

National Identity and Language Education Policy

Regardless of ideological leanings, most Americans agree that education is a hugely important factor that impacts not only democratic civic participation, but also social mobility and economic growth. Education is taken seriously as an integral part of the American Dream, and public education policy has always been a hotly contentious issue. People feel strongly about education and the effects of educational policy on their kids and their country; thus, education is an area that has traditionally been as closely linked as possible with the people, governed in large part by state and local governments. The education of immigrant children is an area of education policy that has been even more controversial than most, with its various contending programs and arguments over discrimination, inclusion, language rights, identity politics, assimilation and civil rights. It is a debate both at the federal level and at the individual state and local levels of government. Although almost everyone, immigrant or not, would agree that learning English is important to succeed, not much of the legislation passed by state and federal governments actually assists immigrants in their language learning or in researching and creating better methods and programs for language learning. This failure to provide for language education prevents many immigrant children from having any meaningful education. Paradoxically, although language policy and education policy often has stated goals of helping immigrants to succeed by acquiring English as “the key to unlocking the opportunity of America” (Bush, Online News Hour), it often does nothing to actually provide for learning English. Thus, