, both of which were lacking during the Great Depression. This included campaigning for free textbooks for all students. Prior to Lusk's tenure, students had been expected to purchase their own books and poorer rural Mexican American students were unable to afford them. Lusk discovered this for herself during a tour of northern New Mexico, where she found a one-room schoolhouse near Santa Fe where 25 students were sharing a single textbook.<sup>204</sup> Lusk's reaction at the time was telling:

New Mexico was hard hit even before the rest of the country felt the depression. Families simply couldn't afford to buy textbooks for their children. I'd noticed the lack of books in my own county, but this was the worst I'd seen – one book for twenty-five children! So, I went back to Santa Fe and started scouting around for money.<sup>205</sup>

During her first term as Superintendent of Public Instruction (1930-1935), Lusk convinced the state legislature to transfer money from an existing account paid by the federal government for use of New Mexican mineral resources to a school aid fund. This

<sup>203</sup> "Chavez Says Promises Not Kept by GOP," *Las Vegas Daily Optic*, October 14, 1930.

<sup>204</sup> Eleanor Roosevelt and Lorena A. Hickok, *Ladies of Courage* (New York: Putnam, 1954), 133–34.

<sup>205</sup> *Ibid*, 134.

avoided public antipathy over higher taxes and created a resource that also be used for public school expenses.<sup>206</sup> She campaigned to institute more stringent certification process for hiring teachers, established by the state Board of Education, and was able to campaign to have the state school code amended to allow for the hiring of more rural school supervisors to help better organize rural school districts. While these were not new ideas, or even the first time they had been tried, as an experienced politician as well as an educator Lusk was the first to get them implemented.<sup>207</sup> When asked how she convinced legislators consistently to support her goals and she replied “I just walk around and look at ‘em mostly. They know what I mean.”<sup>208</sup>

Lusk stepped down in 1934 to return to her family’s ranch and raise her children, as the position of Superintendent of Public Instruction was limited to no more than two consecutive terms. She returned to that position from 1943 to 1945. Having focused on school finances during her previous term, in 1943 she turned her attention to improving the quality of education in New Mexico. For example, Lusk attracted more skilled instructors to New Mexico by raising the annual salaries of teachers from \$750 to \$3,600.<sup>209</sup> This attracted back many teachers who had gone away to war or into industries that had growing in the Southwest in the 1940s. New Mexico surpassed the national average for teachers’ pay by the mid-1940s.<sup>210</sup> Lusk also focused on improving the

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<sup>206</sup> This proved particularly effective, as the fund continued to grow steadily as more mineral resources were discovered and exploited by the federal government. This soon made the fund one of the largest contributors to school funding in New Mexico.

<sup>207</sup> Hardaway notes that Lusk’s predecessor had also attempted free textbooks, and that previous superintendents had tried to hire more rural school supervisors, but had little success, something that Hardaway attributes to her political skills in working with the state legislature.

<sup>208</sup> Roosevelt and Hickok, *Ladies of Courage*, 132.

<sup>209</sup> *Ibid*, 130.

<sup>210</sup> Roger Dale Hardaway, “Georgia Lusk of New Mexico: A Political Biography” (MA, New Mexico State University, 1979), 40.

salaries of rural teachers specifically, and in creating statewide curriculum guides to ensure standardized education for both urban and rural school districts.<sup>211</sup> Lusk had lost her son Virgil during World War II, which influenced her interest in veterans and their education following the end of the war. She was given direct control of a training program for veterans through the G.I. Bill and focused on vocational rehabilitation and training programs for returning New Mexican soldiers, the majority of which were Mexican American.

Through her efforts, Lusk became a national expert campaigning for rural education aid through her campaigns to reform and improve rural schools. In 1946 when she stepped down again, then ran and was elected as member of the U.S. House of Representatives. By that point, she had left a more effective and better financed school system than had existed before her tenures.

Georgia Lusk ran again for Superintendent of Public Instruction in 1954 after completing her term in the House of Representatives. In this election, Lusk faced opposition from those who wanted a candidate appointed for their educational credentials and experience over electability. (Despite her experience as a teacher and superintendent; she held no degrees and had taken no courses in educational administration.) The leadership of the New Mexico Educational Association (NMEA) resented Lusk's attempts to put her supporters on the NMEA board in her previous term of office and resisted her taking the position again. Not all NMEA members were against her, however; one member of the NMEA committee pointed out that it was still officially neutral in political affairs despite personal prejudice displayed by some members towards

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<sup>211</sup> *Ibid*, 42.



Lusk.<sup>212</sup> After a spirited battle over votes in the Democratic primaries and a successful campaign against the former vice president of NMEA (whom she had also defeated in 1944), Lusk was able to return to her former position on January 1<sup>st</sup>, 1954.

Her subsequent actions as superintendent show that she was both interested in promoting bilingualism in public schools and in serving as an advocate for federal funding for New Mexican schools. Lusk's efforts to bring in more federal aid allowed her to use freed up state funds by for other programs as well. In 1955, Lusk authorized a new program to teach Spanish to elementary school children.<sup>213</sup> It was an interesting mix of a desire to teach English to those who did not speak it well and to ensure Spanish remained an important language.

Edward Medina, the state department's supervisor of elementary Spanish, stated that the purpose of the new course was "to make the study of Spanish a family project and even a community project whenever possible... We feel that if we can get the parents interested in learning to speak Spanish well along with their children, the children's progress in language studies will be greatly speeded up."<sup>214</sup> The program attracted attention across the nation, with Lusk also calling for a statewide kindergarten program that emphasized language training to help address the challenges facing many Spanish-speaking Mexican American students.

In her support of this sort of Spanish instruction, however, Lusk's attitude towards Spanish was more like that of leaders like Dennis Chávez. Lozano has pointed out that Lusk's attitude was not to teach Spanish to preserve Spanish language and culture as it

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<sup>212</sup> *Ibid*, 118–19.

<sup>213</sup> "2-Language NM School Plan Set for Fall," *Santa Fe New Mexican*, March 20, 1955.

<sup>214</sup> *Ibid*.

existed already in New Mexico, but to help students appreciate “other peoples’ cultures” and “better understanding of Latin Americans through a knowledge of their language.”<sup>215</sup> Lusk, like Chávez, saw Spanish as a useful tool for dealing with Latin America, not necessarily as a means of preserving *nuevomexicano* language and culture; English-speaking culture was still superior to Spanish-speaking culture.<sup>216</sup> Non-Spanish speakers would begin Spanish lessons at the first grade, while Spanish-speaking children would have a focus on English until the fifth grade, where they would also begin Spanish lessons. The idea of educating native Spanish-speakers only starting in the 5<sup>th</sup> grade meant they would not learn to be fluent in Spanish side-by-side with English. While this was not precisely a subtractive view of bilingual education, it certainly was one that made no attempt to preserve the existing Spanish language and put more value on learning Spanish to interact with Latin America than to preserve *nuevomexicano* culture.

By the end of Lusk’s term as superintendent, public concern mounted over the perceived loss of Spanish culture and language in New Mexico, partially due to the influx of Anglo Americans from other states coming to the state. A professor of education at the time, Dr. Frank Angel, painted a dark picture in 1958 of the condition native Spanish was in for New Mexico, following years of neglect and discrimination: “It is getting harder to find Spanish spoken well in New Mexico. Many children of Spanish-speaking parents are unable to speak any Spanish.”<sup>217</sup> Overall, however, *nuevomexicanos* in New Mexico were in a better position than many other states, as it at least promoted the teaching of Spanish, even if the pedagogy behind it was not truly bilingual or multicultural. Arizona did not

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<sup>215</sup> Lozano, 290–91.

<sup>216</sup> Phillip B. González, “Promise and Frustration,” 28.

<sup>217</sup> Associated Press, “Spanish Culture Losing Ground in New Mexico,” *Santa Fe New Mexican*, July 6, 1958.

have as smooth a path, and thus it was where pro-Latino organizations formed early due to the discrimination against Latinos seen there.

Arizona historically was stigmatized by Anglo Americans for having a large Spanish-speaking Mexican population. As shown in a previous chapter, many of the reasons for delaying Arizona's admission into the Union revolved around "skepticism as to the advisability of granting full civil rights to a people largely illiterate and of an alien culture."<sup>218</sup> The mining boom that began in the 1880s brought numerous Sonoran workers over the border with Mexico, as Arizona had originally been part of the Sonoran state. Other workers came from Chihuahua and the border along New Mexico and Texas to mix with Mexican-American settlements in Tucson and nearby.<sup>219</sup> This created a large population of Mexican workers that Anglo Arizonans saw outsiders and a "Mexican problem." Discrimination was frequent, and Latinos in the state were concentrated into specific towns or areas rather than being allowed to assimilate into Arizonan culture.

Another prominent group was La Liga Protectora Latina, a Mexican American labor union for miners created by Pedro G. de la Lama in 1914 headquartered in Phoenix.<sup>220</sup> La Liga had formed in opposition to the Claypool-Kinney Bill, which attempted to restrict any mining firm from hiring more than 20% "aliens" and which completely prohibited those who did not speak English from working in Arizona's mines.<sup>221</sup> Resistance by La Liga and others did not prevent some virulently anti-immigrant actions, such as the infamous Bisbee Deportation in 1917, where nearly 1,300

<sup>218</sup> Carey McWilliams, *North From Mexico* (Philadelphia: J.B. Lippincott, 1949), 52.

<sup>219</sup> Rodolfo Acuña, *Occupied America: The Chicano's Struggle Toward Liberation* (San Francisco, CA: Canfield Press, 1972), 121.

<sup>220</sup> Sheridan, *Los Tucsonenses*, 170–71.

<sup>221</sup> Acuña, *Occupied America*, 130.

striking mine workers, their supporters and numerous bystanders were illegally detained and deported 200 miles away to New Mexico by the local sheriff and a posse of men loyal to the Phelps Dodge mining company.

La Liga declined following the initial rush of support brought by the Claypool-Kinney Bill in 1914, and by the 1920s it was a much less influential organization. However, the legacy of striking Latino workers left with it an antipathy among Anglo residents towards Latinos as aliens or intruders. Latinos were useful to Anglo business and mine owners when they were docile workers; less so when they strongly began to protest conditions, treatment, and pay. It was common for deportation to be the fate of Latino protest and union leaders, whether they were Mexican or Mexican-American. These strikes left a lingering legacy of distrust and distain for “Mexicans” with many Arizonans, especially with the history of the chaos of civil war over the border in the early 20<sup>th</sup> century. Darius Echeverría phrased it as “Mexico’s struggles with poverty and governmental corruption reminded Arizonans just where the so-called Mexican problem evolved. The racial perspective that Mexican Americans were natural mongrels and savages due to their ‘Indianism’ only compounded the rationale that Arizonan-Mexicans must be segregated educationally and throughout larger society.”<sup>222</sup>

Thus, when the *Brown* decision was handed down in 1954, it did not immediately change things for the better in Arizonan education. Arizona chose to meet the requirement to desegregate by stalling, taking almost six years to act on the new federal requirements. It required additional pressure from the Supreme Court as well as the denial of federal funding for its school system to force Arizona to finally create and

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<sup>222</sup> Echeverría, 13-15.

execute programs to desegregate.<sup>223</sup> Above all, it required a surge in postwar activism for Latinos in Arizona and beyond: the Mexican-American generation of activists of the late 1940s and 1950s.

Many of the organizations that would take up the flag of educational reform and desegregation in the Southwest were based on earlier *mutualistas* (aid societies), that had supported the war effort and consisted of both Mexican American men and women. Among the most influential across the Southwest was the La Alianza Hispano-Americana, established in 1894, and the League of United American Citizens (LULAC), founded in 1929 in Texas and discussed in the previous chapter.

La Alianza was the best-known Mexican American organization that had its roots in Arizona, though it expanded throughout the Southwest. By the 1940s, it had become a national organization that could provide both organizational and financial support for Mexican American activists eager to reform their local school districts. Like LULAC, La Alianza promoted the sort of American assimilation that the Mexican-American generation preferred pre-1950 and saw English and American culture as the path to greater opportunities over preserving the Southwestern cultural heritage. By the 1950s, it had become an aggressive force for civil rights in Arizona and focused strongly on educational equity as the root of the problems of Latinos in the state.

Gregorio García, a lawyer who became president of La Alianza in 1950, became a powerfully assertive advocate for desegregation and educational equality. Along with members Rafael Carlos Estrada (later president himself) and Ralph Guzmán, the three

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<sup>223</sup> *Ibid*, 21–22.

brought with them a greater focus on civil rights that changed the course of the organization, particularly a stronger focus towards legal means of addressing racism and segregation in public schools. The organization was influential through its magazine, *Alianza*, which provided a way to further educate and influence grass roots groups throughout the state and beyond on how to fight for their rights and the rights of their children. It provided an important space for discussions about Mexican American civil rights and public education for activists, educators, politicians, and others, helping to cement a unified message and purpose in their attempts to alter state education policies.

La Alianza was a participant behind several important court cases, such as the *Gonzales v. Sheely* case (1951), where Estrada was one of the attorneys for the plaintiffs.<sup>224</sup> This case was instrumental in Arizona, because it countered the argument Latino students could be segregated by the excuse of language fluency; it was also one of the first cases to make an unqualified argument against segregation itself.<sup>225</sup> They were successful in a less prominent case, *Ortiz v. Jack* (1951), which caused the Glendale board to end segregation in the face of the lawsuit. It had continuing success with cases outside of Arizona, such as *Romero, et al. v. Weakly* (1955) in California, where it was allied with the NAACP and the ACLU over widespread racial segregation in the El Centro school district.

Numerous local Arizona-based organizations were active proponents of reform, such as the Arizona Council for Civic Unity (ACCU). Much as the earlier *mutualistas*

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<sup>224</sup> See Anthony Quiroz, *Leaders of the Mexican American Generation* (Boulder: University of Colorado Press, 2015)

<sup>225</sup> "*Gonzales v. Sheely*, 96 F. Supp. 1004 - Dist. Court, D. Arizona," Google Scholar, 1951, [http://scholar.google.com/scholar\\_case?case=17369262541411124523&hl=en&as\\_sdt=2&as\\_vis=1&oi=scholarr](http://scholar.google.com/scholar_case?case=17369262541411124523&hl=en&as_sdt=2&as_vis=1&oi=scholarr).

had allowed Mexican American communities to come together to improve the community, and mining unions had combated discrimination, these organizations provided the organization and support activists in Arizona needed to combat public segregation of Mexican Americans, including in public education. The ACCU was formed in 1948, with auxiliaries in both Phoenix (PCCI) and Tucson (TCCU). While its goal was to overturn all segregation, promoting equal public education was the group's primary focus. The ACCU campaigned for an end to educational segregation as well as discriminatory hiring practices against minority teachers. The focus of the ACCU, however, was not overtly political but aimed at education and promoting understanding between ethnic groups. Trinidad argues that critical language in TCCU records was "clearly meant to raise awareness and promote social change," motivated by "their belief that the majority of Arizonans vehemently opposed racism and discrimination for any reason as immoral, anti-American, and anti-democratic..."<sup>226</sup> The ACCU and its auxiliaries remained committed to pro-American values and assimilation; their target was equality rather than preservation of Spanish or Spanish/Mexican cultural heritage.

Both organizations were a product of their times. Much like LULAC, *La Alianza* and ACCU both strove to find a place for Mexican Americans in the structure of America where they could find equality, particularly in education. This was not yet a promotion of bilingual or multicultural education. Instead, the focus was on Mexican American students learning English and assimilating to gain the skills needed to find new opportunities.

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<sup>226</sup> De La Trinidad, 122.

The period after World War II found numerous Mexican Americans turning to the legal system to start chipping away at the segregation of public facilities, especially public schools. The courts were the forum where educational Mexican American activists were most successful, because their struggles could be both public and could use existing law to provide a foundation for their arguments. Arizona courts had already seen one of the earliest anti-segregation cases in education, *Romo v. Laird (Tempe School District no. 3 Arizona)* in 1925, previously discussed in chapter 2.

The first major case in Arizona after 1945 was *Gonzales v. Sheely* in 1951, just three years before the historic *Brown* decision. This case challenged the common educational rationalization that segregation was not due to national origin or racial background, but that it was justified by the educational or linguistic challenges that faced Latino students. The case rested on precedents created by *Mendez v. Westminster* (1946) and *Delgado v. Bastrop* (1948) and was later used as an example by activists in *Brown v. Board of Education*. Its plaintiffs were Porfirio Gonzáles and Faustino Curiel, filed against the Tolleson School District and Kenneth Dyer, the district superintendent, and precisely mirrored the accusations in *Mendez*: the district should not be able to segregate Mexican American students from Anglo students in a separate school, basing it on the Fourteenth Amendment.<sup>227</sup> In this case, Tolleson School District was separating most of their Mexican American students to Unit No. 2, a “Mexican School.”<sup>228</sup>

Gonzáles and Curiel were part of the Committee for Better Citizenship, representing the parents of over 300 students in the district, and were represented by

<sup>227</sup> “*Gonzales v. Sheely*, 96 F. Supp. 1004 - Dist. Court, D. Arizona.”

<sup>228</sup> Jeanne Powers and Lirio Patton, “Between Mendez and Brown: *Gonzales v. Sheely* (1951) and the Legal Campaign against Segregation,” *Law & Social Inquiry* Volume 33, no. Issue 1 (Winter 2008): 152–53.



Gregorio García and Ralph Estrada, both members of La Alianza Hispano-Americana. García had just assumed the presidency of La Alianza, while Estrada was its Supreme Attorney. The case itself came at the end of a long campaign to try and change the superintendent's mind over the segregation that had failed. It became obvious during his testimony that Dyer did not believe a Latino student could be smarter than an Anglo student, hedging his responses to say that they could be superior "in their group" but refused to entertain that they might outperform Anglo students among all students.<sup>229</sup> As it was, if a Latino student failed their English assessments, they were sent to the No. 2 school and could not leave it until retesting in the eighth grade. Anglo students who failed their exams could go to the No. 1 school though they were placed in different classrooms there.

The court's decision ruled that the only "tenable ground" that the Tolleson school district could offer for their segregation of Latino students were "English language deficiencies of some of the children of Mexican ancestry as they entered elementary public school life" and concluded:

The substantial inequality in accommodations accorded to petitioners as compared to the facilities and accommodations made available by respondents to children of Anglo-Saxon extraction constitutes a denial of the equal protection of the laws as guaranteed to petitioners as citizens of the United States by the provisions of the Fourteenth Amendment to the Constitution of the United States.<sup>230</sup>

An interesting aspect of this case was that the concept of the "White Spanish American" was co-opted by the plaintiff to focus the injustice in the case on language

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<sup>229</sup> Powers and Patton, 155.

<sup>230</sup> "Gonzales v. Sheely, 96 F. Supp. 1004 - Dist. Court, D. Arizona."

rather than race. In their legal analysis of the case, Powers and Patton suggested that this was problematic, since the school district's defense centered on the idea that segregation was necessary for the benefit of both Latino and Anglo students. To prove discrimination, they argued, the plaintiffs had to first prove that English proficiency was not actually the criteria by which the defendants were segregating Latino students to argue that the segregation was based on origin or ethnicity. By claiming that there was no difference legally between Mexican Americans and Anglos (as both were considered “White”), however, the plaintiffs were able to sidestep laws that upheld segregation between different ethnic groups. While not a perfect argument, or one that acknowledged cultural or ethnic differences between students while ensuring equality, *Gonzales v. Sheely* was an important case with national implications that set the stage for later battles over educational segregation, such as *Brown* in 1954.

With the success of the previously cited *Westminster* case and those that followed it, a legal climate was created where Mexican American cases against desegregation focused on arguments based on due process under the Fourteenth Amendment. This was aided by cases dealing with the segregation of Black students, such as *McLaurin v. Oklahoma State Regents* and *Sweatt v. Painter* in 1950, which reaffirmed earlier court decisions declaring that segregation violated the constitutional rights of students and strengthened anti-segregation movements throughout the country. While this allowed for victories in an era of Jim Crow laws targeting Black students to separate them from White students, it was a tactic that could only work while such discriminatory laws were aimed primarily at Blacks and Asians.

*Gonzales v. Sheely* thus created the perfect rationale for segregating Latinos. Arizona educators could claim they did not segregate by race; they segregated because of the special needs of Arizona's Mexican American students. This likewise sidestepped the previous legal rationale that many equality cases had rested on – that Mexican American students were White and therefore deserved the same education as Anglo students, as now it rested on an educational policy that discriminated based on educational deficiency. But these special classrooms were just the same poorly funded “Mexican schools” by a different name, and never received the resources that the special needs of their students supposedly required to catch up with their Anglo counterparts. Nor did the policy explain why Mexican American students who spoke and wrote English well were sent to these schools. Cases like this fed the turn towards arguing that Mexican Americans were a distinct disadvantage class rather than continuing with the idea of them being also White, as it allowed for desegregation based on ethnic background in future cases. This study characterizes this as a *de facto* ethno-racial segregation.

This push towards desegregation had been pushed into the public eye one year before *González v. Sheely* in 1950, when the ACCU in cooperation with La Alianza and the National Association for the Advancement of Colored People (NAACP) used Arizona's established preference for public ballot initiatives to propose Proposition 13. This proposition would have prohibited segregation based on race, color, creed, or national origin in Arizona's public schools. Specifically, it advocated removing all

language promoting segregation from Arizona law, including the loophole that school districts “shall” segregate students as they deemed necessary.<sup>231</sup>

Proposition 318 was soundly defeated by an almost 2-1 majority, though Trinidad notes that the outcry against segregation by these multi-ethnic local and national organizations did lead to Arizona voluntarily repealing its laws on segregation the following year, well before the *Brown* decision brought with it federal intervention. Trinidad also points out that many school districts voluntarily chose to end segregation following this decision, though she added that the change from “shall to may” in the legal language meant school districts were able to continue *de facto* segregation if they chose. Proposition 318 was defeated at the same time numerous prominent Anglo Arizonans complained about minority groups seeking to force the issue through legal decisions and “interference” by the federal government rather than permitting desegregation on a “voluntary basis.”

Because of these challenges and entrenched segregation practices, Arizonan public schools were notably resistant and reluctant to proceed with desegregation policies, even after *Brown v. Board of Education* specifically addressed the Arizonan public-school system as one of its examples in 1954. Echeverría has stated that, for Arizonans, desegregation “with all deliberate speed” translated to “at a later undetermined time” in a manner that would not disrupt the public-school system.<sup>232</sup> This would lead towards

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<sup>231</sup> Arizona Office of the Secretary of State, “Initiative and Referendum Publicity Pamphlet, Pamphlet Containing Measures to Be Submitted to the Electors of Arizona” (Arizona Office of the Secretary of State, 1950), Arizona State Library, Archives and Records, <http://azmemory.azlibrary.gov/digital/collection/statepubs/id/10531>.

<sup>232</sup> Echeverría, 21.

Arizona dragging out any response to court orders on desegregation in the 1960s and 1970s, until increasing fines would force them to make at least token gestures.

By the end of the 1950s, it was obvious to Mexican Americans in most of the Southwest that educational policy change that would end segregation and inequality would come slowly, if at all. The Mexican-American generation which had instigated most of the legal challenges while also working hard to prove their loyalty as Americans, continued to work for equality by putting pressure on local, state, and national politicians through the organizations that had emerged in the early to mid-twentieth century, such as LULAC or La Alianza.

These organizations had fought for desegregation but were not interested in bilingual education; Spanish was useful internationally for dealing with Latin America, but they attached less importance to protecting Mexican American language and culture in the Southwest. Supporters of Spanish like Georgia Lusk and Sen. Dennis Chávez still saw fluency in English as more important, and above all, that Mexican Americans become part of the structure of American society by following Anglo heritage and values over Southwestern Spanish/Mexican cultural heritage. Court cases brought in this period, as a result, commonly used the tactic of desegregating on what Mexican Americans were not (Black or Asian) rather than what made them a unique community. While segregation in Arizona was often more blatant, New Mexico had the same issues with Spanish being forbidden on school grounds, and a generation of children growing up without their ancestral language.

But those children, who experienced firsthand this institutional discrimination against Spanish and their cultural heritage, were not as willing as their parents to prove

themselves good American citizens by discarding their culture. The young men and women who entered higher education in greater numbers, often to become educators themselves, became the leaders of the new era of civil rights in the 1960s, and would continue the tradition of resistance to educational discrimination their parents had begun. The next decade was filled with the sound of chanting student protesters and walkouts supported by the local Mexican American community, as the next generation of Mexican American activists, the Chicano generation, moved for more rapid and immediate change, instead of seeking to achieve it in some far off future day.

## **Chapter 5: A Cresting Wave of Change**

Education in the 1940s and 1950s had undergone many major changes. The progress of the Mexican-American generation, which where the activists of that period, had made significant albeit slow strides in dismantling *de jure* segregation, having moved from a legal strategy of claiming Whiteness towards claiming rights as a distinct class within the category of White. Many Mexican American leaders of the 1950s had been focused on Spanish for its usefulness in dealing internationally with Latin America, not on the value of preserving the language and culture of their ancestors. The English language and American values, which had allowed many of the Mexican American generation to reach the middle class, were seen as the path to opportunities in the United States.

But as the 1960s began, the foundations had been laid for a more active, confrontational type of activism, that demanded recognition and protection for Mexican American culture. A new generation of activists, now in high school and college, had grown up under the restrictive, anti-Spanish school policies and ethnocentric biases of the late 1940s and 1950s. These young activists were determined to produce immediate change through forceful action, civil disobedience, and nonviolent protests, rather than accept the slower pace of change of their parents' generation.

As the civil rights movement entered the national stage and gained sympathy from the American public, Mexican Americans were able to push hard toward equality in the courts and in the public's perception, especially with the unprecedented expansion of federal funding for education that was part of the War on Poverty, and its creation, the Elementary and Secondary School Act. It was programs and legislation from the War on

Poverty that gave activists the tools to make progress, and to seek to be identified not as White, but as a distinct minority.

The War on Poverty during the Johnson administration was the first major action taken by the federal government to alleviate poverty and its effects through direct funding. Its programs were aimed at the poor, especially the urban poor, who were often ethnic and racial minorities. It was a re-examination of what poverty was, as the government attempted to define what had been a nebulous concept in terms of previous policy. Poverty and poor education are linked, so even programs not aimed specifically at education helped Mexican American students. However, the War on Poverty had fundamental limitations, as it did not focus on changing structural realities in American society that underlaid the reasons for why minorities were so affected by poverty. As such, it is necessary to discuss the philosophy behind the War on Poverty, its assumptions, and why its programs helped in some ways and hindered in other ways contemporaneous efforts to change education for the better.

The administrators, academics and politicians who designed policies for the War on Poverty relied on theories developed during the first half of the 20th century, primarily in academic settings. These theories were the first serious attempts since the New Deal to examine poverty as something more than the temporary effects of a downturn of the business cycle. Previously, according to historian Alice O'Connor, “the poor were more likely to be recognized – if at all – as part of some broader economic or social problem” rather than as a specific separate issue.<sup>233</sup> New books studying those in poverty at the

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<sup>233</sup> Alice O'Connor, *Poverty Knowledge: Social Science, Social Policy, and the Poor in 20th Century U.S. History* (Princeton, NJ: Princeton University Press, 2001), 139.



time, such as Dr. Michael Harrington's *The Other America: Poverty in the United States* (1962), provided a grim look at the realities of being poor in the United States, most especially as an ethnic or racial minority, though he focused more on African Americans than Latinos in his investigation.<sup>234</sup>

What had been the model for poverty before the 1960s was the theory of human capital. Human capital theory, or growth theory, proposed that poverty levels depended on the state of the overall economy. When the economy was growing, there would be more jobs, better pay, and less poverty, whereas during a period of economic decline, poverty would grow as fewer jobs were available. This economic explanation grew out of the Keynesian Revolution of the early 20th century, which put the focus of the economy on "increased consumer capacity, full employment and above all growth." These theories opposed previous attempts to stabilize the economy through "monopoly and market regulation." which after the New Deal had shifted towards a "reliance on market-driven growth" and "compensatory" social welfare.<sup>235</sup>

The human capital theory of poverty relied on the idea that the supply side of the market could be manipulated to improve the situation of workers. For example, giving them a better education and training would make workers more valued employees. As historian Michael Katz put it: "Individual skills and behavior, not institutional practices or sociological factors, could explain both the differences in earnings and why people were poor."<sup>236</sup> The sponsors of the new anti-poverty programs had two choices: "One was

<sup>234</sup> Michael Harrington, *The Other America: Poverty in the United States*, eBook (New York, NY: Macmillan Press, 2012).

<sup>235</sup> O'Connor, 140.

<sup>236</sup> Michael B. Katz, *The Undeserving Poor: America's Enduring Confrontation with Poverty*, Second edition (Oxford: Oxford University, 2013), 112.

to place the blame squarely on individuals and to redefine poverty as evidence of moral or intellectual incompetence. The other was to see it as the result of artificial and unjustifiable barriers unnecessary, indeed inimical, to the open and competitive structure of American life.”<sup>237</sup> Without explanations that considered structural racism and discrimination, human capital theory made the poor themselves responsible for their situation. Human capital theory put the blame for poverty or a lack of education on the individual and their lack of commitment to improving their ability to be employed. Failure to leave poverty thus became what U.S. policy historian Alice O'Connor terms a “characteristic of poor people” that was passed down generation to generation.<sup>238</sup>

In addition, the theory of human capital was linked to cultural deprivation theory, which explained poverty as a matter of blocked opportunities, particularly in terms of education. This was nothing new to Mexican American educational activists; they had been arguing that a lack of education blocked opportunity since the early 20<sup>th</sup> century. But this theory also ignored the idea of social barriers or inequalities being responsible, in favor of claiming that those in poverty (especially children or young men) simply had not had the same educational opportunities as other citizens as the only reasons for living in poverty. Thus, the idea of cultural deprivation theory, like racially motivated theories before it, “patronized the poor by reinforcing stereotypes of empty, child-like incompetence” over other reasons for poverty.<sup>239</sup>

After all, the reasoning went, the opportunities were there...the poor just failed to take those opportunities due to lack of knowledge. Katz has labeled this a “supply side”

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<sup>237</sup> *Ibid.*

<sup>238</sup> O'Connor, 143.

<sup>239</sup> *Ibid.*

view of poverty, as it relies on the idea that there is plenty of demand, but not enough people taking advantage of opportunities to meet it. This tied in nicely with theories of juvenile delinquency that were popular at the time. *Delinquency and Opportunity* by sociologists Richard A. Cloward and Lloyd E Ohlin, for example, placed the blame for delinquency on the reaction among the young to promised opportunity versus the limited realities of opportunity available to them.<sup>240</sup> Their program to help young people (primarily young men) in New York City, Mobilization for Youth, became a model for the Kennedy administration's programs against juvenile delinquency and would continue later efforts to focus poverty relief on increasing opportunities for young men during Johnson's era. The other side of this argument was that if the poor could not be depended on to understand their opportunities and seize them, someone would have to teach them to do it. This job accordingly fell to academics who informed government bureaucrats on how best to deal with the poor based on a top down model of educational and poverty relief.

The alternative explanation to human capital theory, a structuralist approach, rightly saw poverty and a lack of education as indicative of inequalities in American society and capitalism itself based on structural and institutional discrimination. This theory recognized that growth as a remedy for poverty alone failed to consider how workers and job seekers were restricted in their ability to truly be free agents by cultural and social realities. To “fix” poverty therefore required that the underlying societal factors that created poverty be addressed – it was not enough to simply give those in

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<sup>240</sup> Richard A. Cloward and Lloyd E. Ohlin, *Delinquency and Opportunity: A Theory of Delinquent Gangs*, A Free Press Paperback: FP 90559 (Glencoe, IL: Free Press, 1960).

poverty more education and training, in the hopes that the market would return their investment in the form of better employment. This view of poverty and educational inequality was what Mexican American activists had been fighting for, a change to societal discrimination and the refusal to treat Mexican Americans as equals in that society.

The problem with the structuralist model is that it required directly challenging structural realities in American society, such as racism and discrimination. This was an uphill battle for the federal government to take on. Given that there was a complex series of factors that kept people (especially minorities) in poverty, liberal activists of the time favored the human capital model. After all, this model argued that by giving those in poverty more education, training, and capital to improve their condition, they would be able to escape their situation and ensure their economic success. Once this was accomplished, the poor would no longer be in poverty and would no longer need welfare, which would greatly reduce the nation's monetary commitment in the future. Best of all from the government's point of view, accomplishing this would seemingly require no serious governmental intervention in the free market economy. It was a simplistic answer for a complex problem.

Structuralist economists also took issue with the idea that economic growth above all could serve as the sole method of fixing economic problems in society. Economists such as John Galbraith criticized this view for putting too much power in the hands of corporations and the military-industrial complex, who encouraged economic growth above all else as well as creating excessive consumer debt and weakening the public sector. Another critic was the Swedish economist Gunnar Myrdal. In his book *Challenge*

to *Affluence*, Myrdal correctly blamed poverty on changing conditions in the American economy, such as automation, different skills, and sociological and racial “historic inequalities” that kept segments of the population from achieving true employment equality.<sup>241</sup>

Poverty historian Michael Katz has argued this attitude about poverty was also a reason why welfare was artificially split between social insurance and public assistance during the New Deal. According to Katz “...the insurance model removed the stigma of relief and welfare and distinguished beneficiaries from the irregularly employed or otherwise dependent poor ...[which] cemented the association of relief or welfare with social and economic marginality...”<sup>242</sup> Social insurance became more “respectable” than social assistance as a result and the distinction became artificially frozen in federal policy from that point onwards. This became a major issue for the War on Poverty, since it made it very difficult to redistribute wealth, ensure incomes or alter the existing inequalities in American capitalism. The lack of ability to shift wealth or inequalities was especially problematic for education, which depended heavily on funding and equality to be successful. It also demonstrates that the same attitudes towards those in poverty existed before the War on Poverty as would turn the public against the “undeserving poor” of the late 1970s, which this study will discuss in chapter 7.

A second problem about the federal government’s adoption of human capital theory is that it changed how poverty was studied. Previously, this research had relied on ethnographic and case studies that allowed the direct investigation of poverty. Human

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<sup>241</sup> Gunnar Myrdal, *Challenge to Affluence* (New York, NY: Vintage Books, 1965).

<sup>242</sup> Katz, 89.

capital theory turned the government towards model-building or hypothesis-based testing. This methodology suffered from having no good way to evaluate programs and their long-term efficiency or effectiveness but allowed for a great deal of short term creativity and productivity in terms of programs. O'Connor argues that this partially explains the short-term success but long-term failure of many War on Poverty programs.

Armed with human capital theory, the Council of Economic Advisers (CEA) became the first government agency to take the lead in both poverty and prosperity in the public eye as part of the Kennedy administration. In 1963 the chairman of the CEA, Walter Heller, set out to create a definition of poverty that would support the CEA's belief in economic growth to deflect structuralist criticism, but would also fit with Heller's plans to make the CEA and the Kennedy administrations acknowledged experts on poverty. This meant that terms like "inequality" or "redistribution" could not be included without giving ammunition to supports of the structural theory.

Instead, Heller and the CEA chose to define poverty very narrowly as a specific income level, which linked poverty to growth since other reasons for poverty were disregarded. In fact, when the programs from the early 1960s to the early 1970s were put in place, they focused more on creating opportunity than addressing inequality. Some Mexican American activists would capitalize on these opportunities, but most of those programs made no structural changes and thus had no permanent impact on education or poverty. Kennedy's assassination interrupted the programs that had begun during his administration, leaving this a task for his successor, Lyndon B. Johnson.

In 1964, President Johnson first officially referred to this new war against poverty in his inaugural address, when he stated: "In a land of great wealth, families must not live

in hopeless poverty. In a land rich in harvest, children just must not go hungry. In a land of healing miracles, neighbors must not suffer and die untended. In a great land of learning and scholars, young people must be taught to read and write.”<sup>243</sup> That same year, the Office of Economic Opportunity was created by the Johnson administration, and became the primary governmental organ by which the Johnson administration's poverty bills were administered, replacing the CEA.

The OEO's philosophy was mixed. On the one hand there was a continuing emphasis on top-down change that rested on the cultural deprivation model and which put the blame for poverty on the poor themselves. On the other hand, there was a new community-focused activism designed to create change from the bottom up that was espoused by many early OEO thinkers, aimed at the neighborhood or the local school district. This idea suggested that the poor could and did choose to try and change their environment and were active participants in seeking better jobs and lives. The OEO through its Community Action Program (CAP) reached out directly to community leaders rather than elected officials. This was a useful strategy in political terms. Appealing to community leaders allowed the federal government to bypass local politicians at the state and local level that might otherwise resist its attempts to put programs in place. Federal funds went directly to those who needed it, requiring no approval by the existing local power structure. The OEO went so far as to withhold funds from city halls in Philadelphia, San Francisco, Los Angeles, Cleveland, and New York, claiming that this was done because the mayors were insensitive to the needs of the poor. This created an

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<sup>243</sup> Lyndon B. Johnson, "The President's Inaugural Address," The American Presidency Project, January 20, 1965, <https://www.presidency.ucsb.edu/documents/the-presidents-inaugural-address>.

odd dichotomy, where on the one hand OEO still looked at improving the situation of the poor through cultural deficiency theory as their primary goal, but at least acknowledged unofficially the structural realities that prevented success. By giving funding directly to minorities, the OEO did not act to change those structural realities so much as it sidestepped their existence without confronting them.

Nor was the OEO's thinking on this monolithic and unchanging. To a significant number of OEO's thinkers, existing institutions and power structures *were* part of the problem and in need of reform. While the OEO was perfectly willing to let the community use its democratic rights to vote to change or to influence existing power structures, it also encouraged community groups to ignore those same structures, which many activists were happy to do considering the structural racism built into local social structures at times. Ideally, actual change would follow a two-pronged approach. In practice, however, the two ideas often worked at cross purposes and resulted in gridlock or heightened conflict between community leaders and local political leaders. This led to trouble when the OEO and CAP were both accused of attempting to foment racial or class warfare, organizing strikes, or of improprieties based on interaction with lower income groups within communities.<sup>244</sup>

CAP also had problems with longevity. This was a situation frequently repeated with CAPs programs: spontaneity and experimentation led to many programs getting started but few having lasting effects once the federal grants ended. The OEO was skilled at quickly theorizing, planning, and implementing even large-scale projects on a brief timetable, but not always in maintaining the result. For example, the Community Action

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<sup>244</sup> O'Connor, 177–79.



Program (CAP) demonstration research program reserved 15% of CAP's annual budget for experimental programs to be funded directly with federal funds rather than through local agencies. These programs were used as a combination of experiments and as templates to be employed in other communities. The most successful of these was the Head Start program, which O'Connor notes was an outgrowth of Shriver's own idea for a "kiddie corp." Head Start was one of the educational programs successful enough to warrant getting specific funding in later amendments to the Economic Opportunity Act of 1964.

Since CAPs were experimental (if creative), there was little focus on scientific testing, planning and evaluation. Because of this, O'Connor argues, once these programs had been discredited, CAP had no available alternatives to suggest that were based on proven theories and concepts. The underlying theories that had driven the CAP programs were increasingly questioned not just because they were encouraging radical political views among the poor, but because of new studies, most notably the Moynihan Report in 1965. Senator Moynihan's work, while criticized at the time, nevertheless was a way of looking at poverty among African Americans that focused not on a lack of opportunity or cultural deficiency, but on existing realities in ghettos that prevented those living there from easily breaking the cycle of poverty.

The OEO was forced to alter its trajectory, as exemplified by its new National Anti-Poverty Plan of 1965, also called the Five Year Plan. The new plan called for a lot more planning and a lot less action, with a greater focus on budgetary concerns and tracking for where and how to fund any programs in the future. Unfortunately for the OEO, the budget that planners decided on (which they considered a conservative level of

funding) was not possible politically. Because of the Vietnam War, the administration was cutting budgets, not increasing them, and the Five Year Plan was flatly rejected as a result. Instead of the \$10 billion the OEO had conservatively budgeted, they received only \$1.75 billion. Establishing new programs, or expanding existing programs proved nearly impossible, as the budget allowed for only minor increases to existing programs.

Although OEO was beginning to falter in 1965, in the same year a very influential federal education statute passed as part of the War on Poverty: the Elementary and Secondary Education Act (ESEA). The ESEA was by far the most intensive intervention in American education historically. It drew opposition both from those afraid of federal influence and those who objected due to its assistance to people of color. The infamous Rep. Howard W. Smith, a longtime opponent of civil rights legislation, tried unsuccessfully to kill the bill in the House. Smith's attempt caused Democrats in the Senate to pass it without debate for fear it would go back to the House for another vote. The bill won majority approval and was signed into law on April 9, 1965.

The ESEA included several important aspects that assisted Mexican American students, primarily those in low-income households in poorer urban or rural schools. Title I of the ESEA provided funding for school districts with a high percentage of these low-income households. The ESEA grants were distributed from the federal government to the state, who would then give funding to local districts, who would then pass that funding to public schools. This was to avoid accusations of federal interference in local education. Title I provided funding to help prevent dropouts and to generally improve schools, something particularly relevant to many majority Mexican American schools in the Southwest. It also provided funding for students from families who had recently

migrated to the United States, something that obviously was of great help to recent Mexican immigrants and their children, as well urban or rural children. It did not target who were English Language Learners (ELLs), such as Spanish-speaking Latinos. That was left to a section added three years later, the Bilingual Education Act (BEA).<sup>245</sup>

The BEA was a personal goal of populist Senator Ralph Yarborough (D-Texas), the leader of the liberal faction of the Democratic Party in Texas and the bill's sponsor. Yarborough was the only Southern Senator who had voted to pass every civil rights bill since 1957 and was one of the few Southerners who refused to sign the Southern Manifesto, an agreement to resist desegregation. He was a supporter of Johnson's Great Society, and the social programs that came from it, such as Medicare and Medicaid, as well as the War on Poverty itself. The ESEA grew out of Yarborough's desire to experiment with federal funding for bilingual education, following his attendance at a National Education Association (NEA) conference in Tucson in 1966. There, the NEA presented their findings from a study they had commissioned, the Tucson Survey on the Teaching of Spanish to the Spanish Speaking, often referred to as the Tucson Survey of 1965-1966. This survey reported dismal academic performance for Mexican American students across the Southwest and placed most of the blame on the English only "sink-or-swim" attitude of many Southwestern schools.<sup>246</sup>

In a speech he gave introducing the BEA, Yarborough framed it as something specifically intended to help the Spanish-speaking peoples of the Southwest:

...Mexican Americans have been the victims of the cruelest form of

<sup>245</sup> United States, "Elementary and Secondary Education Act of 1965," Pub. L. No. P.L. 114-95 (1965), <https://www2.ed.gov/about/offices/list/oii/nonpublic/eseareauth.pdf>.

<sup>246</sup> Ernest M.B. Obadele-Starks, "Ralph Yarborough of Texas and the Road to Civil Rights," *East Texas Historical Journal* 32, no. 1 (1994): 39-48.

discrimination...Spanish is forbidden to them, and they are required to struggle along as best they can in English...Thus the Mexican American child is wrongly led to believe from his first day at school that there is something wrong with him, because of this language.<sup>247</sup>

Yarborough went on to caution that this was not a general aid bill for all schools with Latino students, but a bill designed to allow schools to revamp their courses; to “try new things, blaze new trails, and demonstrate to other schools what might be done.”<sup>248</sup> This was because the BEA did not specifically require bilingual education, but encouraged programs be made that could be bilingual. Priority was placed on lower income English Language Learner (ELL) students over those who were from middle class families. The Bilingual Education Act provided aid for only Spanish-speakers, but the language was changed before it was passed to include all groups with limited English proficiency. The BEA was then made part of the ESEA as Title VII.

Yarborough’s cause was aided by a wide range of testimony from educators, academics, administrators, and others. Journalist James Crawford has refuted arguments that the BEA came about as a cold political maneuver designed to appease Mexican American militant activists. While Crawford acknowledges there were certainly political motivations (as in the case of any law), it was untrue to dismiss most of the testimony as being from “ethnic activists,” and called that assertion “a distortion, to put it charitably.”<sup>249</sup> He noted the wide range of experience inherent in those testifying: “linguists, psychologists, curriculum specialists, economists, school superintendents,

<sup>247</sup> Senator Ralph Yarborough, quoted in James Crawford, ed., *Language Loyalties: A Sourcebook on the Official English Controversy* (Chicago: University of Chicago Press, 1992), 322–25.

<sup>248</sup> *Ibid.*

<sup>249</sup> James Crawford, *Hold Your Tongue: Bilingualism and the Politics of English Only* (Reading, Mass: Addison-Wesley, 1992), 77.

principals, teachers, social workers, labor and business leaders, state legislators and other public officials – of varied ethnic backgrounds... testified from academic or practical experience.”<sup>250</sup>

Crawford added that contrary to those who believed it to be some sort of “ethnic conspiracy” to get the BEA passed, bilingual education was nevertheless a revolutionary concept, though one increasingly seen as an alternative to failed English-only education in teaching Spanish-speaking students.<sup>251</sup> This is consistent with the beliefs of many Mexican American organizations and activists in the 1950s, who saw fluency in English and assimilation to American values as the key to opportunities, rather than the preservation of Spanish and their cultural heritage. Adopting bilingual education was not a simple matter in seeking to convince even Latinos that this was a good choice; only experience and a steadily growing surge of studies and academic writing won over many educators and Mexican American parents.

This changing and positive view of bilingualism constituted a significant part of the testimony of A. Bruce Gardner, chief of the Modern Language section of the U.S. Department of Education, at a Senate hearing concerning bilingual education. Gardner disproved the flawed analysis that claimed that bilingual programs in and of themselves failed to teach students. While testifying before the Committee on Labor and Public Welfare’s Special Subcommittee on Bilingual Education, Gardner stated:

There is a fast body of writing by educators who believe that bilingualism is a handicap... Many researchers have established a decided correlation between bilingualism and low marks on intelligence tests, but what no research has shown is that bilingualism, per se, is a *cause* of low

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<sup>250</sup> *Ibid*, 76–77.

<sup>251</sup> *Ibid*, 77–78.

performance on intelligence tests. On the contrary, studies which have attempted to take into account all the factors which enter the relationship show that it is not the fact of bilingualism, but *how* and *to what extent* and *under what conditions* the two languages are taught that make the difference... Much of the literature on bilingual education does not deal at all with bilingual education. Rather, it shows the unfortunate results when the child's mother tongue is ignored, deplored, or otherwise degraded.<sup>252</sup>

Gardner went on to use examples of bilingual children in Montreal who spoke English and French who were “markedly superior” to monolinguals on verbal and nonverbal tests for intelligence, and “that appear to have a greater mental flexibility, a superiority in concept formation, and a more diversified set of mental abilities.”<sup>253</sup> He presented further evidence from studies that showed when students were taught in their mother tongue, it resulted in better academic performance. This provided additional support to George I. Sánchez's previous assertions in the 1960s that most of the problems of Spanish-speaking students could be traced back to the single-minded pursuit of teaching English above all else as the sole means of teaching fluency.<sup>254</sup>

Educational historian Guadalupe San Miguel, Jr. has pointed to the BEA as a watershed moment for bilingual education, in terms of the public perception towards the protection and encouragement of native language and culture. He argues that it brought about a “new phase of ethnic and race relations in the history of American public schooling that soon polarized Americans along the lines of language, culture, ethnicity,

<sup>252</sup> Gardner, Bruce, “Hearings on Session 428,” § Special Subcommittee on Bilingual Education, Committee on Labor and Public Welfare (1967). Emphasis in original.

<sup>253</sup> *Ibid.*

<sup>254</sup> George I. Sánchez, “History, Culture, and Education,” in *La Raza: Forgotten Americans* (Notre Dame, IN: University of Notre Dame Press, 1966), 10–13.

and pedagogy.”<sup>255</sup> The combination of the BEA, a change in views of bilingual education, and the funding provided by the ESEA opened a wealth of possibilities for educators looking for ways to create and teach truly bilingual programs throughout the Southwest. It took a political decision at the magnitude of the BEA to finally break the monolithic view in many Southwestern schools that immersion in English was the best way to teach Spanish-speaking children. Moreover, later amendments in 1974 and 1978 changed the statute. Instead of an open-ended bilingual program with set amounts for how much was taught English or another language, the program now measured success by mastery of English and limiting the number and types of students that could be served.<sup>256</sup>

Following the passage of the BEA, the War on Poverty continued to wind down. The OEO became increasingly hampered by political and special interest groups which encouraged decisions made more for political reasons than poverty science. For example, O'Connor points to the 1967 amendments to the Economic Opportunity Act, which discouraged the rural poor from migrating to the cities on the mistaken idea that this was what was contributing to overcrowding and rioting among the urban poor.<sup>257</sup> Another example was how the OEO severely cut back on its plans for expanding family planning services after meeting with leaders of the Catholic Church, for fear of offending Catholics.<sup>258</sup> In late 1967, Sargent Shriver resigned as director of the OEO, leaving the organization very different from how it had been just three years earlier. The OEO had

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<sup>255</sup> Guadalupe San Miguel, *“Let All of Them Take Heed”: Mexican Americans and the Campaign for Educational Equality in Texas, 1910-1981*, 1st ed., Mexican American Monographs, no. 11 (Austin: University of Texas Press, 1987), 12–19.

<sup>256</sup> Armando Trujillo, *Chicano Empowerment and Bilingual Education: Movimiento Politics in Crystal City, Texas* (New York, NY: Garland Publications, 1998), 36–37.

<sup>257</sup> O'Connor, 175–76.

<sup>258</sup> O'Connor, 181.

increasing adopted elements of structuralist theory over human capital theory in planning new programs and considered social inequalities that contributed to poverty in its planning. CAP was no longer the golden child of OEO, having had its budget severely trimmed, to where it only administered funds going to communities rather than planning and executing community programs. This was due to protests by local authorities whom CAP had bypassed with its funding who felt it was directly funding minority activism rather than community projects. The Johnson administration had been brought low by the Vietnam War, and Johnson's successor, Richard Nixon, moved the OEO towards solely a research and development role.<sup>259</sup>

Under the Nixon administration the government was no longer fighting a War on Poverty. In 1971 Nixon cut many programs from the OEO, converting it to a presidential think tank. Most of OEO's successful programs, such as Head Start, the Job Corps, Neighborhood Health Centers and other successful programs, were given to other agencies. OEO ceased to exist two years later in 1973 when Nixon completely cut all funding, dissolving the agency entirely. Despite Nixon's anti-welfare rhetoric, however, his administration saw a substantial expansion of welfare services, though no longer as part of the War on Poverty. But even with those programs, the decline of poverty slowed and came to a halt in the 1970s at a low of 11% before beginning to rise again.<sup>260</sup>

Thus, the War on Poverty had a dramatic effect on education in the Southwest and provided the federal government with an indirect way of influencing education. This was due to the realities of federal funding, which were linked to federal requirements for

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<sup>259</sup> O'Connor, 190–94.

<sup>260</sup> O'Connor, 222–27.



gaining that funding. Even modest grants could have dramatic changes in educational policy, as schools intentionally altered their behavior to qualify for the funding in question. Few poorer schools could easily refuse these resources, and when bilingual programs would actively benefit schools with high Latino populations, it was an easy choice for many principals and superintendents to make.

The War on Poverty also highlighted the way the federal government officially viewed minorities and the poor. O'Connor argues the idea of a "underclass" underwent a change in public perception from "sub-working-class people...at the very bottom" to a popular usage where being part of the underclass meant to be "jobless, welfare dependent, uneducated, drug addicted, criminal, sexually promiscuous, inner-city, and overwhelmingly black."<sup>261</sup> It was the beginning of a turn towards those using government assistance as the "undeserving poor" that would dominate discussion over government assistance throughout the 1980s.

One of the problems about the War on Poverty that government administrators as well as progressive educators ignored was the structural racism that was endemic to American society. It was left to Mexican American activists to oppose that racism, with tactics that were much more confrontational than in previous decades. By the 1960s, some organizations that had been established around World War II, such as LULAC or the G.I. Forum, had grown into powerful grass roots organizations campaigning for equality for Spanish-speaking students in Southwestern schools. Others, such as La Alianza Hispano-Americana were dying out, having lost membership and suffering financial difficulties, to the point where they were no longer an effective organization. La

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<sup>261</sup> O'Connor, 265–66.

Alianza effectively ceased to exist by the early 1970s. Mexican Americans became more organized and aware politically and made their needs and voices known to the public at large. Many of these older Mexican American organizations, however, were seen by a new generation of Mexican Americans as too willing to accommodate and assimilate into American society, instead of protecting their language and culture. This new generation took the name “Chicano” to identify themselves as a distinct and separate movement from those of their parents.

The Mexican American student activists of the 1960s expressed disdain and frustration at the pace of reform. One Denver student wrote in an editorial:

We Chicanos realize that the schools, as well as everything else, are not controlled by us, and that the alleged philosophy behind education is not the actual. For the Chicano, education the American way means being taught how to become janitors, garbagemen [sic], dishwashers, and migrants. We will be taught this and have been taught this every time we are expelled from school, flunked out, channeled into vocational rather than academic courses by counselors, denied our civil rights, exposed to racist teachers and the American way of thinking, punished for our accent and our pride and ridiculed as a political force...In our struggle to secure more for our people we talk of jobs, salaries, etc. But the underlying force is our identification not only as a people but also as a part of the southwestern United States. When we organize around an issue involving colleges, public schools or racist teachers, we are striving in a sense to reestablish a saner, non-dehumanizing education for our children and ourselves.<sup>262</sup>

New politically motivated Chicano organizations rose to replace them, such as the Movimiento Estudiantil Chicano de Aztlán (MECHA) and United Mexican American Students (UMAS), as part of the growing Chicano Movement of the 1960s. “Chicano” was originally a derogatory label for the children of Mexican migrants but became a

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<sup>262</sup> Rudy Garcia, “The Chicano and Education: American Way or Mestizo Way?,” ca. 1960s, MSS 654 BC Box 50, Inventory of the Reies Tijernina Papers, 1888-2003.

symbol of pride for this younger generation of activists. It began in Colorado, then coalesced around many different problems facing Latinos: loss of land grants, farm worker or union rights, opposition to the Vietnam War, voting and political rights, as well as education. Leaders such as Corky Gonzales and the Plan Espiritual de Aztlán created by the First National Chicano Liberation Youth Conference in 1969 provided a manifesto for Chicano nationalism, self-determination, and equality. Mexican American activists and organizations also found new allies with other ethnic organizations, such as the National Association for the Advancement of Colored People (NAACP) or legal groups such as the American Civil Liberties Union (ACLU). These alliances created multi-ethnic coalitions with shared goals. The Mexican American Legal Defense and Education Fund (MALDEF) would be founded in 1968 as part of this movement, modelled after the NAACP.

In 1968, the Chicano student movement became prominent when local students assisted by the Mexican American Youth Organization (MAYO) and inspired and organized by Sal Castro staged a “Blowout” (a walkout) in various Los Angeles schools to draw attention to their petition for equal education.<sup>263</sup> MAYO at the time was a new organization, having been created in 1967 in at St. Mary’s University in San Antonio, Texas by a group of five young men: Jose Angel Gutiérrez, Mario Compeán, William Velásquez, and Juan Patlán. While small at first, MAYO rapidly became a force to be reckoned with, providing organization and experience to other student protests around the Southwest. As Gutiérrez put it, “all of us were products of the traditional Mexican

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<sup>263</sup> Mario T. García and Sal Castro, *Blowout!: Sal Castro and the Chicano Struggle for Educational Justice*, eBook (Chapel Hill, NC: The University of North Carolina Press, 2011).

American organizations...All of us were very frustrated at the lack of political efficacy, at the lack of any broad-based movement, and at the lack of expertise.”<sup>264</sup> In doing so, they rejected traditional groups like LULAC or the G.I. Forum’s steady, assimilationist view of activism, in favor of a more confrontational activism and civil disobedience used by African Americans leaders such as Martin Luther King Jr. or Malcolm X. Gutiérrez himself became famous for his call to “eliminate the gringo,” which he later clarified to mean gringo as “a person or institution that has a certain policy or program, or attitudes that reflect bigotry, racism, discord, prejudice, and violence.”<sup>265</sup> Unfortunately, to many Anglo Americans the phrase “eliminate the gringo” did not encourage them to be supportive of MAYO, and the explanation did not greatly counter that opinion.

MAYO would become most famous for forming La Raza Unida Party (RUP) in Crystal City, Texas, in 1970. RUP, building on the publicity and swell of support for the Blowout, was able to gain control not only of the school board, but also of the city council of Crystal City in local elections. The invigorated council immediately began a series of reforms to address inequalities and strengthen the Mexican-American community. This grass roots drive as a matter of course included modifications to the school system. They were able to use the BEA to promote Spanish and Mexican culture as truly additive education, by endorsing a bilingual program that placed emphasis on learning Spanish and English simultaneously, rather than one that promoted gaining English proficiency to switch to an English curriculum.

<sup>264</sup> Armando Navarro, *La Raza Unida Party: A Chicano Challenge to the U.S. Two-Party Dictatorship* (Philadelphia, PA: Temple University Press, 2000), 20.

<sup>265</sup> Ignacio Garcia, *United We Win: The Rise and Fall of La Raza Unida Party* (Tucson, AZ: University of Arizona Press, 1989), 24–25.

However, this program demonstrated the conflicting feelings of Latinos for bilingual education. People objected to the proposed bilingual programs on educational grounds, preferring to support a program that assisted acculturation rather than promoting two languages side by side, given the difficulties of “identifying dominant languages, reading levels, and not knowing when to transition students into second language reading.”<sup>266</sup> Even Mexican American parents questioned the focus on learning Spanish over learning English, which many felt could be better taught at home, or the lack of an early focus on acquiring a functional command of English. Some parents even mistakenly believed that this program meant that classes would be taught only in Spanish.

But even within the community, there was as much resistance to the reforms as there was support, which set the stage for the resistance that would weaken activism in the 1970s. Historian Armando Trujillo demonstrated how the highly political nature of organizations like RUP and MAYO generated as much resistance as support for pro-Mexican-American reforms because of their abrasive tactics. From outside the community, attacks were aimed at the radical aims of RUP and MAYO, with accusations flying that they were “un-American” or looking to “create a little Cuba” in the heart of Texas in response to what were anti-integrationist policies.<sup>267</sup> Many educators found RUP's attempts to force their political agenda on educators intrusive, especially when they belonged to more moderate parties such as Raza Libre who balked at passing out RUP political literature or putting pro-RUP bumper stickers on their cars.<sup>268</sup>

In the face of this fracturing of support outside and inside its organization, RUP

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<sup>266</sup> Trujillo, 57.

<sup>267</sup> Trujillo, 55–56.

<sup>268</sup> Trujillo, 55–57.

was able to achieve impressive short-term goals, especially in succeeding as a political party. But in the long term, its revolutionary outlook was counterproductive. By the early 1970s their political star had ceased to rise, when their gubernatorial candidate failed to gain more than a small scattering of votes compared to the Republican and Democratic candidates. RUP continued to achieve some success politically with smaller political races, but experienced uneven support by Mexican Americans across Texas, and disintegrated completely by 1978.

Aside from the confrontational tactics of Chicano activists and political groups, new court cases strove to dismantle the remaining examples of *de facto* segregation in the Southwest School districts were no longer segregating schools overtly, but various state policies allowed districts to legally sidestep desegregation requirements. Mexican Americans sought new ways to prove the discrimination happening to them and followed the example of African Americans in seeking recognition as a minority, rather than a distinct class of White. This problem was finally solved in 1970, with the case *Cisneros v. Corpus Christi ISD*.<sup>269</sup>

In 1968, José Cisneros filed suit against the Corpus Christi Independent School District along with twenty-five other Mexican American and African American parents. They sued the district over the operation of a *de facto* dual school system that existed at all educational levels in the district.<sup>270</sup> This system included tactics like busing Anglo students to better schools outside of their local district but refusing to do the same for Mexican American students. The school board renovated old schools in African American

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<sup>269</sup> *Cisneros v. Corpus Christi ISD*, No. Civ. A. No. 68-C-95 (United States District Court, S.D. Texas, Houston Division 1970).

<sup>270</sup> *Cisneros v. Corpus Christi ISD*.

and Mexican American neighborhoods rather than building new buildings, and limited the hiring of minority teachers, most of which were assigned to African American and Mexican American schools.<sup>271</sup>

The attorney for the plaintiffs was James de Anda, who had been part of the earlier *Hernández v. Texas* case in 1954 as a member of the G.I. Forum. In that case, the plaintiffs had depended on claiming “other Whiteness” to argue for Mexican Americans as a distinct class of White, and the *Hernández* decision had recognized the difference between White Anglo and White Latino. In *Cisneros*, de Anda argued that Mexican Americans were an identifiable minority that was being discriminated against and were protected by the Fourteenth Amendment. The defense in turn argued that since the state had never had a law that required the segregation of Mexican Americans and blacks, no segregation could exist. The defense ignored the *de facto* segregation in place.

In the opinion of Judge Woodrow Seales, the presiding judge, these elements of school policy in Corpus Christi ISD were “calculated to, and did, maintain and promote a dual school system.”<sup>272</sup> Judge Seales also agreed that Mexican Americans were an “identifiable ethnic minority with a past pattern of discrimination” and ruled in favor of the plaintiffs. Not only was the case successful, but the precedent defining Mexican Americans as an ethnic minority became the primary argument for Mexican American desegregation cases afterwards. The U.S. Supreme Court would cement this separate legal status in 1973 in *Keyes v. School District No. 1*. *Keyes* also would provide the

<sup>271</sup> Vernon Carl Allsup, “*Cisneros v. Corpus Christi ISD*,” Texas State Historical Association, accessed December 6, 2018, <https://tshaonline.org/handbook/online/articles/jrc02>.

<sup>272</sup> Woodrow Seales, quoted in Trujillo, *Chicano Empowerment and Bilingual Education: Movimiento Politics in Crystal City, Texas*, 134.

precedent that if a part of a school system was found to be segregative in nature, the burden fell on the school district to prove that segregation was not involved on a system-wide basis.

Another important case, *Rodríguez v. San Antonio* in 1968, dealt with financial inequalities as well as the right to education. The plaintiffs were members of the Edgewood Concerned Parents Association in San Antonio, Texas, who sued San Antonio Independent School District, Alamo Heights Independent School District, as well as five other school districts, the Bexar County School Trustees, and the State of Texas. The plaintiffs, by claiming education was a fundamental right, alleged that the system of school financing in Texas violated the Fourteenth Amendment. Therefore, wealth-based discrimination created by wealthy districts being overfunded and poor districts being underfunded without that funding being distributed equally created the poor as a distinct class that should be protected from discrimination. The school districts dropped out of the case over time, leaving Texas itself as the main defendant.

*Rodríguez* was originally heard in the District Court for the Western District of Texas but was appealed after an initial decision for the plaintiffs to the U.S. Supreme Court. The Supreme Court ruled that while state governments were ultimately responsible for equality in educational spending within the state, Texas had not created a suspect class related to poverty. The decision specifically noted that it was neither “explicitly or implicitly” textually found in the U.S. Constitution that American children had a right to education.

The *Rodríguez* decision allowed systems of unequal funding for schools to continue without federal interference, but it was also a sign that the current membership



of the Supreme Court, would not be as positive towards minority cases arguing for Constitutional rights as it had been in the 1960s. In fact, Justice William Brennan, one of the dissenting opinions in the case, later wrote an article urging those seeking the protection of individual rights to turn to State Supreme Courts rather than the U.S. Supreme Court, as he argued that state courts were now “guaranteeing citizens of their states even more protection than the federal provisions, even those identically phrased.”<sup>273</sup> This would be proven true in a related case in 1971, *Serrano v. Priest*, where education was confirmed to be a right in the state of California, as well as holding that California’s funding system “invidiously discriminates against the poor because it makes the quality of a child’s education a function of the wealth of his parents and neighbors.”<sup>274</sup>

Despite the successes of Mexican American activists and many positive advancements in equality, such as the BEA or Cisneros, Mexican Americans had not succeeded in overcoming structural racism built into society and educational institutions. While *de jure* segregation was now a thing of the past, there were numerous examples of *de facto* segregation that remained, as well as states like Arizona which resisted implementing desegregation requirements for years after *Brown*. Historian Thomas Carter has noted that the percentage of Mexican-American students who were isolated and segregated during the turbulent height of the civil rights movement in 1970 was higher than in the previous four years.<sup>275</sup> In addition, Carter has used statistics from numerous reports through the 1970s to indicate that Latino children remained highly segregated

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<sup>273</sup> William J. Brennan, “State Constitutions and the Protection of Individual Rights,” *Harvard Law Review*, no. 3 (1977): 495.

<sup>274</sup> “*Serrano v. Priest* L.A. No. 30398, Supreme Court of California (1974),” Justia Law, 604, accessed January 22, 2018, <https://law.justia.com/cases/california/supreme-court/3d/20/25.html>.

<sup>275</sup> Thomas Carter, *Mexican Americans in School: A History of Educational Neglect* (New York, NY: College Entrance Examination Board, 1970), 130–38.

despite attempts at reform at the national and state levels.<sup>276</sup> The new makeup of the U.S. Supreme Court in the early 1970s represented a turn towards a conservative, rigid view of the Bill of Rights and Constitutional protections, which would be borne out as many decisions to come in the 1970s would be blows against desegregation and educational equity.

The War on Poverty was a tremendous financial boon to schools in the Southwest. Coupled with the BEA, federal funds flowed into Southwestern schools, allowing for true bilingual programs to begin to replace the English only education that was the norm in the 1950s and much of the 1960s. Despite the benefits of increased funding, however, the War on Poverty would run aground on several erroneous assumptions, namely the belief that poverty could be solved in less than a generation without a concerted attempt to bring about structural change in a system that disadvantaged minority students. The War on Poverty ended without victory under Nixon, but many of its programs continued in one form or another, creating a new chapter for federal educational policies and funding.

Older Mexican American organizations such as LULAC, the G.I. Forum, or La Alianza became less prominent in the 1960s, as a new generation of activists entered the struggle over educational equality. Armando Trujillo among other historians has pointed to the Chicano Movement of the 1960s and 1970s as the primary source for change in state and national policies towards Mexican Americans.<sup>277</sup> Trujillo draws specifically on a model of linkage between grassroots politics and a policy proposed in 1989 by Thompson and Rudolph, that states that grassroots local activism leads to policy changes at higher

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<sup>276</sup> Carter, 138.

<sup>277</sup> Trujillo, 134-136.

levels.<sup>278</sup> Part of those changes arose from fear by authorities that refusing to respond to Mexican American demands for equality would lead to a repeat of the African American marches and protests that had disrupted the American South. Trujillo believes that while there were definite victories for Mexican Americans, however, overall the Chicano movement hardened institutional reactions to change in response to their activism, since those institutions had reason to feel threatened.

The struggle for educational equality in the 1960s improved dramatically with the new energy injected into a new generation of Mexican American activists. The War on Poverty provided funding, especially through the ESEA and the BEA, that gave Mexican American activists and educators the chance to experiment and find alternatives to the English only pedagogy of their youth. Success in court decisions like *Cisneros* now came from the idea that Mexican Americans were not White or a distinct class of White but were their own distinct minority that had been discriminated against. The decade was filled with activist energy that was linked to the success and sympathy for the civil rights movement. But towards the end of the decade, these benefits seemed to be ephemeral, with cases like *Rodríguez v. San Antonio* undercutting the tactic of appealing to federal law for equality. The 1970s would see an erosion of many of the successes of the 1960s, though the struggle for equality would not end.

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<sup>278</sup> This system was explained in *Ethnoterritorial Politics, Policy, and the Western World*. Edited by Joseph Rudolph and Robert Thompson (Lynne Rienner Publishers, Inc, 1989).

## Chapter 6: A Tide of Southwestern Support

In the 1960s, both Arizona and New Mexico were still struggling to improve their educational systems. The baby boom during the late 1940s and 1950s had come with a surge of new, largely Anglo students, which strained the existing financial systems greatly. As student populations continued to rise (per Figure 6.1) and revenues began to sharply drop, the two states responded sluggishly with reforms that were less than effective.<sup>279</sup> The War on Poverty offered opportunities for much needed educational funding, both for low income districts and for new bilingual programs, but factions in both states were wary of the possibility of federal influence in their local school systems. Accepting federal funding was not an easy choice.

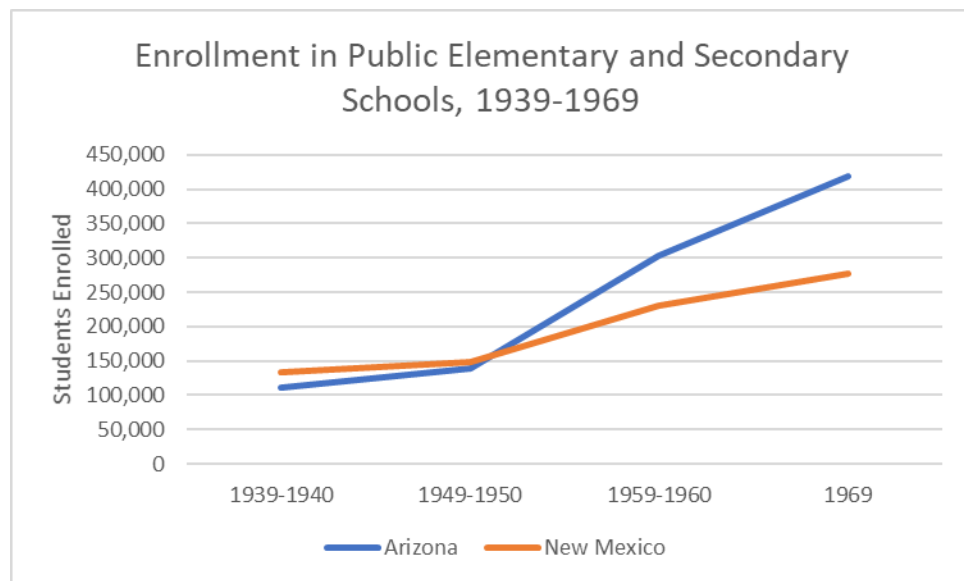


Figure 6.1: Data from Thomas D. Snyder, *120 Years of American Education: A Statistical Portrait* (Washington D.C: Office of Educational Research and Improvement, National Center for Statistics 1993).

It might have been assumed given its historic requests for educational funding aid

<sup>279</sup> Phillip B. Gonzales, "Historical Overview of Public School Financing and Indian Education in New Mexico," Unpublished Manuscript. (Albuquerque, NM: University of New Mexico, 2016), 28–29.

from the federal government that New Mexico would have happily endorsed receiving such aid. But when the question of education was put to New Mexican Democratic candidates in 1964, the answers were decidedly split. One candidate stated that some federal aid was needed, but only with safeguards against federal influence. Another opposed any federal aid save for federally impacted areas (such as for military bases or federally claimed land that could not be taxed). A third favored federal aid for higher education but argued that elementary and secondary education should remain “a local responsibility.” A fourth opposed federal aid in general but allow for an exception for schools that provided technical or scientific training. The last flatly declared “We are not doing the job in this state. We are not educating our children...since we aren’t giving it to them we should have federal aid.”<sup>280</sup> Arizona was even more suspicious of the new funding, given its long tradition of independence and local control of education.

Despite this debate, both states needed additional funding, federal or otherwise. Both states had the same problem: they had based their school funding system on property tax revenue. Because of this, school funding varied depending on the wealth of the district and land values, which could fluctuate. Property rich districts could raise school funds easily; low income communities could not, leading to financial inequities.

In New Mexico, this was offset by federal impact aid to compensate for the high populations of students surrounding military bases, where much of the land was nationalized and not available for taxation. But this provided only 3-4% of New Mexico’s annual education budget.<sup>281</sup> By 1962, the State Board of Educational Finance had gone so

<sup>280</sup> “Walker Is Frank with Farmers,” *Albuquerque Tribune*, October 2, 1964.

<sup>281</sup> David Colton and Luciano Baca, “Governing New Mexico’s Schools,” in *New Mexico Government* (Albuquerque: University of New Mexico Press, 1994), 209.

far as to create a New Mexico Commission on Statewide Higher Education Problems. The commission, which included 15 “prominent New Mexico citizens” and a regent from each of the higher education institutions in the state, was intended to look at the higher education needs of the state, as well as financial matters such as tuition and fees, admission standards, financial aid, and facility issues on what was needed and how to finance it.<sup>282</sup>

Sociologist Phillip Gonzales has argued that limitations on local taxes in New Mexico provided no leeway to meet these expanding needs; what was essentially a low, fixed property tax was all that could be raised legally by school districts, as property was not assessed at market value in New Mexico.<sup>283</sup> This had led to declining revenues for schools at a time where they needed to have additional resources to expand to better serve a larger number of students. The state legislature passed several new funding formulas over the course of the 1960s to fix the problem. The first attempt in 1962 failed due to not being given enough funds to complete the reforms. In 1963, the legislature adopted what Gonzales terms a “slide rule” formula based on attendance, that included a minimum support clause. However, it also gave the chief financial officer the ability to simply change the minimum support level as needed, rendering the level a suggestion rather than a fixed standard.<sup>284</sup> Throughout the 1960s, while New Mexico’s legislature made several attempts at reforming the school funding system, results were mediocre at best, and these reforms did not remove the fundamental flaws in a property-based system of school funding.

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<sup>282</sup> *Albuquerque Journal*. 1962. “Group to Study Higher Education Problems Named,” September 12.

<sup>283</sup> Gonzales, “Public School Financing,” 28.

<sup>284</sup> *Ibid*, 30.

By the 1960s, urban school districts like Albuquerque were considered outliers in terms of the number of eligible children from Spanish-speaking neighborhoods that were enrolled in school, while New Mexico's public-school system enrolled almost an equal number of children with Spanish surnames as children with Anglo surnames.<sup>285</sup> Despite this, these reforms were not particularly aimed to help Mexican American students, either urban or rural. David Colton, in his study of New Mexico's educational funding, noted that "equity was a consideration, but it was defined as equal distribution based on student membership, or number of classrooms, or both."<sup>286</sup> There was no attempt to earmark additional funding for at-risk students or Spanish-speakers, meaning that rural schools with mostly Mexican American students were not equalized under these systems and the state funding formula provided nothing specifically for them.

In Arizona, the State Superintendent of Public Instruction, Robert Pickering, reported a similar problem to that of New Mexico. Pickering stated that the value of Arizona land varied wildly and could be anywhere from 4% to 30% of the market value. He argued that this was a deliberate decision in some districts, as it allowed them to get state authorities to grant them more funds, but the practice rendered a tax rate based on valuation to be arbitrary at best.<sup>287</sup> In addition to this flaw was what he termed "fund lags" caused by school districts continuing programs despite a lack of funds to continue with, requiring that money be lent, adding to the overall eventual cost. Some of these issues were addressed in the Equalization Aid program in 1965, which used money generated from an increased cigarette tax paid to the state to help needy school districts.

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<sup>285</sup> González, *Spanish-Americans*, 155.

<sup>286</sup> Colton, 30–31.

<sup>287</sup> Robert L. Pickering, "Some Significant Events in the History of Arizona Education" (Arizona Department of Education, September 1966), 14, Box 495. File. PL-874, Polly Rosenbaum Archives and History Building.

But underlying funding problems were left unresolved. Despite this, Arizona maintained an average spending level above the national average for funding its elementary and secondary schools through the 1960s, but this disguised inequity in the system; poor school districts still were underfunded, but wealthy district raised the average by being overfunded.

This uncertain funding system had direct repercussions in Arizona on what this study terms “institutional capacity”, such as the maintenance of school buildings. Many buildings were in poor condition, and new schools had only recently started to be built. According to Pickering, the lack of a budget to have a state-wide school design and construction counsel had led to many poorly constructed school buildings. Many existing buildings suffered from a lack of upkeep dating back to the end of Great Depression.<sup>288</sup> Superintendents polled by Pickering reported that some newly constructed schools were “falling apart” and that “obsolete and even unsafe structures [were] still in use for children.”<sup>289</sup> Arizona had no oversight for monitoring construction or maintenance of local districts and had made no attempt to do so. One superintendent noted acidly that “each district has tried to do on its own with no leadership from the state.”<sup>290</sup>

Another issue relating to institutional capacity is regarding the matter of expertise. New Mexico had improved its teacher pay and work conditions dramatically in the late 1950s under Georgia Lusk’s supervision. Arizona still suffered a high turnover rate among its teachers and administrators, due to low pay. A secondary reason was the limited tenure system Arizona employed, where Arizonan teachers were employed via

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<sup>288</sup> *ibid*, 11.

<sup>289</sup> *ibid*.

<sup>290</sup> *ibid*.



yearly contract until completing a third consecutive year at which time they qualified to become continuing teachers, though they could still be removed with the permission of the local school board. New teachers were thus in a precarious position. One superintendent went so far as to say: “Tenure is of little use to the quality teachers...Hell, a good teacher is too busy and happy to think or worry about it...,” though he acknowledged that the tenure system was good as a safeguard against mistreatment from “rats on school boards.”<sup>291</sup>

Moreover, teachers would not easily move to Arizona to teach from other states as it did not recognize interstate teaching certifications; Arizona required every teacher to pass its own certification tests. Teachers had no ability to take sabbaticals or other leave save for professional development. For example, if a female teacher wanted to have a child, she needed to quit her position to do it, and had no promise her job would be there when she was ready to teach again. These employment realities were often worse for Mexican American teachers, who were underrepresented to begin with.

Because of issues such as these, both states began a series of reforms designed to try and improve their educational systems in the 1960s. John Mondragón and Ernest Stapleton have commented that in New Mexico's case, the movement towards reform was the beginning of a reexamination of educational realities that might have otherwise lain “dormant.”<sup>292</sup> The first major reform in New Mexico occurred in 1958, when the state passed a constitutional amendment that abolished the current appointed of Superintendent of Public instruction in favor of a Superintendent to be elected by the Board of Education. This was also the year that Dennis Chávez won a landslide re-election as Senator for New

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<sup>291</sup> *Ibid*, 8.

<sup>292</sup> Mondragón and Stapleton, 158.

Mexico. The newly established State Board of Education consisted of ten elected member representing school districts across the state.<sup>293</sup> With the Board selecting a State Superintendent of Public Instruction, it removed this position from being appointed by the governor and thus from to the vagaries of political partisanship. The intent, to quote an article of the time, was to “put educational policy in the hands of persons representing the public customer instead of the professionals who serve that public,” as well as to keep the Department of Education free of politics.<sup>294</sup> Santa Fe’s Committee on Public Education (SCOPE) went so far as to create a list of preferred attributes of school board members. In addition to the requirement that the candidate be willing to “SERVE the WHOLE community” rather than seeking the post for personal ambition, and that they be both ethical and intellectual, it specifically listed that candidates should “understand New Mexico school laws, school finance, problems of the entire education program, policy making and the dividing line between policy and administration.”<sup>295</sup>

The Parent Teacher Associations in the state made a concerted effort to support the amendment, though it is unclear what the racial and ethnic membership of the PTAs of the time were.<sup>296</sup> Given that there was a significant Mexican American voting population in the 1960s influence in New Mexico politics, however, this meant Mexican Americans had a better chance to make their voices heard in regard to the State Department of Education with this change. It is evident that at least some primarily Mexican American school districts and neighborhoods were not represented by a PTA,

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<sup>293</sup> Mondragón and Stapleton, 166.

<sup>294</sup> *Taos News*. 1962. “Pick of the Press,” October 11.

<sup>295</sup> *Santa Fe New Mexican*. 1963. “SCOPE Lists Qualifications for School Board Members,” January 31.

<sup>296</sup> “PTA’s Plan All-Out Support for Appointive Superintendent,” *Santa Fe New Mexican*, April 8, 1958.

such as the Los Duranes neighborhood in Albuquerque.<sup>297</sup>

As stated earlier, part of New Mexico's attempt to fix its ailing educational funding system was to make its public-school system more efficient through consolidation. In 1962, the state House of Representatives passed a bill directing the State Department of Education to begin consolidating smaller districts and dissolving districts with less than 1500 students, which failed to pass the State Senate due to determined resistance by rural Mexican American districts.<sup>298</sup> The 1962 House bill became the newest point of contention between those valuing centralization, efficiency and standardized schools, and those who valued local control of schools for their school districts. Mondragón and Stapleton listed the different set of problems facing rural versus urban school districts: "Rural problems centered on issues of bonding capacity, transportation, accessibility, demographic changes, and staffing. The focus of urban problems was on growth, municipal overload, special needs, bonding capacity, and management issues."<sup>299</sup> These issues cut across both funding and institutional capacity for both types of districts. While both were focused on giving their students quality educations, there was a sharp disagreement over how best to fund it. Moving rural students into better funded school districts would delivery education more efficiently but brought up issues of transportation and the possibility of existing schools, thereby reducing their ability to deliver a good education to the students already present. While it did not become law, the 1962 House bill provided the impetus for a shift in administrative policy that eventually allowed school districts to centralize and combine funding and teachers in fewer school buildings,

<sup>297</sup> "Duranes Group Denied Place on Board Agenda," *Albuquerque Journal*, June 17, 1967.

<sup>298</sup> Tom Wiley, *Forty Years in Politics and Education: Some Memories, Recollections, and Observations* (Albuquerque, NM: C. Horn Publisher, 1974), 106.

<sup>299</sup> Mondragón and Stapleton, 167.

though it increased the number of students concentrated in those buildings.

Unlike New Mexico, in Arizona there was no corresponding move towards the consolidation of school districts in the 1960s. This was in keeping with Arizona's history promoting local independence and control over education, over a centralized state influence. There was little in the way of state oversight or standardized curriculum in the state, though an attempt had been made to unify Arizona's public-school system in 1950 through a Curriculum Coordinating Committee. The committee shortly after ceased to exist without much of an effect, then was nearly resurrected in 1959 after the NDEA sent waves of educational reform through the nation, but again was dissolved before making any progress. Pickering also listed a complete lack of state safety standards for buses and their drivers, as state regulations had only started to be enforced in 1959 due to several high-profile incidents with drivers and accidents.<sup>300</sup>

This emphasis on local control in Arizona meant that educational reform was applied unevenly, and even was resisted by some communities. Local control of educational policy grew stronger in the 1960s. An example was the change in the state Board of Education in 1965, which moved away from a five-person board of professional educators to a nine-person board that required at least three lay members. Unlike New Mexico, however, Arizona had retained the position of State Superintendent of Public Instruction as an elected position, requiring that candidates run a member of a political party, instead of serving in an appointed position that would have separated the office somewhat from the vagaries of political elections. Moreover, as the state superintendent appointed the Department of Public Instruction, it meant some measure of partisan

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<sup>300</sup> Pickering, 12.

politics leaked into it as well.

One area where the State Board of Education had exercised statewide control was limiting elementary schools to one textbook choice for each subject up until 1961, when it allowed them to choose from three texts, then expanded it to five possibilities in 1966. Some consolidation of Arizona schools did eventually take place, as transportation in Arizona improved with its roads, but there was never a state-sponsored attempt to reorganize the local districts in the 1960s as had occurred in New Mexico

As the civil rights movement hit its peak in the 1960s, a new generation of Mexican American activists took the national stage. Many of the organizations associated with the activists were distributed throughout the Southwest, such as MeCHA or MAYO, and had been founded outside of Arizona or New Mexico. But other organizations and activists made their names inside the states they originated from. Struggles over the preservation of language and culture were given new energy with the passage of the BEA and caused both states to pass their own equivalents shortly thereafter.

Mexican Americans in both states in the 1960s still were fighting to overcome structural and institutional racism. An excellent example of this was when Senator Barry Goldwater of Arizona, a candidate for President of the United States in 1969, denied that there was any problem with segregation in Arizona: “There has never been any problem of segregation. They can go as high as they want and do what they want. They never had the problem.”<sup>301</sup> This must have come as quite a surprise to the thousands of Arizonan Latinos who understood they were kept segregated in swimming pools, theaters,

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<sup>301</sup> Senate, “Establish An Interagency Committee on Mexican-American Affairs: Hearings on S. 740,” § Senate Committee on Government Operations (1969), 157.

restaurants, churches, and of course, schools. They were likewise quite aware of the societal barriers erected that prevented Latinos from being as successful or accepted as their Anglo neighbors in their careers as well as their education. While New Mexico was less overt in its discrimination, school districts in both states still maintained anti-Spanish rules in their classrooms that prevented native Spanish-speakers from using their own language, while Mexican American organizations of the 1950s were still focused on assimilation into American values and a focus on English fluency over retaining Southwestern Spanish (as opposed to more formal training in Latin American Spanish).

As a result, the situation of Spanish-speaking Latinos in Arizona had not improved during the 1950s. One report in 1960 lamented that only 6% of Arizona's Latinos had completed at least one year of college, as opposed to 22% of Anglos and 12% of African Americans. Latinos had an average 7.1 years in school compared to 12.1 years for Anglos and 9 years for African Americans.<sup>302</sup> The same report labeled many Latino students as "mental dropouts" who were disillusioned by their educational experiences, with those who did stick it out gaining a diploma without having the actual skills that diploma should represent.<sup>303</sup> The report split the basic problems of Latino education into five categories:

- 1) failure to understand the cultural differences of Mexican Americans
- 2) failure to understand the unique language learning problems of Mexican Americans
- 3) failure to recruit and encourage professional growth of Mexican American educators

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<sup>302</sup> Manuel Domínguez, Antonia Díaz, et al., "Injustices in the Education of Mexican-American Children in Arizona and Recommendations for Change" (May 18, 1970), 1–2, ME Ephemera, Chicano/a Research Collection (CRC), Hayden Chicano Research Collection, Arizona State University.

<sup>303</sup> *Ibid*, 2–3.

- 4) failure to relate to Mexican American parents and other adults
- 5) a need for educational compensatory services<sup>304</sup>

In terms of the recruitment of Mexican American educators, a second document further accused state officials of hiring “Spanish-Americans” that were “Spanish-surnamed, non-Mexican-Americans” over educators of Spanish descent, as a method by which school districts could claim Mexican American representation without hiring actual Mexican American educators.<sup>305</sup>

Politically, Mexican American interests in New Mexico and the wider Southwest were dealt a major setback in 1962, when influential Mexican American Senator Dennis Chávez died of a heart attack while in office. U.S. Rep. Joseph Montoya, a fellow Democrat, was viewed as his natural successor, as part of an unwritten agreement in New Mexican politics that there would always be a Mexican American U.S. Senator for the state. This agreement, however, was broken, and Chávez was replaced by Senator Edwin Mechem, a former multi-term Anglo governor of New Mexico and a Republican, who reversed Montoya and Chávez’s records on civil rights by voting against the Civil Rights Act in 1964. Mechem was not replaced until 1964 by Sen. Montoya who was instrumental in expanding Mexican American rights, as one of the lead coauthors of the Bilingual Education Act with Sen. Ralph Yarborough in 1968. He was joined in Congress the same by Representative Manuel Luján, allowing New Mexico to be the first state to have two Mexican American members of Congress at the same time. Montoya later established the Cabinet Committee on Opportunities for Spanish-Speaking Americans in

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<sup>304</sup> *Ibid*, 5–6.

<sup>305</sup> “The Schools, Mexican-Americans, and Personnel Recruitment” (National Coalition for Language Freedom, 1970), MSS #145 Box #1, Chicano/a Research Collection (CRC), Arizona State University.

1969.

In the wake of the Bilingual Education Act, both Arizona and New Mexico adapted to the new paradigm concerning bilingual education as a legitimate alternative to English-only instruction. The idea of true bilingual education was a rebuke of the view before the 1960s that full English immersion classes were the best way to teach English Language Learners (ELLs) while discarding their Southwestern heritage Spanish, in favor of possibly future college courses teaching Latin American Spanish instead. Following the BEA's passage, New Mexico's legislature indicated a growing interest in bilingual education with a memorial in 1968, noting that "our school system should strive not only to teach English better, but it should also encourage Spanish-speaking children and children speaking Indian languages to be proud of their linguistic heritage, as well as their cultural heritage, and to strive to both preserve and improve it."<sup>306</sup> Despite this, many educators remained resistant to bilingual education, and few additive bilingual programs were begun in New Mexico following passage of the BEA. Not until the *Serna v. Portales* case in 1974 would this change, which will be discussed in Chapter 8.

This did not change the fact that an entire generation of Mexican Americans in New Mexico had lost their native language. One woman from Truchas recalled her early high school experiences: "I began my freshman year at Santa Cruz High School...Now it was okay to speak Spanish, but we couldn't. With time we had forgotten most of it, if not all of it. Now we were teased about acting like gringos."<sup>307</sup> Activist Carlos Cansino, speaking in the 1960s, was even more vehement:

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<sup>306</sup> New Mexico, "House Memorial No. 12," Pub. L. No. House Memorial No. 12 (1968).

<sup>307</sup> Dolores Fuentes Guzman, "Between Two Worlds" in *New Mexico Scrapbook*, Michael Miller, ed. (Huntsville, AL: Honeysuckle Imprint, 1991), 41.



We can still remember when our teachers made us ashamed of our Spanish accent. Some told you speak English, “You live in America and only English is spoken here.” They changed our name to English, from Carlos to Charlie, from Gilberto to Gilbert and from Rosa to Rosie. Very few teachers told us to enhance our Bi-lingual [sic] abilities as part of our culture and future. And we were even punished for Speaking Spanish; we were spanked or kept after school...Laws against Bilingual Education seem to be part of a power struggle between the White power structure and Hispanic/Mexicans or Chicanos. We are not against learning English...but not at the expense of eliminating Spanish from schools. Spanish is the predominant language of the Indohispano...and the language of the future.<sup>308</sup>

Memories of growing up like this, deprived of their language and culture, energized a new generation of Mexican Americans in New Mexico to fight for bilingual education alongside educational equity.

Arizona, unlike its neighbor, had never promoted dual language education or Spanish language instruction, having made English the only language in which education could occur via its state constitution. This had shaped its educational policy in the first half of the 20<sup>th</sup> century.<sup>309</sup> The large influx of Anglos to the state just after statehood in 1912, and again in the 1940s and 1950s with the rise of new industry during World War II and reinforced English as the primary language of instruction. However, the language requirements promoted by NDEA in 1958 did encourage more Spanish language instruction in high school and higher education, if not preservation of native Spanish. A longtime Mexican American teacher at Pueblo High School in Tucson remembered the counterproductive nature of the English only policy combined with NDEA requirements:

<sup>308</sup> Carlos Espinosa Cansino, “The Chicano Movement and Bilingual Education,” n.d., Box 1, Folder 1 Writings, Rocky Mountain Online Archive.

<sup>309</sup> For more information, see the excellent discussion of early bilingual education in Arizona in Laura K. Muñoz, “Desert Dreams: Mexican American Education in Arizona, 1870-1930.” Ph.D. diss., Arizona State University, 2006.

“We used to punish kids... We told them they couldn’t speak Spanish; that they had to learn English. And then we turn around and give them Spanish in high school.”<sup>310</sup> This teacher, Maria Urquides, would become an influential educator in Arizona, whose dedication to bilingual education would change the public’s perception of its benefits for Spanish-speaking students.

Urquides was a member of both La Alianza and the Tucson branch of the Arizona Council for Civil Unity (TCCU) in the 1950s, and was part of numerous educational associations, in Tucson, Arizona, and nationally as part of the National Education Association (NEA). She was recruited to Pueblo High School in the 1950s by its principal, Elbert Brooks, who set out from the beginning to hire a faculty that could effectively teach all his students, no matter what language they spoke or what culture they considered their own. As a teacher at Pueblo High School in Tucson, Urquides did not believe in bilingual education beyond a certain grade level when she felt that students would have learned English and would no longer require education in both languages to further facilitate understanding of their coursework. This was not a fully additive educational policy for bilingualism, but not a subtractive one either, though Urquides remained a strong promoter of Spanish culture. She was instrumental in being one of the first to teach classes grounded in promoting both English and Spanish fluency together, as well as focusing on Spanish and Mexican culture to give her students more pride in their history and culture.<sup>311</sup>

Alongside Urquides in this campaign was another teacher at Pueblo High School,

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<sup>310</sup> Morgan, Anne Hodges, and Rennard Strickland. 1984. *Arizona Memories*. Tucson, Ariz.: University of Arizona Press. 327.

<sup>311</sup> Elizabeth Quiroz González, “The Education and Public Career of Maria L. Urquides: A Case Study of a Mexican American Community Leader” (Thesis (Ed.D), University of Arizona, 1986), 61–63.

Adalberto Guerrero, a native son of Arizona, and one who was aware of how unusual he was as a Mexican American for having graduated from high school as well as having gone behind that to become a teacher. Like Urquides, Guerrero expressed the view that Spanish-speaking students should be encouraged to improve their native language and reformed the Spanish classes he taught to be more challenging for his native Spanish-speakers. Guerrero felt that students should continue to master both languages throughout their educational career to become truly bilingual, though he agreed with Urquides that promoting their native culture as something to take pride in would help with their confidence academically and socially.<sup>312</sup>

After Sputnik's launch encouraged educational change, in 1957 Guerrero and Urquides went to their principal and requested a change in how Spanish was taught at Pueblo High School. Up to this point, Spanish had been taught via the direct method, meaning how Spanish-speaking students already spoke Spanish was ignored in favor of focus on Latin American Spanish. In addition, while Spanish historical heritage was taught, Mexican and Southwestern heritage was not, leaving little for students, most of which had a Mexican heritage, to identify with in class.<sup>313</sup>

The result was a four-year Spanish honors course in 1959 called Spanish for the Spanish-Speaking, that was designed to teach Spanish speakers to master their native language and to acquire a deeper understanding of their Latino culture and history. The class included "emphasis on the cultural heritage of both Spain and Mexico to help students develop a positive sense of identity."<sup>314</sup> This pedagogy focused on what would

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<sup>312</sup> *Ibid*, 63–64.

<sup>313</sup> *Ibid*, 63.

<sup>314</sup> *Ibid*, 64.

become known as a multicultural as well as bilingual focus for Latino students, another point that would be hotly debated in the future by those who questioned the value of retaining a Latino, primarily Mexican, cultural heritage. The class was hugely successful with students, who had become bored with the elementary nature of previous courses despite many having never been taught the basics of Spanish grammar. By 1961, similar classes were offered not just for honors students, but for average and below average Spanish speakers as well. Guerrero would later teach in the Department of Romance Languages at the University of Arizona, where he collaborated with the University of Sonora and other educators in Mexico for a student exchange program “to promote cross-cultural understanding and enhance language teaching skills.”<sup>315</sup>

One of the major issues many Mexican American parents objected to (and would continue to object to) was segregating students into separate classrooms for the honors program. Some parents considered that this program prevented children from becoming fully Americanized and therefore would limit their options and leave them too “Mexican” to be accepted in Arizonan culture. Urquides had a special gift for making parents see the benefits of bilingual education, though her educational approach did not always appeal to militant activists who felt changing structural racism would be enough by itself to better educate Latino students. As one contemporary would later recall:

María had many things going for her, including that parents listened to her. Her thoughts weighted very heavily, so parents listened and did what she asked. She was alone in doing this, however, because the militants of the late sixties put her in a very difficult position where she was unacceptable for certain people in the community...She had acquired such a stature by then that even the most militant people had a hard time not accepting her.”<sup>316</sup>

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<sup>315</sup> De La Trinidad, 179-180.

<sup>316</sup> González, “Maria L. Urquides,” 69.

The well-publicized success of the bilingual programs at Pueblo High School led to Urquides collaborating with the National Education Association (NEA) along with like-minded teachers of Spanish-speaking Mexican ancestry who believed that Mexican Americans could be both bilingual and multicultural. The group, with the permission of the Tucson Unified School District, were instrumental in creating the Tucson Survey on the Teaching of Spanish to the Spanish Speaking 1955-1966, and in organizing the accompanying NEA symposium in Tucson. The study and the convention would strongly influence legislators who attended such as Sen. Ralph Yarborough (D-TX) and Sen. Joseph Montoya and would serve as an impetus in creating the federal Bilingual Education Act of 1968. The Tucson group was part of the deliberations on bilingual education, testifying in Washington, D.C. before Congress, and Maria Urquides was dubbed “The Mother of Bilingual Education” as she had consistently led the way in the many struggles over creating bilingual education not just in Arizona, but in the United States as a whole.<sup>317</sup>

In 1968 Arizona passed its own Bilingual Education Act, following the federal act in the same year. This was necessary, as Superintendent of Public Instruction Sara Folsom had pointed out to Governor Jack Williams the same year that it would require constitutional changes to undertake an actual bilingual program. Arizona’s constitution required that “said school shall always be conducted in English,” while school law stated that “All schools shall be conducted in the English language.”<sup>318</sup> By the following year, funding for bilingual programs in Arizona had switched from the NDEA to the

<sup>317</sup> González, “Maria L. Urquides,” 68.

<sup>318</sup> Sara Folsom, “Letter from Superintendent of Public Instruction Sara Folsom to Governor Jack Williams,” December 19, 1968, Governor Williams, Depts, Bds, and Comms, Box 531, 1969-1970, Public Instruction Correspondence 1970, Polly Rosenbaum Archives and History Building.

Department of Health, Education, and Welfare (HEW), and became a combined effort at the college and secondary school level, with a focus preparing effective teachers to be drawn from the ranks of native Spanish speakers.<sup>319</sup> Trinidad refers to this new focus for the program as a conversion to “more of a leadership institute that focused on improving Spanish language proficiency and pedagogical methods among Mexican American/Chicano teachers...to foster their academic skill and a positive ethnic identity and self-image among program participants.”<sup>320</sup> This was a part of a national trend, as students who had grown up in the 1950s increasingly became the educational activist leaders in the 1960s as they went on to higher education and/or teaching. Educational activists like Maria Urquides were instrumental in bringing bilingual education to Arizona and would help organize numerous educational activist groups in Arizona, such as the Arizona Association of Mexican American Educators (AAMAE) and the Tucson League for the Public Schools (TLPS).<sup>321</sup>

Activism like that of Urquides was no longer not the norm, however, among many young Chicanos, who became more militant. Even New Mexico experienced its moments of confrontational activism and new activism organizations, despite its supportive rhetoric for Spanish and Spanish culture. One of the most well-known Chicano organizations to rise in the 1960s, the Alianza Federal de Mercedes, began in New Mexico, and is best known for its activism on behalf of land grants, but also had an educational agenda.

The Alianza Federal de Mercedes was founded by Reies Tijerina, Jose Lucero,

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<sup>319</sup> *Ibid*, 178.

<sup>320</sup> *Ibid*, 179.

<sup>321</sup> *Ibid*, 181.

Santiago Anaya, Abenecio Sandoval and Eunice Myrick in 1963. Their leader, Reies López Tijerina, was a divisive figure for most New Mexicans, even among Mexican Americans. Originally a preacher and an immigrant from Texas, Tijerina changed from preaching faith to preaching the idea of the Indo-Hispano as an ethnic identity for Latinos in New Mexico and embracing the mixed Mexican and Native American heritage of the original settlers of the area.

The Alianza championed rural northern New Mexico residents seeing to return original Spanish and Mexican land that had been lost to the federal government and unscrupulous Anglo land speculators. Land loss had caused conditions for rural *nuevomexicanos* to worsen, to where many unlucky families were reduced to subsistence farming. The Alianza argued that the loss of these lands was a violation of the Treaty of Guadalupe-Hidalgo and the protections granted within it. These protections, they argued, had been reinforced as the law of the land in 1912 as part of Article II of the New Mexico State Constitution. Most of these land grants were part of northern New Mexico, the heartland for many rural *nuevomexicano* towns, farms, and ranches.

Though focused on recovering land, the Alianza was also active in arguing vigorously for educational reform, especially the use of Spanish in elementary schools for instruction, and bilingual fluency for all teachers in New Mexico. While these were state constitutional requirements, they had never been vigorously enforced. The Alianza was a positive force in educational reform, in that it encouraged students and parent activists, alongside educators and legislators, to join educational reform movements, and led various protests against discrimination in New Mexico.

The Alianza Federal de Mercedes and Tijerina, are portrayed as almost religious

in their fervor. Nancie González, who wrote in the late 1960s about the organization, went so far as to characterize the Alianza as a “revitalization or nativistic cult movement” attempting to create a more satisfying culture, “which may include messianic, millennial, revivalistic, militant, or reformatory features, or various combination of these.”<sup>322</sup> She based this on what she called the “dream-revelation” aspects of the group. The Alianza leadership believed that their Spanish ancestors had prophesized that an invasion from the east who would take their land, only for a leader to also come from the east who would return the invaders crying to their homes. Tijerina was an immigrant from the east.<sup>323</sup>

While their goals were laudable, their methods were questionable, especially in terms of what would happen to restored land grants once they were won back. Tijerina had at the time suggested that the Alianza would hold all recovered lands in trust. The Alianza would then hold tribunals to determine who would be allowed access to them. The Alianza members did not actually have ties to Spanish or Mexican land grants themselves.<sup>324</sup> Attacks on National Park Service officers, and an attempt to arrest a local prosecutor that became an assault on a courthouse in Tierra Amarillo by Alianza members, provoked a negative reaction in the public, including other Mexican Americans in the state. Moreover, other well-known civil rights organizations, such as Cesar Chavez’ organization, were not closely aligned with Alianza, leaving it isolated compared to more influential groups. This limited their reach and would lead to the waning of their influence after the Tierra Amarillo courthouse raid in the 1970s.

But the Alianza were not alone in New Mexico as the sole native Mexican

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<sup>322</sup> González, *Spanish-Americans*, 93–94.

<sup>323</sup> González, *Spanish-Americans*, 99.

<sup>324</sup> González, *Spanish-Americans*, 103.



American activist group in the 1960s. Student groups like Los Caballeros de Nueva España and Los Comancheros del Norte were organizations founded in the late 1960s in New Mexico. They were both composed of young people between the ages of 10-24, both high school students and dropouts, who focused on improving educational policies for Spanish-speaking children; something they themselves had experienced and knew needed to be fixed. They also expressed a connection with Alianza and its focus on recovering land grants. Other organizations included a New Mexican chapter of the United Mexican-American Students (UMAS), though it was more closely connected with the Crusade for Justice in Colorado. It did, however, agitate for socio-economic reform as well as educational reform.<sup>325</sup>

Another example of a purely local group was the Los Duranes Community Improvement Association (DCIA) in Albuquerque, New Mexico. DCIA grew from a situation with the high school in Los Duranes, a highly Mexican American neighborhood in Albuquerque. Despite New Mexico being more favorably disposed towards Mexican American culture and the Spanish language, it is undeniable that educational policy in the state was not free of the racialized discrimination found elsewhere in the Southwest. For example, as late as 1967 the Albuquerque Public Schools (APS) lacked any Mexican American board members.<sup>326</sup> Carlos Espinosa Cansino, a local Mexican American activist who worked with the Alianza Federal de Mercedes and Reies Tijerina, was instrumental in challenging Albuquerque Public Schools over conditions in the Los Duranes school, mostly centered on its principal, John Gedders, who had held his position for twenty

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<sup>325</sup> González, *Spanish-Americans*, 188.

<sup>326</sup> Cansino, "The Chicano Movement and Bilingual Education."

years.

In 1967, Gedders was accused of not developing the school to help the local Spanish-speaking residents, such as forming a Parent Teacher Association. The school offered no programs to teach children to write or read Spanish, and no pro-Mexican American history or cultural options were offered. Interestingly, the complaint also included that “English was not taught as a foreign or second language”, which reflects the very Chicano view that Spanish deserved to be considered a primary language for those who spoke it as their home language.

Cansino and the other Los Duranes activists formed DCIA in 1967 in response to these problems. The DCIA was supported not just by Mexican American residents, but by Anglos sympathetic to their requests. They were opposed by other Mexican Americans as well, most notably State Representative Robert Mondragón (also from Los Duranes) and State Senator Tony Lucero, both of which Cansino termed *vendidos* (sell outs) for their opposition.<sup>327</sup> The DCIA confronted Gedders directly, and also complained to Albuquerque Public Schools (APS) but received no response.

Members of the Los Duranes committee listed four major issues that needed to be fixed in Los Duranes:

- 1) The streets near the school needed paving, and there was a lack of stop signs, streetlights, or sidewalks
- 2) There was no city recreation for the youth of the community
- 3) The *acequias* (irrigation canals) in the neighborhood needed maintenance
- 4) The Duranes Elementary needed improvement. Specifically, they requested that the current principal be replaced, the playground be better maintained and improved, lower priced school lunches be offered more in keeping with prices in other school districts, and a

<sup>327</sup> Cansino, “A Barrio Organizer during the Chicano Movement.” 11–12.

bilingual education program and a Head Start program be offered.<sup>328</sup>

The last was especially galling as the main Albuquerque district had two Head Start programs, while Los Duranes had none.

The group staged a march to the local Board of Education on June 6<sup>th</sup>, 1967. Senator Lucero was a member of the Board at the time. When confronted with the problems at Los Duranes, Lucero claimed that the board had never been contacted with these complaints previously, and publicly criticized the marchers for their “militant attitude,” as did Rep. Mondragón.<sup>329</sup> Lucero’s counter claim was that he didn’t know why they believed the school had no library or competent teachers, as he believed Los Duranes, a very poorly funded school, to be “the best school in the system.” Cansino responded in a letter stating that DCIA “vehemently disapprove of this strange coalition of teachers and politicians” (emphasis in original, in reference to Lucero, Mondragón, Precinct Chairman Trujillo, Chairwoman Chavira, and the teachers that had defended Gedders at the Board of Education meeting) and requested that a full accounting of any of their relatives currently on the Los Duranes Elementary school payroll be publicly presented and placed on the agenda for the next meeting. This was denied.

The DCIA’s activities also alienated the school superintendent, Robert Chisholm, who had previously objected to letters asking for Gedders’ removal as an attempt “to raise the issue of race in the newspapers.” Chisholm argued that it was dangerous to give in to “a highly charged, emotionally vocal pressure group that it is not fully willing to

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<sup>328</sup> Cansino, 7–8.

<sup>329</sup> Rose Marie Walker, “Duranes Group Marches for Better Education,” *Albuquerque Tribune*, June 6, 1967.

listen to the facts and carries on in this manner,” and ascribed hidden motives to the protestors beyond their stated goals.<sup>330</sup> Cansino sent Chisholm a letter stating their grievances and asked for time on the Board of Education’s agenda for the next meeting to discuss them, but Chisholm denied the request, instead promising to respond in a written format, and steadfastly refused to discuss Gedders or his performance in a public setting.<sup>331</sup> Most of the protestors’ grievances were not met (as there were hundreds of letters of support for Gedders to be retained, for example) but the city of Albuquerque was willing to install stop signs and do some road work in the area to make it safer for children.

After most of their demands were denied, the Los Duranes protestors circulated petitions addressed to President Johnson, Secretary John Gardner of the HEW, Commissioner Harold Howe of the Office of Education, Armando Rodríguez of the Mexican-American Unit Office of Education, and Felipe Móntez of the U.S. Commission on Civil Rights. In the petition, the group asked for an immediate investigation of APS, citing discrimination against schools in poor Mexican American neighborhoods, unequal representation of Mexican Americans in APS school affairs (such as the PTA), and defamation of Mexican American culture and the Spanish language.<sup>332</sup> In the end, Cansino and the DCIA got most of what they asked for: in 1968, Principal Gedders was transferred out of Los Duranes Elementary School in favor of a bilingual principal, a bilingual education program was begun, and the school buildings and yard were

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<sup>330</sup> *Ibid.*

<sup>331</sup> “Duranes Group Denied Place on Board Agenda.”

<sup>332</sup> Carlos Espinosa Cansino and Los Duranes Community Improvement Association, “Petition to the President of the United States Lyndon B. Johnson” (Center for Southwest Research, University of New Mexico, 1967), Collection, Box 1, Folder 4, Center for Southwest Research, University of New Mexico.

improved.

The DCIA represented the power of a grassroots neighborhood group when confronting structural and institutional discrimination. Student activists learned from this public example of activism in Albuquerque and took their own actions to try and reform their schools. Students of Washington Junior High School, near downtown Albuquerque, launched a petition of their own in 1968 which included a school walkout. The students demanded that the “Principal-Teacher habit of hitting students will be stopped” and that “teachers who demonstrate prejudice against Mexican-Americans or Negroes will be fired. They also asked that 1/3 third of the administration and the principal be Mexican American, not “white-washed Mexicans” who were Anglos with Spanish surnames.<sup>333</sup> Other requests included the creation of a “REAL” bilingual and bi-cultural program, as per Article XII Section 8 of the New Mexico constitution, a discontinuation of the current I.Q. and aptitude tests in favor of appropriate tests for the “special cultural heritage” of *nuevomexicanos*, and Mexican-American counselors “with knowledge of the Spanish language, history, and local culture.”<sup>334</sup> While the list of demands included that those engaged in the strike would not be punished for it, twelve students were suspended by Principal Edward Marinsek with the approval of Superintendent Chisholm, who stated they would be treated “in the same manner as other students who have unexplained or unjustified absences from school.”<sup>335</sup>

Chisholm himself went on record that he “reject[ed] completely” the idea that the

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<sup>333</sup> Carlos Espinosa Cansino and Los Duranes Community Improvement Association, “Washington Junior High School Student Grievances,” 1968, Box 1, Folder 4 Letters, Petitions, and Grievances, Rocky Mountain Online Archive.

<sup>334</sup> *Ibid.*

<sup>335</sup> “Striking Students to Be Suspended,” *Albuquerque Journal*, April 22, 1968.

I.Q. and aptitude tests were racist, and that he was concerned by the racist tone of many of the demands. He again claimed, as he had with Los Duranes, that he had “received no complaint either formal or informal against any member of the staff at Washington Junior High in the 21 years he has been superintendent” and that thus he did “not consider the allegations valid.”<sup>336</sup> Marinsek also stated that he believed the list of grievances had been lifted verbatim from a militant activist paper called *El Chicano* and that the grievances “were not germane” to Washington Junior High.<sup>337</sup> The point about compliance with the constitution stands in out in the face of these accusations, since appealing to state constitutional authority countered the argument that student grievances had been lifted wholesale from an outside source.

Two days later, 24 students were arrested for truancy during a second larger protest by the Albuquerque Police and for obstructing pedestrian traffic and littering (from the leaflets being pass out). Among those arrested were the son and daughter of Reies Tijerina, while his nephew Richard Gallegos was arrested for battery for striking an officer in the face.<sup>338</sup> The disruption was serious enough that two members of the Governor’s Emergency Task Force on Education, Sen. John P. Eastham and Charles A. Thompson of the Albuquerque Classroom Teachers Association, held a public meeting, with the announcement that “our public schools face a serious and immediate crisis, as reflected in the national teacher and student walkouts, crowded classrooms, concerns over accreditation and vigorous controversy about overhaul of state school financing.”<sup>339</sup> Despite this, nothing was mentioned of the student demands, and it is unclear how

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<sup>336</sup> *Ibid.*

<sup>337</sup> *Ibid.*

<sup>338</sup> “Junior High Suspends about 24 in Protest,” *Albuquerque Journal*, April 24, 1968.

<sup>339</sup> “Schools’ Crisis Public Meeting Topic Tonight,” *Albuquerque Journal*, April 24, 1968.

effective the walkout was in creating change at Washington Junior High.

By the end of the 1960s, Latinos in Arizona and New Mexico continued to fight for educational equity. Armed with the legal decisions of the 1950s that had abolished *de jure* segregation, a new generation of activists made use of surveys and studies to show just how poorly Mexican American students were being served. Both states attempted to reform their educational systems, but with decidedly mixed results; neither was able to create a better way of paying for schools at the state and local level. This would lead to continuing issues of underfunding, especially in New Mexico as the poorer of the two states.

In response to the poor treatment of Mexican American students, their native language, and their cultural heritage in the 1950s, local activist groups in – student, parent, and educator based – rose to replace older organizations like LULAC and the G.I. Forum to actively engaged in the fight for educational reform. Along with educators like Maria Urquides, they pushed back against the traditional English only education seen as best for Latino students and were instrumental in pushing for bilingual alternatives in the wake of the Bilingual Education Act of 1968. While many of these groups chose confrontational tactics, successes had come in the spread of additive bilingual programs and multicultural programs aimed at giving Mexican American students pride in their history, culture, and language. However, as many of these activist groups turned more militant, public support began to wane, and resistance to the civil rights victories of the 1960s mounted. In the 1970s, Mexican Americans would see much of the ground gained in educational equality be lost in an accelerating pattern extending to the end of the 20<sup>th</sup> century. Latinos in both Arizona and New Mexico would face continuing challenges to

maintain gains they had made, and the difference between the two states would become even more obvious as they chose different paths towards educational policies aimed at Latino students.



## **Chapter 7: The Turn Against Equal Education**

The 1960s was the era of blossoming civil rights, and government intervention that advanced equality in education and support to ethnic and racial minorities. But the national mood changed in the 1970s, and many of the improvements for Mexican American students in the Southwest were delayed or became undone. This erosion of support from American society came about for a variety of reasons and represented a dramatic shift away from public support for civil rights and educational reform across the nation. These can be traced to three major arenas in which these struggles took place:

- 1) In federal policy: changes in federal funding, support, and the rise of the idea of the undeserving poor;
- 2) In the courts: primarily with limiting pro-civil rights movement decisions and desegregation; and
- 3) In the community: debates over bilingual education and the decline of grassroots activism.

In all three arenas, structural racism and stereotyping were not overcome. Losses in these three arenas were primarily responsible for the ebb of the civil rights movement and receding efforts towards equality in the 1970s and into the 1980s.

Federal funding became a permanent part of national education with the creation of the Elementary and Secondary Education Act (ESEA) in 1965 as part of the War on Poverty. But the 1970s saw a steady decline of public enthusiasm and support for federal money being provided to minority and low-income students. While the War on Poverty had provided educational improvements to minorities and low-income citizens, it also had weaknesses that kept programs from creating lasting change. The architects of the campaign against poverty had assumed that by transfusing capital into what were intended to be temporary programs, the generations that followed would have escaped poverty and would not require similar assistance in the future. Unfortunately, they did not

begin to address structural racism and discrimination in America until nearly the end of those programs, and thus the gains achieved were largely temporary. In addition, many programs were experimental and administered by people who had a great deal of energy and passion, but not much experience in making such programs work. The use of Community Action Programs (CAP) by the Office of Economic Opportunity (OEO) to bypass local politicians by directly funding neighborhood programs had also created political ill will. The War on Poverty had spent a great deal of money for few tangible rewards, and had funded programs seen as overly political and activist – thus, it was a failure in the eyes of many Americans.

This failure provided fertile ground for those who wanted to roll back federal expenditures for social assistance. The backlash against government assistance programs was led by conservatives, who in the process changed the public dialogue regarding the poor. The public had supported attempting to “fix” the problem of poverty, but opposition coalesced around the idea that there was a reservoir of “undeserving poor.”

The undeserving poor is a term used by historian Michael Katz, to describe people who were supposedly in poverty for reasons other than being born in the wrong neighborhood, facing limitations due to racism and discrimination, or having been enrolled in inadequate public schools. Instead, conservative politicians called them “lazy leeches” who refused to get a job because they could live on the dole instead and committed welfare fraud to avoid working. The stigmatizing term “welfare queen,” aimed at poor single, and often African American mothers, was first coined in 1974 as part of this view of the poor.<sup>340</sup> That term would later be expressed most famously in Ronald

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<sup>340</sup> It is unclear exactly who first coined the phrase, but it is thought to have either been writer George Bliss at the Chicago Tribune when writing about famed welfare fraud Linda Taylor, or by writers at *Jet*

Reagan's political rallies to promote welfare reform in the late 1970s and early 1980s.

Reagan used this as an explanation for his welfare benefits cuts after he took office, stating in a 1981 interview:

The other things that we had suggested in that program were not aimed at deserving and eligible recipients. They were aimed at the abuses in the program, people that are collecting disability benefits and are not disabled... This is the type of thing that we think there's much more of it than anyone realizes, as was evidenced in Chicago a couple of years ago with the—or a few years ago—with the welfare queen who went on trial. And it was found that in addition to collecting welfare under 123 different names, she also had 55 social security cards. So, this is where we were going to try and make some of the changes.<sup>341</sup>

This emphasis on an epidemic of welfare cheats, which in later years was found to have been greatly exaggerated, became a method of undermining support for welfare and government assistance designed to assist the poor. By extension, this line of attack also undermined support for minorities, who were very likely to be a large part of those in poverty, especially in cities. This, combined with a more conservative U.S. Supreme Court, meant that the federal government was no longer the same ally it had been for Mexican American activists in the 1950s and 1960s, in Washington D.C. and in the court room.

The period of the late 1960s and early 1970s also was one of widespread financial reform in education, partly because of *Serrano v. Priest* in California. In this case, the California Supreme Court ruled that a child's quality of education could not be dependent on "the wealth of his parents and neighbors," meaning that children living in low income

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magazine. Other publications such as *Readers Digest* and *Look* magazine also published numerous stories in the early 1970s on welfare mothers who were reportedly abusing the welfare system.

<sup>341</sup> Ronald Reagan, "Interview with Managing Editors on Domestic Issues," The American Presidency Project, December 3, 1981, <http://www.presidency.ucsb.edu/ws/index.php?pid=43315&st=welfare+queen&st1=>

neighborhoods should not be penalized with underfunded schools.<sup>342</sup> Not surprisingly, there was resistance by some lawmakers in Congress to using poverty at all as an indicator for additional funding. For example, in 1974 Congressman Al Quie (R-M), a minority member of the education committee, proposed an amendment to ESEA Title I to change the distribution of funds from relying on poverty data to relying on test scores, primarily based on the argument that a poor child was not necessarily an academically failing child.<sup>343</sup> This also reflected a growing popularity for the idea that schooling should be evaluated through “standards” that would determine subsequent federal funding and assistance.

Under the Nixon administration, federal funding for education took a different path from that of the War on Poverty. In a 1970 address to Congress, Nixon called for educational reform, characterizing previous federal efforts as lacking “a cohesive education policy during a period of explosive expansion when our Federal education programs are largely fragmented and disjointed, and too often administered in a way that frustrates local and private efforts.”<sup>344</sup> Nixon also focused on the idea of accountability by holding educators and administrators responsible for school performance, though he was careful to clarify that success or failure of a school “should be measured not by some fixed national norm, but rather by the results achieved in relation to the actual situation of the particular school and the particular set of pupils.”<sup>345</sup> This avoided the appearance that the federal government was dictating to local schools when a school was successful or

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<sup>342</sup> “*Serrano v. Priest* L.A. No. 30398, Supreme Court of California (1974).”

<sup>343</sup> Jack Jennings, *Presidents, Congress, and the Public Schools* (Cambridge, MA: Harvard Education Press, 2015), 35–37.

<sup>344</sup> Richard Nixon, “Special Message to the Congress on Educational Reform,” The American Presidency Project, March 3, 1970, <http://www.presidency.ucsby.edu/ws/?pid=2895>.

<sup>345</sup> *Ibid.*

failing. Nixon was careful to insist that this was not a move to national educational standards, thus leaving control of education firmly in the hands of local and state authorities.

Among the changes advanced by President Nixon was the establishment of a U.S. National Institute of Education, in a bid to provide a central entity as “a focus for educational research and experimentation” and to make a “serious, systematic search for new knowledge needed to make educational opportunity truly equal.”<sup>346</sup> This reflected a policy turn towards Nixon’s comprehensive reform of education, while characterizing the War on Poverty reforms as “piecemeal.” Although this criticism of earlier programs was not unjustified, the use of the word “comprehensive” was vague. While it was being used in educational policy discussions at the federal level, there was no definition of exactly what comprehensive reform would look like, or how one might determine that such reforms had been completed. This lack of specificity would cause numerous problems in implementation in the future, yet “comprehensive reform” would remain the focus of federal educational policy for decades to come. In 1980, President Jimmy Carter would convert the National Institute of Education into the federal Department of Education, a cabinet-level agency that Ronald Reagan unsuccessfully attempted to dismantle in the early 1980s.

Following the landmark court cases of the 1950s and 1960s, Mexican American activists were greeted with a more conservative U.S. Supreme Court in the 1970s. Many pro-civil rights and desegregation decisions from the previous two decades were now under attack by opponents trying to find a way to reverse or weaken those results. Many

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<sup>346</sup> *Ibid.*

states and school districts in the American South as well as in the Southwest pushed back against desegregation legislation and judicial decisions, often by of maintaining *de facto* segregation. Frequently, resistance came from states taking advantage of vaguely worded desegregation policies to only vaguely follow their requirements. Such policies were often poorly enforced and provided loosely defined timeframes for implementation. In the case of some states, such as Arizona, this resistance involved outright stalling on the part of the government or local administrators, in the hopes of overturning the relevant decision against them. The 1970s represented a shift away from support for bilingual education, desegregation tactics such as busing, and support for the Mexican American institutional and legal fight for equality.

Mexican Americans were now officially recognized as an ethnically identifiable and legally protected minority group that suffered discrimination, with little political power and a socially subordinate position, rather than a distinct sub-class of White.<sup>347</sup> The previous strategy of arguing whiteness had only preserved the status quo rather than advancing progress towards equality for Mexican Americans. At best, it had been a “policing of the existing boundaries of Jim Crow” by declaring themselves White instead of Black, and only remained effective as long as the Jim Crow laws remained in force.<sup>348</sup> Once those laws were repealed, other weaknesses became evident. School districts resistant to desegregation exploited the definition of Mexican Americans as legally White by segregating them with Black students and arguing that this demonstrated they had desegregated by putting “White” students with Black students. This, legal expert Steven

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<sup>347</sup> The court had already made a similar earlier decision regarding minorities and juries in *Hernández v. Texas* in 1954.

<sup>348</sup> Steven H. Wilson, “Brown over ‘Other White’: Mexican Americans’ Legal Arguments and Litigation Strategy in School Desegregation Lawsuits,” *Law and History Review* 21, no. 1 (2003).

Wilson argues, created an overdue turn away from arguing for rights under due process in the absence of discriminatory statutes towards arguments for equal protection under the Fourteenth Amendment.<sup>349</sup>

In 1970, the Supreme Court decision in *Swann v. Charlotte-Mecklenburg Board of Education* in North Carolina upheld the use of busing as a means of desegregating imbalanced school districts. As a result, busing became the foremost political issue concerning federal educational funding and desegregation for the 1970s. For Nixon, and to some extent for the Republican Party, opposing busing was a way to woo the votes of Southerners who were against desegregation. A specialist in politics and educational policy, Jack Jennings, has argued that Nixon regularly demonstrated his opposition to busing, such as in his statement made during his efforts to appropriate additional funds to help segregated Southern school districts pay for desegregation:

I am against busing as that term is commonly used in school desegregation cases. I have consistently opposed the busing of our Nation's schoolchildren to achieve a racial balance...the proposed Emergency School Assistance...will expressly prohibit the expenditure of any of those funds for busing.<sup>350</sup>

Previous anti-busing measures in 1966, during debates over ESEA, had also been offered to garner political support, by forbidding federal education officials from ordering that busing be done as part of desegregation efforts. However, the law only specified members of the executive branch, and did nothing to stop judicial authorities, who were much more likely to order such measures. According to Jennings, Nixon's actions clearly

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<sup>349</sup> *Ibid.*

<sup>350</sup> Richard Nixon, "Statement About the Busing of School Children," The American Presidency Project, August 3, 1971, <http://www.presidency.ucsb.edu/ws/?pid=3098>.

showed his support for anti-busing advocates, and his attempts to win over Southern Democrats for the Republican Party.<sup>351</sup>

While he did not attempt to push for a repeal of the ESEA, Nixon did attempt to change the law fundamentally by trying to add language that would convert ESEA funding to unrestricted block grants to the states, rather than employing federal requirements. This was stymied by congressmen eager to ensure that funding was maintained for their poorer school districts, as well as by school districts that preferred the relatively few requirements attached to ESEA funding at the time. These requirements were re-examined as attention was drawn to what was being done with the Title I funding from the ESEA, particularly when it was discovered that a district had used the lack of monitoring to misuse the funds for school projects unrelated to poor children.<sup>352</sup>

The 1972 amendments to the ESEA included several anti-busing measures. They forbade federal funding for busing outside of local districts, or if it would affect student health, or would transport them to inferior school districts. Some Mexican American parents opposed busing out of concern about their children being bussed out of their communities and disrupting the strong community links that existed in their neighborhoods, especially when they saw no sign that Anglo students were bussed into their neighborhoods. In practice, many school districts simply bussed Anglo students out of poorer neighborhoods to better schools but left Mexican American children where they were. Nixon included in these amendments the Emergency School Aid Act (ESAA),

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<sup>351</sup> Jennings, 123.

<sup>352</sup> Ruby Martin and Phyllis McClure, "Title I of ESEA: Is It Helping Poor Children?" (Washington, D.C.: Washington Research Project of the Southern Center for Studies in Public Policy and the NAACP Legal Defense and Education Fund, 1969).



which provided funding to cover the costs of desegregation of Southern schools on a permanent basis, as well as additional federal funding awards for districts that were already integrating.

Jennings has noted that the issue of busing also distracted attention from the extent of the new educational amendments and policies Nixon's administration put in place, to the point where it practically was the only focus of discussion rather than any of the other funding reforms made.<sup>353</sup> All this, Jennings points out, "shows the twisting and turning that legislators did to convince their constituents that they did not really favor busing, while adopting legislative language that did not completely bar busing, since that was a necessary means to achieve desegregation."<sup>354</sup> These amendments combined with the Nixon administration's opposition to busing undercut it as a useful means of desegregation; instead, it became as much a tool of *de facto* segregation by districts that wanted make sure minorities were restricted from the best schools

Federal court cases also acted to undermine desegregation efforts by redefining desegregation as not necessarily having to do with student racial balance. Thus, busing was not necessary to equalize that balance if it was not focused on race. Initially, cases such as *Swann v. Charlotte-Mecklenburg Board of Education* (1971)<sup>355</sup> and *Keyes v. Denver, Colorado No. 1* (1973)<sup>356</sup> had promoted the idea of busing for desegregation purposes across school districts. But only a year later, the first case against desegregation via bussing reversed the effect of these initial decisions. *Milliken v. Bradley* (1974), a case in Detroit, Michigan, defined the difference between *de jure* and *de facto*

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<sup>353</sup> Jennings, 127.

<sup>354</sup> Jennings, 127–28.

<sup>355</sup> *Swann v. Charlotte-Mecklenburg Board of Education*, No. 281 (U.S. Supreme Court 1971).

<sup>356</sup> *Keyes v. Denver, Colorado No. 1*, No. 413 U.S. 189 (U.S. Supreme Court 1973).

segregation in school, and removed any burden for desegregation across school district lines if it could not be proven the district was engaging in deliberate *de jure* segregation as an explicit policy, rather than *de facto* segregation.<sup>357</sup> The follow-up to this case, *Milliken II* (1977) ruled that other methods of desegregation could be used besides busing, such as magnet schools, voluntary student transfers or so-called enriched curriculum.<sup>358</sup> Educator Richard Valencia has noted that because of *Milliken*: “School districts and school board can manipulate school policies because they have legal control over pupil assignments, the designation of which schools will be magnets, and the student selection procedure for magnet programs...”<sup>359</sup> Valencia cited as an example the case of Phoenix Union High School District in Arizona, where from 1985 to 1996:

...the magnet schools had led to the clustering of higher-income White students in nine of the 14 magnet schools...this choice program was accompanied by unbalanced district school financing, overwhelmingly disadvantaging the racial/ethnic minority students because the magnet schools were better financed and disproportionately served White students...The existing magnet schools are quite costly, not cost-effective, disproportionately benefit Anglo students, have had a small effect on District-wide racial/ethnic balance, enroll only a small fraction of the District's students, and will likely have little impact on the racial/ethnic balance of the District in years to come (due to the low capture rate of Anglo students from the feeder districts and the explosive growth of the Hispanic student population.<sup>360</sup>

Not only did this decision effectively derail attempts at racial desegregation, it contributed to White flight as wealthier Anglo families bought their way out of poorer

<sup>357</sup> *Milliken v. Bradley*, No. 73–434 (U.S. Supreme Court 1974).

<sup>358</sup> *Milliken v. Bradley* (Milliken II), No. 76–447 (U.S. Supreme Court 1977).

<sup>359</sup> Richard Valencia, *Chicano School Failure and Success: Past, Present, and Future.*, 2nd ed. (London; New York: Routledge/Falmer, 2002), 98.

<sup>360</sup> Ibid: 98-99; Richard Valencia, *The Phoenix Union High School District desegregation plan and efforts: An analysis*. Submitted to plaintiff's counsel, Albert M. Flores. *United States of America v. Phoenix High School District #210, et.al.* Case number CIV 85 1249 PHX CAM, Consent Decree and Desegregation Order, United States District Court, District of Arizona, Phoenix, Arizona, May 15, 1985 for U.S. District Court of Arizona: 39.

districts and took their funding with them, leaving their local public schools even more deficient in funds. A second case that same year, *Dayton Board of Education v. Brinkman* reached the same verdict, further undermining busing as a means of addressing *de facto* segregation.<sup>361</sup>

The first serious legal challenge to the idea of affirmative action, in *Regents of the University of California v. Bakke*, was also decided in the late 1970s.<sup>362</sup> Prior to this time, opponents of affirmative action had argued that such programs were a constitutional violation and (ironically) a breach of the Equal Protection Clause of the Fourteenth Amendment because of its focus on one ethnic group over another, despite it being used to help poor whites previous to World War II. *Bakke* became the first case heard before the Supreme Court to argue this viewpoint in 1974 but was not decided until 1978.

The case revolved around Allan P. Bakke, an engineer who had applied in 1964 to the University of California's medical school, but had been rejected not once, but twice. This was not unheard of; the University of California received roughly 3700 applications to the school, of which only 100 were accepted in 1974. What Bakke took issue with was the university policy that 16 of those 100 approvals were reserved for minority students, which he argued was a case of "reverse discrimination" against Anglos. When the case was initially brought before a California court, the judge ruled that Bakke was correct and that the affirmative action policy of the university violated Title VI, which stated that "no race or ethnic group should ever be granted privileges or immunities not given to every

<sup>361</sup> *Dayton Board of Education v. Brinkman*, No. 76-539 (U.S. Supreme Court 1977).

<sup>362</sup> "*Regents of Univ. of California v. Bakke*, 438 U.S. 265 (1978)," Justia Law, accessed January 22, 2018, <https://supreme.justia.com/cases/federal/us/438/265/>.

other race.”<sup>363</sup> However, the judge only ordered that the university no longer use race as a factor in its decisions, and did not require it to reconsider Bakke’s application.

Both sides of the case appealed; in Bakke’s case, this was because the judge had not ordered that he be admitted as part of the judgment. The California Supreme Court directed that the case be transferred directly to it rather than the usual pattern of appeals, and upheld the decision, with the judge stating that “no applicant may be rejected because of his race, in favor of another who is less qualified, as measured by standards applied without regard to race.” The dissenting opinion argued that it was financially impossible to do this with admissions and that it would result in poorer students being denied the opportunity to enter the medical profession.<sup>364</sup>

The case was appealed to the U.S. Supreme Court, which split six ways, for and against to varying degrees. Nevertheless, the Supreme Court upheld the decision, but not by claiming affirmative action was inherently unconstitutional. Instead, the court ruled that in this specific case the University of California had made race too much of a factor, instead of considering other factors for applications. With that in mind, the ruling directed that Bakke be accepted in the university and allowed that affirmative action was a method that could be used in certain circumstances, something that all the justices agreed on (with the sticking point being upholding the California Supreme Court decision on ordering Bakke’s admission). Another opinion held that the constitutionality of the program did not need to be ruled on as it had already been shown the decision violated Title VI regarding Bakke. In effect, affirmative action itself was upheld, but using rigid

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<sup>363</sup> Joseph Holmes, “Bilingual Education: *Serna v. Portales Municipal Schools*,” *New Mexico Law Review* Vol. 5 (May 1975): 332.

<sup>364</sup> “*Regents of Univ. of California v. Bakke*, 438 U.S. 265 (1978).”

numerical requirements as the only metric on who would be enrolled was not. This, however, would only be the first of many attempts to undermine the idea of affirmative action as discriminatory to Anglo students, returning thirty years later to the Supreme Court in the *Grutter v. Bollinger* case.

There was still movement toward promoting equity for non-English speakers in the classroom, or English Language Learners (ELLs) as they came to be defined in federal policies. The right to a bilingual education had been upheld in 1973 in the case *Lau v. Nichols*. In the words of that court decision: "...there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education."<sup>365</sup> Though the case involved Chinese-speaking students rather than Spanish-speaking students, its effects applied to any non-English speakers in American public schools, which was a boon for bilingual educators in the Southwest.

This became apparent in the 1974 congressional hearings over expanding Title VII and renewing the Bilingual Education Act. Ravitch highlighted the different definitions in use between supporters of bilingual education as a means of preserving language (and culture), and those who saw it as a bridge to English language competency and Americanization. Bilingual supporters such as Congresswoman Shirley Chisolm argued that it was necessary to teach bilingually, because students who could not speak English would be at a material disadvantage in society. The director of a local bilingual program in New York specifically stated that bilingual education was not in any way

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<sup>365</sup> "*Lau v. Nichols* 414 U.S. 563 (1974)," Justia Law, accessed January 22, 2018, <https://supreme.justia.com/cases/federal/us/414/563/case.html>.

intended merely as a transition between a student's native language and English.<sup>366</sup> Many bilingual supporters saw it a means of promoting the strengths of multiculturalism. This multicultural viewpoint was by its nature a rejection of the traditional melting pot view of acculturation. These proponents of bilingual education sought to add a language to a student's lives, but also to reinforce their culture as well as preserving their native tongue.

On the other side of the argument were those who supported bilingual education conditionally to transition Spanish-speaking students to speaking and taking classes in English. These conditional supporters were firmly in the camp of seeing English as necessary to the proper transformation of Spanish-speaking immigrants into American citizens; never mind that there were plenty of American citizens already who spoke Spanish as their first language or as bilingual persons. For these supporters, it was necessary to strip the culture and language from those entering to make Latino heritage invisible, to better blend into American society. With that in mind, there was no focus on teaching Spanish-speaking students in their best-known language. This added the difficulty of trying to understand concepts in a language they were less familiar with to the disadvantages many Latino students already possessed, either as new arrivals or as students likely to come from families close to the poverty line. This approach obviously and drastically undermined academic achievement of students when they were denied the ability to learn in a language they were already fluent in.

While it was widely supported by Spanish-speaking Mexican Americans, there were also notable flaws in the Bilingual Education Act (BEA) of 1968 that became apparent in the 1970s. According to historian Guadalupe San Miguel, the BEA was:

- 1) Underfunded, especially in comparison to poverty programs, which

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<sup>366</sup> Ravitch, *The Troubled Crusade: American Education, 1945-1980*, 275.

- meant many districts might not be able to draw enough funds to justify one;
- 2) Categorical in nature and compensatory in intent, in that it viewed non-English languages as detriments and students to be switched to English posthaste;
  - 3) Open-ended, in that it didn't clearly define how to teach bilingual education or what should be considered a bilingual program;
  - 4) Ambiguous, in that it had few clear definitions for its programs; and
  - 5) Set up on a voluntary basis that had to be asked for by local districts, rather than something that was automatically put in place.<sup>367</sup>

The implementation of bilingual education in the Southwest was thus uneven.

Different districts created their own programs based on what they considered to be appropriate. These ranged from true bilingual/multicultural programs to an English Only immersion courses and might not be set up at all by districts if administrators saw no need for such a program.

These bilingual programs were intended to bring pride and awareness of how a student's ethnic culture contributed to their lives and American society, and to make their culture something to be proud of in demonstrating how it was part of the American story, rather than something to be shunned as un-American and foreign. For those in the Southwest, this was a particularly strong argument, as some Spanish-speaking families had lived for many generations on ranches and farms throughout the Southwest and could trace their lineage back to the original Spanish settlers and native peoples of the area. These Mexican American people and their children were not immigrants who came to America; America had come to them, absorbing their lands and imposing its rules while often ignoring the rights originally given to them by Spain and later Mexico. To reject these people as "outsiders" or to lump all Spanish-speaking residents of the Southwest as

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<sup>367</sup> Cited in Richard Valencia, "The Plight of Chicano Students: An Overview of Schooling Conditions and Outcomes," in *Chicano School Failure and Success: Past, Present, and Future* (London; New York: Routledge/Falmer, 2002), 165.

“Mexicans” rather than the distinct flavors of long-term citizens and recent arrivals was to define all of them as not American. Rather than welcoming, this mindset rejected them until they “proved” themselves by abandoning any culture but that of middle class America and English as their language. This, above all else, was the reason many multicultural-based programs succeeded in promoting student achievement, by giving them pride and a place in American history by accepting their ethnic heritage was an equal part of it.

This was of special importance to Mexican Americans living in the Southwest who believed that preserving their language went together with preserving elements of their centuries-old culture. However, many conservatives viewed this as a threat to the primacy of the English language and to American culture in general, and even believed it would contribute to a balkanization of the United States into competing cultures. Others less concerned with the perceived threat of multiculturalism to society worried if students also were being taught in Spanish, they would fall behind in learning English. If nothing else, many educators resented the distinctly separated position bilingual education held, since it was set aside from the normal classwork, funded separately, and seemed to privilege certain ethnicities in public education. To some extent these fears of critics of bilingualism were lessened during the 1980s and into the 1990s when immigration from European countries rather than Spanish-speaking countries grew and attention focused on those new Eastern European immigrants. But attention would later return to Spanish-speakers, along with the nativism and xenophobia attached to Mexican immigrants and Spanish-speakers in general.



The 1970s saw other bilingual legislation passed that supplemented the Bilingual Education Act of 1968. Many of these laws were in response to the 1974 *Lau* case, such as the Educational Amendments of 1974 which provided funding for any child who did not speak English or spoke it with only limited ability. This amendment to the Elementary and Secondary Education Act (ESEA) also included the Equal Educational Opportunities Act that required that language barriers preventing public education be removed for students. More importantly, the language of the 1974 amendments specifically made it the policy of the federal government to endorse bilingual education, noting that “a primary way means by which a child learns is through the use of such child’s language and cultural heritage.”<sup>368</sup> This led to the U.S. Department of Education creating new regulations in 1975 called the *Lau* remedies, intended to help school districts align with the *Lau* decision and to assure compliance with the new rules. The rest of the federal government, however, was not necessarily swayed by the idea of a truly bilingual/multicultural model. The undersecretary of the HEW at the time, for example, stated that he believed it was not the federal government’s place to advance specific cultures, which he felt should left to local interests; Ravitch notes that he specifically stated that he only saw bilingual programs as a means for students to learn English.<sup>369</sup>

Moreover, the continuing disagreement over the purpose of bilingual programs widened into a condemnation said programs following an American Institutes for Research (AIR) study completed for the Office of Planning, Budget, and Evaluation (OPBE) in 1978. The report compared students in thirty-eight ESEA Title VII programs with those students in English as a Second Language (ESL) programs and failed to find a

<sup>368</sup> “Bilingual Education Act, Sec. 703 (a) (4) (A) (I),” Pub. L. No. 93–380, 88 Stat. 503 (1968).

<sup>369</sup> Ravitch, *The Troubled Crusade*, 276–77.

positive outcome. The report did demonstrate that students were being kept in bilingual programs even after they had attained proficiency in English, and that many of the program personnel supported maintenance bilingualism.<sup>370</sup> This was a shock to many in Congress who held bilingual education to be a means of transitioning students to English from another language, whereas those who thought of bilingual education as something to extend throughout elementary and secondary schooling took it as a matter of course.<sup>371</sup> The AIR study had many problems, but the report emphasized that “the failure to find effects in poorly designed evaluative studies should not be taken as evidence that such effects do not exist.”<sup>372</sup> The problem with this first generation of bilingual programs is that they had not existed long enough to have extensive research proving their benefits, partly because what exactly a bilingual program was meant to do was not clearly defined.

Obviously, a lack of motivation in school could not be blamed solely on a lack of proficiency in English. The treatment of Latinos in wider society and other factors led to poor academic performance. Programs that undertook to teach English to Spanish-speakers did not always take the time to improve the self-image of their students through cultural support and historical relevance to their students’ ethnic heritage in their classes. As such, there was growing public resistance to the idea of bilingual programs claiming that they were not “effective” in what they set out to do. By the beginning of the 1980s, what public support there had been for bilingual education was waning, hastened by the general anti-migrant and nativist English-only sentiment brought about by the economic

<sup>370</sup> M.N. Dannoff, “Evaluation of the Impact of ESEA Title VII Spanish/English Bilingual Education Programs,” Technical report. (Washington, D.C.: American Institutes for Research, 1978).

<sup>371</sup> Ravitch, *The Troubled Crusade*, 277–78.

<sup>372</sup> National Research Council et al., eds., *Assessing Evaluation Studies: The Case of Bilingual Education*, eBook (Washington, D.C.: National Academies Press, 1992), 3.

panics of the late 1970s and the growing backlash against those in poverty as “undeserving” of any special assistance.

There was also the matter of what constituted a legitimate bilingual program, which was not decided until the late 1970s. Another case, *Castañeda v Pickard*, was brought to court in Texas in 1978 to the United States Court of Appeals, Fifth Circuit by a Mexican American parent who believed that the existing bilingual education programs were poorly serving his children, as well the district using grouping systems for classrooms that discriminated both ethnically and racially. When the Texas district court ruled in favor of the district, Castañeda appealed, and the U.S. Court of Appeals reversed the decision, in the process setting out three requirements for any bilingual program to meet the requirements of the Equal Education Opportunities Act of 1974:

- 1) A bilingual program must be “based on sound educational theory.”
- 2) Any bilingual must be “implemented effectively with resources for personnel, instructional materials, and space.
- 3) Most importantly, after an initial trial period a bilingual program must be proven effective in overcoming language barriers and handicaps in the students being served.<sup>373</sup>

By identifying three requirements to be met, the court established what would be known as the Castañeda Test, which would be applied to new bilingual programs in Texas as well as to other states like New Mexico to determine whether a program served its students as a bilingual program or was merely a remedial English program. This at last provided a judicially created definition of how a bilingual program would be judged, which previously had been nebulously defined and thus allowed for a wide variety of practices, some effective and other loosely organized and implemented. The debate over

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<sup>373</sup> *Castañeda v. Pickard*  
<http://www.stanford.edu/~hakuta/www/LAU/IAPolicy/IA1bCastanedaFullText.htm> (Accessed 5/5/2014)

what a bilingual program should be continued, however.

Aside from federal funding, court decisions, and the debates over poverty and bilingual education, the 1960s was a time of cultural upheaval, particularly in higher education. For one, thanks to the Immigration and Nationality Act of 1965, the National Origins Formula used in U.S. immigration law was abolished, in favor of new policy that did not discriminate against non-northern Europeans and Latin Americans. Immigration skyrocketed, especially undocumented immigration coming from the south, from Mexico, the Caribbean, and numerous Central American countries. The number of undocumented immigrants arrested by the INS rose precipitously from about 1.6 million in the 1960s to 8.3 million in the 1970s; 975,780 immigrants alone were arrested in 1981, compared to only about half that number in 1971.<sup>374</sup> The population of Mexican immigrants were more than one million strong in the Southwest, creating a constant influx of Spanish-speaking workers entering the United States, and Spanish-speaking students entering the Southwestern public education system (and in the country at large).

The rising tide of immigration exacerbated anti-immigrant feelings. Spanish-speaking Mexican immigrants represented to many Americans the face of an undocumented flood, and the growth in population of Spanish-speakers stroking the fears of Americans who saw themselves as under siege by a foreign culture taking hold in their country. This ignored the fact that many of these Spanish-speaking Mexican Americans had been present in the Southwest long before it became part of the United States. Somehow, the fact that these citizens had retained both their language and culture yet had not created the sort of balkanization that many conservative thinkers feared, but this did

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<sup>374</sup> Milton D. Morris, *Immigration: The Beleaguered Bureaucracy* (Washington, D.C.: The Brookings Institution, 1985), 51.

nothing to soothe these fears.

The worsening of the economy following the oil crisis of the late 1970s predictably led to the scapegoating of immigrant workers as threats to the jobs of American blue-collar workers, even though a majority of Mexican migrant workers were employed in agriculture rather than in other occupations. The decade was marked by an increasingly prevalent nativist and even xenophobic movement in sections of the American public against “Mexicans” and other Spanish-speaking immigrants. This came to encompass any Spanish speaker who had not completely abandoned their language and culture in favor of English and “American” culture. Not surprisingly, this also created antipathy towards bilingual education and educational policies aimed at preserving other languages and cultures, as well as any educational policies that acted as a remedial fix for past inequities for minority students. For many, there was increasingly no difference to be seen between recent undocumented immigrants and families that had lived in the Southwest for centuries. Stereotypes of Mexicans were used as justification for anti-immigrant feelings, alongside arguments that the United States should not reward criminal behavior associated with illegal entry or undocumented migration.

Aside from the effects of immigration, there was mass upheaval concerning the Vietnam War, resulting in massive student protests all over the country. The countercultural movement and minority student organizations that rose to prominence in the 1960s became militant and confrontational. While many war protestors targeted ROTC recruitment and military research labs on campuses, minority groups stridently pushed (and even threatened) university administrators into allowing programs dedicated specifically to minority and ethnic studies. This behavior increasing caused the public to

view protestors as a destructive force, drew increasingly violent responses by authorities, and eroded support for civil rights reforms. The most famous of these incidents was the Kent State Massacre on May 4<sup>th</sup>, 1970, where four students were killed (two of which had not been protestors and had been walking between classes) and nine were wounded when the Ohio National Guard fired on protestors after they refused to disperse and began throwing rocks and expended tear gas canisters at the Guard.<sup>375</sup> The University of New Mexico had its own clash between students and National Guardsman just days later, which will be discussed in the following chapter.

The late 1960s and 1970s had seen the rise of the Chicano movement, a generation of highly motivated young Mexican American activists who wanted to see change then, not in another generation or two. Chicano activists were confrontational, and by the 1970s had started to move beyond the nonviolent protests and civil disobedience that had served the African American civil rights movement. There was not always agreement in how to bring about change, resulting in factionalization and the splintering of organizations within the Chicano movement. These groups were systematically undermined by the FBI's COINTELPRO program, which infiltrated Chicano organizations to spy on or disrupt them, often by encouraging extreme militant responses to justify law enforcement officers arresting members.<sup>376</sup> This led to a loss of momentum for many activist organizations, many of which dissolved by the end of the 1970s.

Despite this waning of the Chicano movement in the 1970s, however, the social

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<sup>375</sup> Jerry M. Lewis and Thomas R. Hensley, "The May 4 Shootings at Kent State University: The Search for Historical Accuracy," *Ohio Council for the Social Studies Review* 34, no. 1 (Summer 1998): 9–21.

<sup>376</sup> Pedro Caban, "COINTELPRO," *Latin American, Caribbean, and U.S. Latino Studies Faculty Scholarship* 18 (2005): 366–69.

and political activism of Mexican Americans in this period left a legacy of change and Mexican American and Latino studies programs in university campuses across the country. But it also left scars on higher education. Noted educational historian Diane Ravitch has suggested that the uproar created by university activism had a detrimental effect on faculty unity: “The process of polarization left its mark on university faculties. Where there was a major crisis, the faculty split into factions that were characterized by their sympathy or opposition to student demands.”<sup>377</sup>

In addition, Ravitch has argued that while initially student protests were sympathized with, especially when university administrators mishandled the protestors, when the disruptions caused by those protestors became extended, or grew violent, faculty and student support evaporated quickly. This led to more moderate or conservative factions taking control of university administrations and academic departments away from activist or radical leaders.<sup>378</sup> These clashes between liberals and conservatives on campus led to the creation of what would become the neoconservative movement, which would have a powerful influence on politics and education towards the end of the 20<sup>th</sup> century and a negative one for minorities and the poor.<sup>379</sup>

Finally, Ravitch points out that in many cases incidents of student unrest became a “pretext for dismantling requirements,” with the number of required courses for general education diminishing noticeably, such as for English, math, and foreign languages in favor of electives and student autonomy.<sup>380</sup> This corresponded with the new progressivism movement which came about during the early 1960s, which focused on

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<sup>377</sup> Ravitch, *The Troubled Crusade*, 224.

<sup>378</sup> *Ibid*, 224.

<sup>379</sup> *Ibid*.

<sup>380</sup> *Ibid*, 225.

giving students greater autonomy rather than on compulsory education, fixed subjects, and more rigid methods of learning. The movement to diminish graduation requirements spread from higher education to secondary education. Alongside this was a nationwide push for curriculum reform of current teaching methods, which Ravitch characterizes as “teacher-led ‘telling’” versus “discovery ...inquiry...and inductive reasoning.”<sup>381</sup> Public focus on education was rapidly shifted away from educational pedagogy to the effects of the civil rights movement, however. Attempts to redress these injustices had failed to enact the scale of change needed, primarily due to the lack of focus on structural change.

In the mid-1960s, this led to “new progressivism,” which blamed the failure of schools to promote educational equity for minorities on structural issues: the bureaucratic nature of public education that did not treat students as individuals, the tendency of teachers to put their own ahead of students, and the ingrained racism and inequality of American society in general.<sup>382</sup> New progressive reformers argued for drastic changes that put the impetus for learning on students to choose what they were interested in learning, rather than teaching a set curriculum that might be viewed as important but that many students found uninteresting.

This education environment allowed for the creation of hundreds of departments and courses dedicated to minority interests. African American, Chicano/Mexican/Latino, and Feminist Studies became part of the curriculum in many universities, often bringing with them the generation of minority instructors and professors who taught them. Not all schools were willing to hire minority instructors, which became a point of contention for Mexican American activists in state like Arizona. But the legacy of the 1970s for higher

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<sup>381</sup> *Ibid*, 224–25.

<sup>382</sup> *Ibid*, 235.



education was contentious at best; it provided more visibility for Mexican American programs and the hiring of Mexican American instructors but created resentment on the part of those forced to acquiesce to student demands.

The national mood in the 1970s had begun to change from the sympathetic, optimistic view of civil rights held in the 1960s. The failure of the War on Poverty to end poverty had disillusioned many and given opponents of government social assistance the chance to paint the poor as undeserving of the funding they had received. The federal government cooled noticeably on minority rights, as did the Supreme Court, with decisions from both undermining desegregation and encouraging the continuation of *de facto* segregation. Despite many advances in educational equity through the ESEA and the wealth of bilingual programs inspired by the BEA, the debate over bilingual education still raged on, while grassroots activism, particularly among students, began to flag as organizations fractured or dissolved. This was the beginning of the erosion of the victories won in the 1950s and 1960s, when the backlash by those who had opposed desegregation and poverty support began undermining the gains made by Mexican American activists in previous victories. By the end of the 1970s, when economic stress and immigration applied pressure on the nation, it gave conservative politicians the platform they needed to win, and to continue to try and dismantle what had been built in the previous two decades.

## **Chapter 8: A Shifting Southwestern Wind**

The decade of the 1970s witnessed the full flowering of the civil rights movements, and a continuation of developments in the previous decade that had energized Mexican American activism. Many positive developments aided Latinos and Spanish-speakers in both states, especially in educational finance reform and bilingual education. But the decade also represents the beginning erosion of many of the victories for equality the 1960s had brought. Activists became more militant, less willing to compromise, and more willing to push hard for change. This caused support for civil rights and reform to wane and encouraged authorities to respond negatively and sometimes violently to perceived threats. And there were uglier examples of state violence against activism, even in a pro-Latino state like New Mexico. This discussion begins with two incidents that demonstrate that New Mexico was equally willing to resort to force against Mexican Americans attempting to change the structural framework of society.

To begin, the focus returns to the Alianza Federal de Mercedes and its leader Reies Tijerina. Alianza was founded in New Mexico in early 1963 as a means of attempting to redress land grants that had been swindled or legally stolen from their original owners, despite assurances in the Treaty of Guadalupe-Hidalgo that such grants would be maintained under the old Laws of the Indies.<sup>383</sup> In fact, Alianza was created on the anniversary of that treaty's signing.<sup>384</sup> The group also campaigned to improve the lives of Mexican Americans through educational reform in New Mexico.<sup>385</sup>

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<sup>383</sup> Reies López Tijerina and Jose Ángel Gutiérrez, *They Called Me King Tiger: My Struggle for the Land and Our Rights*, eBook, Hispanic Civil Rights (Houston, TX: Arte Publico Press, 2000), 10–11.

<sup>384</sup> *Ibid*, 202.

<sup>385</sup> *Ibid*, 134.

Like many other Chicano organizations, Alianza developed along militant lines towards the latter half of the 1960s using public confrontation with authorities over racism and discrimination. In 1961, Tijerina specifically addressed education at a press conference, where he stated, “We not only find ourselves in the need to fight for our lands, but also to fight to save our children from the perverse education of the Anglos.”<sup>386</sup>

Upon hearing of a meeting of Alianza in the village of Coyote, Alfonso Sánchez, the local District Attorney, ordered the meeting disbanded, claiming Alianza consisted of communists and subversives from outside the state. The state police broke up the meeting and arrested eleven Alianza members, though Tijerina and others were able to escape.<sup>387</sup> Two days later, Tijerina led a raid on the Rio Arriba County courthouse in Tierra Amarillo to free the imprisoned Alianza members, and to perform a citizen’s arrest on Sánchez for ordering the raid on the Coyote meeting.<sup>388</sup> Unbeknownst to the raiders, the Alianza members had already been freed. In addition, Sánchez was not at the courthouse that day. The raid resulted in one prison guard being shot, a sheriff’s deputy being wounded, and Alianza members escaping into the mountains after briefly holding hostages.<sup>389</sup>

In response, the lieutenant governor, E. Lee Francis, ordered the largest manhunt in New Mexican history, calling up the National Guard as well as the State Police, local law enforcement agencies, Jicarilla Apache police, and even cattle inspectors to find and arrest Tijerina and the other raiders. The press, upon learning of the manhunt, gave Tijerina his nickname of “King Tiger.”<sup>390</sup> Instead of the manhunt capturing the Alianza

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<sup>386</sup> *Ibid*, 59.

<sup>387</sup> *Ibid*, 82–87.

<sup>388</sup> *Ibid*, 82–85.

<sup>389</sup> *Ibid*, 81–82.

<sup>390</sup> *Ibid*, 84.

leader, Tijerina chose to surrender himself to authorities in Albuquerque. Tijerina was ultimately convicted of assault with intent to commit a violent felony, destruction of federal property, and assault on a federal officer and sentenced to two prison terms of two years each, which he served in 1970 and 1974. As part of the terms of his release in 1971, he was forbidden from holding a leadership position in Alianza, though he continued his activism independently.<sup>391</sup>

Oddly enough it was not until after the Tierra Amarilla courthouse incident that Alianza began a campaign of reform advocacy. In 1968, the Alianza published a series of education reform measures. Correia notes this began a campaign that included press releases, circulars pamphlets, direct action, and several lawsuits, all with Alianza arguing for the reform of a system that was “intentionally ruining the lives of hundreds of thousands of IndoHispano, Black, and Indian kids.”<sup>392</sup> Correia discusses how this campaign was comprehensive, both covering reforms for local school curricula, such as criticizing history textbooks used in a school district, to reforms for broad educational policy, such as their proposal to the State Board of Education in 1969 to allow Spanish only instruction in some schools, with Spanish language fluency required of employees. In the same proposal, Alianza also argued for history to be taught from the perspective of Spain and Mexico, not just of the United States.<sup>393</sup> In Alianza’s opinion, the current history being taught was “a very prejudiced view of history designed to make the Gringo look good and the Chicano like a stupid, dirty, lazy bum, and to justify the US aggression

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<sup>391</sup> *Ibid*, 169.

<sup>392</sup> “Alianza Press Release,” July 1969, Reies Tijerina Papers, Box 2, Folder 2, Center for Southwest Research, University Libraries, University of New Mexico.

<sup>393</sup> David Correia, “‘Rousers of the Rabble’ in the New Mexico Land Grant War: La Alianza Federal De Mercedes and the Violence of the State,” *Antipode* 40, no. 4 (2008): 574.

against Mexico. This book destroys the very history and mind of the Chicano child.”<sup>394</sup>

The Alianza activist also demanded community control of certain schools and an end to curricula that excluded Chicano children from college prep course, along with an increase in instruction on Spanish literature and art. Above all, Alianza argued for each district guarantee students freedom to “organize, speak, distribute literature, assemble and protest.”<sup>395</sup> While the Alianza were strident in their tone, the Board of Education did not seem to respond to their demands. Correia does note on his speaking tours, Tijerina regularly blamed structural racism for the main woes facing Mexican Americans in the Southwest.<sup>396</sup>

Even Mexican Americans were divided over what to think about Reies Tijerina. When he emerged after his first prison term, Tijerina had had a change of heart; rather than the confrontational activism that had gotten him arrested and imprisoned, he turned his attention to promoting peace and harmony among all people, no matter their ethnic background. Historian Lorena Oropeza highlighted the polarized views of Tijerina through letters received by Governor Bruce King when he was considering pardoning Tijerina from entering his second prison term in 1974. The responses are reflective of the divided public view of militant Chicano activism.<sup>397</sup>

In a study of these letters, roughly half praised Tijerina for being a heroic advocate of social justice and providing a new ethnic identity for Chicanos in opposition

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<sup>394</sup> “Alianza Statement on Texbooks,” ca 1969, Reies Tijerina Papers, Box 2, Folder 4, Center for Southwest Research, University Libraries, University of New Mexico.

<sup>395</sup> “June 1968 Draft Proposal,” 1968, Reies Tijerina Papers, Box 34, Folder 34, Center for Southwest Research, University Libraries, University of New Mexico.

<sup>396</sup> Correia, 575.

<sup>397</sup> Lorena Oropeza, “Will the Real Reies Lopez Tijerina Please Stand Up?,” New Mexico History.org, accessed April 4, 2018, <http://newmexicohistory.org/people/reies-lopez-tijerina>.

to earlier assimilationist tactics. One writer stressed the sense of community and solidarity Tijerina had engendered with Alianza's work, which reminded Mexican Americans "that we were all brothers and sisters and must try to live together in harmony."<sup>398</sup> Another letter, sent from Lila A. Pfeufer to Governor Bruce King, stated: "At first, I considered him just a rabble-rouser inflaming the hopeless people who would lose anyway...[but] He is a self-educated man who can very likely do much good for his people – perhaps in the long run help in overcoming some of the prejudice that exists in our beautiful state."<sup>399</sup> Other supportive writers felt that Tijerina's work for social justice outweighed the severity of his crimes. A letter sent from John Burton to Governor King read: "I admire Reyes Tijerina for his efforts on behalf of the Spanish-Americans. Of course, he was a bit rash at one time, but he has been punished enough."<sup>400</sup> Others believed that Tijerina's incarceration experiences had changed him for the positive. Dr. Myra Ellen Jenkins, the Official State Historian of New Mexico, wrote: "Mr. Tijerina has done what many thoughtful New Mexicans, myself included, had long hoped he would do, turn his organizing abilities, his charisma and his deep convictions toward peaceful methods of securing justice...further imprisonment would not serve the cause of justice."<sup>401</sup>

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<sup>398</sup> Mrs. Robert Shanks, "Letter from Mrs. Robert Shanks to Governor Bruce King," 1974, Collection 1972-009, Box 64, Folder 1514: Militant Groups, Tijerina Pardon - Yes, Bruce King Papers, First Term 1971-1974, New Mexico State Records Center and Archives, Santa Fe, New Mexico.

<sup>399</sup> Lila Pfeufer, "Letter from Lila A. Pfeufer to Governor Bruce King," 1974, Collection 1972-009, Box 64, Folder 1514: Militant Groups, Tijerina Pardon - Yes, Bruce King Papers, First Term 1971-1974, New Mexico State Records Center and Archives, Santa Fe, New Mexico.

<sup>400</sup> John Burton, "Letter from John M. Burton to Governor Bruce King," 1974, Collection 1972-009, Box 64, Folder 1514: Militant Groups, Tijerina Pardon - Yes, Bruce King Papers, First Term 1971-1974, New Mexico State Records Center and Archives, Santa Fe, New Mexico.

<sup>401</sup> Myra Ellen Jenkins, "Letter from Dr. Myra Ellen Jenkins to Governor Bruce King," 1974, Collection 1972-009, Box 64, Folder 1514: Militant Groups, Tijerina Pardon - Yes, Bruce King Papers, First Term 1971-1974, New Mexico State Records Center and Archives, Santa Fe, New Mexico.

The other half condemned him as a fraud and con man who was a threat to peace and who was tricking Mexican Americans for his own betterment. Notably, just as many *nuevomexicanos* from New Mexico as Anglos were on this side of the argument, believing that Tijerina was still a threat. One writer noted that it was better for Tijerina to be where he was, that “The Tierra Amarilla action got people hurt” and that Tijerina was “exactly where I like to see him, defanged...If he ever manages to do any ‘good,’ it will be incidental to the real business of feathering his nest.”<sup>402</sup> Another writer echoes the accusations that Tijerina was nothing but a con man, noting “For years he has been living off others and from his wits.” One of the most vitriolic letters stated that Tijerina was: “a Mexicano who hates Americans, defies the laws and customs of our society, and tries to tear it down at every opportunity.”<sup>403</sup> In this microcosm, one can see the reactions that polarized society around Chicano activism as it became more militant and less patient.

Alianza also provides an example of how New Mexico was willing to use state violence against Mexican American activists. Tijerina’s trial, in which he ably defended himself, had made him a symbol to many Mexican Americans, and a threat according to local authorities, police, and the FBI. American Studies professor David Correia has outlined how the FBI used opinions by the John Birch Society, a conservative anti-communism organization which vehemently hated Tijerina, to form their official briefs on his activities for the FBI’s COINTELPRO program.<sup>404</sup> By becoming a target of

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<sup>402</sup> Frederick Dubois, “Letter from Frederick Dubois to Governor Bruce King,” 1974, Collection 1972-009, Box 64, Folder 1515: Militant Groups, Tijerina Pardon - No, Box 64, Bruce King Papers, First Term 1971-1974, New Mexico State Records Center and Archives, Santa Fe, New Mexico.

<sup>403</sup> R.A. Crider, “Letter from R.A. Crider to Governor Bruce King,” 1974, Collection 1972-009, Box 64, Folder 1515: Militant Groups, Tijerina Pardon - No, Bruce King Papers, First Term 1971-1974, New Mexico State Records Center and Archives, Santa Fe, New Mexico.

<sup>404</sup> Correia, 575.

COINTELPRO, Correia argues that Tijerina and the Alianza became seen as an embodiment of terrorist and subversive categories through racialized coding by the FBI and local authorities.<sup>405</sup> Following his trial, Tijerina's family was constantly harassed and attacked, sometimes brutally, as was Alianza, including a bomb being set off in the car of an Alianza member.

Correia argues that these incidents involved state-sponsored and state-tolerated violence" against Tijerina and were due to Alianza's stance on fighting racism on inequality. Tijerina and Alianza, Correia concludes, were the targets of this "acceptable" violence because they had been stereotyped as terrorists and subversives, allowing New Mexican and federal authorities to strip away the social context of the structural racism Tijerina and Alianza opposed, which reduced them to a generalized and stereotypical subversive threat.<sup>406</sup> Correia's evidence is compelling; New Mexican authorities seem just as complicit as federal authorities in their harassment of Tijerina and the Alianza. Certainly, both were willing to use state violence to try and silence protestors and activists like Tijerina and the Alianza.

These tactics were also used against student activist groups in New Mexico, with authorities justifying the use of force by pointing to student protests as violent or disruptive. This was visible when New Mexico suffered an incident of violence during a sit-in protest at the University of New Mexico in 1970, a few days after Kent State. Spurred on by the deaths and injuries of students at Kent State, many universities had already suspended classes, as over four million students boycotted class in solidarity with the dead protestors, setting off a wave of college protests throughout the nation.

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<sup>405</sup> Correia, 578–79.

<sup>406</sup> Correia, 579–80.



Among other things, the UNM protestors demanded the removal of ROTC from campus and more scholarships for minorities, especially for Native Americans. UNM President Heady refused to meet with the protestors but allowed the Student Union Building (or SUB) to remain open for meetings. This sparked a second protest the following day, causing classes to be suspended again. On May 8<sup>th</sup>, after a march downtown, students staged the sit-in protest at the SUB, during which many were arrested after refusing to vacate the building. After the initial confrontation with law enforcement, however, most students left the building on their own, leaving the SUB deserted save for a group of die-hard protestors who were using a meeting room. Since there were no classes being held due to the Kent State shooting, these students had no pressing reason to leave, but chose to do so anyway.

New Mexico Governor David Cargo was not in the state that day, as he was visiting Michigan. Instead, it was Lt. Governor E. Lee Francis who responded to reports of the occupation of the SUB. Much like with his reaction to Tijerina and the Tierra Amarillo courthouse raid, Francis immediately called in a unit of the National Guard stationed at the nearby town of Socorro. In the aftermath of the Kent State clash, the National Guard unit arrived at the university with no ammunition in their rifles but were equipped with bayonets. The National Guard soldiers joined members of the Albuquerque Police Department, the UNM Police, and the New Mexico State Police on campus in surrounding the SUB in ranks. Rather than encouraging students to leave, this emboldened many students to re-occupy the building in response.

George Hannett recalls: “One group of the troops went around to the west...which

basically blocked the crowd. They started pressing them from two directions.”<sup>407</sup> When the National Guard began to advance, students were trapped between the building and the bayonets.

Layden remembered:

When a tear gas canister leaked, Guard members put on gas masks and removed their name tags and symbols of rank, so they could not be identified.... despite no orders [given] to evacuate, the Guard bayoneted 8-11 bystanders, severely wounding a TV news reporter.<sup>408</sup>

Though numerous people were stabbed, there were no fatalities. Six of those wounded later sued the governor and commanders of the Guard and law enforcement over the assault but were unable to prove that the defendants had either personally stabbed anyone or given orders for people to be stabbed. The suit was dismissed, but the incident left its scars on the university population.

These two examples demonstrate that New Mexico’s authorities were just as willing as authorities in other states to resort to armed force against activists and protestors. Lieutenant Governor Francis overreacted to both situations, first summoning the military to deal with a much smaller group of Alianza raiders and Tijerina in 1968, then again against unarmed student protestors at the SUB in 1970, in what can only be an unnecessary and dangerous escalation. New Mexico’s metaphorical hands were not clean when cracking down on activists who were a threat to the structured racism and discrimination in New Mexican society.

If New Mexico had issues with the use of state violence against protestors and

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<sup>407</sup> George Hannett, Interview with George Hannett by David K. Dunaway and Stephen Mandrgoc, Audio transcript, November 17, 2016, 16.

<sup>408</sup> Dianne R. Layden, “May 1970: The Bust at the SUB,” Santa Fe Reporter, November 26, 2013, <http://www.sfreporter.com/santafe/article-7911-may-1970-the-bust-at-the-sub.html>.

activists, the situation of Arizona's Spanish-speakers was worse overall than that of New Mexico. While obvious means of *de jure* segregation of Arizonan Mexican Americans had been dismantled, *de facto* segregation did not continue to exist in other forms.

Darius Echeverría noted that segregation now was slipped into Arizonan schools "by drawing upon educational surveys, legislative mandates, and legal and quasi-legal rulings by local and state administrators." These administrators formulated educational policy in the state and had resisted desegregating the Mexican schools for decades.<sup>409</sup> Without active federal enforcement of desegregation, Arizona was able to put off implementing federally mandated desegregation policies for more than a decade.

Other schools were also found wanting under review by the HEW. An example is Tempe Elementary District #3, which came under inspection around 1973 and was found to be in non-compliance with Title VI of the ESEA. This came in reaction to the district attempting to close a local school, the Frank School, when it was required to transition from an all-minority school to a mixed school including Anglos. In its response to questions from the superintendent of the district, the HEW Office of Civil Rights stated, "such a measure would place the burden of desegregation on minority students and their parents...it would be acceptable only if the District could demonstrate that the school was being closed for educational, not racial reasons."<sup>410</sup>

The report concluded that:

- 1) Minority students are not performing at the same educational level as non-minority students;
- 2) A substantial number of minority students lack English language skills;
- 3) The educational program offered by the Tempe District is an English-language oriented program, which effectively excludes non-English

<sup>409</sup> Echeverría, 21.

<sup>410</sup> Pierce, "Letter to Tempe School District."

- speakers; and
- 4) The Tempe District has not yet developed and implemented programs to bring minority students into the educational system by eliminating differences in educational performance attributable to membership in a national origin minority group.<sup>411</sup>

The HEW report went so far as to declare the district's attempts to relocate and redistrict its schools as a method of creating *de jure* segregation.<sup>412</sup> Nor was Tempe alone in being called out by the federal government. By 1976, twenty-four Arizona school districts had been reviewed and cited by the Office of Civil Rights for non-compliance.<sup>413</sup>

The HEW citing of the Tempe school came just before an important desegregation court in Arizona known as *Mendoza v. Tucson Sch. Dist.* (1974).<sup>414</sup> The case brought by Mexican American students based on past intentional examples of *de facto* segregation that lingered in the district, and later was combined with a similar case, *Fisher v. Tucson Sch. Dist.*, in 1978, which was brought by African American students. There was no final decision by the court, as the case was settled between the opposing parties. TSD agreed to pursue several remedial paths, including reassignment of students through busing (both voluntary and mandatory) and the closing of specific segregated schools. While the initial stipulation was to complete this task in five years, Arizona again delayed implementation for over *thirty years*, until attempting to file a Petition for Unitary Status and Termination of Court Oversight in 2005 as a legal sidestep that would create a new district entity that was no longer the Tucson district, and thus no longer under the court's judgement.<sup>415</sup>

Besides the segregation of students, Arizona had serious issues with its adult

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<sup>411</sup> *Ibid.*

<sup>412</sup> *Ibid.*

<sup>413</sup> Arizona Department of Education, "Bilingual Education Services" (Arizona, 1977), Superintendent of Public Instruction Box 9, Polly Rosenbaum Archives and History Building.

<sup>414</sup> *Mendoza v. Tucson Sch. Dist.*, No. 10-15124 (U.S. Court of Appeals Ninth Circuit 1974).

<sup>415</sup> The results of this case will be discussed in Chapter 12.

education division, especially concerning recent immigrants. It was one of three states that still did not provide citizenship or Americanization classes, despite Arizona state law making this citizenship training mandatory and the Arizona Attorney General having affirmed this in 1968.<sup>416</sup> According to a 1970 position paper from the Arizona Association of Mexican-American Educators to Governor Jack Williams, while fifty-nine percent of the Adult Basic Education students in the 1969-1970 year were Mexican-American ancestry, there was “not one staff member in the Adult Education Department that is multi-ethnic, bi-cultural, multi-lingual...there is not one Mexican-American working for that department.”<sup>417</sup> Part of this was the focus on local control in Arizona over education. While the state had made it mandatory, local districts had not followed through, and Arizona had provided no concrete plans by 1970 for how these educational needs of those seeing GEDs who were Spanish-speakers might be addressed.<sup>418</sup>

Those adults who had been forced to struggle through segregated and underfunded schools in their childhood had few ways to fill in those gaps in their education through adult education programs. 90% of all funding for adult education came from the federal government, with only 10% provided by the state of Arizona, meaning that classes could be held only six months out of the year by the 16 people in the state being supported through Adult Basic Education funds.<sup>419</sup> In addition, while G.E.D. testing was possible, adult education programs of the time were incapable of meeting federal

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<sup>416</sup> “The Dilemma of Adult Education in Arizona,” May 18, 1970, ME Ephemera, Chicano/a Research Collection (CRC), Hayden Chicano Research Collection, Arizona State University.

<sup>417</sup> *Ibid.*

<sup>418</sup> Anne Lindeman, “Testimony to the Panel Hearing on Proposed Rules and Regulations for Bilingual Education of the U.S. Department of Education” (1981).

<sup>419</sup> “The Dilemma of Adult Education in Arizona.”

standards for G.E.D. training and education.<sup>420</sup> Not only had Arizona failed to help this generation of Mexican American students, but it offered no way for a motivated student to try and get their high school diploma if they failed to pass high school.

Arizona did make progress in providing opportunities for ethnic studies programs when it approved its first Mexican-American Studies center at the University of Arizona in 1974. Throughout 1974, under the auspices of Dr. Paul Rosenblatt, Dean of Arts and Sciences, plans were made at the University of Arizona (Tucson) to implement the proposed Mexican American Studies and Research Center. Once created, the MAS Center offered a B.A. degree in Mexican American Studies. In January 1975, Professor Adalberto Guerrero, department of Spanish, served as the first director of the MAS Center.

During that time, the first courses in Chicano studies offered by the university were Mexican American History and a Colloquium on Twentieth Century Mexican American History at the Department of History. Both courses were presented by Dr. Joseph P. Sánchez who taught at the University of Arizona until 1979. Dr. Sánchez served as the director of the Mexican American Studies and Research Center from 1977-1979 and oversaw the continued development of the Center as an interdisciplinary curriculum that offered courses in history, political science, sociology, Spanish literature and other disciplines. While the Department of Education offered disciplinary classes designed for educators and students about Mexican American history and culture, Dr. Rumaldo Z. Juárez, of the Department of Sociology, offered a course entitled The Chicano in American Society, and Dr. John A. García, of the Political Science Department, taught

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<sup>420</sup> *Ibid.*

The Politics of the Mexican American Community.<sup>421</sup> Similarly, Dr. Celestino Fernandez, a sociology professor, taught courses pertaining to culture and Mexican immigration.<sup>422</sup>

The Mexican American Studies and Research Center served as a stimulus in higher education for surrounding communities in southern Arizona. Earlier, in 1974, the Renato Rosaldo Lecture Series, presented by academicians and scholars, served to share the broader Mexican American experience with the broader Tucson community surrounding the University of Arizona.<sup>423</sup> The Mexican American Studies department still existed at the University of Arizona in 2018 and includes a dedicated Mexican American research library, while its sister university, Arizona State University in Phoenix, has a portion of its main library dedicated to an extensive Chicano/a Research Collection.

Despite the creation of an ethnic studies center, severe inequities existed in Arizonan higher education in the late 1970s. In a report to Governor Bruce Babbitt in 1978, the same Mexican American Studies Department reported: “Of nearly 30,000 students at the University of Arizona... 1100 or 4% are Hispanics... The Mexican American population of Tucson is approximately 23%.”<sup>424</sup> Only 4% of that 4% of enrolled Mexican American students successfully graduated. The percentage of college going Mexican Americans dropped to 3% for those in graduate school, while only 3% of the Law school and 2% in the Medical school were Mexican American. In terms of faculty, only 1.6% were Mexican American and predominantly not on tenure tracks,

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<sup>421</sup> Echeverría, 104.

<sup>422</sup> Joseph P. Sánchez, Interview with Joseph Sanchez by Stephen Mandrgoc, September 12, 2018.

<sup>423</sup> Echeverría, 103.

<sup>424</sup> “Statement of Concerns Regarding Mexican Americans in Higher Education in Arizona Presented to Governor Bruce Babbitt by Mexican American Studies, University of Arizona,” April 28, 1978, ME Ephemera, Chicano/a Research Collection (CRC), Hayden Chicano Research Collection, Arizona State University.

while none of the few University of Arizona's Mexican American administrators held Ph.Ds. The Mexican American Studies Department connected the relatively few Mexican American professionals in Arizona to this educational imbalance.<sup>425</sup>

In the same year, a report presented by the Arizona Secondary Education Panel painted a troubling picture of Mexican Americans educational gains in the state. Over half (sometimes as high as 68% in certain areas) of Mexican American students were not graduating from high school. Less than 1% of Mexican Americans who started first grade in Arizona went on to college, and of those, only 6% were able to finish at least one year of college. Those who did tended to be teachers specializing in teaching Spanish at the secondary level.<sup>426</sup> The panel listed the same issues that had plagued Southwestern schools since the 1950s: no attempt at understanding Spanish-speakers in their language or their culture (both for students and their parents), a failure to recruit Mexican American educators and staff (who could have assisted with the first problem), and a lack of services offered to compensate for disadvantages that Mexican American students and their families faced.<sup>427</sup>

On a more positive note, the 1970s saw much needed educational finance reform in Arizona, which was encouraged by the California decision in *Serrano v. Priest* in 1971. The case dealt with a class action suit on behalf of California's public-school students over the unfairness of the current education finance system in the state. Districts in low income areas often had to raise property taxes at a much higher rate to pay the same per

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<sup>425</sup> *Ibid.*

<sup>426</sup> Manuel Domínguez, Antonia Diaz, et al., "Injustices in the Education of Mexican-American Children in Arizona and Recommendations for Change," May 18, 1970, ME Ephemera, Chicano/a Research Collection (CRC), Hayden Chicano Research Collection, Arizona State University.

<sup>427</sup> *Ibid.*



pupil expenditures that wealthy district were easily able to raise. The California Supreme Court struck down the educational financing structure for the state as a violation of equal protection for its students, because of the wide variation in per pupil expenditures that were depend on property values, and in doing so confirmed education as a fundamental right under California's state constitution.

The decision was reaffirmed when it was heard before the California Supreme Court a second time in 1976 as *Serrano II*. This second hearing followed the decision of *Rodríguez v. San Antonio* in Texas in 1973, which had stated that education as a fundamental right as it was not "explicitly or implicitly" part of the language of the U.S. Constitution. The judge in *Rodríguez* ruled while the educational finance system in Texas was uneven, that the state did not discriminate or disadvantage a specific class that had a right to protection under the Fourteenth Amendment. *Serrano II*, however, reaffirmed the original *Serrano* decision, which had been based not on the U.S. Constitution but on the California State Constitution, which could be applied to the case since education is controlled by the state, not the federal government.

In Arizona, a local case was initiated to challenge the state's existing educational funding in 1973, called *Shofstall v. Hollins*.<sup>428</sup> In it, the Arizona Supreme Court ruled against plaintiffs who had argued that low quality education brought about by high tax burdens in property-poor school districts violated the equal protection clauses of the federal and state constitutions. The court decision noted that education was not a fundamental right under the U.S. Constitution (per *Rodríguez*) and that although education is a fundamental interest under the Arizona Constitution, This was not

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<sup>428</sup> *Shofstall v. Hollins*, No. 11165 (Supreme Court of Arizona 1973).

sufficient to strike down the funding formulas for Arizona's school districts.

These cases encouraged legislators in Arizona and New Mexico to reform their existing educational finance systems through equalization. New Mexico was the first to try at reform, but Arizona followed shortly thereafter in the wake of the *Shofstall* decision. With the redistricting of the 1940s and 1950s, New Mexico legislators made important strides towards centralization of their school districts. By the end of the 1960s, the number of school districts had shrunk to 88, with many being small rural districts that enrolled less than 1,000 students, while Albuquerque remained the largest, enrolling a third of the state's total student population.<sup>429</sup> However, by 1973, New Mexico had not yet attempted to equalize educational funding between districts. Sociologist Phillip Gonzales notes that this inequity was due to not every district being able to raise the 30% of local educational funding as easily as others. Moreover, there was no provision to compensate for the extra costs of small schools, high school programs, or special programs. The result meant smaller low-income districts and large urban areas were effectively penalized relative to wealthier districts. Under a liberal coalition in the state government, there had been previous legislation working towards true equality, through the Public Schools Financing Act in 1971, and the School Equalization Fund created in 1972, though neither completely fixed the problem.<sup>430</sup>

In 1973 Arizona's legislature passed the Finance Reform Legislation statute, which was intended to equalize educational funding in the state. It proposed to phase in the equalization over the course of five years. Four years later, Arizona was forced to re-evaluate the statute in view of numerous "ambiguities and/or other inequities" that arose

<sup>429</sup> Gonzales, "Public School Financing," 32.

<sup>430</sup> *Ibid.*

in implementation.<sup>431</sup> For example, a determination as to what was considered “adequate educational programs, supportive services, and facilities to assure equal educational opportunity” needed to be made, as the initial wording was vague.

The following year, New Mexico passed the Public School Finance Act of 1974. This statute made large improvements to New Mexico’s equalization system, through a comprehensive weighted pupil plan that was nearly a full state assumption plan, where New Mexico would provide 87% of non-federal revenue, greatly lowering the amount of funding required by local districts. The plan calculated funding for districts based on total number of pupils and a teacher training-and-experience index, that was then multiplied by the state per-unit guarantee of funding. The state’s share would be whatever was left of that total after subtracting local revenue.<sup>432</sup>

While the 1974 New Mexico plan was not perfect – it relied on weighting factors over actual costs and lacked capital outlay funds for construction and maintenance of school facilities – the new system was closer to what New Mexico’s school system needed. Gonzales points out that the 1974 plan also included bilingual and multicultural education as part of the act, though he notes it is unclear how much it benefited New Mexico’s minority population.<sup>433</sup> In addition, it spurred interest in public education from the New Mexico governor's office under Governor Bruce King, who took a strong personal interest in the state equalization funding formula for New Mexican public schools. This cooperation between the executive and legislative branches led to several other acts being passed easily, quickly, and with bipartisan support.

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<sup>431</sup> Arizona Department of Education, “An Equalization Plan for Financing Elementary and Secondary Education in Arizona” (Arizona, July 29, 1977).

<sup>432</sup> Gonzales, “Public School Financing,” 34.

<sup>433</sup> *Ibid.*

As part of the re-evaluation of its 1973 act, in 1974 Arizona adopted a Unified System of Financial Records intended to provide the complete financial status of each school district. While a useful tool, it did not consider many other factors related to the characteristics of the population in a school district. In a proposal to research and update the 1973 state equalization plan to Governor Raúl Cortez (Arizona's only Mexican American governor), additional factors were listed as necessary to add, including population density, mobility, wealth, growth and decline, guidance and counseling, transportation, and other economic factors, such as the cost of different types of educational programs (regular, special, vocational, disadvantaged, bilingual, etc.).<sup>434</sup> The final State Equalization Plan, submitted to the governor in 1978, was intended to “equalize financial ability to reflect the wealth of the state as a whole and not the wealth of independent local educational agencies.”<sup>435</sup> It would be updated again in the 1980s as part of Arizona's continuing attempts to tweak a fundamentally unstable system, but made progress towards equalizing educational funding throughout the state.

One of the last educational policies enacted in New Mexico in the 1970s would have particularly long-reaching implications, though not for finance. The High School Proficiency Exam, created by the State Board of Education in 1979, was the first of its kind to rely on a performance-based writing test in the state. As such, it was also the first example of what is called criterion-referenced testing, a growing trend in education at the time that would expand significantly in the next three decades, and particularly after the *Nation at Risk* report in 1983 which gave impetus to standards-based education.

Aside from educational funding reform, the most important change for Mexican

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<sup>434</sup> Arizona Department of Education, “An Equalization Plan.”

<sup>435</sup> *Ibid.*

Americans in both states came from the passage of the Bilingual Education Act in 1968. The new bill provided federal funding to create bilingual programs in both states and was accompanied by new studies demonstrating why additive bilingual programs were superior to English only instruction in terms of ELL achievement. Both states by the early 1970s had a population of Spanish-speaker in desperate need of something other than English only education.

In 1972, New Mexico's own investigation showed that minority children (Latinos, Native American, Black, and other) now made up half of all public school students in the 1972-1973 school year: 40.7% Spanish-surnamed, 7.7% Native American, and 2.2% Black primarily.<sup>436</sup> In 39 out of 88 school districts in New Mexico, half of those students were Spanish surnamed, with one third of students being Native American in nine of the total districts.<sup>437</sup>

This was consistent with the findings of the Excluded Student Report: Educational Practices affecting Mexican Americans in the Southwest, better known as the Mexican American Education Study or the MAES report, published in 1972.<sup>438</sup> In surveys conducted by the Commission on Civil Rights, New Mexico had only 4.7% of its schools offering bilingual education, with less than one percent of its Mexican American students enrolled.<sup>439</sup> This put New Mexico roughly between California, at 8.5% of schools offering bilingual programs, and Arizona, which had less than one half of a percent offering such programs. It provided data demonstrating that 36% of New

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<sup>436</sup> New Mexico Department of Education, "New Mexico School District Profile" (New Mexico, April 1973).

<sup>437</sup> *Ibid.*

<sup>438</sup> U.S. Commission on Civil Rights, "The Excluded Student: Educational Practices Affecting Mexican Americans in the Southwest."

<sup>439</sup> *Ibid.*

Mexico's Mexican American first graders did not speak “English as well as the average Anglo first grade pupil.” Fifty-four percent of Spanish-speaking students were classed as below reading level by the time they became seniors in high school, with one in four having dropped out of school by that point in time.<sup>440</sup>

Following the passage of the Bilingual Education Act (BEA) in 1968, New Mexico’s State Legislature had memorialized the need for school boards and administrators aimed at English Language Learners (ELLs) who could then “be proud of their linguistic heritage, as well as their cultural heritage, and to strive to both preserve and improve it.”<sup>441</sup> Arizona’s commitment to bilingual education, however, was oriented towards transferring all students to English-only classes and education after elementary school, as can be seen in the MAES report that examined the resources being provided to bilingual education in each state. Several aspects of the study highlight that Arizona programs aimed at teaching Spanish-speaking children English were focused only on elementary grades, with little support provided for high school students to continue becoming fluent in Spanish. Both New Mexico and Arizona received federal funding in 1970 for bilingual education, roughly \$363,000 for New Mexico and \$642,000 for Arizona.

Both states had traditions of English only education and had actively restricted students from using Spanish in their schools, though Arizona’s policies were harsher. In 1972, 7% of New Mexico’s elementary school students were discouraged from speaking Spanish on school grounds; this dropped to less than a half of a percent by secondary

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<sup>440</sup> *Ibid.*

<sup>441</sup> Ray M3ntez, “Education and the Spanish-Speaking - An Attorney General’s Opinion on Article XII, Section 8 of the New Mexico Constitution,” *New Mexico Law Review* 3 N.M. L. Rev. 364, no. Summer (1973): 331.

school. On the other hand, Arizona remained steady at nearly 12% for both elementary and secondary.<sup>442</sup> (Both states, however, were roughly the same at officially discouraging Spanish in the schools itself, at roughly 30% of schools.) In 1976, a report on bilingual education services by the Arizona Department of Education estimated that roughly 19% of the student population was of Latino in background, with 16, 656 students taught in thirty-six districts across the state. Arizona's available funding for bilingual education, however, meant that these bilingual classrooms had a pupil-to-teacher ratio of 200 to 1. Because of this scarcity of trained bilingual teachers and classrooms, bilingual instruction depended on a "pull out" approach, where students were removed to separate classrooms where they could be concentrated with the teachers available and given intensive instruction in English.<sup>443</sup> Arizona was also last among Southwest states for staff resources allocated for teaching bilingual education.

Even those compensatory services that did exist were in danger of vanishing. One successful bilingual program at Phoenix Public High School had been sustained through federal funds since 1969 but suffered when in 1975 that federal oversight was withdrawn. By 1977, it was in danger of being abolished entirely in favor of a new English as a Second Language program that evoked protests from the Mexican American community, with one member noting that it was not "a 'Bilingual Program' just because one of its sections has been called 'bilingual.'"<sup>444</sup> In the protest document written by the Phoenix Union High School Bilingual Advisory Committee members pointed out that by 1974 the program, while small, had been highly successful, having reduced the rate Mexican

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<sup>442</sup> U.S. Commission on Civil Rights, "The Excluded Student," 16.

<sup>443</sup> Arizona Department of Education, "Bilingual Education Services."

<sup>444</sup> PUHS Bilingual Advisory Committee, "Facts about Phoenix Union High School Bilingual Program," February 10, 1977.

American dropouts by 93%. Not surprisingly, it had the support of local educators and administrators and had been recognized nationally as a top bilingual program.<sup>445</sup> The Committee pointed to the poor treatment of the program by authorities, who had restricted it from growing larger than a pilot program, and had recently demoted the program from departmental status, as well as using a “misrepresentation” of the program that claimed it consumed a substantial amount of the school budget when this was not true.<sup>446</sup>

Above all else, the Committee denigrated the English as a Second Language (ESL) program, pointing out that the current Phoenix High bilingual program was committed not just to teaching English to non-English speakers, but assisting “students with indications of cultural maladjustment, originating from circumstances of background and environment” or, put more directly, addressing “the psychological conditioning of the student,” something the new program was unconcerned with.

The Committee also defended the idea of multicultural education, arguing that it was not a program that would “try to prevent the student from becoming a full-fledged American” but intended to take into account a student’s cultural background to “make our students happy and welladjusted [sic] for the rest of his life, here, in America, since they are or are about to become ‘Americans.’”<sup>447</sup> Without this, the Committee argued that ESL was doomed to fail, as it assumed students were “already receptive” to being taught, when many Mexican American students were coming to them believing there was

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<sup>445</sup> *Ibid.*

<sup>446</sup> *Ibid.*

<sup>447</sup> *Ibid.*



nothing to be gained from school where they were denigrated and where their learning disadvantages were ignored.<sup>448</sup>

This reflected the Arizona Department of Education's focus on the idea of the "pull-out" style of English teaching, where a non-proficient student was pulled out of regular classrooms and put into special intensive ESL programs, which led to *de facto* segregation of Spanish speakers in separate classrooms. A further program was the assertion that of 1976, "Little, if any, content area instruction is given in the native language."<sup>449</sup> The status of bilingual programs would not greatly improve in Arizona by the end of the 1970s.

Meanwhile, despite the State Legislature's memorial for New Mexico's schools to create bilingual programs, three years later such programs barely existed in the state. Former New Mexico Attorney General Ray M3nchez placed most of the blame for the failure of New Mexico to expand its bilingual programs on the response of Attorney General Boston Witt of in 1968 following the passage of the Bilingual Education Act. Witt's interpretation was of Article XII, Section 8 of the New Mexico State Constitution, which concerned the state requirement that bilingual teachers be available for instruction Spanish-speaking students. Witt argued that it was a "*mere directive* to the legislature to provide training [to teachers] ...to enable those *who so desire* to become proficient in both the English and Spanish Languages."<sup>450</sup> Thus, school districts in New Mexico were not compelled to create many new programs, since there were few bilingual teachers to staff them, in addition to the initial expense of a new program.

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<sup>448</sup> *Ibid.*

<sup>449</sup> Arizona Department of Education, "Bilingual Education Services."

<sup>450</sup> M3nchez, 370.

The attorney general in 1971, David L. Norvell, had a completely opposite reading of the section, stating in his opinion that the wording “clearly indicates” that the New Mexico State Legislature was required to provide bilingual training and to ensure there were sufficient bilingual teachers in New Mexico to meet demand. Norvell recommended that the legislature start by determining where the greatest concentrations of Spanish-speaking students were in the state, then determine how many classrooms would be needed to teach them all to estimate how many teachers would be needed for the Legislature to meet its obligations.<sup>451</sup> In the same year, Norvell also included in an opinion as attorney general that “no prohibitions, restraints, or discouraging tactics may be punitively imposed upon students exercising their freedom to speak on school grounds, classrooms, or on school buses, whether the language they choose to speak be English, Spanish, or Hindustani.”<sup>452</sup> This ended overt discrimination over being punished for speaking Spanish in school for students.

In 1971, the New Mexico State Legislature passed the Bilingual Instruction Act (BIA) to help ELL student become proficient in English and to expand bilingual programs in the state. The act included additional funding of \$150 per student enrolled in the program, and explicitly included language that this program “must use two languages as mediums of instruction for any part or all the curriculum of the grade level” as well as including “the history and culture associated with the student's mother tongue” as part of the program.<sup>453</sup>

The following year, New Mexico was the site of a case concerning bilingual

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<sup>451</sup> M<sup>o</sup>ntez, 368–70.

<sup>452</sup> M<sup>o</sup>ntez, 377.

<sup>453</sup> New Mexico, “New Mexico Statute Annotated 77-21-4 (Supp. 1971),” in *Laws of New Mexico* (Santa Fe, NM: Secretary of State, 1912).

education that had repercussions outside of the state. The 1972 case was *Serna v. Portales* and was decided in 1974 by the U.S. District Court for New Mexico. The parents of the main plaintiff, Judy Serna, filed suit against Portales Municipal Schools, arguing that the district had failed to provide bilingual and multicultural programs for their children, and that this violated the equal protection clause of the Fourteenth Amendment and denied the right to equal education in the state. The court granted Serna relief, stating that “a student who does not understand the English language and is not provided with bilingual instruction is therefore effectively precluded from any meaningful education.”<sup>454</sup> The court also created a remedial action plan for Portales Municipal Schools to implement new bilingual and multicultural teaching programs. The 10<sup>th</sup> Circuit Court affirmed this ruling and plan. In addition to ensuring ELLs could not be discriminated against for having a Spanish surname, the plan required that when a “substantial group” of ELL students were present in a school, bilingual education was required.

In the same year, *Keyes v. School District No. 1* declared that de facto segregation affected a substantial part of the school system and therefore was a violation of the Equal Protection clause of the Fourteenth Amendment.<sup>455</sup> While not concerned primarily with bilingual education, the decision also suggested that it was not just a matter of ELL students receiving bilingual instruction in English, but also that that they receive instruction in other subjects in their native language until they had achieved basic English fluency. The *Lau v. Nichols* decision occurred during the same period and was also decided in 1974. That decision stated that failure to provide bilingual instruction to all

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<sup>454</sup> *Serna v. Portales Municipal Schools*, No. 361 F. Supp. 1279 (D.N.M) (U.S. District Court for the District of New Mexico 1972).

<sup>455</sup> *Keyes v. Denver, Colorado No. 1*.

non-English speaking students violated their right to education due to their limited English proficiency.

With these three cases being considered, the New Mexico Legislature considered a new, stronger statute. The BIA was repealed and replaced two years later in 1973 by the Bilingual Multicultural Education Act (BMEA), which was enacted while these three cases were under review. The BMEA expanded on the BIA, offering additional funding to help defray the cost of bilingual education programs, with the state paying the difference between the average educational expenditure for students enrolled in the new bilingual programs and equivalent non-enrolled students. This was important as bilingual programs in general are more expensive to set up and require a larger expenditure of resources to find and train bilingual educators. Because of this expense, it was common for many school districts to emphasize remedial English instruction rather than true bilingual programs. As such, initially they were created for increasing English language proficiency rather than emphasis put on maintaining culture. Nor were these programs present in every district since they remained optional and were dependent on fluctuating state funding levels for their support. Importantly, the new act required that districts interested in creating these programs hire teachers that met new standards for eligibility.<sup>456</sup>

BMEA reaffirmed that New Mexico's students had the right to be taught in their native language. It included three items as its primary purpose:

- 1) Utilizing the cultural and linguistic backgrounds of students in the curriculum;
  - 2) providing students with opportunities to expand their conceptual and linguistic abilities and potentials in a successful and positive manner;
- and

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<sup>456</sup> New Mexico, "Bilingual and Multicultural Education Act," NMSA 1978 § 22-23-1.1 § (2004).

- 3) teaching students to appreciate the value and beauty of different cultures<sup>457</sup>

The act created a needed administrative component within the State Board of Education and the State Department of Education, as well as authorizing the board to set program guidelines and giving the state department the power to administer and enforce the act.<sup>458</sup>

Finally, the act provided for the creation of parent advisory committees that would allow parents to have a say in the creation and review of program goals that would be part of the education of their children. Gonzales notes that despite intentions, school district participation was still voluntary, while the state funding was dependent on the availability of funds, meaning steady funding could not be depended upon for high quality programs.<sup>459</sup> Despite progress, these programs were not able to reach most ELL students in the state. In an article written a few years after the passage of BMEA, Joseph Holmes pointed out that though one million dollars had been appropriated by the state legislature for use in bilingual programs, while only twelve to fifteen percent of state's minority children were able to participate in these programs.<sup>460</sup>

The 1970s demonstrated several truths about the Mexican American struggle for educational equality. One was that while New Mexico was better disposed towards Spanish language and *nuevomexicano* cultural heritage, it did not mean that it was any less harsh with those the state and local authorities saw as militant protestors. New Mexico's treatment of Reies Tijerina and the Alianza Federal de Mercedes, as well as the incident at the University of New Mexico, make it plain that activism to change structural

<sup>457</sup> New Mexico, "New Mexico Statute Annotated 77-23-4 (B) (Supp. 1973)," in *Laws of New Mexico* (Santa Fe, NM: Secretary of State, 1912).

<sup>458</sup> New Mexico Stat. Ann 77-22-3; 77-23-4(A); 77-22-3(B) (Supp. 1973);

<sup>459</sup> Gonzales, "Public School Financing," 39.

<sup>460</sup> Holmes, 332.

realities, even in a supposedly Latino-friendly state, would be met with harsh resistance by those invested in maintaining it. While Arizona overall was worse for Mexican American students, as the MAES report suggests, New Mexico had serious issues with serving its Spanish-speaking students as well.

Another was that both states did make efforts to reform their educational finance systems that their efforts provided some relief to state school districts, though the changes did not perfect the systems by any means. The equalization plans in both states were inspired by victories in several court cases concerning educational funding, which directly created a positive atmosphere for reform. These reforms would continue in the following decade at the state level, even when the federal government began to withdraw from interaction with state education.

Finally, the creation of the BEA in 1968 was a boon to bilingual education in both states. Not only did it provide funding, but it created a new arena for Mexican American activists to campaign for true bilingual and multicultural programs for Spanish-speaking students. While Arizona made progress, New Mexico by far led the way with its Bilingual and Multicultural Education Act, which went one step farther than the federal BEA by including cultural education.

The struggles of this period reflect the difficulties Mexican American activists continued to have with overcoming the structural discrimination that existed in education. While it is undeniable that New Mexico was more inclined towards pro-Mexican American and Spanish language programs than Arizona, the educational activism of Alianza shows that there was still a need to oppose institutional racism in the state. Moreover, New Mexico's authorities were perfectly willing to use state violence against

activists if they deemed them a sufficient threat to the status quo, as Reies Tijerina's harassment and the incident at the University of New Mexico suggests. It is surprising how resistant New Mexico's school districts were to creating bilingual programs considering the passage of the BMEA by the state legislature, but it is plausible that this was due to a lack of funding more than actual antipathy towards bilingual education itself.

Arizona, however, was certainly the more blatant of the two states in resisting desegregating, as has been shown with the Tempe School example, and did little preserve or encourage bilingual programs in the state, much less to reward successful ones, as the Phoenix High School programs example demonstrates. Its lack of funding for bilingual programs and instructors seems born of a desire not to contribute than an inability to do so. Towards the end of the 1970s and the beginning of the 1980s, when the political climate turned against bilingual education, Arizona demonstrated it was perfectly willing to reject these programs in favor of going back to English-only education, despite support from Latino residents. In the 1980s, the mood of the nation seems to have suited Arizona's long term historical dislike of Spanish language and Latino culture as this study shall explore in the following chapters.

## **Chapter 9: A Nation at Risk?**

In the 1980s, Mexican American activists found themselves in a very different environment than had existed during the 1960s and 1970s. Public and federal support for civil rights and federal funding for education and social assistance had waned, and a strong conservatism had taken hold in the federal government starting with President Ronald Reagan's election in 1980. Fueled by resistance to desegregation measures and fears over Latino immigration, the environment was less friendly to those seeking equity for Mexican American education, or minorities in general.

U.S. education itself came under attack through a narrative of failing schools spurred on by a 1983 report known as *A Nation at Risk*, which presented a national problem of education in crisis and which led to attempts to "fix" education through ideas like a national curriculum, standards-based testing and accountability, and the privatization of schools. Finally, the courts, which had been an arena where Mexican American activists frequently met success, shifted their support of civil rights to a conservative view that undermined previous liberal rulings. Overall, the 1980s were a period of erosion of the rights and equity gained by Mexican Americans, where the energy of the civil rights movement flagged and the struggle for equality in education grew much more difficult.

By the end of the 1970s, immigration, especially undocumented immigration, had become a national concern. The passage of the Immigration amendments of 1965 had been intended to keep immigration levels to the United States steady by capping Western Hemisphere immigration levels for the first time; but as an unintended consequence, throughout the 1970s it created a brain drain from developing countries as educated



immigrants flocked to the United States; for example, Asian immigration jumped by 500%.<sup>461</sup> This was due to the amendment's stipulation that the spouses, minor children, and parents of American citizens would be allowed entry without limitation. Given the long history of Mexican migration across the border following seasonal work in the United States, there were many established citizens who also brought their extended families over the border to stay with them. The Amendment's replacement of the national origins system was partly due to the civil rights movement in the 1960s and the public turn against the sort of discrimination that was inherent in the old immigration law.

In 1964, most immigrants had been from Canada, the United Kingdom, and Germany; by 1973, they were arriving primarily from Mexico, the Philippines, Cuba, and Korea.<sup>462</sup> The end of the *bracero* program increased legal immigration from Mexico, but also undocumented immigration grew for the same reasons: the demand for labor in the 1970s in the United States. A combination of constant immigration and a high birthrate caused the population of Latinos in the Southwest to increase by 30% each decade starting in 1960; by 1985 this population had risen to ten and a half million Mexican Americans, mostly concentrated in the Southwest.<sup>463</sup> Arizona's Mexican population grew particularly rapidly.

This flood of new Spanish-speakers alarmed many Americans. The same issues that drove nativism and xenophobia in the past were still visible in the 1980s: fears that immigrants would replace domestic workers and drive down wages, racist prejudice and

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<sup>461</sup> Maldwyn Allen Jones, *American Immigration*, 2nd ed. (Chicago, IL: University of Chicago Press, 1992), 267–68.

<sup>462</sup> *Ibid*, 268.

<sup>463</sup> *Ibid*, 274.

discrimination, and concerns over national security.<sup>464</sup> The recent oil crises in 1973 and 1979, and the beginning of the Iran-Iraq War in 1980 had contributed to fears, as oil prices fluctuated and created economic insecurity. Lower income workers tended to oppose immigration the most, particularly illegal immigration. This was not confined to Anglo Americans; many Mexican American citizens resented undocumented immigrants as well. Many business owners, on the other hand, were supportive of the cheap labor, especially those in the agricultural industry.

The first legislative reaction to this issue was the Immigration Reform and Control Act (IRCA). Early versions of IRCA were passed by the Senate in 1982 and again in 1983, but political considerations kept the House from passing it until 1986. Mexican American activists were one of the interest groups who spoke out over the possibility of discrimination and abuse towards Mexican Americans that IRCA might cause. On one hand, it made it illegal to knowingly recruit undocumented immigrants, and required that employers attest their workers were documented. On the other, it legalized seasonal agricultural immigrants (who had worked in agriculture for no less than 90 days in 1985-1986) and offered legalization for undocumented immigrants who entered the United States before January 1<sup>st</sup>, 1982 and had remained continuously since then. It also forbade INS from searching farms and fields for undocumented immigrants without a warrant but promised to increase the INS budget for border patrols and other enforcement. In 1987, Reagan used his executive authority to also legalize the minor children of parents granted legalization.

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<sup>464</sup> Morris, 15–23.

Despite the hopes of legislators, IRCA did not greatly deter illegal immigration over the border, as many migrants had family and friends already living in the United States that could help them find work regardless of the extra difficulties. Per Figure 9.1, the foreign-born population in Arizona continued to swell, with its 1990 population being over three and a half times the 1970 population, and growing from 4.3% of the population in 1970 to 7.3% by 1990.<sup>465</sup> The continuing flows of immigrants into the United States caused many Americans concern for a variety of reasons, and the fear of undocumented immigrants (or even just legal immigrants) drove the passage of many anti-immigrant laws in the Southwest.

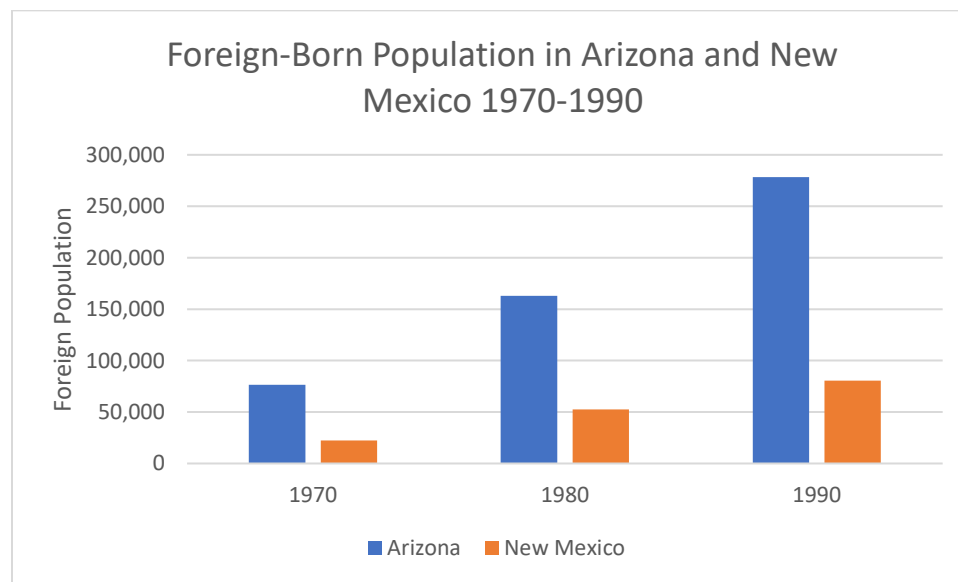


Figure 9.1: Data adapted from U.S. Census Bureau, *Nativity of the Population, for Regions, Divisions, and States: 1850-1990* (Washington D.C. 1999)

In addition to immigration fears, education underwent a “crisis” created by a report known as *A Nation at Risk*, which was published in 1983 during the Reagan administration (1981-1989). The National Commission on Excellence in Education,

<sup>465</sup> “Nativity of the Population, for Regions, Divisions, and States: 1850-1990” (U.S. Bureau of the Census, March 1999).

created by President Reagan's Secretary of Education, Terrell Bell, wrote the report. Its vice chairman, Yvonne Larsen, stated that the commission's purpose was:

...to address the challenge that we faced in trying to upgrade America's education to the rigorous education that we had in the past ... We felt the rigor in our schools had diminished. We were concerned. There was a strong feeling that if we continued how we were going, we wouldn't continue to improve.<sup>466</sup>

The seriousness with which the authors saw the situation was underscored by equally apocalyptic language: "The educational foundations of our society are presently being eroded by a rising tide of mediocrity that threatens our very future as a nation and as a people."<sup>467</sup> More dramatically, the report stated: "If an unfriendly foreign power had attempted to impose on America the mediocre educational performance that exists today, we might well have viewed it as an act of war."<sup>468</sup>

Ronald Reagan showed great antipathy towards the Department of Education during his presidency. His focus was on returning education to local control, prayer in schools, and vouchers to attend the school of a student's choice, which were all key elements of his election campaign platform. Some critics have argued that *Nation at Risk*, while helpful for education in some ways, was written primarily for a political purpose: to tie the economic downturn of the United States in the 1980s to a failing education system, one where the authors of the report set out to confirm their fears about American education's future. The report tied these failures to liberal policies, and enhanced

<sup>466</sup> Anya Kamenetz, "What 'A Nation at Risk' Got Wrong, and Right, About U.S. Schools," NPR, April 29, 2018, <https://www.npr.org/sections/ed/2018/04/29/604986823/what-a-nation-at-risk-got-wrong-and-right-about-u-s-schools>.

<sup>467</sup> National Commission on Excellence in Education, "A Nation at Risk: The Imperative for Educational Reform" (Washington, D.C.: The National Commission on Excellence in Education, 1983), <http://www2.ed.gov/pubs/NatAtRisk/index.html>.

<sup>468</sup> *Ibid.*

Reagan's strong school reform message during his re-election campaign and first term in office. It supported Reagan's oft-stated goal to remove the federal government from education by abolishing the Department of Education.

Thus, *Nation at Risk* was used as a political bludgeon by Reagan to justify his platform. In his remarks upon receiving the final report, Reagan lauded the NCEE for supporting "an end to Federal intrusion" in education, as well as personal goals such as tuition tax credits, vouchers, educational savings accounts, voluntary school prayer, and abolishing the Department of Education. None of these things were actually in the report; in fact, some of Reagan's cabinet had urged him to reject it, as it ran counter to his platform goals of getting the federal government out of education. Instead, he framed the conclusions of the report as supporting his agenda.<sup>469</sup>

In addition, Reagan's administration needed a way to deflect attention from growing economic problems caused by the massive tax cuts Reagan had overseen and encouraged. The report moved blame on a perceived failure of education to explain why the economy was flagging. A narrative of a United States that still had all of its economic strength and vitality but suffered from poor education policies was preferable to a story of a country which had lost a good chunk of its tax income and was not seeing the economic renaissance promised through ideas like supply-side economics (or "voodoo" economics, as its critics named it).

Educational reform also became a way for Reagan's administration to undermine traditional Democratic support for educational politics to lure away voters from Reagan's opponents. During his second presidential campaign, Reagan made over fifty speeches

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<sup>469</sup> James W. Guthrie and Mathew G. Springers, "A Nation at Risk Revisited: Did 'Wrong' Reasoning Result in 'Right' Results? At What Cost?," *Peabody Journal of Education* 79, no. 1 (2004): 10–12.

aimed specifically at school reform. By the end of the 1980s, the Republican Party dominated the conversation on education, and had pushed educational policy heavily towards standards-based reforms as part of their “get tough” stance on a variety of social issues.

The language of the *Nation at Risk* report painted an image of a failing public-school system, noting that the “average achievement of high school students on most standardized tests is now lower than 26 years ago when Sputnik was launched” and that SAT scores were falling in “a virtually unbroken decline from 1963 to 1980. Average verbal scores fell over 50 points and average mathematics scores dropped nearly 40 points.”<sup>470</sup> The report was limited in scope in that it only examined and made suggestions for reforms at the high school level. It ignored the equally real problems in both elementary education and higher education. Despite this, the Reagan administration used the report to portray *all* American education as broken.

Like many Republican conservatives of the time, Reagan saw federal funding and influence on education as a violation of states’ rights and wanted to return education completely to local state and community control. Education nationwide suffered a notable reduction in financial support from the federal government because of this crusade. By 1988, at the end of Reagan’s second term, funding for the Department of Education had decreased as a percentage of the Gross National Product from 0.6% in 1980 to 0.4% in 1988, while the budget for the Department of Education had gone from 2.5% to 1.7%. The federal share of expenditures for elementary and secondary education programs had

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<sup>470</sup> “A Nation at Risk.”

fallen from 8.7% to 6.2%.<sup>471</sup> While Reagan was unable to muster the political support to completely shut down the Department of Education, he was able to noticeably affect what it was able to fund.

The Reagan administration also did not consider the realities of what cutting off federal funding would mean. Not all states had the resources to make up for the loss of federal grants. The funding provided by the federal government was already tightly stretched at the local level, from aiding minority students in need to helping student programs serving the majority. Federal cuts hit programs particularly hard for students classified as disadvantaged or at-risk, both categories where Mexican Americans were heavily represented. While state education aid increased by 35 billion between 1980 and 1988 (an increase of 20%), less than 1% of state funding went to disadvantaged, often minority pupils, such as Latino students.<sup>472</sup>

Aside from attacks on the Department of Education, the Reagan administration also greatly reduced funding for the Office of Civil Rights. By 1988, its budget was 42% lower than it had been in 1980, which is reflective of how strongly this administration acted to weaken or roll back enforcement of desegregation. Tellingly, a defense of the Reagan administration by Dr. Paul D. Kamenar, legal director for the Washington Legal Foundation and a professor at Georgetown University Law Center, argued that the administration was pursuing a Constitutional and “color-blind” view of civil rights – in effect, not acknowledging racial discrimination existed rather than addressing it as

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<sup>471</sup> Deborah A. Verstegen, “Education Fiscal Policy in the Reagan Administration,” *Educational Evaluation and Policy Analysis* 12, no. 4 (Winter 1990): 366.

<sup>472</sup> *Ibid*, 366.

previous administrations had done.<sup>473</sup> In short, Reagan's administration chose to ignore civil rights as much as possible because he disagreed with many desegregation policies that had been enforced on individual states.

By the time that H.W. Bush succeeded Reagan as president in 1989, there were those who had begun to question the validity of the *Nation at Risk* report and the widespread changes it had engendered. The document fueling these objections was the Sandia Report, commissioned by the Bush administration in 1989. Rather than created by the Department of Education, the push towards examining education performance came from Admiral James Watkins, the Secretary of Energy. The job of evaluating education was turned over to Sandia Laboratories in New Mexico, which was already conducting scientific research on higher education for the U.S. government. K-12 education was a new frontier for Sandia.

The New Initiatives Department of the Sandia Strategic Studies Center was given the task of analyzing local, state, and national educational systems. When the Center completed its report in 1989, rather than releasing it to the public the Department of Education took the unprecedented step of requiring an additional review by the National Science Foundation and the National Center for Education Statistics, which effectively prevented the Sandia Report's release for three years, as these reviews were not completed until late 1992.<sup>474</sup> Critics have argued that the government was attempting to bury information that contradicted the *Nation at Risk* report. When Sandia report was finally released in 1993, it was published as an article in the *Journal of Education*

<sup>473</sup> William L. Robinson and Paul D. Kamenar, "At Issue: What Is the Justice Department Doing in Civil Rights?," *ABA Journal* 71(10) (1985): 38–40.

<sup>474</sup> Daniel Tanner, "A Nation 'Truly' at Risk," *The Phi Delta Kappan* Vol. 75, No. 4 (December 1993): 299.



*Research*, after which it was disseminated to a variety of educational researchers but had low circulation.

The Sandia Report was featured, however, in a front-page article by the *Albuquerque Journal* in 1991. While the report itself was not released, its conclusions were made public, especially the assertion that grades and dropout rates had not actually declined but had in fact remained steady or had even improved. Tellingly, six days after the article was published, Admiral Watkins responded in a letter to the editor of the *Journal*, in which he declared that the Sandia study was “dead wrong,” stating that those behind it recognized “what the Sandia study does not – being ‘OK’ is not good enough.”<sup>475</sup>

The Sandia Report itself based its main challenge to the conclusions of *A Nation at Risk* on a statistical phenomenon called Simpson’s Paradox. The analysts determined that despite the assertion by *Nation at Risk* that there had been a steady decline in test scores over the previous twenty years, their own evidence suggested that while overall scores had dropped, scores within subgroups had remained roughly the same. Moreover, in the preface to a briefing to several senators, the Sandia researchers were careful to point out that “problems discovered in complex systems do not necessarily lend themselves to simple solutions,” to drive home that easy answers had not been forthcoming for American education.<sup>476</sup>

The Sandia Report posited that overall scores had declined not due to declines in educational achievement or flaws in educational policies, but because of the entry of new

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<sup>475</sup> *Ibid*, 292.

<sup>476</sup> C.C. Carson, Robert M. Huelskamp, and T.D Woodall, “Perspectives on Education in America (Third Draft)” (Sandia National Laboratories, Albuquerque, NM, May 1991).

groups of students taking the tests. Previously, in the 1960s, only top students, almost exclusively male Anglo and middle-class, had taken the SAT to enter college. Students of lower socioeconomic backgrounds had not had the same opportunities to go to college and likely had not considered taking the test as a result.

Thanks to expanding opportunity and rising expectations brought about by the civil rights movement, however, the pool of test takers had grown to include lower-ranked students as well as minority students – people who previously had not had the opportunity to go to college, or even attend school at all in some cases. More students now took the SATs, and the average scores of the total group dropped as a result. *Nation at Risk* had looked at scores of *all* students who took the test, rather than as separate groups with differing backgrounds, such as looking at socioeconomic and ethnic groups like Mexican Americans alone. The Sandia Report, on the other hand, had measured within subcategories, and found that there was generally an increase in scores over the same period within those subgroups (though the academic performance of Mexican Americans remained dismal). Some educators took the Sandia Report as a repudiation of the diagnosis offered by the *Nation at Risk* and as a rejection of its proposed remedies.<sup>477</sup>

The Sandia Report, however, was not without its own methodological limitations. One critic, Prof. Lawrence Stedman, pointed out a year after it had been released that it lacked references and citations to support its conclusions and ignored some popular measures of standardized testing, such as the Iowa Test of Basic Skills and other ways of measuring functional literacy. Stedman concluded: “The report’s arguments are provocative and frustrating; major points are often made without supporting evidence or

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<sup>477</sup> Tanner, 293.

data...even when the argument has the “ring of truth” about it, one wishes for more.”<sup>478</sup>

Stedman also questioned the report’s assertion that changes in SAT scores were due to a larger group of students from the bottom half of their classes taking the test, given that Sandia analysts had combined verbal and mathematics scores. This had obscured a large decline in verbal scores since the 1960s. This was made worse by the SAT scores having only been collected since 1976, which obscured the decline from the 1960s to the 1970s.<sup>479</sup>

However, Stedman did agree that at least part of the decline was due to the increasing diversity of students taking the test and incorporating minorities, women, and students from lower economic backgrounds.<sup>480</sup> This of course included Spanish-speaking students in the Southwest. The same year the Sandia Report was released, a study by the Consortium on Financing Higher Education (consisting of 32 private colleges) provided evidence that the SAT was biased against minority students, who did not have the same privileged backgrounds as Anglo American students and often lacked the same frames of reference for successfully answering questions, particularly in reading comprehension.<sup>481</sup> This meant that Mexican American students were at a disadvantage in taking the SATs in the first place.

Other education professors were much harsher in their criticisms of *Nation at Risk*. Dr. James Guthrie, for example, who published a 20-year retrospective of *A Nation at Risk* in 2004, stated: “The idea that American schools were worse just wasn’t true.”

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<sup>478</sup> Lawrence C. Stedman, “The Sandia Report and U.S. Achievement: An Assessment,” *Journal of Educational Research* Vol. 87, No. 3 (February 1994): 133–46.

<sup>479</sup> *Ibid*, 136.

<sup>480</sup> *Ibid*, 136.

<sup>481</sup> Melissa Lee, “Experts: SAT Biased Against Minorities,” *Harvard Crimson*, May 19, 1993, <http://www.thecrimson.com/article/1993/5/19/experts-sat-biased-against-minorities-ptest/>.

Guthrie even accused the authors of being “hellbent on proving that schools were bad” and that they had “cooked the books to get what they wanted.”<sup>482</sup> Prolific educational historian Diane Ravitch, who was Assistant Secretary of Educational Research at the Department of Education when the Sandia Report was released, wrote an op-ed at the time that criticized the Sandia Report. Ravitch has since recanted, and now disagrees with *A Nation at Risk*'s assessment of American education, noting that at the time she had felt that it would “shake things up,” but in retrospect she felt that it “sounded an alarm that was misguided.”<sup>483</sup>

The Sandia Report also indicated that Mexican Americans had experienced no real reduction in dropout rate for the time studied. In fact, the report suggested half of all dropouts were first-generation immigrants who were dropouts before they came to the United State. However, it offered no evidence to support this assertion, though the report did confirm that Mexican American dropout rates were higher than that of Anglo American or African American students, especially for inner city schools.<sup>484</sup> It is at least plausible that the constant arrival of under-educated Mexican migrants into a school system raised the total dropout rate, or at least concealed modest gains that Mexican Americans might otherwise show academically.

While the Sandia Report was a rejection of the need for a complete overhaul of the existing American school system, it did not prove that the major conclusions of *Nation at Risk* report were completely incorrect. Moreover, neither report addressed another major issue that had been growing since the 1950s: the lack of growth in capacity

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<sup>482</sup> Kamenetz, “What ‘A Nation at Risk’ Got Wrong, and Right, About U.S. Schools.”

<sup>483</sup> *Ibid.*

<sup>484</sup> Robert M. Huelskamp, “Perspectives on Education in America,” *The Phi Delta Kappan* Vol. 74, No. 9 (May 1993): 263.

to meet the growing number of students in the public-school system nationwide. This stemmed from a lack of funding required to keep up with the needs of schools facing larger and larger class sizes every year.

In this, *Nation at Risk* did some good, in that it turned from measuring school success as a function of the resources provided, to measuring student academic outcomes, such as grades, graduation levels, and the rate of dropouts.<sup>485</sup> But *Nation at Risk's* long-term results were negative, as it began a false narrative of a failing American school system that was not borne out by the facts. It fueled numerous future attempts to replace the public-school system as it existed, in some cases completely, and for politicians to justify unnecessary and even harmful reforms over the next thirty years. It empowered the idea of the privatization of schools in particular, including ideas such as vouchers and charter schools.

Vouchers have existed in the United States since the 1800s in one form or another but were popularized in 1955 by Nobel Prize winner and American economist Milton Friedman in an article entitled “The Role of Government in Education.” In the paper, Friedman established why the government should have a compelling interest for supporting a public-school system, he posed the question: does the government need to run the school, or simply pay for the school? His proposal was for a series of privately run schools where the government paid for them through public funds, with vouchers allowing students to go to whatever school they wished.<sup>486</sup> This was ironic considering it was the beginning of the desegregation period following *Brown* in 1954, and vouchers

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<sup>485</sup> Guthrie and Springers, 10-12.

<sup>486</sup> Dan Laitsch, “After 60 Years, Do the Arguments for K-12 Vouchers Still Hold?,” *Global Education Review* v3, no. n2 (2016): 24–25.

have been known to increase economic, social, and racial stratification in education.<sup>487</sup> It was primarily the wealthier Anglo American families that could afford to send their children to a private school, meaning that some private schools in the 1960s became “segregation academies,” untouched by the wave of desegregation that took place in the public schools with entirely Anglo White populations.<sup>488</sup> The idea of vouchers was first extended by the Reagan administration in the early 1980s as a tuition tax credit option, but vouchers did not find the same popularity as charter schools.

As envisioned by the man considered the founding father of the charter school movement, Albert Shanker, charter schools were intended to reach out to students who were particularly gifted, or who were struggling in standard public schools, much like magnet schools. Charter schools provided a means for these students to receive instruction that was more specialized, and to allow for experimental pedagogies that, if they proved effective, could then be used in the public-school system to better serve those groups in the public school student population<sup>489</sup>. Critics of education in the wake of *Nation at Risk* saw public schools as overstaffed and under-disciplined, and as adopting poor curriculum administered by incompetent teachers. Academic supporters of charters schools believed offering parents and students a choice that was matched to their student’s needs would lead to greater investment in education and better quality, if more specialized, schools. Many adhered to the market hypothesis in support of charter schools, which argued that if school choice was comprehensive enough, competitive

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<sup>487</sup> Laitsch, 28–29.

<sup>488</sup> “Segregated Academies,” *Time*, December 15, 1975.

<sup>489</sup> Diane Ravitch, *Reign of Error: The Hoax of the Privatization Movement and the Danger to America’s Public Schools* (New York, NY: Alfred A. Knopf, 2013), 57–79.

pressure would cause all schools to improve, with poor schools going out of business and good schools continuing to attract more students.<sup>490</sup> This matched well with those who supported the privatization of schools as a means of repairing the perceived deficits of the public-school system, real or imagined.

Charter schools were envisioned as working alongside the public-school system but quickly became a means of replacing public schools entirely following *Nation at Risk*. Charter schools not only took away funds from the public-school system but had every reason to compete with public schools for students and funding. The private interests behind charter schools were invested in making money and getting that money from public funds; thus, the focus of many charters was to enhance the stock of their owners rather than good education. When public school districts were already suffering, the loss of funds to charters meant that the school districts could not improve and were likely to grow worse, which only fed the outcry for charter schools to replace “failing” public schools. Charter schools also became a means of bypassing the requirements of state curriculum by ideological groups who wanted control over what their children were taught, such as religious ideology.<sup>491</sup>

Finally, charter schools had mixed success in practice. Some schools were very successful and showed notable improvements in student achievement. However, many were no better than the local public schools, and some were much worse, even shutting down without warning in the middle of the school year. Even schools that boasted successes were sometimes revealed to be padding their numbers by kicking out students

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<sup>490</sup> Robert Maranto et al., “Real World School Choice: Arizona Charter Schools,” in *School Choice in the Real World: Lessons from Arizona Charter Schools* (Boulder, CO: Westview Press, 1999), 5–6.

<sup>491</sup> Ravitch, *Reign of Error*, 166–79.

whose grades were too low before yearly testing to improve their school scores. Other schools had sought out students from wealthier households who had more educational support, or selected students who already were high performers to improve their overall school test scores. Public schools were left with students who either did not have the preparation or lacked the money to attend charter schools; naturally, these public schools also suffered in terms of student test scores and school rating by losing their best students to a charter school. Charter schools and vouchers, despite their flaws, became more prevalent through the 1990s and into the new millennium, as a “fix” for the perceived inadequacies of the public-school system championed by many politicians.<sup>492</sup>

They certainly had possibilities for Mexican American education – the use of charter schools could help with bilingual education and English Language Learners (ELL) students and would be helpful to Mexican American students hoping to retain their Spanish language and culture. Thanks to funding from the Bilingual Education Act, bilingual education programs across the nation were thriving, and some charter schools did support them.

But bilingual education was still being debated over whether it should be an additive program or a transitional program to English. President Ronald Reagan made it a point of his administration to change federal policy concerning the teaching of bilingual education, believing it was the job of public education to teach only English, not heritage language or cultures. Educational amendments in 1984 opened 10% of available federal funding to “alternative” English programs that were not required to be bilingual or even to involve a student’s native language. In an interview in 1987, Reagan gave his opinion

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<sup>492</sup> *Ibid*, 174–79.



of bilingual education, clearly putting himself in the camp of bilingual education as a transitional and subtractive path to English:

...we have come to the point where we're talking about teaching both languages and teaching students in their native language, instead of what the move should be if they're going to be in America. They have to learn our language in order to get along. And I will do anything that I can to help get rid of any Federal interference that is trying to force local school districts to continue teaching students in their native tongue. Their job is to teach them English.<sup>493</sup>

More educational amendments in 1988 increased funding to these alternative educational programs to use up to 25% of available bilingual funding, as well as limiting any student to being in a bilingual class for three years, with two additional years possible for special cases.<sup>494</sup> The reasoning given for allowing non-bilingual programs was that there were often not enough bilingual teachers who spoke all the native languages required in many school districts, and therefore districts should have some flexibility to come up with other ideas for teaching ELLs. Reagan's successor, H.W. Bush, did not oversee any further alternations during his administration, but the existing amendments already had weakened bilingual education by allowing questionable programs to replace them in teaching ELL students.

Aside from federal legislation changes dealing with bilingual education, the rush of immigration taking place to the United States brought new resistance to bilingualism in the form of the English-only movement. This philosophy was not new; requiring English fluency had been a common theme of American assimilationists since the 19<sup>th</sup>

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<sup>493</sup> Ronald Reagan, "Remarks to the National Governors' Association - Department of Education Conference in Columbia, Missouri," The American Presidency Project, March 26, 1987, <http://www.presidency.ucsb.edu/ws/index.php?pid=34025>.

<sup>494</sup> *Ibid.*

century. English immersion classes had been forced on Mexican American students through the 1940s and 1950s, to replace their heritage Spanish language. Even some Mexican American leaders and parents had seen the value of English fluency and the opportunities that it allowed their children and had allowed their children to lose their native tongue in favor of English. Changes in educational equity in the late 1950s and 1960s however, had demonstrated the flaws in the forced English immersion of Spanish-speaking students. English-only became the new face of Americanization and assimilationist arguments about Spanish and Spanish-speakers.

The idea of other languages as foreign and un-American had existed since the beginning of the 20<sup>th</sup> century when Theodore Roosevelt had declared: “We have room for but one language in this country, and that is the English language, for we intend to see that the crucible turns our people out as Americans, of American nationality, and not as dwellers in a polyglot boarding house.”<sup>495</sup> This idea expressed one of the true fears behind this movement: the idea that somehow if other languages and cultures were put on equal terms with English and American culture, it would result in a balkanization of America into ethnic enclaves.

In the early 1980s, opponents of bilingual education and multiculturalism rallied around the symbol of English as a means of controlling these alien arrivals. The first state to declare English its official language was Virginia in 1981. Shortly thereafter in 1983, an attempt was made to make English the official national language as well. A U.S. Senate bill was advanced by Senator S.I. Hayakawa (R-CA), himself a Canadian immigrant of Japanese descent. Hayakawa expressed concern over bilingualism, and saw

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<sup>495</sup> Theodore Roosevelt, *Works*, Memorial edition, vol. XXIV (New York: Charles Scribner’s 11 Sons, 1926), 554.

foreign languages as obstacles to communication, rather than as a benefit. Hayakawa stated: “English has long been the main unifying force of the American people. But now prolonged bilingual education in public schools and multilingual ballots threaten to divide us along language lines.”<sup>496</sup>

While the Senate measure failed, after Hayakawa had retired from the U.S. Senate, he formed a new political organization called U.S. English, now the oldest English Only lobby in the United States. His partner in this was John Tanton, who was the founder of the Federation for American Immigration Reform (FAIR). FAIR sought to stop all immigration save for refugees, or the spouses and minor children of U.S. Citizens, as it felt that the rapid pace of immigration was putting too much stress on national institutions due to the nation’s inability to easily absorb so many immigrants from other cultures. The initial members of U.S. English included notables such as famed TV broadcaster Walter Cronkite. The organization grew rapidly, to where in 1990 it had over 400,000 members and had raised and spent \$29 million dollars over the course of the decade.<sup>497</sup>

Another prominent Mexican American figure that joined was author and radio talk show host Linda Chávez. Previously Chávez had served as Staff Director of the U.S. Commission on Civil Rights from 1983-1985 and had been appointed by Reagan to the position of White House Director of Public Liaison in 1985. She had quit her position to run for the Senate in Maryland but had been defeated. She was hired as U.S. English’s executive director in 1986, but she quickly resigned in the same year after Tanton publicly made jokes and comments she and others deemed anti-Mexican American and

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<sup>496</sup> Crawford, *Hold Your Tongue: Bilingualism and the Politics of English Only*, 4.

<sup>497</sup> *Ibid*, 4.

anti-Catholic in nature. Many other members followed her, including Cronkite. Chávez, however, would remain a foe of bilingualism and an advocate of American assimilation for Mexican Americans in the 1990s and beyond.<sup>498</sup> Tanton resigned in 1986 over the scandal but would later found English Language Advocates in 1994 with other former board members of U.S. English in order to defend Arizona's first English Only proposition, passed in 1988. This group would become known as ProEnglish, another organization dedicated to making English the official language of the United States.<sup>499</sup>

Throughout the 1980s, numerous states passed English-only laws, often with support from U.S. English. During the 1980s many other states joined Virginia, including Arkansas, California, Colorado, Florida, Indiana, Kentucky, Mississippi, North Carolina, South Carolina, North Dakota, and Tennessee. While U.S. English and other pro-English organizations failed to convince Congress to make English the official language of the U.S., they re-energized the debate over bilingualism and bilingual education.<sup>500</sup>

The example of U.S. English was responsible for a wave of attempts at the local level to impose English on residents. A notable attempt was in Monterey Park in California, where one of the pro-English leaders of the attempt declared that "our city has bent over backwards long enough in an effort to accommodate our new immigrants...they must realize that they are making a negative impact on our city. They must adapt to our ways. They must use our language and respect our culture...this is America...Don't isolate us by building a separate nation with your language and

<sup>498</sup> Mariela Nuñez-Janes, "Bilingual Education and Identity Debates in New Mexico: Constructing and Contesting Nationalism and Ethnicity," *Journal of the Southwest* Vol. 44, no. 1 (Spring 2002): 61–78.

<sup>499</sup> Christina Ziegler-McPherson, "English Only Groups," in *Anti-Immigration in the United States: A Historical Encyclopedia*, ed. Kathleen R. Arnold, eBook, vol. 1 (Greenwood, 2012), 182.

<sup>500</sup> Crawford, *Hold Your Tongue*, 16–17.

culture.”<sup>501</sup>

In response to English Only, pro-bilingual activists expressed the opposing idea of English Plus. This movement acknowledges that English is the primary language of the United States, undercutting fears that it will somehow be replaced. But English Plus also promotes the benefits of being fluent in multiple languages. Or as author James Crawford, a proponent of bilingualism, describes the philosophy of English Plus: “Rather than language-as-problem, it stresses language-as-resource.”<sup>502</sup> English Plus follows the tradition of seeing other languages as knowledge to be valued, as well as the benefits of bilingual education giving fluency in multiple languages. In response to the threat of English Only, several state legislatures passed support for English Plus in the late 1980s, including New Mexico, Oregon, and Washington.

As discussed in the previous chapter, the court was becoming less of an ally to Mexican American activists as an arena for struggles over equality in the 1980s. Many court decisions in this period were direct responses to the desegregation decisions on busing as a means of desegregation, segregation by curriculum and bilingual education, affirmative action, and unequal educational funding: all were challenged. Busing and affirmative action were primary targets.

Busing was intended to help districts redistribute their ethnic makeup of students between schools as a remedy. But it also became one of the ways to continue *de facto* segregation. Some districts encouraged *de facto* segregation through busing exceptions that allowed Anglo students to be separated from minority students and concentrated in certain schools. It was not until the *Brown v. Califano* case in 1980, a decision by the

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<sup>501</sup> *Ibid*, 8.

<sup>502</sup> *Ibid*, 251.

Washington D.C. Court of Appeals, that the use of busing was reversed, when the case reexamined the authority of Department of Health, Education and Welfare (HEW, or later the Department of Health and Human Services or HHS after the Department of Education was split off in 1979) in terms of using busing to promote desegregation.<sup>503</sup> Specifically, it challenged Congressional floor amendments that had been created to create busing exceptions that were being used to avoid desegregation.

The judgment in the *Califano* case pointed out that these amendments seemed to have no clear purpose other than that “no student would be transported beyond the school nearest his home because of a HEW requirement.”<sup>504</sup> The judge further concluded that while the amendments might prevent HEW from directly ordering busing as a means of desegregation, it did not prevent them from cutting off funding for local schools to induce the use of busing, nor did it prevent federal courts from ordering busing as a solution to desegregation. Another decision in *Green v. County School Board of New Kent* (1968) judged that desegregation based on racial balancing could be used if other methods of desegregation had been proven to be ineffective.

The early 1980s also included two anti-busing decisions, *Crawford v. Board of Education the City of Los Angeles* (1982) at the U.S. Supreme Court, and *Washington v. Seattle School District No. 1* (1982) in the United States Court of Appeals for the Ninth Circuit. While these courses did not overturn the precedent for busing set by *Brown v. Califano* in 1980, they did make it possible for local communities to pass anti-busing

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<sup>503</sup> “*Brown v. Califano*, 627 F. 2d 1221 - Court of Appeals, Dist. of Columbia Circuit,” Google Scholar, 1980, [http://scholar.google.com/scholar\\_case?case=15822856786435102135&hl=en&as\\_sdt=2&as\\_vis=1&oi=scholarr](http://scholar.google.com/scholar_case?case=15822856786435102135&hl=en&as_sdt=2&as_vis=1&oi=scholarr).

<sup>504</sup> *Ibid.*

referendums to prevent busing to be used for desegregation unless it could be positively proven that intentional segregation of school districts was taking place. Busing was still a viable option, however, when it could be proven that magnet schools were failing to provide real desegregation. The problem remained that proving failed desegregation often required lengthy litigation, even if HEW/HHS could cut off funding to a guilty school district to encourage a response. Without busing as a mean of enforcing desegregation, *de facto* segregation rose noticeably through the decade. Magnet schools were offered as an alternative, but had the same issues as twenty years earlier, in that wealthy parents could afford to use vouchers, but poorer families had to make do with the local public school.

The issue of internal segregation through sorting students according to curriculum became an issue during a court case in the U.S. District Court of Arizona, *Castro et al. v. Phoenix Union High School District #210 et al.* (1982). In this case, Mexican American and Black parents sued to keep open their existing schools rather than be incorporated into in primarily Anglo school, as they believed that their students would be treated as second class students within the combined school system. Educational psychology professor Richard Valencia gathered data on enrollment numbers as part of his testimony on behalf of the plaintiff. Indirectly, Valencia demonstrated via the preregistration numbers for the proposed combination schools that "...there was sufficient predictive evidence that Central High School would undergo considerable curricular stratification between White and Chicano/Black students. Such a separation...would likely result in the raising of barriers to equal education opportunity for minority students."<sup>505</sup> The initial

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<sup>505</sup> Richard Valencia, *Chicano School Failure and Success: Past, Present, and Future.*, 2nd ed. (London; New York: Routledge/Falmer, 2002), 95. based on data from Richard Valencia, *Understanding School Closures: Discriminatory Impact on Chicano and Black Students* Policy Monograph Series No. 1 (Stanford, CA: Stanford Center for Chicano Research, Stanford University, 1984)

case went against the school district, though a judge would later reverse the decision in 2005 based on supposed progress by the district, as discussed in the next chapter of this study.

A more successful case for educational equity was *Plyler v. Doe* in 1982, which benefited the children of undocumented immigrants.<sup>506</sup> This case was brought to the U.S. Supreme Court by a group of students from East Texas suing James Plyer, the Superintendent of Tyler Independent School District in Texas, over a revision to its education laws which authorized school districts to deny enrollment to foreign-born children who were not “legally admitted” to the United States. A second revision two years later required foreign-born students pay tuition if they were undocumented; children would be considered legally admitted if they had documentation showing they were legally present in the U.S., or that immigration authorities confirmed they were in the process of receiving that documentation.

In its decision, the Supreme Court ruled for the plaintiffs based on the Fourteenth Amendment’s equal protection clause. The decision noted that if Texas provided education for citizens and legally present foreigners, it would have to show “substantial state interest” to deny it to undocumented students. Texas had no rational basis to deny children a public education based on immigration status, given the harm done to both the child and society by leaving them uneducated. Specifically, the court stated: “By denying these children a basic education, we deny them the ability to live within the structure of our civic institutions and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation.”<sup>507</sup> The decision added that such

<sup>506</sup> *Plyler v. Doe* 457 U.S. 202, No. 80–1538 (United States Supreme Court 1982).

<sup>507</sup> *Ibid*, p.223



actions would lead “the creation and perpetuation of a subclass of illiterates within our boundaries, surely adding to the problems and costs of unemployment, welfare, and crime” as well as commenting that holding children responsible for their parents’ crimes “does not comport with fundamental conceptions of justice.”<sup>508</sup>

The dissenting opinion agreed that it was “senseless for an enlightened society to deprive any children – including [undocumented immigrants] – of an elementary education...[as] the long-range costs of excluding any children from the public schools may well outweigh the costs of educating them.”<sup>509</sup> However, as in the previous decision in the *Rodríguez* case in 1973, the dissenting justices disagreed with basing the decision on the Fourteenth Amendment, arguing that the Constitution “does not provide a cure for every social ill, nor does it vest judges with a mandate to try to remedy every social problem.”<sup>510</sup> Instead, the dissenting members felt this should have fallen to Congress to fix, rather than the judicial branch deciding on it. This lack of interest in allowing the use of the Fourteenth Amendment to remedy inequities, as it had been used in the 1960s and 1970s, was characteristic of the Burger court in this period.

In short, the national mood and federal government in the 1980s created a harder environment in which activists in Arizona and New Mexico could argue for greater equality than previous decades. Fears over immigration, a president hostile to the federal government involved in education, the rise of English-only and court cases that challenged desegregation decisions – all of these combined to create strong opposition for Mexican Americans in the fight for educational equity.

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<sup>508</sup> *Ibid*, p.220.

<sup>509</sup> *Ibid*, p.252

<sup>510</sup> *Ibid*, p.253.

## **Chapter 10: Two Southwestern States at Risk?**

The rising tide of conservatism in the 1980s created a hard environment for Mexican Americans to work for equity in education. It was a time of widespread reforms for both Arizona and New Mexico. Leaders in both states were inspired by the *Nation at Risk* report to make notable changes in their educational policies. Both states developed an increased focus on standards and assessment for students, teachers, and school districts, as well as how teacher and curriculum quality related to academic performance. As such, there was a move towards new assessment strategies. Arizona was most notable in this, with the creation of its statewide ASAP test, a noticeable departure from its previous decentralized testing practices.<sup>511</sup>

While these reforms occurred, the steadily increasing flow of Spanish-speaking immigrants from the south continued to stress both school systems with more students who needed to learn English. The large numbers of undocumented workers coming to the United States to work often brought their families; thus, a significant portion of students were now also undocumented. Across the Southwest, the plight of Central American refugees fleeing violence in their homelands was able to blunt growing anti-immigrant sentiment in the population for a time, and even made it a cause for politicians. But in the end, it did not significantly change growing nativist attitudes in either state by the end of the decade. Both states had to define themselves, based on how they faced the challenges of teaching those students, within the English Only/English Plus debate over bilingual programs. This resulted in a decade of structural changes and improved assessment and

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<sup>511</sup> Lois Brown Easton, "The Arizona State Assessment Program (ASAP) as Education Policy" (Ph.D. Dissertation, University of Arizona, 1991), <http://hdl.handle.net/10150/185711>.

curriculum in both states, but also further defined the foundation on which Arizona's anti-immigrant movement and New Mexico's bilingual movement for the following decades.

Before the release of the *Nation at Risk* report, educational reform was still ongoing in Arizona and New Mexico. Starting in 1975 in Arizona, Carolyn Warner was elected for the first of three consecutive four-year terms as Superintendent of Public Instruction, and consequently would shape Arizona's policies until 1987.<sup>512</sup> Warner listed four major goals for her administration after her appointment:

- 1) Improving accountability for taxpayer dollars;
- 2) Improving student achievement;
- 3) Improving teacher morale and performance; and
- 4) Improving public confidence.<sup>513</sup>

One of Warner's first actions was to cut the operating budget of the Department of Education by 18%, with a commitment to hold the budget to a zero increase; in fact, Arizona kept the budget to only a 1.5% increase by 1986.<sup>514</sup> This placed Arizona at 26<sup>th</sup> nationally in the amount of money spent per pupil. Despite this, and ignoring the effects of inflation, Warner argued that the state was able to deliver a superior educational experience while spending less on its students, though Arizona was still able to fund K-12 funds per pupil roughly at the median state level nationally, primarily from local district contributions.<sup>515</sup>

In 1980, Arizona's legislature began looking at ways to equalize funding between school districts, while still limiting local tax liabilities for their citizens. Up to this point, financial shortfalls had been aggravated by inequalities in local funding for school

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<sup>512</sup> Carolyn Warner, "Blueprint of Success: Educational Reform in Arizona 1975-1986" (Arizona Department of Education, December 1986).

<sup>513</sup> *Ibid.*

<sup>514</sup> *Ibid.*

<sup>515</sup> *Ibid.*

districts, as Arizona's emphasis on local control meant that there was no method to ensure that municipalities equally funded different schools.<sup>516</sup> To counter this, the Arizona Educational Foundation was founded in 1983 by Warner as a non-profit and tax exempt corporation intended to make up for local shortfalls in funding with private donations to the public schools, as well as a means of recognizing notable educators in the state.<sup>517</sup> Despite these changes, Arizona was frequently tied up in litigation over financial equity between districts involving inflation, capital improvements, and maintenance costs. This would become an especially important issue during the national economic downturn in 1983 when the effects of the national Reagan tax cuts arrived.

In New Mexico, before *Nation at Risk's* release, the New Mexico State Board of Education had begun to test the quality of its teachers through the Teacher Preparation and Licensure Act (TPLA) passed in 1981. The TPLA required an evaluation to ensure teachers had the skills sets necessary to be good educators, while requiring that some means of testing student critical thinking and problem solving be included in all courses. This would lay a foundation for future assessments designed to test on an established curriculum.

Like Arizona, New Mexico continued to struggle with its financing system, after what sociologist Phillip Gonzales calls a "conservative tax revolt" occurred, both nationally and in New Mexico itself.<sup>518</sup> The New Mexico State Legislature passed a tax reform package in 1981 that all but eliminated local real estate taxes as a means of funding

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<sup>516</sup> Bruce D. Baker, "America's Most Financially Disadvantaged School Districts and How They Got That Way: How State and Local Governance Causes School Funding Disparities" (Center for American Progress, July 2014).

<sup>517</sup> Warner, "Blueprint of Success: Educational Reform in Arizona 1975-1986."

<sup>518</sup> Gonzales, "Public School Financing," 44-45.

school districts, which was a very popular tax cut for the populace. Without this funding, the state no longer needed to worry about equalizing local funds across the state, because the state was now providing almost all the operating funds to districts directly.<sup>519</sup>

Fortunately, New Mexico's state revenues at the time were up to the task of maintaining its education system for all districts for several years.

But the greatest educational change for both states in the 1980s was the growing focus on student assessment and curriculum created by the Nation at Risk report's recommendations. New Mexico had already considered new educational reforms along these lines, based on research by Dr. Ron Edmonds. Edmonds was a nationally-known educator, who had focused on poor urban schools in his studies, and was best known for his book *Effective Schools for the Urban Poor* (1979) in which he had outlined the characteristics of effective schools, even in those situations where they were poorly funded:

- 1) Have strong instructional leadership;
- 2) Possess a climate of high expectations for success;
- 3) Create a safe and orderly environment;
- 4) Have a clear and focused mission;
- 5) Have frequent monitoring of student progress; and
- 6) Possess a strong home-school relations program.<sup>520</sup>

In 1983, Edmonds released a report that countered the widely held view that home life and parents were primarily responsible for the success of students in New Mexico.

Edmond's requirements were incorporated directly into the New Mexico State Education Standards by the State Board of Education, which in turn was influenced by national organizations such as the National Council on Mathematics to continue developing

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<sup>519</sup> *Ibid*, 43–44.

<sup>520</sup> Mondragón and Stapleton, 173.

specific criteria for testing and evaluating student performance.<sup>521</sup>

The same year *Nation at Risk* was released, New Mexico passed two educational reform laws. The first was the Student Competencies Act, which required “school districts to include student competencies of critical thinking and problem solving” to all classes by the 1986-1987 school year in order to ensure students would possess these skills before graduation.<sup>522</sup> The second law concerned graduation requirements, doubling the required coursework for math and science and adding computer literacy courses based on *Nation at Risk* recommendations. This unfortunately meant sacrificing humanities courses as a result, however.<sup>523</sup> These initial changes were mirrored in many other states that followed *Nation at Risk* suggestions, as most states chose to accept the recommendations of the report without significant modification.

However, New Mexico could only maintain its educational system despite the 1981 tax cuts until 1983, when what Gonzales terms a “steep and prolonged downturn in state revenues” began. This severely stressed the 1974 equalization formula under which New Mexico was operating, as it no longer had local property taxes to help handle educational funding needs.<sup>524</sup> David Colton, in his analysis of New Mexico’s educational finance system, noted that neither a return to the original state-mandated taxes nor a change to local option property taxation had votes in the legislature to pass. Because of this deadlock, no new revenue sources were found to make up for the growing shortfalls in New Mexico’s educational funding system.

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<sup>521</sup> *Ibid*, 177.

<sup>522</sup> *Ibid*, 171.

<sup>523</sup> *Ibid*.

<sup>524</sup> Gonzales, “Public School Financing,” 45.

Without adequate financial resources, New Mexico dropped in national ranking for spending in per pupil from 25<sup>th</sup>, just above Arizona, to 36<sup>th</sup> between 1983 and 1988. Pupil-teacher ratios dropped from 31<sup>st</sup> to 41<sup>st</sup> place, and teacher salaries plummeted from 21<sup>st</sup> place to 33<sup>rd</sup> place.<sup>525</sup> Colton further argues that this enforced austerity changed the state debate over equity and adequacy in education, to where adequacy became the main focus over equity; results mattered more than equality.<sup>526</sup> This, and the refusal to raise taxes at any cost, was part of the conservative moment that swept the nation in the 1980s under Reagan, and fed the need for standards and outcomes over equity.

In response to the financial crisis, the New Mexico State Legislature passed the Public School Reform Act (SB 106) in 1986, again based largely on the *Nation at Risk* recommendations. This time, it was the New Mexico State Legislature that advanced the reforms, as opposed to the State Board of Education or the governor, though the Reform Commission created by the legislature did include representatives from the Board as well as educators and representatives from the Republican and Democratic parties. Among the main priorities of the act were:

- 1) Developing a schedule for reducing class size;
- 2) Releasing teachers from non-instructional duties;
- 3) Setting teacher license requirements;
- 4) Establishing student learning competencies;
- 5) Improving school attendance requirements;
- 6) Expanding testing and graduation requirements;
- 7) Establishing the number of hours of schooling by grade level;
- 8) Testing students; and
- 9) Reciting the Pledge of Allegiance daily.<sup>527</sup>

The bill was a battlefield for partisan groups in the state, with conservatives,

<sup>525</sup> Colton, "The Weighting Game: Two Decades of Fiscal Neutrality in New Mexico," 48–49.

<sup>526</sup> *Ibid*, 50–51.

<sup>527</sup> Mondragón and Stapleton, 175-176.

liberals, and centrists squaring off over what areas of education to change. While the groups bitterly defended their personal ideological viewpoints, there were bipartisan elements to the final bill written, and some ideas that the majority of both parties was firmly against. For example, when one conservative member proposed solving the dropout problem of New Mexican students by lowering the dropout age to 13, arguing they were “not going to make it anyway”, the suggestion was roundly attacked as not only a slight against lower income families but as a racist viewpoint of Mexican Americans and Native Americans.<sup>528</sup> Many requirements for this bill were accepted only after it was agreed that those requirements would be phased out over five years, due to a lack of extended funding or simple impracticality of some of the ideas.

Part of the failure in funding was due to another bill passed the same year that drastically reduced property taxes (from \$8.95 per \$1000 value to \$.50 per \$1000 value), as well as financial austerity changes to the 1974 equalization formula. This was a harsh blow to educational funding and undermined the loftier ideals of New Mexico’s reforms by making them extremely difficult to fund and fulfill. Gonzales notes that a change that affected minority students was language in the act, in that could override existing school-funding formulas for class size and salary, for example. While an agreement between legislators allowed for a teacher salary increase to counterbalance changing the salary funding formula, it also did away with teacher tenure, something that became a point of contention into the 1990s.<sup>529</sup> Even at its best, the Public School Reform Act of 1986 was a compromise between liberal and conservative interests in education, resulting in a middle of the road agreement, but one starved of funding with unrealistic timelines that somehow

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<sup>528</sup> *Ibid*, 172–73.

<sup>529</sup> Gonzales, “Public School Financing,” 46–47.



managed to achieve modest success.

Three years later, New Mexico added a requirement to the Act that educational outcomes be measured and tracked. In addition to the original legislation that required annual tracking of standardized test results, the act was amended to include “high stakes” testing requirements for accountability of New Mexico's schools. As part of these assessments, school districts would be judged on student achievement using standardized testing, school safety, dropout rates, attendance, and parent/community involvement. If a school should receive the lowest probationary rating for three years, the State Superintendent would take over the district directly to correct the situation.<sup>530</sup>

This series of reforms in New Mexico were significant. They constituted major changes in what New Mexico expected of its students and teachers, and how it planned to assess those elements. While funding fluctuated, and some reforms were discarded as being unworkable, these elements would provide the basis for New Mexico’s next series of reforms in the 1990s and allowed the effects of the *Nation at Risk* report to overshadow its school system for years to come.

Meanwhile, in 1984, Arizona had started to focus on its bilingual education system. It passed two statutes, ARS 15-715 and ARS 15-756, that were intended to assess the need for bilingual education and English as a Second Language programs in the state. This included establishing these programs, as well as undergraduate and graduate teacher education programs for bilingual instructors.<sup>531</sup> The statutes required transitional bilingual programs for K-12 classes, then secondary bilingual programs from grades 7-12, along

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<sup>530</sup> Mondragón and Stapleton, 78–79.

<sup>531</sup> C. Diane Bishop, “Commitment to Quality Education: Arizona’s Top Priority” (Phoenix, AZ: Commission to Study the Quality of Education in Arizona, Arizona Department of Education, 1987), 44–45.

with bilingual/multicultural programs, English as a Second Language (ESL) programs, and Individual Education Programs (IEP). However, the Arizona Department of Education left which programs would be created up to local school districts.

By the 1985-1986 school year, ninety-three districts had ESL programs, and twenty-six districts had transitional and secondary bilingual programs, but only six had bilingual/multicultural programs. Twenty-two districts reported having Limited English Proficiency (LEP) students, while forty-three either did not have any LEP students or were not implementing the law, with an estimated three thousand LEP students not being served in the state. Of those teaching LEP students, four hundred and eighty-three teachers had bilingual or provisional bilingual endorsements and fifty-three had English as a Second Language (ESL) or provisional ESL endorsements. But an estimated one thousand four hundred and forty-five teachers in Arizona had no endorsement whatsoever.<sup>532</sup> Arizona's bilingual education system was thus advancing in fits and starts, hampered by local districts being responsible for creating bilingual programs which often had little interest in starting new programs due to the additional expense of setting them up and funding them.

In 1986, Arizona began its standardized assessment reforms based on the *Nation at Risk* suggestions. The main issue Arizona faced in this was that there was no statewide assessment in place; local districts could use whichever assessment they preferred. The Arizona Board of Education appointed The Commission to Study the Quality of Education in Arizona, based on concerns offered by educators in the state over currently educational policy. The 18-member commission defined quality education or Arizona's

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<sup>532</sup> *Ibid*, 51-52.

students as one that “educates all the children so that each one can realize his/her potential and can become an optimally contributing member in a changing democratic society.”<sup>533</sup> The goal was for students to become acceptable members of society, rather than any mention of the length or breadth of knowledge a child should possess as, say, a high school graduate. No mention was made that speaking fluent English was a requirement; it may have simply been assumed.

The Commission freely admitted that there was no comprehensive data on elementary and secondary education in Arizona, nor did it have the resources to collect that data; charging the Arizona Department of Education with gathering data in the future was one of their first suggestions. Previously it had been up to local districts to submit educational statistics to the State Board of Education, rather than the Board being able to mandate reporting. The Commission still arrived at what conclusions it could draw: that great variation existed in the quality and effort to improve education across the state; that achievement tests showed Arizona students were at or above the national average in their performance; and that results were “considerably poorer” for language minority students. This was something the Committee expected to only get worse with “projected increases in language minority student” populations without improvements to the educational system that were required for Arizona’s education to at least stay the same in overall quality for Latino students.<sup>534</sup>

The finding of the Language Minority Students Subcommittee was that 58,665 of Arizona’s 90,228 language minority students in 1986 were not enrolled in limited English proficient programs or of any other program at all. As a result, Latino students currently

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<sup>533</sup> *Ibid*, p. ii.

<sup>534</sup> *Ibid*.

lagged 9-15 percentage points behind the national average for reading comprehension for grades K-12.<sup>535</sup> The Subcommittee proposed that “minority cultural and linguistic differences be incorporated into the school programing,” as well as developing a “multicultural strand for the social studies scope and sequence that focuses not only on Arizona but reaches to a more comprehensive point of view.” In form, this certainly suggests that the Subcommittee was urging Arizona to begin developing multicultural programs as well as bilingual programs. It is telling that a minor point from the Subcommittee also recommended defining terms in a systematic way, as monolingual, bilingual, and Limited English Proficient were being used incorrectly and often interchangeably. This suggests there was still not a clearly defined definition of what a bilingual student was in Arizona almost a decade after the passage of the BEA.<sup>536</sup>

In response to these shortcomings, the Arizona State Legislature passed SB 1423 in 1987, better known as Goals for Educational Excellence (GEE). It established a Joint Legislative Committee on Goals for Educational Excellence which including “politicians, the State Superintendent of Public Instruction, business leaders, district superintendents and principals, teachers, local school board members, and parents.”<sup>537</sup> The Joint Committee worked with the State Board of Education and the State Department of Education to create a series of goals identifying which essential skills were required for students, and what assessments could effectively measure those skills. While the Joint Committee created the goals, the Department of Education wrote the specific objectives dealing with those goals for K-12 achievement. The Committee was intended to take only

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<sup>535</sup> *Ibid*, 44.

<sup>536</sup> *Ibid*, vii.

<sup>537</sup> Easton, 165–66.

one year to complete their task, but additional legislation in 1988 (SB 1327 and SB 1234) allowed it to be extended over four years. In 1990, the results were signed into law as the Arizona State Assessment Program (ASAP).<sup>538</sup>

ASAP was an entirely new type of education policy at the state level for Arizona. There had been assessment testing previously in the state, but it had largely been left up to the individual districts as to what those assessments should be. All districts were required to establish a system for evaluating reading, writing, and mathematics as part of a Continuous Uniform Evaluation System (CUES). Unfortunately, the law did not specify that the Department of Education monitor which districts had CUES, so at the state level there was limited information as to what assessments were being used. Before 1980, Arizona made use of norm-referenced standardized tests consisting of a two spelling tests, an English test, an eighth-grade survey examination, a high school comprehensive examination, and tests on the Constitution of the United States. None of these were required of local school districts, save for the tests on the Constitution, and could be administered whenever districts wished, provided they sent the results to the State Department of Education afterwards.<sup>539</sup> However, in 1980 the use of nationally normed standardized tests became mandatory in Arizona, giving the state considerably more authority in its ability to test Arizonan students. Arizona was also the only state to test every student every year in grades 1-12, using a combination of three separate tests.<sup>540</sup>

ASAP was created as a unique assessment for Arizona based on essential skills lists created for reading and mathematics by the Joint Committee. It was meant to be tied

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<sup>538</sup> *Ibid.*

<sup>539</sup> *Ibid*, 170–71.

<sup>540</sup> *Ibid*, 172.

to the curriculum being taught, and was transparent, so that teachers knew which standards the state valued that they should be teaching towards. Spanish versions of the exams were provided to all districts, with Latino students having the choice of taking either the Spanish or the English exam. It included a new system of reporting results to the State Department of Education through publishing school, district, and state profiles yearly. Not only did this standardize assessments for Arizona, it allowed incentives for teachers to be linked to test performance.<sup>541</sup>

This change in student assessment by Arizona was a top down transformation, with school districts having to realign their curriculum to the test and state goals, but still allowing local districts to choose the specific content of their curriculum. Since ASAP was transparent, every district knew what would be required that it teach. This was an unprecedented level of influence by the state of Arizona over local education, but a long overdue change that helped centralize Arizona's educational statistics as well as providing a single exam to ensure a consistent level of education throughout the state.

At the end of the 1980s, a severe recession swept the nation. This led to public sector deficits in both Arizona and New Mexico. In Arizona, the situation became so dire that the state put off making any payments until the following fiscal year in 1991 to avoid a 9% deficit in state funding.<sup>542</sup> New Mexico was forced to pass large single-year tax increases to make up the deficiency and fund education. In response, educational funding reform slowed in both states. For example, a proposition in Arizona to increase per-pupil

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<sup>541</sup> *Ibid.*

<sup>542</sup> William A. Firestone, "Education Reform from 1983 to 1990: State Action and District Response" (New Brunswick, NJ: Consortium for Policy Research in Education, Eagleton Institute of Politics, Rutgers, The State University of New Jersey, 1991), 52–55.

expenditures by \$100 annually over the next ten years was defeated by voters.<sup>543</sup> New Mexico began looking for ways to shrink its Department of Education for greater efficiency and to reduce costs. This put educational reform on hold until state finances stabilized in the early 1990s.

New Mexico and Arizona were much less likely to be the destinations of undocumented workers in the 1980s. New Mexico had little industry to draw workers and had always been a poor state, offering few prospective jobs to migrants. Arizona was just north of the Sonoran Desert, making the journey over the border very risky and encouraging most migrants to cross in more hospitable areas in California and Texas. This could not, however, counterbalance the growing numbers of Spanish-speaking undocumented students who were filtering into schools in Arizona and New Mexico. This added significantly to the problems in institutional capacity that both school systems were already having, as most undocumented students were ELLs and spoke Spanish as their native language, requiring that they be taught English. Despite the influx of Central American refugees in the 1980s, however, Mexico remained the largest sending country for Spanish-speakers entering the Southwest. After Congress passed the temporary protected status for Central American refugees, it likely meant that this privileged group of undocumented immigrants faded from public perceptions as the constant flow of new Spanish-speakers from Mexico stoked anti-immigrant feeling.

What helped inflame nativist feelings in both states, especially Arizona, was expressed through the growing conflict over the English-only movement. This was the modern face of the classic assimilationist argument that English fluency above all else

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<sup>543</sup> *Ibid*, 53–55.

was what indicated that someone was American and opened opportunities in American society. As has been seen in previous chapters, the study of English and its mastery are frequently seen in America as an intrinsic part of American national identity, culture, and political loyalties. To anti-bilingual critics, learning English and discarding a former language and culture was a test of loyalty as a “true American.” For English-only supporters, especially Mexican American supporters, to learn English was to attempt to make Mexican Americans “invisible” in American society, by “erasing and silencing ethnicity.”<sup>544</sup>

Not surprisingly, the two states were on opposite sides of the English-only debate. In 1978 New Mexico had been the first state in the country to have its State Department of Education endorse New Mexico’s Bilingual Multicultural Education Act, while as early as 1988, Arizona sought to become an English Only state through the Proposition 106 “Official English” ballot in that year.

Proposition 106 amended the Arizona Constitution by making English the official language of the state, including “the language of the ballot, the public schools, and all government functions and actions” save for “instruction in a language other than English to provide as rapid as possible a transition to English.”<sup>545</sup> Furthermore, the state was required to “serve, protect, and enhance the role of the English language as the official language of the State of Arizona.” This included not passing or enforcing any state law, order, decree, or policy that required the use of any language but English, save to comply with federal law or to assist ELL students in transitioning to English. Critics in the

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<sup>544</sup> Nuñez-Janes, 66.

<sup>545</sup> State of Arizona, “Arizona Publicity Pamphlet: ‘The Choice Is Yours’ (General Election, November 8, 1988)” (Arizona, November 8, 1988).



Legislative Council opposed to the bill because they felt it would “foster disunity among our citizens where none now exists” and threatened to “divide Arizona and tarnish our proud heritage of unity and tolerance.” More specifically, they pointed out it was not clear what the state or local governments could or could not do, including printed necessary multilingual materials, court interpreters for witnesses, and signs that might have foreign names, all of which would invite “costly, divisive, and endless legal battles.”<sup>546</sup>

Partially in response to Arizona’s Proposition 106, the New Mexico State Legislature adopted a nonbinding resolution supporting English Plus in 1989, stating: “The people of New Mexico acknowledge that 'English Plus' best serves the national interest, since it promotes the concept that all members of our society have full access to opportunities to effectively learn English plus develop proficiency in a second or multiple languages.”<sup>547</sup> With this, New Mexico renewed its pledge to protect the Spanish language in its educational policy and in its public schools.

While Proposition 106 was adopted, it did not take long before it was challenged in the U.S. District Court for Arizona with the case *Yñiguez v. Mofford* in 1988.<sup>548</sup> Two individuals, María-Kelly F. Yñiguez, an insurance claims manager employed by the state’s Risk Management Division, and Jaime P. Gutiérrez, a state senator from Tucson, were the plaintiffs. Yñiguez “communicated in Spanish with monolingual Spanish-speaking claimants and in a combination of English and Spanish with bilingual

<sup>546</sup> “Arizona English Official Language Amendment, Proposition 106 (1988),” Ballotpedia, 1988, 24–27, [https://ballotpedia.org/Arizona\\_English\\_Official\\_Language\\_Amendment,\\_Proposition\\_106\\_\(1988\)](https://ballotpedia.org/Arizona_English_Official_Language_Amendment,_Proposition_106_(1988)).

<sup>547</sup> “English Plus Declaration in New Mexico,” languagepolicy.net, March 1989, <http://www.languagepolicy.net/archives/nm.htm>.

<sup>548</sup> U.S. District Court for the District of Arizona, “*Yniguez v. Mofford*, 730 F. Supp. 309 (D. Ariz. 1990),” Justia, February 6, 1990, <https://law.justia.com/cases/federal/district-courts/FSupp/730/309/1984957/>.

claimants” as part of her job taking health claims from Mexican American citizens.<sup>549</sup> Due to the overly broad amendment language, Yñiguez had been forced to use only English during working hours, for fear she would be fined, while Senator Gutiérrez continued to speak Spanish to his constituents but was unsure if this constituted a violation of the law. Despite Arizona’s Attorney General making an official ruling that the Article XXVIII created by the amendment would not prohibit the use of English to deliver governmental services, the federal district court that heard the case ruled in 1990 that the amendment was unconstitutional, because it violated First Amendment rights by restricting access to government and political speech beyond the means necessary to achieve a legitimate state purpose.<sup>550</sup>

This was appealed to the U.S. Court of Appeals for the Ninth Circuit in 1994 by a group known as Arizonans for Official English (AOE), which had been responsible for the petition drive in 1987 that produced Proposition 106. A new English-only group founded by John Tanton in 1994 after his departure from U.S. English was created specifically to help defend Proposition 106 alongside AOE: the English Language Advocates, later known as ProEnglish. The new case was called *Arizonans for Official English v. Arizona*. The Ninth Circuit court also upheld the decision, causing AOE to appeal further to the U.S. Supreme Court, which vacated the decision of the lower court as Yñiguez had quit her job before the case was decided. The case was dismissed for lack of standing as a result. Governor Rose Mofford had opposed Proposition 106 and chose not to appeal this decision. In 1997 AOE won the right to appeal on behalf of the public

<sup>549</sup> “Ruiz v. Hull,” Azcourts.gov, 1998, <http://www.azcourts.gov/Portals/23/pdf1998/cv960493.pdf>.

<sup>550</sup> U.S. District Court for the District of Arizona, “Yniguez v. Mofford,” 730 F. Supp. 309 (D. Ariz. 1990).”

in *Yñiguez v. Arizonans for Official English*, but their motion to vacate was denied by the Court of Appeals.

During this period in 1992, *Ruiz v. Hull* was brought by ten plaintiffs (four elected officials, five state employees, and a public school teacher) to the Arizona Superior Court. The plaintiffs argued that the constitutional amendment created by Proposition 106 violated the First, Ninth, and Fourteenth Amendments of the U.S. Constitution. The defendants were Governor Jane Dee Hull, State Attorney General Grant Woods, the State of Arizona, and the sponsors of the bill, AOE and its spokesperson Robert Park.<sup>551</sup> The plaintiffs echoed Yñiguez's earlier concerns, that they needed to speak Spanish as part of their employment but feared they would be punished under the new amendment. Initially, the Arizona court decided in favor of the state in, noting that there was no violation of the Fourteenth Amendment's equal protection clause and that the Ninth Amendment said nothing about protecting choice of language.

The ruling was appealed to the Arizona Court of Appeals, which overturned the lower court decision and ruled that the amendment was unconstitutional due to being too broad; it forbade expressive activity (which could be constitutionally forbidden) but in this case also affected First Amendment rights to speech or conduct. The case was appealed again to the Arizona Supreme Court, which stayed all proceedings on the case until *AOE v. Arizona* had been decided in 1997.<sup>552</sup>

When it made its decision, the Arizona Supreme Court found the amendment was an infringement on First Amendment rights of political speech and government access for

<sup>551</sup> Michael A. Cavanagh, "Ruiz v. Hull: A Legal and Rhetorical Examination of 'English-Only' Legislation," *First Amendment Studies* 48, no. 2 (October 2014): 86–87.

<sup>552</sup> *Ibid*, 87–88.

non-English speakers, and violated the Equal Protection Clause of the Fourteenth Amendment because it unduly burdened the rights of a specific class of persons without advancing a legitimate state interest.<sup>553</sup> The Arizona Supreme Court did not, however, “undertake to define the constitutional parameters of officially *promoting* English, as distinguished from banning non-English speech.”<sup>554</sup> The court also did comment on if that Arizona had a constitutional obligation to provide government services in languages other than English save where required by federal law.<sup>555</sup> AOE attempted to appeal to the U.S. Supreme Court, but the Court refused to hear the case, thus repealing the Proposition 106 amendment, though the “Official English” amendment would return again in a rewritten proposition in 2006 that would be more successful.

Legal scholar Michael A. Cavanagh, in his discussion of the legal and rhetorical meanings of the decision in *Ruiz v. Hull*, noted that while the Arizona Supreme Court had not taken a stand on English-only legislation in general, it had “created a community in this opinion that views immigrants and their families as legitimate members of our society.”<sup>556</sup> But, he notes that this view of Spanish-speakers was short-lived, as the Official English amendment was successfully and permanently passed in 2006, when voters “used their ballot power to override the Arizona Supreme Court’s finding that free speech and equal protection under the law requires the State of Arizona to hear and respect diverse voices...the American promise of equal opportunity for all got lost in

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<sup>553</sup> “*Ruiz v. Hull*,” 97.

<sup>554</sup> *Ibid*, 41.

<sup>555</sup> *Ibid*.

<sup>556</sup> *Ibid*, 93.

translation.”<sup>557</sup> Certainly, future statutes in Arizona would bear out this anti-immigrant bias that had first been advanced by AOE and Proposition 106 in 1988.

The 1980s was a period where Mexican American efforts to find educational equity found rough ground to take root in. In many ways, the decade was a transitional period between the Civil Rights movements of the 1960s and 1970s, and the harsh anti-immigrant and nativist movements of the 1990s to 2010. Despite this, improvements in educational policy were made through a series of reforms built off the recommendations of the *Nation at Risk*. But while anti-immigrant feelings in this period were not as severe, due to neither Arizona or New Mexico being strong draws for undocumented immigrants, this would change with border security decisions in the early 1990s that would route a flood of immigrants into Arizona. The rise of the English-only movement was built over a century of anti-Spanish sentiment and was only the most recent face of Americanization attempts to eradicate the language and culture of Latinos in the Southwest. The conservative movement that it was part of, that rose with the election of Ronald Reagan in 1981, would continue to affect Mexican American education at the federal, state, and local levels into the 1990s, and was responsible for laying the foundations for the harsh treatment immigrants and Mexican Americans could expect in the future.

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<sup>557</sup> *Ibid*, 93.

## **Chapter 11: Education in the New Millennium**

At the end of the millennium, educational policy shifted towards a conservative surge of anti-bilingual opposition. By the 1990s, most large Mexican American activist organizations had changed, becoming less focused on community organization at the grassroots level and more on maintaining funding for specific projects. The narrative created by *A Nation at Risk* of a failing U.S. public school system was mixed with anti-Spanish and anti-immigrant feelings in the nation that intensified nativist attacks on those seen as different, particularly Spanish-speaking Latinos. Though it was not carried out by Latinos, the terror attack in New York on September 11<sup>th</sup>, 2001 only intensified these fears, leading to hate crimes, harassment, and police profiling, along with greater fears over border security. Much like during the World War II period, Mexican Americans had to simultaneously reassure Anglo Americans as to their loyalty while continuing the fight for educational equality.

In the decade between 1990 and 2000, the U.S. population grew by more than 11 million immigrants.<sup>558</sup> This created a nativist backlash, particularly in California, which in 1994 resulted in the passage of Proposition 187 in the state. This proposition, known as Save Our State (SOS), was aimed at undocumented immigrants. It proposed a state-run screening process to prevent undocumented immigrants from using public health care, K-12 education, and other services in the state. This was connected to the narrative of the undeserving poor many conservatives promoted beginning in the 1980s, as well as the idea that the state could not afford to provide social services, especially public education,

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<sup>558</sup> Wayne A. Cornelius, "Controlling 'Unwanted' Immigration: Lessons from the United States, 1993-2004," *Journal of Ethnic and Migration Studies* Vol. 31, no. 4 (2005): 776.

for so many undocumented students. The Republican Governor, Pete Wilson, used Proposition 187 to gain support for his re-election campaign, which was unexpectedly successful due to votes from Californians who supported the proposition, enough that other politicians likewise adopted tough stances on illegal immigration. Proposition 187 was challenged in a lawsuit by the Mexican American Legal Defense and Educational Fund (MALDEF) and the American Civil Liberties Union (ACLU) the day after it was approved, a case that was consolidated with several other cases and brought eventually before the Ninth Circuit Court of Appeals. Despite Governor Wilson starting the appeal to the Ninth Circuit, his successor, Governor Gray Davis, chose to have it brought to mediation in 1999 when he took office and withdrew the appeal, effectively killing the law, though the unenforceable sections of it were not repealed and replaced until 2014. Ultimately, this tactic proved counterproductive for the Republican Party, as it energized Mexican American voters against them, but the same anti-immigrant feelings that inspired Proposition 187 encouraged President Bill Clinton (1993-2001) to also harden his stance on immigration.<sup>559</sup>

One year before Proposition 187, the Clinton administration tripled INS Border Patrol numbers to 11,000 agents, as well as emphasizing greater control over border areas. Political scientist Wayne Cornelius argues that this sudden concern about the border was a reaction by the Clinton administration to anti-immigrant feelings in California and a need to be strong on border security to defuse Republican accusations of being lax on immigration control.<sup>560</sup> The INS budget grew from \$750 million in 1993 in

<sup>559</sup> Patrick J. McDonnell, "Davis Won't Appeal Prop. 187 Ruling, Ending Court Battles," Los Angeles Times, July 29, 1999, <http://articles.latimes.com/1999/jul/29/news/mn-60700>.

<sup>560</sup> Cornelius, 777-78.

a massive increase to \$3.8 billion by 2004. The original federal initiative was followed by a variety of local state immigration security programs along the border, such as the Hold the Line program in Texas (1993), the Gatekeeper program in California (1994), the Safeguard program in Arizona (1995), and the Rio Grande program in Texas (1998).<sup>561</sup> Despite this, Cornelius points out that “the explosive growth of unauthorized immigration [occurred] at a time when the United States was spending considerably more on immigration than ever before, especially on border enforcement.”<sup>562</sup>

In 1996, President Clinton signed the Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA), which made punishments for undocumented immigrants much harsher, and included Section 287(g), which covered the federal government making agreements with state and local governments about enforcement, effectively giving local law enforcement authority as immigration agents. While New Mexico did not sign on with this section of the law, Arizona did, reflecting its overall harsher attitude and greater fears over the influx of immigrants into that state. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) was passed as part of a major welfare reform bill the same year. Conservative opponents used the specter of the undeserving poor to argue that under the previous system the combination of welfare fraud and a “welfare trap” led those in poverty to not have a reason to apply for jobs.

In 1997, the Temporary Assistance to Needy Families (TANF) program replaced existing welfare programs. In addition to having stricter conditions for undocumented

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<sup>561</sup> Jezmin Fuentes et al., “Impact of U.S. Immigration Policies on Migration Behavior,” in *Impacts of Border Enforcement on Mexican Migration: The View from Sending Communities*, CCIS Anthologies, No. 3 (La Jolla, CA: Center for Comparative Immigration Studies, UCSD, 2007), 54.

<sup>562</sup> Cornelius, 777.



immigrant food stamp and welfare eligibility, it affected how higher education tuition worked for undocumented immigrants, by prohibiting them from receiving in-state tuition. Any state that attempted to offer in-state tuition to undocumented students would be required to offer in-state tuition to *all* students. While at the time many believed this would trigger a “race to the bottom” for higher education, with states moving to cut as many benefits as they could, by 1999 most states had enacted legislation to allow anyone to apply for in-state tuition instead.

Rather than keeping undocumented immigrants and migrant workers out of the United States, the Clinton era immigration laws had the opposite effect. The draw of jobs and a better economy in the United States continued to bring Mexican workers and Latin American immigrants into the Southwest. Cornelius argues that “the concentrated border enforcement strategy had raised the financial cost and physical risks of illegal entry to the point where undocumented migrants were staying longer in the United States...or were settling there permanently.”<sup>563</sup> This caused the population of undocumented immigrants and the Latino population in the United States to continue to rise rapidly. Arizona became a favored location for settlement, due to the creation of nearly 1 million new jobs (141% of the number of jobs in 1980) for construction between 1980 and 2000 in Phoenix, and another 336,00 (21%) between 2000 and 2007. By the mid-1990s, fast-growing Phoenix had surpassed Philadelphia as the fifth largest city in the United States.<sup>564</sup> With the failure to contain the flood of illegal immigration, nativist fears continued to be part of the political landscape. This affected how the public viewed Mexican Americans, with many

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<sup>563</sup> Cornelius, 782.

<sup>564</sup> Audrey Singer, “Why Arizona?,” Huffington Post, May 25, 2011, [https://www.huffingtonpost.com/audrey-singer/why-arizona\\_b\\_632243.html](https://www.huffingtonpost.com/audrey-singer/why-arizona_b_632243.html).

holding stereotypes of the undocumented immigrant that they applied to all Spanish speakers, regardless of citizenship. Immigration fears thus contributed to negative attitudes towards Latinos, especially immigrants, and their right to be educated.

This massive migration of immigrants, many undocumented, created what has been termed a “Latino Threat” narrative.<sup>565</sup> This cycle, according to D.S Massey and K.A. Pren, built on existing fears from the 1970s and 1980s that created a “self-perpetuating cycle in which rising border apprehensions were manipulated to produce a conservative reaction that demanded more enforcement measures, which in turn produced more apprehensions, which then produced more conservatism and even harsher enforcement measures, which generated more apprehensions.”<sup>566</sup>

Many Mexican American organizations had disappeared by the 1990s, though the largest remaining changed how they approached activism. Three examples of surviving organizations were the League of United Latin American Citizens (LULAC), the National Council of La Raza (NCLR), and the Mexican American Legal Defense and Educational Fund (MALDEF). MALDEF has already been discussed in previous chapters, and mostly limited itself court actions based on its financial and personnel resources, and thus will not be discussed directly here. Political scientists Deidre Martínez and Benjamin Márquez have provided a discussion of LULAC and NCLR in the 1980s and 1990s, though they disagree on the results of the changes in both the organization.

<sup>565</sup> Emilia E. Martínez-Brawley and Paz M.-B. Zorita, “Will We Build a Wall: Fear of Mexican/Latino Immigration in U.S. History,” *Journal of Society & Social Welfare* XLV, no. 2 (2018): 168.

<sup>566</sup> D.S. Massey and K.A. Pren, “Origins of the New Latino Underclass,” *Race and Social Problems* 4 (2012): 6.

LULAC's biggest problems in the 1980s were financial. This was not the first time irregularities had arisen; in 1974 the national president of LULAC had been indicted by its supreme council and general assembly for financial mismanagement.<sup>567</sup> In the 1980s a related organization, the LULAC Foundation, had also been dissolved for misappropriation of funds. Márquez notes that LULAC itself underwent years of financial hardship until its lowest point in 1991, when its national president was arraigned on federal charges for filing fake alien amnesty applications through an immigrant services business he owned. By 1994, the organization was nearly broke because of more than a decade of financial mismanagement and leadership scandals, but a concerted effort by the leadership reorganized its finances and restored its accounts by the end of the decade.

In his examination of LULAC, Márquez has argued that one of the reasons that LULAC still existed was that it changed its focus, moving from a group concerned with activism and civil rights at the grassroots level to a “staff – or elite – dominated group that devoted much of its energies to continuity and survival.”<sup>568</sup> Part of this was LULAC's need to change their funding procedures following the Reagan administration's federal cuts during the 1980s, which removed most of their federal funding support. As a result, LULAC had to pursue partnerships with corporate and private interests to get the funding needed to stay in operation. From this, Márquez has drawn the conclusion that groups like LULAC are focused on projects of interest to the primarily Anglo organizations that they get their much of their funding from – corporations, foundations,

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<sup>567</sup> Benjamin Márquez, *LULAC: The Evolution of a Mexican American Political Organization*, 1st ed. (Austin, TX: University of Texas Press, 1993).

<sup>568</sup> *Ibid*, 7.

and wealthy donors – and therefore are biased towards them, Márquez bluntly states that by the 1980s: “LULAC political and civil rights activities conducted by rank and file members were no longer a prominent part of the group’s agenda.”<sup>569</sup>

A second important organization is one that Deidre Martínez examines, the National Council of La Raza (NCLR).<sup>570</sup> Originally created in 1968 in Phoenix, Arizona as the Southwest Council of La Raza, the organization went national in 1973, and changed its name to match. It also switched at that time to a focus on all Latinos rather than just those of Mexican descent. Unlike LULAC, which depended primarily on its membership for funding in addition to federal grants, NCLR was almost entirely funded through the Ford Foundation (a private foundation oriented towards advancing human welfare) and the federal government in the 1980s. This was not too unusual as the Ford Foundation also funded MALDEF in this period. When the Reagan administration cut their federal funding in 1981 and the Ford Foundation ceased its funding around the same time, NCLR was, by necessity, forced to shrink its operations and focused on national policy in Washington D.C. over grassroots activism. Martínez notes that unlike LULAC or MALDEF, NCLR was not as active in the courtroom, preferring to influence the federal government and regulatory bodies through lobbying in Washington D.C. as a combination of a policy think tank, best practices clearinghouse, and fiscal agent for community-development institutions.<sup>571</sup> After its move to Washington D.C. and its downsizing, it changed from its original focus on assisting community-based

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<sup>569</sup> *Ibid*, 11.

<sup>570</sup> Now called UnidosUS as of July 10, 2017.

<sup>571</sup> Deidre Martínez, *Who Speaks for Hispanics?: Hispanic Interest Groups in Washington* (Albany, NY: State University of New York Press, 2009), 67.

organizations. Instead, Márquez explains that once NCLR could “play a role in national-level policy-making, its commitment to serving affiliates cooled.”<sup>572</sup>

Martínez, in her analysis of Mexican American interest groups in Washington D.C., challenged Márquez’s view that LULAC and NCLR have changed to where they are more concerned with appeasing funders over listening to their members, however. She begins by noting that “correlation is not causation. Simply because organizations receive more money from large funders than from members does not indicate bias toward funder preferences.”<sup>573</sup> As such, Martínez argues Márquez is making too strong a case for the data available.

Martínez views LULAC, NCLR, and MALDEF as three different evolutions of Mexican American activism. Originally, she notes: “MALDEF was active in the courts, LULAC lobbied Congress and the administration, and NCLR provided the research to support the work of the other two groups.”<sup>574</sup> But Martínez believed that the three had transformed over time by necessity: LULAC still supported local offices but struggled at the national level; NCLR used research and analysis to influence policy making but was “criticized as being aloof and out of touch with Mexican Americans at the local level”; and MALDEF continued to advocate for the civil rights of Mexican Americans in the courts.<sup>575</sup> This evolution was how many activist groups that began in the 1960s and 1970s survived into the new millennium: changed, but still active and interested in helping better the lives of all Latinos.

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<sup>572</sup> *Ibid*, 75–76.

<sup>573</sup> *Ibid*, 31–32.

<sup>574</sup> *Ibid*, 88.

<sup>575</sup> *Ibid*, 88.

The activism of the 1960s and 1970s which was spontaneous and primarily student and grassroots-based had faded by the year 2000, but flared to life again in 2006, largely in support of immigrant rights. As part of protests that swept the nation that year, high schools students again staged walkouts in solidarity with immigrant rights and equality, while on May 1<sup>st</sup> of that year Latinos across the country participated in the Day Without Immigrants, boycotting work, school, and other activities to demonstrate how important immigrants were to America. Despite challenging times and growing pains, many Mexican American organizations remained strong and ready to fight for Latino rights and equity in the 1990s and 2000s but had the benefit of better organization and stable financial support to assist them, particularly in terms of educational reform.

American education in the 1990s and 2000s continued the evolution started with *Nation at Risk*. By 1993, the Sandia Report had finally been disseminated, though it was still less well known than the report it challenged. Critics had begun to question the need for the testing that seemed endemic to American education at the end of the century and looked with suspicion on those who stood to gain the most from it, the Education Testing Service. Founded in 1947, the ETS was the largest private nonprofit educational testing and assessment organization in the world and administered tests internationally as well as in the United States.<sup>576</sup> The small academically-oriented ETS of its early years had changed greatly by 1990. Fifty years after its founding, ETS was a multinational business that created and administered tests and sold preparation aids to students for a profit. While the Sandia Report was being suppressed, ETS was trumpeting in its annual report

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<sup>576</sup> *International Directory of Company Histories*, vol. 62 (Chicago, IL: St. James Press, 2004).

how it would be meeting the newly issued Goals 2000 requirements in the test it crafted to sell to school districts.

Critics such as Daniel Tanner of the Graduate School of Education at Rutgers University noted in 1993 that the ETS had a deep material interest in supporting standards-based testing, being that it was responsible for the National Assessment of Educational Progress (the national “report card” on education), as well as International Assessment of Educational Programs. It also was responsible for administering the SAT, Achievement Tests, and the standards-based curriculum testing for the five categories identified in the Goals 2000 legislation in 1994.<sup>577</sup> Moreover, in 1988 ETS had created its Policy Information Center, which was intended to be the primary source of testing information for politicians and to influence government policy directly. This, Tanner argues, was evidence that ETS was no longer simply administering and reporting on tests, but now was driving educational policy towards sustaining a test-centric system of standards.<sup>578</sup> Certainly, the ETS had grown well beyond its humble academic and educational nonprofit beginnings, and very obviously saw material benefit in convincing the nation that new standards and testing were needed to improve American education. ETS had become a driving force in the need to test in order to be accountable; it remained to be seen what the standards would be for the tests to measure, however.

The rise and fall of true standards-based education began with *A Nation at Risk*. As discussed previously, while the report ignored that many of the problems it pointed out in high schools had their roots in elementary and middle schools, it had offered many suggestions for what could be done to improve curriculum and pedagogy at the secondary

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<sup>577</sup> Tanner, “A Nation ‘Truly’ at Risk.” 292.

<sup>578</sup> *Ibid*, 290.

school level, especially in terms of accountability. This began the standards movement, which advocated creating a nationwide or at least, statewide system of standards for how and what students should be taught at different levels of education.<sup>579</sup> This debate came to a head with the proposed national standards offered by the National Education Standards and Improvement Council (NESIC) as part of the Clinton administration's Goals 2000 Act in 1994. The NESIC were placed in charge of creating national standards, starting with history.

However, when its proposed history standards were released, a blistering denunciation was made by Lynne Cheney, the chairperson of the National Endowment for the Humanities, in an editorial in the *Wall Street Journal*. Cheney attacked the proposed standards for failing to explicitly mention many essentials of United States history: "Imagine an outline for the teaching of American history in which George Washington makes only a fleeting appearance and is never described as our first president. Or in which the founding of the Sierra Club and the National Organization for Women are considered noteworthy events, but the first gathering of the U.S. Congress is not."<sup>580</sup> Of course, these were exaggerated; the standards did nothing of the sort, so at best this was a slippery slope argument. Cheney went on to list the other ways that the new standards did not focus on what she saw as essential aspects of American history. She quoted a member of the panel who blamed the state of the proposed standards on "forces of political correctness" that were "pursuing the revisionist agenda" and who "no longer bothered to conceal their "great hatred for traditional history."<sup>581</sup> Blame was specifically

<sup>579</sup> National Commission on Excellence in Education, "A Nation At Risk," 14–24.

<sup>580</sup> Lynne Cheney, "The End of History," *Wall Street Journal*, October 20, 1994.

<sup>581</sup> *Ibid.*



placed by Cheney on minorities for complaining about “omissions and distortions” in traditional American history.<sup>582</sup>

Cheney was correct that the standards designed by the NESIC *were* different from traditional history, in that the focus of the council was on looking at history through the lenses of race, gender, and class, rather than putting the focus on people and events directly. Rather than an attempt to diminish the importance of people and events, however, it was an attempt to look at history in a way that would incorporate greater diversity of voices into American history, by placing those people and events in the context of the wider realities of culture and society at the time. It was not, despite Cheney’s alarmist editorial, attempting to do away with teaching pivotal events in American history.

Educational historian Diane Ravitch, however, has argued that the historians responsible for making these not-yet-officially-published standards saw criticism like Cheney’s as “narrow-minded conservatives who opposed the standard’s efforts to open American history to a diversity of cultures.”<sup>583</sup> Ravitch believes this was a losing tactic on the part of NESIC: rather than making modifications to the standards that would have addressed some of these elements, such as stating what people and events would be part of this new history requirement, the NESIC chose to stand firm on what it had presented. Because of this, the issue became political fodder for those who saw any attempt to revise history to incorporate forgotten or ignored voices as liberal intellectuals working to distort American history to serve their own ends.<sup>584</sup>

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<sup>582</sup> Ibid.

<sup>583</sup> Diane Ravitch, *The Death and Life of the Great American School System: How Testing and Choice Are Undermining Education* (New York, NY: Basic Books, 2010), 17.

<sup>584</sup> *Ibid*, 20–21.

So powerful was the backlash against what seen as an attempt by liberals to make history politically correct that not only were the proposed standards dropped, but politicians across the political spectrum came to see the subject of standards, curriculum, and content as “radioactive” politically, making it seem impossible to find a consensus to create national academic standards.<sup>585</sup> The federal government all but abandoned the idea, shifting the issue to the states; the states likewise avoided establishing a curriculum that was too detailed, preferring “windy rhetoric, devoid of concrete descriptions of what students should be expected to know.”<sup>586</sup> The resulting academic standards were vague and vapid, and utter noncontroversial, according to Ravitch, but since they offered no specifics they were practically useless.<sup>587</sup>

Instead of academic standards, the government turned to a different means of assessing students: testing and accountability – the Texas plan. This arrived with President George W. Bush when he was elected in 2000, since as governor of Texas he was already familiar with the standardized exam known as the Texas Assessment of Academic Skills (TAAS) used in that state.<sup>588</sup> Under both the Bush era No Child Left Behind (NCLB) act and the Clinton era Goals 2000 program, it was left to states “to set their own standards and pick their own tests...[and] to decide what ‘proficiency’ meant.”<sup>589</sup>

Ravitch argues the problem with this was that the NCLB was “all sticks and no carrots,” so states were “incentivized to lower their standards so most students would

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<sup>585</sup> *Ibid*, 20–21.

<sup>586</sup> *Ibid*, 22.

<sup>587</sup> *Ibid*, 22–23.

<sup>588</sup> *Ibid*, 23.

<sup>589</sup> *Ibid*.

meet ‘proficiency,’ however it was defined.”<sup>590</sup> She also notes that NCLB’s mandated goals were impossible to meet. Ravitch bemoaned the fact that without academic standards at the federal level, “test-based accountability became our national education policy... There was no underlying vision of what education should be or how one might improve schools.”<sup>591</sup> Instead, the new definition of school reform was “accountability, high-stakes testing, data-driven decision making, choice, charter schools, privatization, deregulation, merit pay, and competition among schools.”<sup>592</sup>

Aside from the failure to achieve a system of national standards, there were important changes to the Elementary and Secondary Education Act (ESEA). The successor to President George Bush, President Clinton, stated in 1994 that: “To ignore the barriers to educational opportunity only hampers our own future, as well as the future of Hispanic-Americans as individuals. If we fail the youngest and fastest growing segment of our population, we’ll all fail. Therefore, we must do everything in our power to allow every American child to reach his or her full potential.”<sup>593</sup> In the same year, President Bill Clinton signed the Improving America’s Education Act as part of the reauthorization of ESEA. The law had several sections that directly impacted Mexican Americans in the Southwest.

Under Title I, it included funding for compensatory education and set aside funds to help local schools improve. One of the measurements of improvement for students included limited-English-proficient status and migrant status. Millions were allocated for

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<sup>590</sup> *Ibid.*

<sup>591</sup> *Ibid.*

<sup>592</sup> *Ibid*, 24.

<sup>593</sup> William J. Clinton, “Remarks on Signing the Executive Order on Educational Excellence for Hispanic Americans,” American Presidency Project, February 22, 1994, <http://www.presidency.ucsb.edu/ws/index.php?pid=49683&st=bilingual+education&st1=>

the education of full-time and part-time migrant children, with up to an additional year of service allowed should they become non-migratory. The Goals 2000 legislation had codified National Education Goals previously articulated by Clinton, and his administration was willing to offer federal grants to states willing to pledge to pursue these goals as part of a systematic reform of K-12 education. This included having school districts and states assess reading and mathematics skills through yearly testing to ensure students met academic standards. This would foreshadow the No Child Left Behind (NCLB) reforms of the ESEA in 2001, as well as standards-based testing and the testing-based evaluations that would come from NCLB.

Title VII elements of the bill authorized \$215 million for the development of bilingual education programs, with special attention given to programs that were created to insure true bilingual proficiency for students in English *and* another language.<sup>594</sup> The bill also created a National Clearinghouse for Bilingualism, along with funding studies for school districts evaluating bilingual programs and transferring that information to said clearinghouse.

Political analyst Jack Jennings argues this was “the last gasp of bilingual education” despite appearances. While the bill made bilingual education a “priority,” it also meant that alternate bilingual programs of questionable worth could take money from existing programs. Teachers were also encouraged to consider alternative programs for teaching their students aside from bilingual education. Legislation dealing with English Language Learners would not be picked up again until 2001 with the No Child Left Behind Act.

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<sup>594</sup> “Improving America’s Education Act,” Pub. L. No. 103–382, 108 Stat. 3518 (1994), <https://www.gpo.gov/fdsys/pkg/STATUTE-108/pdf/STATUTE-108-Pg3518.pdf>.

The No Child Left Behind Act of 2001 was the crowning achievement of President George W. Bush's attempt to position himself as an education president. It reauthorized ESEA but added additional provisions to Title I for disadvantaged students and included a standards-based reform for American education. But rather than the federal government creating a single set of standards, this was left to individual states, meaning that a wide range of "acceptable" standards could be adopted to receive ESEA funding with no unified requirements. It focused on the individual states creating tests to assess student skill levels and giving those tests to all students at selected grade levels and incorporated a requirement that schools use scientifically based research for deciding what and how to teach. Finally, it required that all teachers meet state standards, even if they already held tenure.<sup>595</sup>

Teacher pay and retention was quickly tied to student performance in these tests, putting pressure on teachers to focus on testing performance over in-depth student acquisition of subjects. The tests were designed to assess that certain curriculum was taught; thus, those aspects were the main elements that were taught, to the detriment of a broader education. This was considered a positive point by proponents of No Child Left Behind (NCLB), as it allowed assessment data to drive decisions in school districts, as well as providing parents with a "report card" on the district in question on how it performed. Those parents would then be able to move their students out of a school that performed poorly two or more years in a row. It should be noted, however, that if a student wanted to transfer, the receiving school was not obligated to accept them.

Only a few years later, NCLB was already being criticized for numerous

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<sup>595</sup> "No Child Left Behind Act," Pub. L. No. 107- 110 (01/08/2002) (2001), <https://www.congress.gov/bill/107th-congress/house-bill/1/text>.

problems. A major criticism was that the Bush administration had depended on regulatory processes to force compliance as if this would be sufficient to ensure state and local school district compliance. Since there was no coherent federal policy to create this sense of buy-in for local educators, the effectiveness of NCLB depended less on school achievement and more on local politics and finances. As a study just three years later pointed out, instead of one standardized system created by the NCLB requirements, states ended up with multiple layers that increased confusion and disorder in local educational systems.<sup>596</sup>

NCLB was criticized for not being funded sufficiently to meet the goals it required, both by the federal and state governments. Many states were already struggling with educational funding to begin with and had even more trouble after the Great Recession in 2008. The economic downturn reduced state tax receipts and forced large cuts to state budgets of which educational budgets were a major part. With both New Mexico and Arizona having shaky educational funding systems based primarily on property taxes, absorbing these additional costs of compliance with NCLB took more funding away that school districts could not easily spare in either state.

NCLB also suffered from goals that were impossible to achieve, in that it set as a requirement that all students must test at grade level for reading and math. This ignored that students learn at different speeds and that other variables can make it hard for students to achieve these goals, making 100% compliance an impossibility. No school district could realistically achieve that goal even in the best of times. This was especially true for Mexican Americans and other minorities who tended to be in lower scoring

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<sup>596</sup> Gail L. Sunderman, James S. Kim, and Gary Orfield, *NCLB Meets School Realities: Lessons from the Field*, eBook (Thousand Oaks, CA: Corwin Press, 2005), 120–22.

subgroups, meaning that schools that enrolled such students were more likely to fail to meet achievement goals and more likely to suffer federal sanction. Even the best school districts could not meet these goals. In addition, each state had its own definition of what constituted proficiency, while the federal achievement goals set did not consider differences across states based on those differing academic standards.<sup>597</sup> Instead of creating a coherent and realistic method for assessing and improving student achievement, NCLB instead put more stress on schools to try and meet unrealistic goals, and on punishing schools that failed to meet those goals even when making good faith attempts.

NCLB was particularly problematic for non-English speakers. One of the NCLB's stated purposes was to "close the achievement gap between high- and low-performing children, especially the achievement gaps between minority and non-minority students, and between disadvantaged children and their more advantaged peers."<sup>598</sup> A report by the National Association for Bilingual Education (NABE) in 2004, two years after NCLB had gone into effect, highlighted numerous criticisms specifically affecting ELL students. The report listed many structural problems in American society (some of which had existed since before the 1960s) that prevented ELL student success that were not addressed by NCLB, including "resource inequities, critical shortages of teachers trained to serve ELLs, inadequate instructional materials, substandard school facilities, and poorly designed instructional programs."<sup>599</sup> In other words, lack of funding and weak

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<sup>597</sup> *Ibid*, 122.

<sup>598</sup> "No Child Left Behind Act of 2001," 20 USC § 6301 et seq. § (2002).

<sup>599</sup> "No Child Left Behind: Misguided Approach to School Accountability for English Language Learners" (Forum on Ideas to Improve the NCLB Accountability Provisions for Students with Disabilities and English Language Learners, National Association for Bilingual Education, 2004), 2, [http://www.nabe.org/Resources/Documents/NCLB page/NABE\\_on\\_NCLB.pdf](http://www.nabe.org/Resources/Documents/NCLB_page/NABE_on_NCLB.pdf).

institutional capacity were tied to poor educational outcomes, because without the financial support, teachers, and materials to run an education program, it was likely to fail.

In addition to accusing NCLB of setting “arbitrary and unrealistic targets for student achievement”, the NABE targeted the NCLB’s assessments. The NCLB included a three-year window in which students could take assessments in their native language, after which they would need to take further assessments in English (though states could widen that window by an additional two years). Setting aside that most studies show that ELL students need between three to seven years to master English, in practice most states did not provide assessments in languages other than English or translated English tests directly to Spanish, which could change the difficulty of the vocabulary across languages.<sup>600</sup> Nor did NCLB even attempt to measure additive bilingual programs, but assumed ELL programs would be subtractive and transitive to English. It also eliminated the requirements for evaluating ELL programs via the *Castañeda* rules for what defined a best practice bilingual program.

The NABE report pointed out that, by their nature as second language learners, ELL students “were defined by their low achievement level” due to entering their particular subgroup not having yet mastered English, making it an impossibility for them to achieve full proficiency in a subject.<sup>601</sup> Even if an ELL student was able to take an English assessment test, it would be unclear whether student mistakes on the test were due to academic or language errors. Rather, the NABE report suggested that ELL students could be more fairly judged as a longitudinal cohort with scientifically researched

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<sup>600</sup> *Ibid*, 4.

<sup>601</sup> *Ibid*.



achievement targets.

When Barrack Obama took office in 2008, the Obama administration committed itself to a grant program intended to improve educational performance. Race to the Top, a competitive grant that rewarded innovation and reforms at state and local levels of education, was passed in 2009 as part of the American Recovery and Reinvestment Act, the stimulus package designed to help cushion the impact of the Great Recession of 2008. But the Obama administration was also committed to changing the way NCLB worked, in terms of its support financially and for English Language Learners (ELL), minorities, and disadvantaged students.: “Promising high-quality teachers in every classroom and then leaving the support and the pay for those teachers behind is wrong.” Obama said in a 2007 speech explaining the changes. “Labeling a school and its students as failures one day and then throwing your hands up and walking away from them the next is wrong.”<sup>602</sup>

The reforms were two-fold. The first set of reforms were aimed at the assessments themselves, as Obama promoted a broader range of testing that would better evaluate higher order academic skills than just rote memorization of a narrow skill set. The Obama administration agreed with the idea that all student groups including ELLs and special needs students should be assessed appropriately rather than as part of a one-size-fits-all sort of testing. In response, the administration proposed looking for some means of retaining students through graduation and for rewarding student success, rather than encouraging schools to shed low achieving students to preserve their school testing achievement levels. This was aided by looking at where schools started their attempts to improve, rather than treating them as having all started from the same achievement level.

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<sup>602</sup> Anna Weinstein, “Obama on No Child Left Behind,” Education.com, December 18, 2017, [https://www.education.com/magazine/article/Obama\\_Child\\_Left\\_Behind/](https://www.education.com/magazine/article/Obama_Child_Left_Behind/).

Along with this, the administration promoted changes to the accountability side of NCLB, altering the system focus from the punishment of failure to one that could inform teachers about what each student needed to improve academically. Importantly, however, it did not attempt to do away with the high-stakes testing already attached to the NCLB's accountability system, but only suggested additional funding and more flexibility.<sup>603</sup>

Even these common-sense changes were hotly contested by opponents, delaying actual reform until Obama's second term in office. In 2012, Obama did sign into law a system of waivers to NCLB requirements for states that committed to reform and better systems of accountability.<sup>604</sup> Arizona and New Mexico were recipients though Arizona's waiver was conditional as it did not completely meet federal requirements; this was because Arizona did not receive state board approval for teacher evaluations at the time.<sup>605</sup> Despite Obama having discussed the reform of the NCLB as early as 2007, it would not be until December 2015 that the reforms for ESEA finally went into effect, with Congress ending NCLB and replacing it with the Every Student Succeeds Act (ESSA).

While standards had center stage for educational reform at the beginning of the millennium, there were several court cases that were important to the cause of educational equity, because they challenged previous pro-equality decisions such as busing and affirmative action. In the case *Board of Education of Oklahoma City v. Dowell*

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<sup>603</sup> Barack Obama, "Remarks by the President on No Child Left Behind Flexibility," Obama White House, September 23, 2011, <https://obamawhitehouse.archives.gov/the-press-office/2011/09/23/remarks-president-no-child-left-behind-flexibility>.

<sup>604</sup> Motoko Rich, "'No Child' Law Whittled Down by White House," New York Times, July 6, 2012, <https://www.nytimes.com/2012/07/06/education/no-child-left-behind-whittled-down-under-obama.html>.

<sup>605</sup> Joy Resmovits, "No Child Left Behind Waivers Granted to 33 U.S. States, Some With Strings Attached," Huffington Post, August 13, 2012, [https://www.huffingtonpost.com/2012/07/19/no-child-left-behind-waiver\\_n\\_1684504.html](https://www.huffingtonpost.com/2012/07/19/no-child-left-behind-waiver_n_1684504.html).

(1991), which was decided by the U.S. Supreme Court, the Court's decision was that districts that had been made to use busing for desegregation based on race balance had been using it long enough that it was no longer necessary.<sup>606</sup> This effectively dissolved federal court ordered busing that had been imposed on districts resistant to other means of desegregation and allowed districts to resume their previous practices of sending students to their nearest neighborhood school regardless of the racial makeup of local communities surrounding the school district. Busing as a tool of desegregation was now questionable at best, and corrupted at worst.

Challenges to affirmative action also resurfaced in the courts in 2003, when a prospective Anglo law student, Barbara Grutter, was denied admission to the University of Michigan Law School, despite having a high GPA and LSAT test scores. Grutter brought suit against the university in *Grutter v. Bollinger*, arguing before the District Court that she and other respondents were being discriminated against through affirmative action policies, thus violating her rights under the Fourteenth Amendment.<sup>607</sup> Her argument was that because the school was giving a slightly greater chance for admitting students from underprivileged minority groups, they were rejecting Anglo American students with superior scores, and that the school had no compelling interest to justify the use of race in considering admissions.

The University of Michigan, in turn, argued that there was a compelling state interest to encourage diversity, especially for students with less resources who would

<sup>606</sup> *Board of Education of Oklahoma City v. Dowell*, No. 89–1080 (U.S. Supreme Court 1991).

<sup>607</sup> "*Grutter v. Bollinger et al.*, Certiorari to the United States Court of Appeals for the Sixth Circuit, No. 02-241," FindLaw, June 23, 2003, <http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=CASE&court=US&vol=539&page=306>.

otherwise not have the same opportunities. By doing so, the university strove to “ensure that these minority students do not feel isolated or like spokespersons for their race; to provide adequate opportunities for the type of interaction upon which the educational benefits of diversity depend, and to challenge all students to think critically and reexamine stereotypes.”<sup>608</sup> This view was supported by the NAACP as a means of addressing past and present discrimination at public and private universities.

The District Court did not agree, ruling that the Law School’s interest in achieving diversity was not a compelling one and enjoined its use of race in the admissions process. The case was then appealed to the United States Court of Appeals for the Sixth Circuit, which reversed the lower court’s ruling as it held that the decision from the earlier *California v. Bakke* case had established the precedent of diversity as a sufficient compelling interest to justify the use of racial preferences in admissions.

A second case, *Gratz v. Bollinger*, was brought not only against the affirmative action policy of the University of Michigan, but against its method of weighting the qualifications of potential applicants. Two Anglo American students, Jennifer Gratz and Patrick Hamacher, both residents of Michigan, had applied and been rejected from the University of Michigan's Law School.<sup>609</sup> The university at the time used a 150-point scoring system to decide who would be admitted (at 100 points), where underrepresented and minority groups were given additional points when being considered. The plaintiffs

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<sup>608</sup> *Ibid.*

<sup>609</sup> Despite being rejected, Gratz may not have had standing to bring the case. She had applied 3 years before

Michigan's point scoring system had gone into effect and was offered the chance to be put on a waiting list from

which all other applicants were eventually accepted that year. However, it was unclear if Gratz had rejected the

offer, or if she had filled out paperwork to be put on the list that had later been lost by the university.

argued that this system had denied them equal protection under the Fourteenth Amendment, with Gratz specifically targeting the point system used, while her co-plaintiff Hamacher cited the entirety of the affirmative action policies at the university as unconstitutional.<sup>610</sup>

Both cases were heard, appealed to the Sixth Circuit Court, and eventually brought before the U.S. Supreme Court. In the case of *Gratz*, the Bush administration itself chose to file papers with the Supreme Court, urging it to find affirmative action policies like Michigan's to be reverse discrimination that limited equal rights and individual opportunities, and thus unconstitutional. The Bush administration added as a weak addendum that diversity was still a worthy goal, but their principal argument was designed to remove the primary method of ensuring that diversity.

The outcomes of the cases were mixed, but ultimately upheld the constitutionality of affirmative action. In *Gratz*, the Court struck down the Michigan point system as being a quota-based system, something specifically forbidden by the earlier *Bakke* decision. However, in *Grutter* the Court reaffirmed the right of the university to consider diversity and race when making admissions decisions, even if the point system of admission had been ruled unconstitutional. Affirmative action in general was still constitutional where it was narrowly considered in the cause of diversity. This reaffirmed the original *Regents of the Univ. of Cal. v. Bakke* decision while overturning *Hopwood v. Texas*, which had prohibited the use of race as a factor in admissions. The decision still left a measure of

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<sup>610</sup> “*Gratz v. Bollinger*,” Supreme Court of the United States, April 1, 2003, [http://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/02-516.pdf](http://www.supremecourt.gov/oral_arguments/argument_transcripts/02-516.pdf).

ambiguity that opponents of affirmative action continued to target in the future, in hopes of overturning *Bakke* and *Grutter*.<sup>611</sup>

In another case that dealt with affirmative action policies based on insufficiently narrow tailored policies, the U.S. Supreme Court decided to uphold the constitutionality of the idea of affirmative action in *Parents Involved in Community Schools v. Seattle School District No. 1* (or *PICS*) in 2007.<sup>612</sup> This case involved a Seattle school district's attempts to promote diversity by individualized racial classification, which was overturned, but with the opinions of the Court justices split 4-1-4 in a way that reflected the differing public arguments for and against affirmative action.

In the plurality opinion led by Chief Justice Roberts and supported by Justices Scalia, Thomas, and Alito, it was concluded that while the school had considered that a racially diverse environment would be beneficial, the use of racial classifications to achieve it ultimately failed because it promoted a numerical quota (forbidden in *Bakke*) and was achieving racial balancing rather than real diversity. In addition, Roberts suggested that such balancing cannot be considered a state interest.

In the dissenting opinion, Justice Stevens and three other justices accused the majority of incorrectly applying precedents such as *Brown*, essentially dismissing affirmative action as a violation of the equal protection clause of the Fourteenth

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<sup>611</sup> Most recently, the ongoing *Fisher v. University of Texas at Austin* (2016) has again put affirmative action in front of the Supreme Court, after the Fifth Circuit Court ruled in favor of the university. However, the Supreme Court merely noted that the Fifth Circuit Court had failed to apply the rules of strict scrutiny set down by *Bakke* and *Grutter* (the Fifth Circuit having assumed good faith in the university's actions automatically) rather than overturning the decision on constitutional grounds. The Supreme Court then remanded the case back to the Fifth Circuit Court for its appeal. Thus, the final constitutionality of affirmative action remains in limbo for universities at this time.

<sup>612</sup> *Parents Involved in Community Schools v. Seattle School District No. 1*, No. 05-908 (U.S. Supreme Court 2007).

Amendment. Justice Kennedy was the exception, finding that Roberts was correct that the diversity policy was not narrowly tailored, but rejecting Robert's idea that the state could not have an interest in promoting racial diversity in certain circumstances, such as in education. Kennedy likewise berated the dissenting justices for ignoring issues of *de jure* versus *de facto* segregation in their rejection of affirmative action. Kennedy became the deciding vote despite his reservations regarding Roberts' findings. As a result, the existing method specifically used by the university was flawed, but as a policy, affirmative action remained constitutional, despite the repeated challenges.

If the 1980s were the beginning of an attack on Mexican American language and culture, the 1990s and 2000s were a continuation that was less direct, but more insidious because of it. The constant immigration of Spanish-speakers into the Southwest the crisis of September 11<sup>th</sup>, 2001 led to an intensification of fears over undocumented immigrants, and specifically over Mexicans as the most visible and numerous immigrant group entering the country. This came to affect all Latinos, as a significant portion of the country made no distinction between recently arrived Spanish-speakers and heritage Spanish-speakers in the Southwest. The English-only movement became the new face of assimilation forces, and states chose sides. The federal government's attempts to increase border security, combined with the courts undermining previous pro-minority and desegregation decisions, led to a period where public support for Mexican American equity was uneven at best. This background would provide a new, more challenging arena for Arizona and New Mexico to make their own decisions as states about how to treat their Latino students and residents.

## **Chapter 12: The Southwest in the New Millennium**

The end of the 20<sup>th</sup> century and the beginning of the 21<sup>st</sup> century was a period of uncertainty for Mexican American education. Widespread nativist sentiment was aggravated by an explosive growth of the Latino population and a flood of undocumented immigration into the Southwest. The September 11<sup>th</sup>, 2001 attack on New York and its aftermath left the United States' national mood with little support for languages and cultures other than English and American values outside of language minority communities. While there were still Mexican American activists working hard towards the goal of educational equity in both states, both Arizona and New Mexico chose their sides involving the English-only movement. Examining this evidence, it is clear that New Mexico publicly supported pro-Mexican American policies and statutes but did not have the funding or political will to live up to its promises. Arizona intensified attempts control immigrants, limit their rights in the state, and passed a series of harsh laws intended to stamp out ethnic studies and eject undocumented residents.

In 1998, a national report on the Mexican American dropout rate sponsored by Senator Jeff Bingaman (D-NM, 1983-2013) painted a dismal picture for Mexican American education. Mexican American students were three times as likely as Anglo American student to drop out of school; in fact, Latinos had the highest dropout rate of all ethnic minorities. More than a third of Mexican Americans aged 18 to 24 were failing to graduate from high school. This was more than double the rate for African Americans and three and a half times the rate for non-Latino whites. This rate had remained steady at



between 30-35% over the previous 40 years.<sup>613</sup> The three-year study, entitled “*No More Excuses*,” looked at academic statistics up to 1994, the most recent year for which those figures were available. While New Mexico did not compile cumulative dropout rates like the national study, Albuquerque Public Schools (APS) did provide figures for the 1997-1998 school year showing that similar dropout rates were mirrored in Albuquerque. About 11.9% of Mexican American students had dropped out, compared with 8.21% of Anglo Americans.<sup>614</sup> In the 1997-1998 school year, APS bilingual programs enrolled about 25,000 students, or 28% of total enrollment. Of the 118 schools in New Mexico, 58 provided bilingual education.<sup>615</sup>

These statistics provided an opportunity for conservative forces to attack bilingual education in New Mexico directly as a failed educational policy. Linda Chávez, recently of U.S. English, was Chairman of another pro-English organization, the Center for Equal Opportunity (CEO), which was a conservative think tank focused on affirmative action, immigration, and bilingual education. CEO had done some good for Mexican Americans through encouraging redistricting policies that were fair to minorities, as well as supporting the voting rights of rehabilitated felons, the majority of which were minorities in the United States. However, the CEO also had a record of attacking desegregation policies it believed hindered school effectiveness, which was problematic during a national mood that encouraged *de facto* segregation in schools.

Chávez was a native of New Mexico. She gave a public lecture at the University

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<sup>613</sup> Walter G. Secada et al., “No More Excuses: The Final Report of the Hispanic Dropout Project,” Department of Education (Washington, D.C.: Wisconsin University, Madison, Department of Curriculum and Instruction, 1998), <http://www.ed.gov/offices/OBEMLA/hdprepo.pdf>.

<sup>614</sup> Matthew Franck, “Hispanic Dropout Rate High,” *Albuquerque Journal*, February 2, 1998.

<sup>615</sup> *Ibid.*

of New Mexico in August of 1998, in which she defended the “sink-or-swim” style of English instruction and held up Asian Americans as model minorities.<sup>616</sup> She and the CEO saw an opportunity in Albuquerque’s situation to try and bypass the bilingual protections in the state. They encouraged students and parents to blame the problems of APS as being due to its bilingual programs and inadequate English education. It is undeniable that the program was not as effective as it could be as a bilingual program, but Chávez and the CEO looked place blame on the fact it *was* a bilingual program, not on the quality of the program.<sup>617</sup>

In the audience for Chávez’s lecture, Mariel Nuñez-Janes was taking notes that frequently countered Chávez’ points as she made them. Nuñez-Janes was finishing her Ph.D. in anthropology at the University of New Mexico and wrote an article comparing Chávez’s assimilationist standpoint with that of proponents of bilingual education based on the court case created by the CEO’s influence.<sup>618</sup> The comparison demonstrates how both sides have commonalities at their core that are responsible for the continued and energetic debate over bilingual education, both in New Mexico and in the wider Southwest.

The case, *Carbajal v. Albuquerque Public Schools*, was filed the U.S. District Court for New Mexico in March 1998 by twenty-six students and their parents against APS. The plaintiffs were given the financial support to bring the case by the Center for Equal Opportunity (CEO), however, indicating outside influence. In the complaint, the plaintiffs argued APS was violating the civil rights of Limited English Proficient (LEP)

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<sup>616</sup> Linda Chavez, “Lecture by Linda Chavez” (Lecture, August 27, 1998).

<sup>617</sup> Nuñez-Janes, “Bilingual Education and Identity Debates in New Mexico: Constructing and Contesting Nationalism and Ethnicity,” 63–64.

<sup>618</sup> *Ibid.*

students and included eight examples of APS failing to comply with Title VI, the Fourteenth Amendment, the Equal Educational Opportunities Act, the New Mexico Constitution, and the Elementary and Secondary Education Act (ESEA). Nuñez-Janes notes this was a surprise to see “in the seemingly historically culturally supportive context of New Mexico.”<sup>619</sup>

Specifically, the plaintiffs charged that the Alternate Language Services (ALS) program used by the district separated students by race and ethnicity in violation of the Fourteenth Amendment and was ineffective in teaching students Mexican American culture and the Spanish language. The U.S. Department of Education Office for Civil Rights had reviewed the ALS program in 1995, after which Albuquerque Public Schools (APS) and the Office of Civil Rights entered into an Agreement for Corrective Action to establish new procedures for identifying and serving LEP students.<sup>620</sup> At the time, ALS classified students as LEP based on a simple six question test to see whether the child had a primary or home language other than English. Parents did not have to give consent for placement in bilingual programs to occur, though they did have the option to have their children removed from the ALS program. The plaintiffs argued that APS had violated this earlier 1995 agreement by placing students in the program without parental consent and wanted to end the current bilingual program completely.

Nuñez-Janes argues that by using rhetorical tropes to claim the case was about equality and opportunity, Chávez hoped to conceal the CEO’s conservative ideology and assimilationist viewpoint; thus, a main argument in the case was over the primary role

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<sup>619</sup> *Ibid*, 63–64.

<sup>620</sup> “*Carbajal v. APS*, No. 01-2288,” July 30, 2002, <http://ca10.washburnlaw.edu/cases/2002/07/01-2288.htm>.

given to Spanish language over English. Specifically, the complaint noted that plaintiffs had been denied educational opportunities: “because the instructors are not adequately trained to teach English to LEP students, instructors fail to teach Plaintiffs English. Such actions have...denied the same educational opportunities afforded to non-LEP students, and this denial is because of national origin.”<sup>621</sup>

The Court rejected the idea that placing students in language assistance courses was discrimination based on national origin. Specifically, Judge Vázquez stated that “the mere fact that the statute uses a definition which might be correlated with national origin does not itself establish a discriminatory classification...this statute does not divide the students but unites them: it specifically provides that bilingual educational programs in the state must accommodate everyone, children who speak 'minority' languages, Native American children, and all others who wish to participate in the program.”<sup>622</sup>

The case was appealed to the U.S. Court of Appeals 10<sup>th</sup> Circuit, where in addition to repeating earlier arguments, the plaintiffs also argued that New Mexico’s Bilingual and Multicultural Education Act violated the Equal Education Opportunity Act’s mandate to “take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.”<sup>623</sup> This represented an escalation of the original lawsuit; now the plaintiffs were trying to have the BMEA itself declared unconstitutional, arguing that it classified on the basis of race or national origin, and that the ALS program created per BMEA requirements also classed according to race and national origin. In support of this, plaintiffs provided language from the BMEA itself

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<sup>621</sup> *Ibid.*

<sup>622</sup> *Ibid.*

<sup>623</sup> *Ibid.*

that referred to “culturally and linguistically different” students, and that programs educating such students “shall not have the effect of segregating students by ethnic group, color, or national origin.”<sup>624</sup>

Despite this, the appeals court upheld the decision of the district court, confirming the ruling that neither the ALS program or the BMEA was unconstitutional. The lawsuit itself was settled out of court in June 1999, the day before the trial was to re-commence. Both MALDEF and Making Education the Answer (META) negotiated changes to the bilingual program as part of the settlement, including providing greater financial incentives for bilingual teachers.<sup>625</sup>

Based on her observations, Nuñez-Janes argues that opponents of bilingual education like Linda Chávez and CEO believed that “public recognition of ethnicity, subalternity, and minority status as implied in state-supported educational programs, and the emphasis of these identities in public demonstrations of cultural pride” marked Mexican Americans as different in American society, and confused their allegiance for the dominant Anglo majority. Thus, Nuñez-Janes argues that survival in society comes from “erasing and silencing ethnicity” by making it invisible.<sup>626</sup> In Chávez’s own words, her viewpoint is a protest against racism and an “education system that teaches Mexican American children that they are second-class citizens and confines them to a segregated education which does not provide for them the skills that are necessary to be able to survive in this country.”<sup>627</sup> Nuñez-Janes suggests that this process of becoming invisible

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<sup>624</sup> *Ibid.*

<sup>625</sup> MALDEF has a strong supporter of cases that attempt to address de jure and de facto segregation and failures in bilingual education programs, starting as early as *United States v. Texas* in 1970.

<sup>626</sup> Nuñez-Janes, 65–67.

<sup>627</sup> Linda Chávez, quoted in Nuñez-Janes, 66.

is achieved through fluency in English, as English is the most important symbol of American unity to those who support English-only education and assimilation into American society.

Alternately, Nuñez-Janes offers the example of bilingual education supporters, who “resist the exclusionary terms of nationalism by holding a more inclusive view of national ideology...an additive version of Americanism that sees the manifestation of a variety of ethnic identities and cultures as an integral part of U.S. national identity.”<sup>628</sup> A quote Nuñez-Janes includes from a local New Mexican group called the Hispanic Round Table explains this viewpoint succinctly:

By promoting bilingual education, we are not advocating for separatism, for not learning English, for not learning Anglo or Western history, culture, art, literature, or anything else – we are advocating for the learning of these *plus* our own indohispano language, history, culture, literature, art, and civilization as well.<sup>629</sup>

Nuñez-Janes thus concluded that both sides were reacting against what she termed the tri-ethnic myth of New Mexico, where the supposed harmonious coexistence of Anglos, Latinos, and Native Americans created a situation where Mexican Americans were simultaneously confronted with subordinate status to Anglos and Anglo glorification and advocacy for Native American culture, putting Mexican Americans at the bottom of society. Thus, Nuñez-Janes argued, the struggle over bilingual education in New Mexico was part of a struggle to fit the identity of *nuevomexicanos* into a national identity as Americans. Education provides a perfect arena to debate what it means to be Mexican American, and English-only versus English Plus are just another facet of the desire of Mexican Americans on both sides to give their children access to the opportunities they

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<sup>628</sup> *Ibid*, 67.

<sup>629</sup> Hispanic Round Table flyer, quoted in Nuñez-Janes, 67.

need in American society through language.<sup>630</sup>

In addition to debates over bilingual education and identity in *Carbajal*, New Mexico dealt with issues concerning undocumented immigration. Prior to the 2000s, national cases had established that the children of undocumented immigrants deserved the same right of education as any other student, and that the imperative to educate was intended to be blind in this sense. The problem came when local authorities and educators were pulled into assisting with identifying undocumented students and their parents in New Mexican schools and communities. A case regarding this was decided in the U.S. District Court for New Mexico in 2004, *González v. City of Albuquerque, New Mexico*. The city of Albuquerque was sued after local police stopped two undocumented students, Ruben Tarango and Sergio González, while they were on school grounds at Del Norte High School in Albuquerque.

Despite not having violated school code or the law, the sixteen-year-old students were searched and interrogated. When no evidence of criminal activity was found, another student they had been talking to previously was also detained and searched, with the same result. This was followed by a demand that they present identification as students as their car was being illegally searched. While they were found to have committed no crime, the boys were then detained for an hour and a half, while the officers contacted the Border Patrol on suspicion the boys were undocumented. The officers then held the students for an hour and a half more before turning them over to the Border Patrol agent who arrived. A third student, Carlos González, who was attending class at the time and not involved in the initial stop, was also located and turned over to

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<sup>630</sup> Nuñez-Janes, 75–76.

the Border Patrol.<sup>631</sup>

An investigation by the MALDEF found that it had been a known and common practice that undocumented students and parents could be threatened with exposure by APS teachers and administrators. The plaintiffs for the case along with their parents filed suit with financial support from MALDEF and various community organizations, led by El Centro de Igualdad y Derechos and Padres Unidos. The plaintiffs argued that their constitutional rights had been violated under the Fourth and Fourteenth Amendments as well as the Equal Protection Clause of the New Mexico State Constitution.<sup>632</sup> Padres Unidos further argued that the climate of fear and suspicion the arrests had caused interfered with the goal of ensuring access to public education in New Mexico for all children without undue interference, and regardless of race, ethnicity, and national origin or immigration status.

*González* ultimately led to a victory for the plaintiffs. APS chose to settle the case, agreeing that the school district would ensure that all students, regardless of immigration status, were safe and secure while on school grounds. In a later settlement, the Albuquerque Police Department (APD) and the City of Albuquerque agreed to implement new police procedures on the local enforcement of federal immigration laws. The agreement promised that the APD would no longer investigate a person's immigration status or seek to enforce federal immigration laws, and that no city funding would be applied towards investigating any immigration-related matters.

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<sup>631</sup> *González v. City of Albuquerque, New Mexico*, No. CV-05-580 JB/WPL (U.S. District Court of New Mexico 2007).

<sup>632</sup> MALDEF had previously defended education for the children of undocumented parents, most famously in *Plyer v. Doe* in 1981 in a case against a Texan statute that denied funding for the education of undocumented students.



*González* shows that despite the state's pro-Mexican American stance, authorities in New Mexico were influenced by anti-immigrant concerns, to the point where they violated the rights of citizens and undocumented citizens alike. The victory was a triumph for what Rachel Lazar, the director of El Centro at the time, stated was part of "Albuquerque's long history of passing non-discrimination policies that promote public safety and reflect the unique needs and demography of our community."<sup>633</sup>

As these two cases show, despite its rhetorical commitments to Spanish speakers, New Mexico still struggled to meet its promises of support for Spanish language and *nuevomexicano* and Mexican cultural heritage. Even with support for bilingual education, New Mexico bilingual programs were often remedial rather than truly bilingual due to the costs involved with setting them up and running them, especially in terms of finding qualified bilingual instructors. Nor were all New Mexicans supportive of additive bilingual programs as opposed to transitive English programs, or at the presence of undocumented immigrants in the state.

However, following these important court cases, New Mexico continued to improve its general educational policies by developing specific standards in its educational curriculum. These were created through community committees that involved educators, administrators, and community residents, with the resulting plan being adopted by the State Board of Education. This new curriculum was more heavily based on criterion-referenced testing, a continuing process that replaced all norm-based testing in New Mexico starting in 2002 through funds made available by the ESEA. By 2003, the

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<sup>633</sup> Mexican American Legal Defense and Education Fund, "MALDEF and Community Coalition Reach Agreement With City of Albuquerque on Policies Against Local Enforcement of Federal Immigration Law," MALDEF, August 14, 2007, [http://maldef.org/news/releases/González\\_cityofalb\\_081407/index.html](http://maldef.org/news/releases/González_cityofalb_081407/index.html).

initial tests, which were primarily in science and math, were in place. The project was steadily expanded until state policy moved toward adoption of the Common Core, a program that would divide educators in New Mexico as well as the politicians and administrators in the Department of Education.<sup>634</sup>

In addition to new assessment tests for its students, New Mexico made numerous changes to educational policy. Based on the 22<sup>nd</sup> New Mexico Town Hall meeting in 1999, the state legislature organized a task force to address various issues raised about the inadequacy of New Mexico's schools. This resulted in the New Mexico Educational Reform Act of 2003. The major points of the act, as listed by John Mondragón and Ernest Stapleton, both emeritus professors of education, were:

- 1) The revision of major portions of the New Mexico School Code;
- 2) Updating the accountability law to follow federal law, which included an annual report on student achievement;
- 3) A three-tiered licensure structure with commensurate salary and performance measures for teachers and administrators;
- 4) Major changes in local governance, which shifted personnel, instructional, and financial responsibility from the local board of education to the district superintendent and the school principal;
- 5) Legislation calling for an elected school council at each school to be involved in the operation of the school; and
- 6) Notification of parents of teacher, educational assistant, and principal qualifications.<sup>635</sup>

The Act included two constitutional amendments. The first expanded the educational bureaucracy by creating a governor's cabinet-level position for a Secretary of Public Education appointed by the governor, a Public Education Department, and an elected Public Education Committee. The second amendment slightly increased the amount of interest revenue that could be withdrawn every five years for funding education from

<sup>634</sup> Mondragón and Stapleton, 176–77.

<sup>635</sup> *Ibid*, 180–81.

state accounts.<sup>636</sup>

The following year, the Bilingual Multicultural Education Act (BMEA) was modified by the state legislature with an explicit goal: that “all students, including English language learners: (1) become bilingual and bi-literate in English and a second language including Spanish, a Native American language (where a written form exists and there is tribal approval), or another language; and (2) meet state academic content standards and benchmarks in all subject areas.”<sup>637</sup> Despite the language of the amendment, New Mexico remained unable to fund or staff the necessary institutional capacity to actually carry out this goal, which would eventually result in the Mexican American community and school districts alike suing the state of New Mexico for failing to live up to its obligations in 2014. This will be discussed in the afterword of this study.

Meanwhile, Arizona’s public schools were suffering due to the low level of funding they had endured during the 1980s, which did not change greatly during the 1990s. By 1990, Arizona ranked 38<sup>th</sup> in the nation in terms of per pupil educational funding; by 2000, it had dropped to 48<sup>th</sup> in the nation. In just 30 years, it had gone from close to the national average of money spent per pupil to nearly the bottom of the list. In addition, it had the unfortunate distinction of being one of the states with the large class sizes and numbers of students per school site due to a shortage of teachers caused partially by this lack of funding. While class size started to equalize towards the close of the century, this was primarily due to the prevalence of charter schools, rather than any fix applied to the public-school system itself.

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<sup>636</sup> *Ibid*, 180–81.

<sup>637</sup> New Mexico, Bilingual and Multicultural Education Act.

Part of the problem had to do with Arizona's very low pay for teachers and the lack of teacher certification requirements, which allowed districts to pay instructors less. The funding and resources available for Latino English Language Learner (ELL) students was especially substandard. This led to an important case for Arizona in 1992, when a fourth grader named Miriam Flores became a plaintiff in *Flores v. Arizona* in the U.S. District Court for Arizona.

The plaintiffs sued the state of Arizona over the lack of adequate funding provided to ELL students in order for them to become proficient in speaking, writing, and reading English. This case wound its way through the courts for over a decade, with the Arizona District Court finally requiring that Arizona base its spending on ELL students on actual cost studies to determine the average funding needed. In 2006 Arizona had become one of several states to require an exam to graduate from high school, which the district judge in this case also prevented from applying to ELL students before ruling in the plaintiff's favor and directing Arizona to improve its funding for ELL students.

After Arizona continued to delay compliance, the District Court in Arizona ordered that additional ELL funding be made available and issued a fine to the state of Arizona of \$500,000 a day. Even then, Arizona's legislature did not act on the court decision until the Court had increased the penalty to \$2,000,000 a day by 2009. In response, Arizona's legislature passed HB 2064, which set the funding for ELL students at \$365 for elementary students and \$444 for high school students. Arizona challenged the ruling in 2007, however, following the passage of No Child Left Behind, arguing that the change in federal policy had altered the assumptions made by the court in its earlier ruling. For example, ELLs were not defined as a special class previously, and thus

Arizona's representatives argued that they had not been previously tested or tracked separately.<sup>638</sup>

In 2007, another district court judge ruled that Arizona was still illegally underfunding ELL programs, and invalidated HB 2064 since the statute provided less than what had been recommended by a court-ordered study in 2005. It also only provided said funding for two years when ELL students often took four to five years to become proficient in English. Specifically, the judge ruled that the level of funding violated the federal Equal Educational Opportunities Act (EEOA) which required all students, including those with a native language other than English, to have an opportunity for equal participation in public education. This ruling put Arizona in danger of losing over \$600 million in federal funding for education.<sup>639</sup>

Despite this order, the Arizona legislature failed to increase funding, and Arizona was found in contempt of court, with the district judge requiring that the state comply or face additional sanctions. In 2008, the U.S. Ninth Circuit Court of Appeals found that the existence of NCLB did not relieve Arizona of the obligation to follow EEOA mandates; individual students could still sue Arizona over failures of funding of their own education, even if NCLB was providing funding to improve those schools. Otherwise, the court decision noted, Arizona would effectively be repealing EEOA to replace it with NCLB.<sup>640</sup>

After years of court battles, Arizona finally took the case before the U.S. Supreme Court in 2009, arguing the District Court was inappropriately interfering with state

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<sup>638</sup> Cecilia Ríos-Aguilar and Patricia Gándara, "Horne v. Flores and the Future of Language Policy," *Teachers College Record* 114, no. 9 (2012).

<sup>639</sup> *Flores v. State of Arizona*, No. CIV 92-596 TUC ACM (U.S. District Court of Arizona 2000).

<sup>640</sup> *Ibid.*

matters. Relying primarily on Arizona’s own evidence and studies, the Court reversed the earlier decisions, stating that Arizona had sufficiently complied with the law. The Court took the position that Arizona’s Structured English Immersion (SEI) program was *better* than a bilingual program by citing an Arizona Department of Education study – which not surprisingly supported the use of the program it had promoted and used to replace previous bilingual and multicultural programs like the Mexican American Studies Department (MASD) at Tucson United School District.<sup>641</sup>

The Court’s decision forgave Arizona for failing to respond to the decisions of the lower court, citing that “a significant change in factual conditions” had likely occurred that might change the court’s decision. According to educational psychologists Cecilia Ríos-Aguila and Patricia Gándara, no conclusive evidence was offered to support this assertion besides Arizona’s own arguments and evidence.<sup>642</sup> The Court thus vacated the lower court’s contempt order as well as Arizona’s requirement to pay attorney fees, and remanded the case back to the lower court to reexamine all of the evidence thus far presented to determine on whether or not the situation had actually changed. The dissenting opinion by four of the justices argued that the lower courts had considered all the changes in circumstances that affected ELL students in Arizona, and that the decision was denying them the bilingual instruction needed for those students to have equal participation.<sup>643</sup>

In 2013, the local district judge granted Arizona’s motion to dismiss the plaintiff’s statewide claims. In the decision, the Court decided that the previous imposed

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<sup>641</sup> Ríos-Aguilar and Gándara, “Horne v. Flores and the Future of Language Policy.”

<sup>642</sup> *Ibid.*

<sup>643</sup> *Flores v. State of Arizona.*

requirements had been invalidated by changes Arizona had made in the time since the original decision, such as its creation of the Structure English Immersion (SEI) program, including its violation of Equal Educational Opportunities Act. An appeal to the 9<sup>th</sup> Circuit Court of Appeals in 2015 put the final nail in the coffin of the case, when the Court affirmed that the district court decision was correct, in that ELL students were being exposed to all the academic content necessary. The judge ruled that the SEI program had not existed long enough for the plaintiffs to have the evidence to prove it was ineffective, though the court did indicate that any new EEOA violations could cause the case to be revived. This case allowed Arizona to ignore the requirements of a true bilingual program and put what was a version of the old English “sink-or-swim” programs popular in the 1960s and 1970s back in place through SEI. This notably weakened the education of Latino ELL students in the state.

In addition to the results of *Flores*, Arizona demonstrated a public antipathy towards immigrants and Spanish language. Its bilingual education programs varied in quality due to the lack of state authority to monitor their use in school districts across the state. In 1999, the Arizona Superintendent of Public Instruction Lisa Graham Keegan reported that her office did not even have enough information on how many ELL students were learning through bilingual programs or English as a Second Language programs, because 40% of the districts had not submitted any data and those that had offered “conflicting information.”<sup>644</sup>

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<sup>644</sup> Cover letter for Lisa Graham Keegan, “English Acquisition Services: A Summary of Bilingual Programs and English as a Second Language Programs for the School Year 1997-8,” Report of the Superintendent of Public Instruction to the Arizona Legislature (Phoenix, AZ: Arizona Department of Education, January 1999).

These problems were made moot when English-only proponents in Arizona successfully lobbied for Proposition 203, more properly titled the English Language Education for Children in Public Schools Act, to be placed on the ballot in 2000. There would also be a successful Official English proposition six years later in 2006 with Proposition 103.<sup>645</sup>

Proposition 203 was included on the ballot for November 7, 2000 and was approved by 63% of voters that year. The proposition was the brainchild of California entrepreneur Ron Unz, who had sponsored a similar proposition in California, Proposition 277, which had temporarily changed California's bilingual education system to an opt-in structured English language system in 1988 (though it was later repealed in 2016). Unz was also the primary funder for Proposition 203 in Arizona in cooperation with ProEnglish, personally supplying 81% of the funding to get it on the ballot.

The language of the Proposition 203 specified that for Arizona education:

English is the language of instruction.... Books and instructional materials are in English and all reading, writing, and subject matter are taught in English. Although teachers may use a minimal amount of the child's native language when necessary, no subject matter shall be taught in any language other than English, and children in this program learn to read and write solely in English."<sup>646</sup>

It added that "all children in Arizona public schools shall be taught English as rapidly and effectively as possible."

Proposition 203 was much more restrictive than its Californian predecessor.

Previously, Arizona school districts had the choice of teaching their ELL students

<sup>645</sup> "Proposition 203 English Language Education for Children in Public Schools," languagepolicy.net, November 7, 2000, 203, <http://www.languagepolicy.net/archives/echar.htm>.

<sup>646</sup> *Ibid*, 2.



English via either bilingual programs or English immersion programs. The new statute mandated that only English immersion programs could be used. In California parents had the ability to override Proposition 277 by choosing to create bilingual programs. This language was altered in the Arizona bill to make it seem parents would have the same freedoms via waivers to avoid English Only programs. But the language now included the fatal phrase that school officials could “reject waiver requests without explanation or legal consequence,” setting in place a policy that allowed any district to simply refuse to create bilingual programs, even when the parents of their students wanted them.<sup>647</sup> The amendment included language that removed a child’s lack of English proficiency as a reason for receiving special education, and required that children be tested yearly with a standardized written tests in English to determine their progress. As a matter of law, it prevents the use of true additive bilingual education.

This antipathy to the use of the Spanish language was connected to Arizona’s hostility to undocumented immigrants. Arizona demonstrated this through the 1990s with a series of statutes aimed at undocumented migrants, starting in 1996 with a law requiring proof of legal residency to receive a driver’s license, and in 1997 with Operation Restoration, where for five years police could stop anyone who looked Latino and ask them to prove their U.S. citizenship. Between 2004 and 2017, over 70 bills in the Arizona Legislature addressed issues relating to Spanish-speaking immigrants. These included the Arizona Taxpayer and Citizenship Protection Act (Proposition 200) that demanded proof of citizenship to be able to vote and access public services, and the 2005 anti-smuggling law which imposed punishment on anyone engaged in human smuggling and treated

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<sup>647</sup> “Proposition 203 English Language Education for Children in Public Schools.”

those who hired these services as co-conspirators. Other laws included Proposition 100, which sought to deny bail for immigrants; Proposition 102, which sought to deny punitive damages in civil actions; Proposition 103, which made English the state's official language; and Proposition 300 which banned undocumented immigrants from accessing state-funded education services or assistance from the Arizona Department of Economic Security. In 2008 Arizona passed the Legal Arizona Workers Act (LAWA) which mandated employers verify all their employees are authorized to work legally in the U.S. This series of laws make it reasonable to conclude that Arizona was hostile to undocumented immigrants, as well as to Spanish-speakers and those preferring to retain their Mexican culture after moving to the United States.<sup>648</sup>

The most infamous of these statutes, SB 1070 (Support Our Law Enforcement and Safe Neighborhoods Act), was signed into law in 2010. It required that Arizona police determine the immigration status of anyone arrested or detained when there was "reasonable suspicion" they were not in the U.S. legally. This statute inspired over a dozen similar laws throughout the country. A *Los Angeles Times* article accused the law of being born of "a decade's worth of fears of Mexican drug cartels, competition for jobs, and the state's rapidly expanding Latino population."<sup>649</sup>

Dr. Eduardo Torre Cantalapiedra of El Colegio de México has examined the reasons behind SB 1070 and has split them into economic, sociocultural, and political factors. He argues that the Great Recession of 2008 hit the immigrant work force hard, as

<sup>648</sup> Eduardo Torre Cantalapiedra, "Explaining State and Local Anti-Immigrant Policies in the United States: The Case of Arizona's SB 1070," *Migraciones Internacionales* 8, no. 3 (January 2016): 41–44.

<sup>649</sup> Nigel Duara, "Arizona's Once-Fearful Immigration Law, SB 1070, Loses Most of Its Power in Settlement," *Los Angeles Times*, September 15, 2018, <http://www.latimes.com/nation/la-na-arizona-law-20160915-snap-story.html#>.

they were the first to be laid off when construction jobs slowed, and thus “began to be both a potential tax burden for [Arizona] and a threat to jobs for the native-born.” He notes that the sheer scale of the migration “sparked fear of a loss of the nation’s supposed single culture, fear about the country’s future ethnic/racial composition, and fear about the political prominence and status of the growing Latino population.”<sup>650</sup> Other factors included concerns over border security, especially over drug trafficking and human smuggling (which were the highest in Arizona along the border); the Republican Party’s strategy of exploiting public fear over the loss of national identity and its resistance to cultural diversity; similar policies implemented in other states (such as California); the federal government wanting a tough stance on undocumented immigration; and economic interest groups and anti-immigrant organizations influencing politics.<sup>651</sup>

Torre Cantalapiedra concludes that SB1070 “was promoted by Arizona’s Republic political leaders to make electoral gains, given the huge support from the public it had, and to push an anti-immigrant agenda in the state and indirectly on the federal level.”<sup>652</sup> He based argument on this public support based on fears created by unemployment and a perceived loss of national culture combined with xenophobia and racism. Even when the law was challenged and struck down in 2016, it made the law a precedent to be used in national debates on immigration.<sup>653</sup> Aside from numerous boycotts by business leaders and other more liberal cities, the 2016 court decision against SB1070 caused Arizona to end the practice of police officers questioning people and demanding to see their immigration papers (though officers retained the ability to do so at

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<sup>650</sup> Torre Cantalapiedra, 45–47.

<sup>651</sup> *Ibid*, 48–57.

<sup>652</sup> *Ibid*, 56–57.

<sup>653</sup> *Ibid*, 56–57.

their discretion) as well forcing Arizona to pay \$1.4 million dollars in attorney's fees for the plaintiffs.<sup>654</sup>

In addition to its poor treatment of ELL students and immigrants, Arizona has also mistreated ethnic studies programs. In one notable example, a highly successful Mexican-American Studies program was shut down in favor of SEI. This case demonstrated just how deep the antipathy towards Spanish language and culture were in Arizona's government, and how strongly ideas of Americanization and English Only pedagogy were prevalent in the state.

Starting in 1998, the Tucson United School District (TUSD) in Arizona was the site of a highly successful experiment in multicultural and bilingual education, a Mexican American Studies Department (MASD) based in Tucson, Arizona. Tucson traditionally has had the highest concentration of Latino residents in Arizona. The program was a direct result of an earlier court case, *Mendoza v. Tucson School District* in 1974 in the U.S. District Court for Arizona, which was brought by Latino and Black students against the district as a school desegregation lawsuit.<sup>655</sup> As part of its defense, the Tucson school district argued for unitary status in 2005, a bureaucratic trick that would have made it appear that all disparities outlined in the *Mendoza* case had been fixed. This prompted another desegregation case to be brought by students in 2008 assisted by MALDEF, called *Fisher v. United States*, and heard before the Fifth Circuit U.S. Court of Appeals. A related case brought against Arizona in 2011 called *Fisher v. Tucson Unified Sch. Dist* was also heard before the Ninth Circuit U.S. Court of Appeals. As part of the original judgement of *Mendoza* in 1978, TUSD was required to create a Mexican American

<sup>654</sup> Duara, "Arizona's Once-Feared Immigration Law, SB 1070, Loses Most of Its Power in Settlement."

<sup>655</sup> *Mendoza v. Tucson Sch. Dist*, No. 10-15124 (n.d.).

Studies program to further its remedial objectives, which it did not actually do until 1998, twenty year later. TUSD then expanded their Mexican American Studies program further in 2007 after additional court prompting.<sup>656</sup>

The Mexican American Studies Department in TUSD was the brainchild of Dr. Julio Cammarota, an associate professor in Mexican Studies, and Dr. Augustine Romero, the director of the MASD. They envisioned using the Tucson MASD to help close the gap in Mexican American education in the state, following the passage of No Child Left Behind. It was created in cooperation with Dr. Becky Montaña, then Deputy Superintendent of TUSD.<sup>657</sup>

The MASD program depended on the pedagogical principles of problem posing and critical praxis, which were intended to promote intellectual engagement, but also used a wide variety of theories, including critical race theory, youth participatory action research, and a variety of other theories aimed at encouraging Mexican American students to see themselves as intellectuals.<sup>658</sup> This included the ability to point out problems they saw in the coursework. In addition, there was a strong focus on the empowerment of students, by linking the class material to their lived experiences and social conditions to help them better relate to what they were learning. The new program was put in place at Cholla High School, with the help of a former Cholla graduate whom Romero had worked with, Lorenzo López Jr., who returned as a teacher.<sup>659</sup>

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<sup>656</sup> Augustine Romero, "The Battle for Educational Sovereignty and the Right to Save the Lives of Our Children," in *Raza Studies: The Public Option for Educational Revolution*, Kindle edition (Tucson, AZ: University of Arizona Press, 2014), 52–62.

<sup>657</sup> Augustine Romero, "Revolutionary Education in Tucson," in *Raza Studies: The Public Option for Education*, eBook (Tucson, AZ: University of Arizona Press, 2014), xiii–xxii.

<sup>658</sup> Critical praxis is defined as a recurring passage through a cyclical process of experiential learning; by experiencing a cycle of learning, a student learns and improves their knowledge over each cycle.

<sup>659</sup> *Ibid.*

Despite impressive success in motivating students and raising their grades, however, the program fell victim to anti-ethnic studies politics. Tom Horne, Arizona's State Superintendent of Public Instruction from 2003 to 2011, waged a campaign against the MASD during his tenure. Horne targeted the Tucson MASD program by arguing that dismantling ethnic studies was for the good of the students. In Horne's mind, studying the ethnic perspectives of Arizonan Mexican Americans would lead to conversations about oppression, and thus lead to depression in the students, despite ample research suggesting the opposite.<sup>660</sup> His dislike of the program seems to have stemmed from a talk at the school by Mexican American labor leader Dolores Huerta in April 2006, during which several students taped their mouths shut and walked out of the meeting in protest.<sup>661</sup> Ironically, the other thing that offended him was when Huerta had asked the question: "Why do Republicans hate Latinos?"

Horne, in a later interview, used the fact the MASD program allowed students to point out problems as well as the student protests from the Huerta talk to claim that the MASD was led by "radical teachers who taught student to be rude and disruptive."<sup>662</sup> This is in line with the attorney general's comments in court papers, when he stated: "With respect to TUSD's MAS program, the evidence shows that concerns existed that the program was based on a divisive, separatist, politicized pedagogy that taught students to see themselves as exemplars of an oppressed ethnicity rather than as individuals with

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<sup>660</sup> Jeff Duncan-Andrade, "Deconstructing the Doublethink Aimed at Dismantling Ethnic Studies in Tucson," in *Raza Studies: The Public Option for Educational Revolution*, Kindle edition (Tucson, AZ: University of Arizona Press, 2014), 203-204.

<sup>661</sup> Ernesto Portillo Jr., "Neto's Tucson: The Vindication of Dolores Huerta," *Arizona Daily Star*, September 30, 2017.

<sup>662</sup> Associated Press, "Former Arizona Schools Chief: Radical Teachers of Ethnic Studies Had to Be Stopped," *Azcentral*, July 17, 2017, <https://www.azcentral.com/story/news/local/arizona/2017/07/18/former-az-school-chief-tom-horne-testify-mexican-american-studies-trial/486558001/>.

the opportunity to control their own destinies and achieve their own goals.”<sup>663</sup> Jeff Duncan-Andrade, in his article for *Raza Studies* in support of MASD, argues, however, that Horne had promoted the idea of celebrating rebellion against oppression previously in the case of the Founding Fathers and their rebellion against the British. This, Duncan-Andrade notes, is pure Orwellian doublethink, “holding two contradictory beliefs in one’s mind simultaneously and accepting both of them.” Duncan-Andrade persuasively argues Horne held Mexican American Studies and Latino history to a different standard than history based on Anglo American history.<sup>664</sup> Stories of resisting oppression and rebellion were only useful to be taught when they had no direct application to current societal structures.

Horne was in a powerful position to try and dismantle the TUSD MASD program, first as State Superintendent of Public Instruction, and later as the Attorney General for the state of Arizona. Horne worked with the legislature to pass bills aimed at shutting MASD down. The first two bills put to a vote in 2008 and 2009 were defeated, but the wording in those bills demonstrates how Arizona’s government tied respect and interest for Latino culture as opposition to Americanization and patriotism.

The 2008 bill, Senate Bill 1108 (SB 1108) was unrelated to education; it covered a reorganization of the Homeland Security Advisory Councils. It included, however, an amendment that added the wording that “A primary purpose of public education is to inculcate values of American citizenship. Public tax dollars used in public schools should not be used to denigrate American values and the teachings of Western civilization.”<sup>665</sup>

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<sup>663</sup> *Ibid.*

<sup>664</sup> Duncan-Andrade, 202-203

<sup>665</sup> “House of Representatives Amendments to S.B. 1108 (2008),” Azleg.gov, 2008.

By this argument, public education could not include ethnic studies or ethnic organizations in Arizona, because it was not inculcating American values in students; in fact, it was anti-American to bring up America's past sins.

While the 2008 amendment failed, a second attempt was made in 2009, when the same amendment was attached to an education bill, SB 1069. The language was slightly changed, stating that "public school pupils should be taught to treat and value each other as individuals and not on ethnic background." In many ways this was an escalation; it was not enough to deny ethnic studies, now students were not even allowed to identify themselves ethnically. This amendment was not approved but Horne was a contributing author for the bill, though he did not sponsor it personally. This was a glimpse of things to come – if he had the power to do so, Horne would continue to attack the Tucson MASD program by introducing similar bills.

In 2010, House Bill 2281 (HB 2281) was introduced into the Arizona House of Representatives. Horne jointly drafted the bill with State Senator John Huppenthal, who later replaced Horne as State Superintendent of Public Instruction and was also the co-sponsor of SB 1070. HB 2281 had several components that were aimed specifically at ethnic studies and the MASD program, as it prohibited classes that:

- 1) Promoted the overthrow of the United States government;
- 2) Promoted resentment towards a race or class of people;
- 3) Were designed for pupils of a particular ethnic group; and
- 4) Advocated ethnic solidarity instead of treatment of pupils as individuals.<sup>666</sup>

Evidently, the potential radicalization of Mexican American students against Anglo Americans was feared, or perhaps this was a throwback to the antipathy felt by the public

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<sup>666</sup> Romero, "The Battle for Educational Sovereignty," 86-87.



towards militant activism of the 1960s and 1970s, when Chicano activists had very publicly confronted Anglos Americans for their past and present behavior.

Augustine Romero notes that that during Senate Education Committee hearing for the bill, Horne testified that he was sponsoring the bill because he believed that “Mexican American studies promoted anti-American sentiment and resentment towards whites.”<sup>667</sup> Moreover, Huppenthal allowed no supporters of the MASD program to speak at the committee hearing, calling for a vote over the objections of the Democratic members of the committee. Governor Jan Brewer (2009-2015) was also completely unwilling to meet with representatives of the program to hear their views.<sup>668</sup>

HB 2281 was passed by the committee along party lines (4 Republicans in favor, 3 Democrats against), with the Republican-dominated legislature approving it December 31<sup>st</sup>, 2010, and Governor Brewer signing it into law shortly thereafter. At that time, the state made the argument that HB 2281 was “for the best” for ethnic students in the state (if they officially existed anymore in the government view). The problem with this argument was demonstrated when examining exactly how the law was applied, which charitably can be described as “unevenly.”

Despite TUSD certifying that its MASD program did not violate the new law on December 30<sup>th</sup>, 2010, Horne immediately declared the program in violation on January 3<sup>rd</sup>, 2011, as one of his last acts as Superintendent of Public Instruction before becoming the State Attorney General; not surprisingly, this was immediately echoed by his successor, Huppenthal, who assumed the office the next day. Shortly afterward, in March, Huppenthal ordered an audit of the MASD by Cambium Learning Incorporated, a

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<sup>667</sup> *Ibid*, 86.

<sup>668</sup> *Ibid*.

company associated with the University of Arizona, to demonstrate the Tucson MASD violated HB 2281<sup>669</sup>

If that was the purpose, Huppenthal was disappointed. After interviewing eight different focus groups, Cambium discovered that not only did the MASD program have the support of a wide segment of Tucson's people, but after classroom observations concluded:

[TUSD's MAS program] claim[s] not only to improve student achievement, but to surpass and outperform similarly situated peers. The findings of the auditors agree student achievement has occurred and is closing the achievement gap based on the re-analysis and findings of TUSD's Department of Accountability and Research.<sup>670</sup>

There were, of course, promptly complaints made about how Cambium conducted its audit after MASD used their conclusions to appeal the decision that they were in violation. An anti-MASD writer for the *Arizona Daily Independent* sharply criticized the methodology of Cambium, pointing out that they had observed perhaps 5% of available classes, and insinuated that the teachers had been warned that they would be attending so they could be on their best behavior, as well as hand picking students to be in the Cambium focus groups.<sup>671</sup>

Another witness, John Stollar, the Chief of Programs and Policy for the Arizona Department of Education, testified that TUSD had blocked efforts by Cambium to make a more complete audit, and that because of this, the firm had tried to end the audit early.

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<sup>669</sup> Romero, 87-88.

<sup>670</sup> Cambium Learning Inc., "Curriculum Audit of the Mexican American Studies Department, Tucson Unified School District," Tucson Weekly, May 2, 2011, 44, [https://www.tucsonweekly.com/images/blogimages/2011/06/16/1308282079-az\\_masd\\_audit\\_final\\_1\\_.pdf](https://www.tucsonweekly.com/images/blogimages/2011/06/16/1308282079-az_masd_audit_final_1_.pdf).

<sup>671</sup> Loretta Hunnicutt, "Ethnic Studies Appeal Reveals Cambium Audits Flaws," Arizona Daily Independent, October 30, 2011, <https://arizonadailyindependent.com/2011/10/30/ethnic-studies-appeal-reveals-cambium-audits-flaws/>.

The Governing Board President at the time, Dr. Stegeman, an educator himself, referred to the MASD classes he observed with notes like “this is a cult” or “this is a political rally” during his testimony, supporting Huppenthal and Horne’s contention that the MASD program was closer to political activity than to a teaching program.<sup>672</sup> Perhaps the most serious accusation was that students had been encouraged to bring their parents to protests and rallies as an activity that would improve their class grade.<sup>673</sup>

The Cambium report, however, made it clear that their job was not to audit events outside of the curriculum itself. Peripheral events and actions, such as student protests, or political activism, were not within their scope of work. Cambium reported that the MASD program met the state standards, though they were cautious to note that their auditor could not determine how well-organized the curriculum was, due to the lessons being less structured without always having clearly defined goals. Cambium auditors reported that the lesson plans as taught seemed effective, and that controversial lessons had not been part of the classes the auditors observed personally. The Cambium auditors did question the appropriateness of the material for the intended audience, as class materials and textbooks were intended for students at the college level, though they reported seeing no “questionable MASD materials, nor any damaging language that could incite resentment in children.”<sup>674</sup> In fact, most quotes that were considered objectionable had been taken out of context, or were historically accurate phrases or words used by historical figures. The auditors did report what they called an “overabundance of controversial commentary inclusive of political tones of personal activism and bias,”

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<sup>672</sup> *Ibid.*

<sup>673</sup> *Ibid.*

<sup>674</sup> Cambium Learning Inc., “Curriculum Audit of the Mexican American Studies Department, Tucson Unified School District,” 36–38.

further noting: “If said course units underwent an approval process, words used to dehumanize or belittle any elected official or community leader would have to be eliminated out of respect.”<sup>675</sup>

Cambium’s final ruling stated:

MASD programs are designed to improve student achievement based on the audit team’s findings of valuable course descriptions aligned with state standards, commendable curricular unit and lesson plan design, engaging instructional practices, and collective inquiry strategies through approved Arizona State Standards.<sup>676</sup>

Overall, Cambium was supportive of the MASD program, and certified it did not violate the newly created law based on HB 2281; in fact, it proposed that the current classes become core classwork for the district, with the caveat that this include improved curriculum management and greater communication between MASD, TUSD, and the State Department of Education.

Despite having commissioned Cambium to do the audit, Huppenthal did not release the final report for a month, then completely ignored it while continuing with plans to shut down the program, by threatening TUSD with the loss of 10% of their total funding if they did not comply.<sup>677</sup> While the Cambium audit could have been more comprehensive, it certainly did not support Huppenthal’s assertion that MASD was in violation of the statute, but Huppenthal was perfectly willing to proceed with shutting down the MASD program regardless. The TUSD appealed to an administrative judge but the result was a ruling that the course was not in compliance, causing TUSD’s ruling board to vote in January of 2012 to close the program completely.<sup>678</sup>

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<sup>675</sup> *Ibid*, 34.

<sup>676</sup> *Ibid*, 42.

<sup>677</sup> Romero, “The Battle for Educational Sovereignty,” 89.

<sup>678</sup> *Ibid*, 91.

The fate of the MASD program at TUSD stands as an example of an education policy based more on political ideology and anti-Latino attitudes than on data or research, or best practices. The bills proposed to shut down MASD (and various anti-immigrant bills of the time), the fact it was targeted where other ethnic studies programs were not, and the public comments by Horne and Huppenthal, show that it is not unreasonable to draw the conclusion that this was a vendetta by state officials. Horne and Huppenthal obviously objected to the ethnic activist component of the courses, especially given constant accusations of anti-Anglo American propaganda that turned out to be quotes and excerpts of course material taken out of context.

Most recently, HB 2281 was challenged in *Maya Arce, et al. v. John Huppenthal, et al.* in the Ninth Circuit U.S. Court of Appeals, with the name of the case changing as the students who brought it graduated (originally Maya Arce, Korina Lopez, and Nicolas Dominguez, later Barcelo and Noah González) into *González v. Douglas*. The plaintiffs in this case argued that the decision should be judged as to whether it violated ethnic rights. In that case, Dr. Pitti, in his expert testimony, noted that:

When properly understood within the context of the history and contemporary discrimination directed against Mexicans and Mexican Americans in Arizona, it is my expert opinion that government officials, politicians, and private citizens have used code words and have mischaracterized Ethnic Studies, Mexican American Studies, and TUSD's Mexican American Studies Program in order to advance their political objectives....these mischaracterizations, along with the use of code words, are consistent with a finding that [they] were motivated by animus against Mexican Americans and other Latinos with regard to the enactment and enforcement of HB 228 ...It is also my opinion that HB 2281 represented a backlash against Mexican American educators and students who proponents claimed, with little or no evidence, were connected to a highly-publicized critique of Republican legislators [the Dolores Huerta talk].<sup>679</sup>

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<sup>679</sup> Steven A. Reiss et al., "González v. Douglas Closing Argument PowerPoint Presentation," Digital Commons, 2017,

Judge A. Wallace Tashima of the U.S. District Court for Arizona ruled in August 2017 that that state officials had acted out of racial animus in shutting down the MASD program at TUSD, overturning the ban. Since 2015 Arizona has resumed teaching ethnic studies courses under a more controlled curriculum, and as voluntary courses rather than mandatory coursework. HB 2281 was not used to shut down any other ethnic studies programs in the state, only the MASD at Tucson.

After the dismantling of the program at TUSD, and the passage of Proposition 203 creating an English Only education system, in 2009 Arizona turned to a new way of educating ELLs, a program called Structured English Immersion (SEI). This program placed ELLs in segregated classrooms for four-hour daily blocks of grammar and reading instruction to improve their English – effectively, creating a situation of *de facto* segregation and removing ELL students from interacting with their non-ELL peers for most of the school day (which normally last only six to six and a half hours in length). Dr. Mary Carol Combs, an associate professor at the College of Education at the University of Arizona, has pointed out the flaw in this is that only one credit is offered for a four-hour block, when four credits are required for graduation, meaning that it was certain that ELL students would lag behind their peers, even with summer courses, or simply become so discouraged that they dropped out.<sup>680</sup>

The only way out of these immersion blocks was to pass the Arizona English Language Learner Assessment (AZELLA), though students were optimistically intended

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[https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1077&context=korematsu\\_center](https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1077&context=korematsu_center).

<sup>680</sup> Mary Carol Combs, "Self-Inflicted Reductio Ad Absurdum: Pedagogies and Policies of the Absurd in the State of Arizona," in *Raza Studies: The Public Option for Educational Revolution*, Kindle edition (Tucson, AZ: University of Arizona Press, 2014), 101-103.

to only remain in the SEI blocks for a year to achieve English proficiency. This was in keeping with House Bill 2064 (HB 2064) which *required* that students learn English in one year. This unrealistic notion was supported by Tom Horne when he was the Superintendent of Public Instruction; Horne once declared, when informed that it should take seven years to learn English, that it “made his blood boil” that it shouldn’t be done in a year, contrary to all research on the subject by those knowledgeable in what it actually took to become English proficient.<sup>681</sup>

In SEI classrooms, Arizona used the English Language Development (ELD) program, which was a non-optional component of all SEI classes, as Arizona’s Department of Education made it policy that ELLs should become proficient in English before moving on to learning other content in English. Alternately, the Individual Language Learner Plan (LLLP) was created for districts with few ELL students, using a modified version of SEI for instruction.

There have been many reasons given for why this policy took hold in Arizona’s schools. Combs has separated these reasons into five categories:

- 1) A fierce anti-immigrant discourse in the state;
- 2) A widening “gray versus brown” demographic divide;
- 3) A unique, contradictory, and evolving nexus between state education policies and federal case law;
- 4) Uniformed and ideologically motivated state officials (swayed by popular folk theories of language acquisition); and
- 5) Time-on-task notions of curriculum and instruction.<sup>682</sup>

The first point is easy to support, given the previously surge of legislative laws aimed at undocumented immigrants in the state, as well as attempts to marginalize

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<sup>681</sup> Arizona Education Association, “New Superintendent Sees Job as Helping the Classroom,” *AEA Advocate* February/march (2003): 10–11.

<sup>682</sup> Combs, 103-105.

Spanish language and Latino cultures in the state. The second suggests a sense of being surrounded or outnumbered, in that demographics put Latinos on track to soon be the most populous ethnic group in the Southwest, if not the United States as a whole. Combs demonstrates effectively that Arizona is positioned to flip in terms of demographics within a few decades, as while 83% of the senior population is Anglo, only 43% of its young population come from that group.<sup>683</sup> When those older Anglo citizens pass on, Latinos will be the new majority.

The third can be seen in the back and forth between Arizona's attempts to place restrictions on immigrants (or more precisely, undocumented immigrants) and the federal judicial systems routine overturning of many of those statutes on constitutional grounds for violations of the First and Fourteenth Amendments. The fourth and fifth are visible in Horne and Huppenthal's actions and the establishment of the SEI program despite previous evidence that demonstrates that it does not effectively teach ELL students. The story of the MASD program at TUSD and the behavior of the state education officials makes it plain that concerning education and Mexican Americans they were both uninformed (or simply ignoring relevant data and pretending it does not exist) and ideologically driven. The first years of the new millennium showed Arizona to be hostile to Latinos and Spanish-speakers, and quick to rely on programs and standards relative to ELLs that were not supported by scientific research. One could make the argument that Arizona was hostile to public-school systems in general, given the historically low levels of financial support for school districts and the very low pay for their teachers that prevented most at-risk schools from hiring competent instructors.

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<sup>683</sup> *Ibid.*



The differing views of bilingual education, the English-only movement, and Mexican American education in New Mexico and Arizona were built on years of how their citizens viewed Mexican Americans and undocumented immigrants. A fear took hold of conservative Arizona in particular, who showed themselves to be actively hostile to bilingual education, ethnic studies, and undocumented immigrant by banning English from its government and its schools and offering ELLs an education that represented bad educational practices. While New Mexico arguably treated its Mexican American residents more fairly, the support for *Carbajal* indicates that there was still a tenacious layer of conservatism that affected the state's ability to follow through the promises made by its educational policies. At the end of the 20<sup>th</sup> century and the beginning of the 21<sup>st</sup>, growing nativism and anti-immigrant sentiments eroded public support for bilingualism in both states; because of this, in 2010, Mexican American activists in both states still were fighting to achieve equity.

## Conclusion

George I. Sánchez, the famed Mexican American educational activist and thinker, once wrote: “The frequent prostitution of democratic ideals to the cause of expediency, politics, vested interests, ignorance, class, and ‘race’ prejudice, and to indifference and inefficiency is a sad commentary on the intelligence and justice of a society that makes claim to those very progressive ideals.”<sup>684</sup> The story of the neighboring states of Arizona and New Mexico is one of ongoing inequality in education that Mexican Americans had had to battle for over a century since they became part of the United States in the 19<sup>th</sup> century. Anglo Americans claimed to have Mexican American’s best interests at heart, but in practice proved to be unjust in many policies they supported and employed.

This study has examined both the territorial and beginning of the statehood period for Arizona and New Mexico, and the period between 1945 to 2010, as a means of demonstrating that the fight over educational equity has involved both change and continuity. Continuity comes from the unique characteristics of Arizona and New Mexico that were present at their founding as states, that have continued to inform their decisions over time. Change is obvious; everything changes, and so has Mexican American education from the early days of the New Mexico Territory to the opening decade of a new millennium. In the long view of the historical process, change can be good, or can have negative effects.<sup>685</sup>

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<sup>684</sup> George Sánchez, *Forgotten People: A Study of New Mexicans* (Albuquerque, New Mexico: Calvin Horn Publisher, Inc., 1967), 70.

<sup>685</sup> Historian Joseph P. Sánchez defines “the historical process an occurrence, a state of or phenomenon that has to do with the evolution of an idea or concept that ties to an event or a series of events. The historical process is a function of the interactions of the affairs of humankind with time, events, the sequence and continuities of events, causes, effects and the change or changes that develop

The continuity that characterized educational policy making in both states comes from the conditions of how the states were founded, and what they built into the foundation of their legal systems in their state constitutions. The ethnic makeup of both states affected this. New Mexico Territory was a majority Mexican American territory; during the territorial government period Mexican Americans consistently had a majority in the territorial legislature.<sup>686</sup> They could not hold positions in the executive branch as, apart from Governor Otero, those were all Anglos appointed by Washington D.C. But *nuevomexicano* legislators had the numbers and the votes to have at least local power and a position to bargain from. This majority meant that once New Mexico had the opportunity to write a state constitution, it was Mexican Americans who were in the majority and were able to include language that would protect their people and their language.

Arizona was the opposite; when Anglo Americans moved into the area, it was very sparsely populated, and Mexican American communities were underrepresented in the territorial legislature. Over time, the early Mexican Americans, who had settled along the Santa Cruz River in Arizona and founded towns like Tucson in 1776, lost political power to Anglo settlers who moved into the area following the Gadsden Treaty of 1853. A decade later, in 1863, Arizona became a separate territory from New Mexico. In time, Mexican migrants, largely farm and ranch laborers, augmented the Mexican-American

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consequently. The historical process may provide directionality. In summary, the historical process is evident in the questions, who are we, where do we come from, and where are we going? In the historical dialectic, the historical process is best defined as an unanswerable paradox that can never be completed because it is something that is in a perpetual state of becoming.” Joseph P. Sánchez, *Coronado National Memorial: A History of the Montezuma Canyon and the Southern Huachuclas*. (Reno: University of Nevada Press, Reno, 2017), p. xiv

<sup>686</sup> Gómez, *Manifest Destinies*, 88–90.

population, but they had no political real power. Thus, in Arizona, political power rested within the Anglo population. Once they were able to break off a piece of New Mexico Territory to form Arizona Territory, they had no interest in going back, not while they held political power. There was little, if any, Mexican American presence to counter them in the territorial legislature. Thus, the Anglo majority government could put whatever it wished in the Arizona constitution, and they were perfectly fine with making their government and their schools English only based. In New Mexico, it was different. Even after statehood, when a rush of carpetbaggers pushed into the area and Anglos started to outnumber *nuevomexicanos*, Mexican Americans were still a solid voting bloc that needed to be appeased at times.

There was a decidedly large difference in the values held in both states. The people who settled in Arizona had cooperated with the Confederacy when it briefly took over the area; many were immigrants from Texas and the American South, with all the racial views of minorities that existed there. They showed hostility to the idea of being associated with Mexican Americans, most notably when they refused joint statehood, with their teacher's union remarking that "they would have little prospect of successful amalgamation," being too different in ideals, in language, and most of all, not being American.<sup>687</sup> When they formed their own state in 1912, that antipathy towards Mexican Americans and Mexicans was still there, and lingered in the government, whereas *nuevomexicanos* had plenty of reason to have pride in their culture and language and to want to preserve both.

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<sup>687</sup> U.S. Senate Document 216.

Thus, after statehood Arizona had created a society that was hostile to Spanish language and culture and did not regard Mexican American as “Americans” because of their different traditions. They had no reason to cooperate with the small population of Mexican Americans or Mexican workers who arrived to harvest their crops or dig in their mines, and no reason to want them to live nearby, which resulted in Mexicans in Arizona being isolated in their own communities, such as in Tucson. New Mexico was friendlier to Spanish, to *nuevomexicano* culture, and lived among the Anglos in the urban centers of New Mexico, Santa Fe and Albuquerque.

Another point of continuity was the promotion of Americanization and related movements in Southwest history. Language was a point of contention in both states, as it was both a part of the educational equity Mexican American strove to reach through bilingualism, and part of the wider argument of what language says about you. English was seen by those who opposed bilingualism as a signifier of loyalty to the United States. If someone spoke English, s/he should not need another language, or as Theodore Roosevelt put it in 1907, "We have room for but one language in this country, and that is the English language, for we intend to see that the crucible turns our people out as Americans, of American nationality, and not as dwellers in a polyglot boarding house."<sup>688</sup>

Yet this was not about having English as it was about not having other signifiers. Mariela Nuñez-Janes argues that the “public recognition of ethnicity, subalternity, and minority status...and the emphasis of these identities in public demonstrations of cultural pride serve to mark Hispanos as hyphenated Americans...[a] dual allegiance confuses

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<sup>688</sup> Roosevelt, *Works*, XXIV:554.

their status in the eyes of the dominant authority.”<sup>689</sup> Not knowing English marked you as different. Knowing another language besides English also marked you, because for those who promoted English-only, English was the primary glue that joins Americans together, and that rebuilds the identity of immigrants into that of an American. A pro-English-only proponent will expect a Spanish-speaker to become fluent, but they will also expect that any other language and culture will be stripped away to an identity that depends on a vanilla “sameness” to prevent a bilingual person from emphasizing difference in American nationalism rather than embracing unity.

Thus, bilingual education became a battleground in both states because it connects so many things in Mexican American education. Almost all the major cases in both states have come about because of how their ELL students are being treated – that they do not have enough funds, or they do not have bilingual teachers, or they are being forced to learn English without the benefit of also learning in their native language. In the early 1940s to 1970s, this was Americanization, the idea of having immigrants abandon their old languages and cultures along with their old loyalties to inculcate a new patriotism for America in their hearts and minds. But starting in the 1980s, the modern form of Americanization became the English-only movement, which has spread steadily in the face of fears over immigration since the end of the 1970s. At its heart, it is an attempt to destroy Spanish as a first language for many people in the Southwest, and to take their Spanish/Mexican heritage and traditions with it.

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<sup>689</sup> Nuñez-Janes, 66.

Even some Mexican Americans have supported this, arguing that their children can succeed better in America if they just speak English. As Nuñez-Janes explains, that is because “survival” in American society depends on erasing and silencing ethnicity to become an invisible part of the American crowd; to not stand out, and to fit in, rather than to convince them to a position of second class citizen and a segregated education that does not provide their children with the skills they need to succeed.<sup>690</sup> It’s an understandable argument, even if it undervalues the benefits of being truly bilingual.

Thus far, English-only has not taken hold in national law; attempts to amend immigration law language in 2006 and 2007 to officially make English a “common and unifying language” failed. Arizona is an exception, having passed referendums to make English the state language, as well as the only language to be used in education save for special circumstances.<sup>691</sup> In places like Arizona, where a large flood of immigration has raised its resident Latino population to where it cannot be ignored, a lack of English and speaking of Spanish made someone a target, someone who stands out and is not “like everyone else.” And of course, a frequent argument still used in schools is that Spanish-speaking students must be placed in special classes to become fluent in English, which frequently results in *de facto* segregation away from other students for hours at a time. Arizona’s Structured English Immersion courses require that English Language Learners (ELLs) be separated from regular classes for four hours at a time each day, which even

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<sup>690</sup> Nuñez-Janes, 66.

<sup>691</sup> “Proposition 203 English Language Education for Children in Public Schools.”

Arizona teachers agree is not enough time to teach them what they need to begin with, even setting aside the many other flaws in the program.<sup>692</sup>

Despite this, supporters of bilingual education have repeatedly pointed out that it is not separatism that they seek, or that they do not want to learn English. It is that they want to learn both. New Mexico has consistently supported a rhetoric of pro-Spanish language and culture movements, but often failed to put words into deeds and has had a moment where unofficially Spanish was forbidden in many New Mexican schools. Attempts to create an English Only education system like that of Arizona, however, have failed to gain traction, most notably with the recent *Carbajal v. Albuquerque Public Schools* case. But California has passed then repealed an English only bill, and of course, Arizona maintains one. Even New Mexico dealt with an attempt to undermine bilingual education as ineffective in *Carbajal v. Albuquerque Public Schools*.

This resistance to any language other than English has led to the failure of many educational policies aimed at Mexican Americans, who with their “foreign” language and culture are not seen as truly American by many. Nativist and anti-immigrant feelings have had a powerful effect on bilingual programs. Periods of economic stress, such as the oil crisis in the late 1970s, or the Great Recession of 2008, have fed negative views of immigrants, particularly undocumented immigrants that are part of traditional migratory work patterns of Southwestern Mexican migrants. Cases like *Lemon Grove* demonstrated how these feelings could harm students, when they are judged by educators, administrators, and politicians as culturally deficient, which ignores the real problems

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<sup>692</sup> M. Beatrix Arias and Christian Faltis, eds., *Implementing Educational Language Policy in Arizona: Legal, Historical, and Current Practices in SEI*, eBook, Bilingual Education and Bilingualism (Bristol ; Buffalo, NY: Multilingual Matters, 2012).



Spanish-speaking students have with trying to learn English and follow normal school subjects at the same pace as their fellow students. In other cases, schools have been rendered unsafe to the children of undocumented immigrants when officials have worked with the Immigration and Naturalization Service to turn them over, such as with *González v. City of Albuquerque, New Mexico* (2004). Nativism and xenophobia, the fear of the other, have fed this desire by some Anglo Americans to eradicate that which is not the same culturally or linguistically.

Arizona is particularly notable for its pro-Americanization and pro-English stance historically. For example, there is the case of *Flores v. Arizona*, begun in 1992 when an ELL student sued the state for not providing enough funds for ELL programs. Instead of losing gracefully and paying the extra funds, the Arizona legislature did nothing for years, until it was finally forced through a contempt charge and daily fines that climbed from \$500,000 a day to \$2,000,00 a day to make a mediocre adjustment that was promptly rejected. Yet it continued to stall, until it finally was able to take the case before the U.S. Supreme Court and have the original decisions overturned, largely by providing their own evidence for why their programs worked so well, which the Court took at face value. After *twenty-one* years of litigation, Arizona was finally able to wiggle off the hook.

This brings us to the other side of nativist movements like English-only: other languages are their primary target, but many of their supporters are just as against the cultural heritage of Mexican Americans. The most obvious case of this is in Arizona's treatment of the Mexican American Studies Department at Tucson. There, a hostile Superintendent of Public Instruction led a campaign to destroy the department's

programs because he found the ethnic pride and activism it was instilling in the students threatening and divisive. This escalated to the point where Arizona passed a law to forbid ethnic studies in HB 2281, partially written by Horne. Even when Superintendent Horne became State Attorney General Horne, his successor not only paid to have MASD investigated in order to use the law against it but ignored the company's findings when they turned out to be positive and shut MASD down anyway. This cannot be seen as anything but hostility towards Mexican American culture and activism, because it certainly had nothing to do with the education the students were getting; in the MASD program, they were excelling. The replacement for the program, SEI, was anything but an improvement over MASD.

As this study has demonstrated, these elements, the sociocultural views and movements like Americanization/English-only are part of the continuity of the Mexican American struggles over finding good bilingual programs and teachers. The change is the other part of this investigation, and the period under discussion, 1945-2010 saw considerable change. Great strides were made in the 1950s to 1970s, with a surge of positive court decisions against desegregation and discrimination after *Brown*, among other cases. It was the full flowering of Mexican American activism, both at the grassroots level and with larger organizations like the Mexican American Legal Defense and Education Fund (MALDEF) or the League of United Latin American Citizens (LULAC). Political victories include funding equalization, or protections for bilingual education, such as the Bilingual Education Act passed by either state in 1969, or the Bilingual Multicultural Education Act in New Mexico that went even farther in 1973. But they are often outweighed by blatantly anti-Mexican American actions. Again, Arizona

carries more blame for this, especially in recent years with the passage of statutes such as the English Only Proposition 203 in 2000, attempts to force patriotism in education through SB 1108 in 2008, or anti-immigrant measures like SB 1070 in 2010. To be successful in the political arena, a majority voice is required, or at least the ability to sway public sympathies to gain those votes from the wider population; this is something Mexican Americans (and minorities in general) gained during the height of the Civil Rights movement in the 1960s and 1970s but began to lose in the 1980s.

The unfortunate truth is that the gains of the 1960s and 1970s were heavily eroded starting in the 1980s. Sympathy for the civil rights movement in the 1960s led to increased public support of pro-equality legislation and federal intervention in desegregation. This support waned since the end of the 1970s, as Republicans and conservatives turned against the social support statutes created in the 1960s and 1970s as part of the War on Poverty and the Nixon administration's social services push. Presidential candidates, such as Ronald Reagan, won elections by attacking minorities and those in poverty as "undeserving" to give their administrations a rationale for cutting public funding, including programs aimed at improving education of Mexican Americans.

Educational funding in Arizona and New Mexico has grown thin, especially in the aftermath of the Great Recession of 2008, when austerity cuts came from education first, instead of being provided first for education.<sup>693</sup> Funding the outcome of contests over

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<sup>693</sup> Jay Chambers et al., "An Independent Comprehensive Study of the New Mexico Public School Funding Formula" (Santa Fe, NM: American Institutes for Research, January 17, 2008), <https://www.air.org/resource/independent-comprehensive-study-new-mexico-public-school-funding-formula>.

educational equality, and of late not many of those contests have been important victories to where it has reversed the trend. The exception may be in the afterword of this study, with *Martínez v. New Mexico*, discussed in the afterword of this study.

The other major change for this period, however, is that the federal government has firmly pushed itself into funding national education, through bills like No Child Left Behind as part of the larger Elementary and Secondary Education Act in 2001, or the more recent Race to the Top in 2009. As I discussed in Chapter 11, there are severe drawbacks to the NCLB, despite its praiseworthy goals of improving the quality of America's schools; in practice NCLB increased financial burdens on schools, set unrealistic and even impossible achievement goals, did not consider the difference among subgroups being measured, and did not ensure that ELL students would be fairly assessed. Its focus on high-stakes testing and test-based accountability has wrecked many school districts with its impossible goals that cannot be met even by the best of schools.

For poor struggling schools, it has been a death knell, and the Race to the Top has assumed the same stance on these two elements, with the same focus on punishing teachers and schools if their students do not score well on the tests. Making teachers the main source of success or failure for students is unfair, and disheartening for already overworked instructors. But everyone wants to do well; every school district can use the funds the federal government is offering, and that is the most insidious part of it. For while the federal government is not directly intervening in education, its influence is out of proportion to the money being given out. Since it sets requirements on the grants and other funds that are offered, schools must conform to the rules it sets down and to legal requirements associated with working with the U.S. government directly.

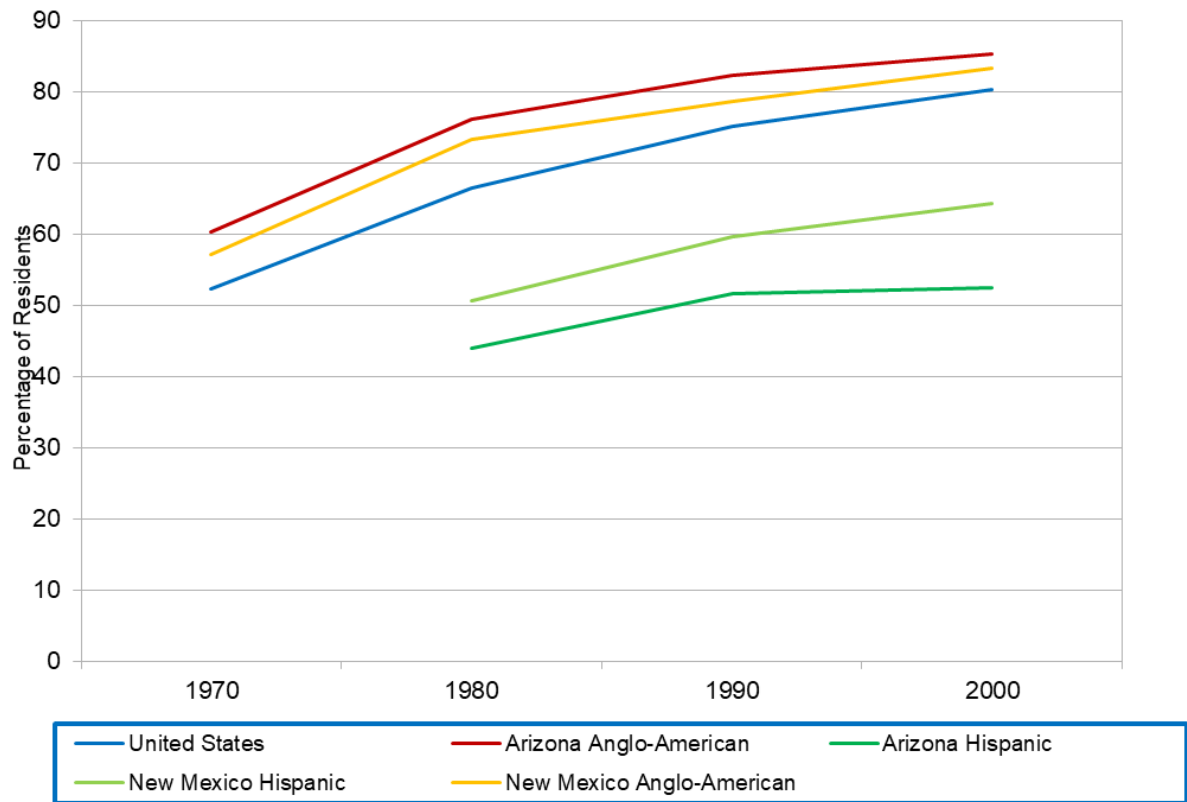
This study demonstrates that that the struggle for better Mexican American education is still ongoing and shows no sign of being won anytime soon. If anything, the recent surges in anti-immigrant feeling have only encouraged nativists to increase their fighting against anything that looks like it might be multicultural, while right wing pundits rant about the inevitable balkanization of the United States into smaller enclaves by language and culture. Continuity runs both ways, and unfortunately while there were great steps forward in the 1960s and many have grown up with a different view of minority relations in the United States, there are still many who fear those who are different. Arizona, again, is responsible for passing law after law aimed at attacking undocumented workers to deprive them of rights and health and freedom. The passage of the infamous SB 1070 has put Arizona at the forefront of the anti-immigrant movement; there is no sign that there has been a change to the structural racism built into Arizona's institutions and culture.<sup>694</sup> Despite it being a wealthier state, its choices do not follow best practices, and thus its students, especially its English Language Learners, suffer for it, while New Mexico at least has tried to make programs work even if it frequently falls short. It and national efforts like the Common Core look to be new challenges to Mexican American educational activists that will further confuse the situation around ELL students and bilingual programs in New Mexico – though Arizona is in no danger, having abandoned most of its best practices programs in favor of falling back to questionable English immersion-based classrooms.

Providing a decent education for Mexican Americans is still a challenge for both

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<sup>694</sup> Duara, "Arizona's Once-Feared Immigration Law, SB 1070, Loses Most of Its Power in Settlement," 1.

Percentage of Arizona and New Mexico Residents That Have Completed a High School Education, 1970-2000



states. Macro data shows that academic results overall are abysmal and have not noticeably improved in most cases. In the 2018 Education Week’s “Quality Counts” research report, New Mexico remains 49<sup>th</sup> in the nation, while Arizona has climbed up to the middle of the pack nationally at 24<sup>th</sup>.<sup>695</sup> But this study has demonstrated that these things can change.

As seen in Figure C.1 above, Mexican Americans in both states are, educationally, well below the national average, compared to Anglo students.

<sup>695</sup> “Nation Earns a C in K-12 Achievement” (Education Week Research Center, 2018), <https://www.edweek.org/ew/collections/quality-counts-2018-state-achievement-success/state-grades-on-k-12-achievement-map-and.html>.

Paradoxically, Arizona's Anglo students do better than New Mexico's Anglo students, but the opposite is true for Mexican American residents. However, attainment levels do improve over time, modestly, even if it is nowhere near the same levels as Anglo or National averages.

While Mexican American educational activism has varied in its effectiveness, changes generally tend towards the positive. It is continuity and change that are the issues; the question of how generations of ingrained discrimination and racism that inform educational decisions in states like Arizona can change and fade. It is a truism that "if one's history is not respected, neither will one be in education, employment, the workplace, housing, justice, law, medicine, banking, the arts, or any other institutions in our society."<sup>696</sup> Time will tell if the 21<sup>st</sup> century will bring about a new blossoming of equality as did the 1960s, but for that change to happen, future policy makers will need to understand, through the lessons of these two states, that it is the background in which policies are made that must change in order for real progress to be made in Mexican American education. Modern challenges will require historical clarity, otherwise equality in educational policy will find itself stymied as it has been in the past. As the adage goes: where have we been, where are we, and where are we going?

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<sup>696</sup> Sánchez, *Comparative Colonialism*, 1.

## Afterword

While it falls outside of the period of my main study, this afterword is dedicated to discussion of a recent suit filed in New Mexico in 2014 and decided in 2018, *Martínez v. State of New Mexico*. This case is a study in the continuity of educational activism in New Mexico, as it makes use of the historical protections that *nuevomexicanos* put in their state constitution in 1912 to oppose state officials who might have been inclined to starve New Mexican schools of adequate funding. It is an excellent example of the struggle over education policies taking place in the arena of the courts as social resistance to poor educational policies built from decades of neglect – something that New Mexico has suffered from since it was a territory. It also illustrates vividly both the themes of continuity and change presented in this study.

Like many before them the plaintiffs of *Martínez* have used the existing law that was already there and used the courts to force the state to abide by those statutes. This case was very much about having the court declare that the defendants had violated the New Mexico State Constitution by their actions, having failed to abide by the Education Clause, the Equal Protection Clause, or the Due Process clause. But more than that, it was a multi-ethnic coalition demanding that their children be given a sufficient education per the rules that had been laid down at the state's founding.

“Sufficient education” is explicitly in the language of Article XII, Section I of the New Mexico State Constitution, which reads that the public-school system must be “sufficient for the education of, and open to, all children of school age in the state.”<sup>697</sup>

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<sup>697</sup> New Mexico, “New Mexico Constitution.”



What constituted sufficient was not clearly defined, however. Historically, David Colton, in his discussion of New Mexico's financial difficulties, noted that when put in a position of enforced austerity, the state's balance between equity and adequacy is thrown off, to where adequacy becomes more important than equity.<sup>698</sup> Fairness becomes less important than having adequate funding. Could this be the same as sufficient? Certainly, the board members of the New Mexico State Board Association (NMBSA) felt that this was the case, when they interpreted in the late 2000s to simply mean "adequate funding."<sup>699</sup>

From 2006 to 2008, NMSBA was in a quandary. The members of the board understood that many of the school districts in the state of New Mexico were struggling with finances, and perhaps even underfunded, because of the way the state government was administering the state funds. Because of this, the NMSBA felt that suing the state was a legitimate tactic, and the board debated at length whether it should proceed. Board members were divided; a sufficiency lawsuit at the time would be costly, as well as a long and drawn-out process over the course of several years, during which it would be a major drain on their already shaky funding. To better inform its decision, in 2008 NMSBA hired the American Institutes for Research (AIR) to investigate the status of public educational funding in New Mexico.

AIR consulted on the study with a Project Advisory Panel created by NMSBA that included numerous education stakeholders: legislators, superintendents, and community members with expertise or interest in the funding of public schools. This was further expanded into the Stakeholder Panel which included more members of the

<sup>698</sup> Colton, "The Weighting Game," 50–51.

<sup>699</sup> Diane Torres-Velásquez, "Martínez v. State of New Mexico: The Right to a Sufficient Education," *Association of Mexican American Educators Journal* Vol 11, no. 1 (2017): 111.

community, such as business owners and parents. The Stakeholder Panel met in January of 2007 to decide what a sufficient education would require in terms of funding and created a goal that would meet those needs. AIR used the goal statement created by the Stakeholder Panel as part of their methodology when conducting their research.

After an in-depth analysis, the AIR study was completed in late 2008. AIR determined that school districts were indeed underfunded; in fact, the state would need to increase public education funding by 14.5%, or nearly \$335 million dollars to meet district needs; in addition, rural children would require a higher per pupil expenditure (\$12,507) compared to urban children (\$7,666).<sup>700</sup> The report also recommended that schools with high populations of students in poverty, English Language Learners, and special needs students should be given priority for additional funding.<sup>701</sup>

Despite this evidence, when the NMSBA board voted on whether or not to move forward on the lawsuit, members were still divided over the necessity of underfunded school districts having to sacrifice even more of their budgets to pay for an expensive lawsuit. In addition, Governor Bill Richardson (2003-2011) had pushed through several educational reforms, such as a three-tier salary structure for teachers that included higher entry level salaries and increasing distribution from New Mexico's Land Grant Permanent Fund to schools to create a reserve for critically needed education programs. Having these initiatives approved by voters and the legislature lessened the sense of urgency of suing the state over inadequate funding and low teacher salaries. As a result, the vote ultimately failed, and NMSBA did not go forward with the suit.

<sup>700</sup> Chambers et al., "New Mexico Public School Funding Formula," 66-68.

<sup>701</sup> *Ibid*, 68.

The idea was kept alive, however, by Dolores Griego, a board member of the Albuquerque Public Schools (APS), as well as community members who were part of The Latino/Hispano Education Improvement Task Force who were concerned over the graduation and achievement rates for Hispanic<sup>702</sup> students. It later shortened its name to the Latino Education Task Force (LETF). The LETF formed in 2009, with José Armas, Lorenzo García, and Jon Barela serving as founding members.<sup>703</sup>

The LETF set out to organize New Mexico community members during a series of forums sponsored by the State of New Mexico in fall of 2009. These meetings were focused on public education for students from distinct groups within New Mexico, including Mexican American, Mexican, Native American, and African American communities. Each group met in their separate forums to discuss their thoughts and ideas. All believed in doing what was best for New Mexico's children. The discussions in the forums led to a request an Office of Hispanic Affairs (OHA) by LETF co-chair Ralph Arellanes, Sr. and a request for a Hispanic Education Act by co-chair José Armas. Governor Richardson did not support the creation of an Office of Hispanic Affairs, and in the end did support the Hispanic Education Act. The legislation passed in February of 2010. The HEA was intended to:

...provide mechanisms for parents, community and business organizations, public schools, school districts, charter schools, public post-secondary educational institutions, the department, and state and local policymakers to work together to improve educational opportunities for Hispanic students, for the purpose of closing the achievement gap,

<sup>702</sup> For the purposes of the Afterword only, I will be using Hispanic to refer to the Spanish-speaking population as that is the term used in the lawsuit and local New Mexico acts such as the Hispanic Education Act. This term refers to any Spanish-speaker of Spanish/Mexican descent in New Mexico.

<sup>703</sup> Diane Torres-Velásquez, Interview with Diane Torres-Velásquez by Stephen Mandrgoc, November 5, 2018.

increasing graduation rates and increasing post-secondary enrollment, retention and completion.<sup>704</sup>

As part of the support for the bill, many community members and families traveled to the state capital to show their support and attended meetings while the bill was being considered.

Dr. Diane Torres-Velásquez, an associate professor in the College of Education at the University of New Mexico, was hired as Hispanic Education Liaison to author the first Hispanic Education Status Report required by the Act. The report, posted in December 2010, provided data on the achievement of all ethnic groups across grades PreK-20, and clearly demonstrated continued poor academic achievement for New Mexico's students of color in stark graphs and data. Dr. Garth Bawden and Swari Hahn, members of the LETF, informally helped edit the report; thus, the LETF group was aware of the report's implications. Torres-Velásquez was the first to raise the idea that New Mexico should recognize public education as a human and fundamental right as part of this report.

In the Southwestern United States, this was not the first time the idea of education as a fundamental right was raised. Education per the U.S. Constitution is controlled by each state, not the federal government. In *Rodríguez v. San Antonio Independent School District* in 1973, the plaintiffs argued before the U.S. Supreme Court that the right to education fell under the protection of the Fourteenth Amendment. Specifically, the case argued that students in low income areas could be considered a distinct class that was

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<sup>704</sup> "Hispanic Education Advisory Council," New Mexico Public Education Department, 2010, <https://webnew.ped.state.nm.us/bureaus/hispanic-education-act/heac/>.

being discriminated against by not receiving equal funding in their schools. Without overturning *Rodríguez*, education as a fundamental right cannot be extended to the nation's children without an amendment to the U.S. Constitution.

The court in *Rodríguez* ruled that the right to education was neither “explicitly or implicitly” a fundamental right under the U.S. Constitution.<sup>705</sup> The following year, another case known as *Serrano v. Priest* in California was decided in the plaintiff's favor as part of another school finance case but included that education was a fundamental right within the State of California, starting a trend of cases coming before state supreme courts to argue for education as part of a state's bill of rights.<sup>706</sup>

Unlike the NMSBA, the LETF decided that sufficient education meant “strengthening home culture and language and also teaching students to honor and live in both the world of their home culture and that of the dominant culture.”<sup>707</sup> In short, part of a sufficient education for New Mexico's children included a bilingual and multicultural component for its non-English speaking citizens. Multicultural programs elsewhere, notably the Mexican American Studies Department (MASD) at Tucson (2002-2010) discussed in Chapter 12, provided strong evidence that a good ethnic studies program promoted pride and a sense of place for Mexican American students that improved graduation rates and general academic achievement. The LETF also considered ethnic studies, culture and language part of the definition of sufficient education, as well as the idea of perfect equity. This is a fascinating difference between the two states, as in the

<sup>705</sup> *San Antonio Independent School District v. Rodríguez*, 411 U.S. 1 (1973), No. 71-1332 (Supreme Court of the United States 1973).

<sup>706</sup> “*Serrano v. Priest* L.A. No. 30398, Supreme Court of California (1974).”

<sup>707</sup> Torres-Velázquez, “Martínez v. State of New Mexico: The Right to a Sufficient Education,” 112.

case of the MASD program in Arizona, the state government, in the person of the Attorney General and Superintendent of Public Instruction, had persecuted the MASD program over its focus on ethnic studies and ethnic solidarity, to the point where the Arizona legislature had crafted a bill specifically to prohibit ethnic studies and to close the MASD program.

By comparison, in New Mexico, protection for Spanish and Spanish-speakers was part of its founding state constitution through protections written in Article VII Section 3 and Article X Sections 8 and 10.<sup>708</sup> Other elements that applied to *Martínez* specifically included Article VII, Section 3 which reaffirmed the rights of Mexican American citizens under the Treaty of Guadalupe-Hidalgo and that they would not be discriminated against based on their race, ethnicity or language.<sup>709</sup> The New Mexico State Constitution made use of the term “of Spanish descent,” which meant the protections applied to both *nuevomexicanos* and immigrants from Mexico, Latin America, and other Spanish-speaking countries.<sup>710</sup> Part of the constitutional requirements in the Education Clause included that teachers be trained in both Spanish and English so they would be able to teach Spanish-speaking students in the state, for example.

The language of the New Mexico State Constitution specified a “uniform” system of schools “sufficient” for the education of all students of school age.<sup>711</sup> Phillip Gonzales, a sociology professor at the University of New Mexico, submitted a report to the court based on thirty-five years of research experience in New Mexico that discussed in detail

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<sup>708</sup> See Chapter 2 of this study for the specific text.

<sup>709</sup> New Mexico, “New Mexico Constitution.”

<sup>710</sup> Gonzales, “Public School Financing,” 12.

<sup>711</sup> New Mexico, “New Mexico Constitution.”

New Mexico's historical woes when it came to funding. In it, Gonzales argued that "uniform" in this case was considered the same language at the time written as "equal", and that no priority had been set as to whether sufficient or equal should be focused on first. Thus, Gonzales argued, "the two concepts were not antithetical, and it was clear that the New Mexico state constitution requires both."<sup>712</sup> The state could thus not neglect one concept in education by focusing on the other and claim they were meeting the legal requirements.

However, the definition of a 'sufficient education' in *Martínez* is also framed by critical race theory. Torres-Velásquez explains this theory as applied to education as equal protection that includes a right to be free of subordination as well as discrimination or their conditions.<sup>713</sup> This relates directly to this study's focus on the struggles that take place in various arenas – political, social, and legal – and that challenge through social resistance the structural racism that becomes normalized in societies over time that were discussed in previous chapters.

After considering what they had learned over the years from their discussions with community members and the data collected in the *Hispanic Education Status Report*, Torres-Velásquez contacted the Southwest Regional Director of the Mexican American Legal Defense and Educational Fund (MALDEF), David Hinojosa, in Spring of 2011 on LETF's behalf concerning the possible lawsuit. New Mexico is located in MALDEF's Southwest Region.

The LETF organized a series of meetings from 2011 through 2014, during which

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<sup>712</sup> Gonzales, "Public School Financing," 11.

<sup>713</sup> Torres-Velásquez, "Martínez v. State of New Mexico," 117.

they met with New Mexico community members to garner support for the lawsuit and to conceptualize and plan the filing of the case. A wide variety of supporters were part of these meetings including attorneys, district superintendents, and school district administrators who oversaw bilingual and multicultural programs for all ethnic groups, as well as principals, teachers, unions, school and church representatives, community organizers, community members and faculty from the College of Education, Health Sciences, Arts and Sciences and the School of Law at the University of New Mexico.

The LETF also reached out to other ethnic organizations, such as the All Indian Tribal Council, the National Association for the Advancement of Colored People (NAACP), Martin Luther King Jr. Peace Center, and Albuquerque Interfaith. During a Legislative Education Study Committee (LESC) meeting in December of 2011, the Latino/Hispano Education Improvement Task Force, New Mexico Association for Bilingual Education, Dual Language Education of New Mexico, American Indian Language Policy Research and Teacher Training Center, and The New Mexico Indian Education Advisory Council together issued a joint statement outlining issues they saw as undermining the legislative and constitutional dedications of New Mexico to English Language Learners (ELLs) and students of color. In these meetings, participants articulated not only the failure of the state to provide a sufficient education, but also what the law stated was to be provided to students.

MALDEF held an education conference at New Mexico State University in Spring of 2012 to speak with stakeholders as part of their ongoing research on the state of New Mexico's educational funding system, where a wide variety of academics, MALDEF attorneys and LETF board members made presentations on poverty in New



Mexico; MALDEF invited the New Mexico Center for Law and Poverty to present their research on poverty in New Mexico at the conference. At the end of the conference, MALDEF announced they would fund a full investigation of education in New Mexico and began its own research in the summer of 2012, building on existing research as well as the 2008 AIR report.

As of 2013, a year before the case was filed, MALDEF found that among New Mexico's 335,710 students in 89 districts in 855 schools, the population consisted of 59% Hispano/Latino students, 26% Anglo students, 10% Native American students, and 2% and 1% of African American and Asian-American students respectively. Of these, 69% of students were economically disadvantaged, and 13% are ELL.<sup>714</sup> Only 45.9% of Latino students were considered competent in reading and only 36.8% in math, while students of all ethnicities were only slightly better, with somewhat over 50% competent in reading and 42% in math.<sup>715</sup>

Community members believed the state was not providing the bilingual education services or programs due to their children, and that the programs that did exist were not being monitored to provide adequate programs for their children's academic and cognitive development or language proficiency.<sup>716</sup> The state's reliance on criterion-referenced testing, a lack of state and local oversight combined with a nonsensical system of accountability, and a lack of materials and technology meant that the education system was a proven failure for New Mexico's students of color, who were now the majority of the state's public school student population.

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<sup>714</sup> MALDEF New Mexico Bilingual and Multicultural Association (NMBEA) Presentation 2014

<sup>715</sup> *Ibid.*

<sup>716</sup> Torres-Velázquez, "Martínez v. State of New Mexico," 113.

MALDEF and LETF proved responsive to community problems and recognized that factors beyond language and culture affected the education of New Mexico students. They included students with disabilities in the lawsuit in 2013, then in 2014, MALDEF attorneys who met with teachers were made aware of the serious problems with the punitive teacher evaluation system and work conditions in New Mexico. The teachers were added as plaintiffs as well. The LETF had opposed these punitive teacher reforms advanced by the New Mexico Secretary of Education, Hanna Skandera, under Governor Susana Martínez's administration. Allegations around the punitive reform measures and the current standardized testing were included in the lawsuit.

MALDEF filed a school finance lawsuit, *Martínez v. State of New Mexico* in 2014. The plaintiffs were fifty-one Mexican Americans and Native American students with their parents or legal guardians from the towns of Española, Santa Fe, Albuquerque, Zuni, Magdalena, Las Cruces, and Gadsden. The plaintiffs alleged that the state had failed to provide the funds needed for a "sufficient education."

A second case, *Yazzie v. State of New Mexico*, was filed at the same time by school districts from Arthur, Santa Fe, Rio Rancho, as well as parents and students from the towns of Gallup-McKinley, Rio Rancho, Santa Fe, Cuba, Moriarty/Edgewood, and Lake Arthur. *Yazzie* was filed by the New Mexico Center on Law and Poverty. This case was different from *Martínez* in other ways. One difference was that *Yazzie* included school districts as plaintiffs, while *Martínez* only included community members (students and parents/guardians) as plaintiffs.

A manuscript submitted to the court by Dr. Phillip Gonzales for the court deposition showed discrimination had been built into New Mexico's school finance

systems from early statehood. Despite reforms in 1940 and 1974, Gonzales demonstrated the state “could not, or would not, adopt a taxation systems that was not susceptible to manipulation and configuration by special interest groups, but also flexible enough to provide for educational services...”<sup>717</sup> Specifically, Gonzales argued that New Mexico had “failed to require, enforce, and competently administer provision for equalized finance to meet the need of [Mexican Americans and Native Americans], despite the fact that education experts consistently advised the state on the necessity of doing so.”<sup>718</sup> This explained why, despite the constitutional protections inherent in New Mexico towards people of Spanish descent and Spanish-speakers, that the state had never actually lived up to those constitutional promises.

Before the case went to trial, the state attempted to have each case dismissed, but this won *Martínez* their first and most surprising victory concerning an element of their foundational sufficient education. From the bench in October 2014, Judge Sarah Singleton declared that public education in New Mexico was a fundamental right. In her declaration, she stated:

Frankly, it is difficult to conceive of a service that the State provides its citizens that is more fundamental than the right to education. Nothing really promotes the ability to be a good citizen or be a productive member of society more than having an education. An educated populace is not only something that is fundamental to our current well-being, it is fundamental to our future well-being.<sup>719</sup>

Before the actual trial, the *Martínez* plaintiffs had achieved an unprecedented victory. Education was now officially a fundamental right in New Mexico by the Court. There

<sup>717</sup> Gonzales, “Public School Financing,” 81–83.

<sup>718</sup> *Ibid*, 82.

<sup>719</sup> Sarah Singleton, *Martínez v. State of New Mexico* 2014b, No. D-101-CV2014-00793 (1st Judicial District Court 2018).

would be four more years before the case was decided.

The judge consolidated the *Yazzie* and *Martínez* cases in January 2015 under *Martínez* because the cases were very similar. The evidence presented in 2017 was extensive, with boxes of exhibits stacked up in the courtroom against the walls on both sides. Numerous experts were brought for either side to give testimony. The plaintiffs provided evidence of the ways that New Mexico had failed to live up to its constitutional requirements, but also how it was damaging public education in the state with the punitive rules put in place against teachers. They also demonstrated how poorly those teachers were being treated, with low pay and punitive reforms leading to high turnover, and minimal time for sick leave, even when teachers were critically ill.

The state, through the Public Education Department (PED) brought experts that attempted to argue that poverty caused poor educational outcomes and that poverty, of course, was impossible for the state to fix. The PED argued that the reason that schools were performing poorly was because they had not followed PED-initiated reforms across the state. They did not provide adequate research to demonstrate the effectiveness of their reform initiatives.

In July of 2018, *Martínez* was decided in favor of the plaintiffs, when the Court rejected arguments by the Public Education Department (PED) that the educational system was improving and did not need more funding as the system was doing what it could with its current funding levels. Now, in response to the requests from plaintiffs, the Court awarded the plaintiffs declaratory relief and injunctive relief. The Court proclaimed the State of New Mexico had violated the Education Clause, the Equal Protection Clause, and the Due Process Clause of the New Mexico State Constitution. More specifically:

- 1) Defendants had failed to provide at risk students with programs and services necessary to make them college or career ready;
- 2) Funding provided had not been sufficient for all districts to provide the programs and services required by the Constitution, and;
- 3) The Public Education Department (PED) has failed to meet its supervisory and audit functions to assure that the money that is provided has been spent to efficiently achieve the needs of providing at-risk students the programs and services needed for them to obtain an adequate education.<sup>720</sup>

For injunctive relief, the judge gave the state legislature and PED until April 15, 2019 to create an educational funding system that met the requirements of the state constitution and that gives New Mexico schools the resources necessary to give at-risk students the opportunity to obtain a uniform and sufficient education that prepares them for college and career., including a system of accountability to measure the program's effectiveness. The court retained jurisdiction in this case until the system is constitutional.

In her decision, the Court stated that:

...as a legal matter, lack of funds is not a defense to providing constitutional rights... Therefore, the Defendants will...take immediate steps to ensure that New Mexico schools have the resources necessary to give at-risk students the opportunity to obtain a uniform and *sufficient education* that prepares them for college and career. Reforms to the current system of financing public education and managing schools should address the shortcomings of the current system by ensuring, as a part of that process, that every public school in New Mexico would have the resources necessary for providing the opportunity for a sufficient education for all at-risk students.<sup>721</sup> [emphasis added]

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<sup>720</sup> *Ibid.*

<sup>721</sup> Singleton, *Martínez v. State of New Mexico* 2014b.

The focus on declaratory relief over specific redress was deliberate; the plaintiffs wanted flexibility to get what was needed to fix the problem, rather than asking for specific items. The judge's decision and implementation mean that this case will provide another precedent for activists in other states to argue for education as a fundamental state right. *Martínez* could be as important as *Brown* for the state and Mexican American education in the future. Governor Martínez and her Interim Secretary of Education did provide notice that they would appeal *Martínez*; it remains to be seen if her successor, Governor Elect Michelle Lujan Grisham, will fulfill her promise to reverse the appeal when she takes office on January 1, 2019.

*Martínez* comes at a time of deepening crisis for underfunded school districts across the country. The Trump administration, as of 2017, stated it will cut the federal Education Department budget by \$9 billion dollars (13.5 percent).<sup>722</sup> It will instead invest heavily in charter schools and vouchers, something the current Secretary of Education, Betsy DeVos, has made a personal project of for years.<sup>723</sup> The Trump administration has shown little desire to fight for the rights of students of color or students from economically disadvantaged families. Moreover, the oft-stated promise by President Trump to build a wall along the border with Mexico is suggestive of his administration's and supporters' negative views on Latinos in general.

In this volatile educational climate, a case like *Martínez* suggests there may be good news ahead for the struggle over Mexican American educational rights that has

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<sup>722</sup> E.L. Green, "Betsy Devos Calls for More Schools Choice, Saying Money Isn't the Answer," *New York Times*, March 29, 2017, <https://www.nytimes.com/2017/03/09/us/politics/betsy-devos-education-school-choice-voucher.html>.

<sup>723</sup> *Ibid.*

been ongoing since New Mexico's territorial period. The trend of Mexican American public education activists from the 1970s to 2018 taking their cases before state courts rather than appealing to federal law is working. New Mexico has joined other states in declaring education to be a fundamental and human. This has come about through a coalition of community members, lawmakers, educators and school officials that shows the voice of the people at work.

As the Latino population continues to grow nationally, as it has in New Mexico and Arizona, it seems plausible that the voice of Latinos will grow louder and louder in the halls of government and the courtroom, given them more power to overcome the obstacles in their way. *Martínez* provides hope for the future, and perhaps a precedent that will allow Mexican Americans and other students of color across the Southwest and beyond to seize the education for their children that they deserve as a right at last, and to have the power through the courts to make it become a reality.

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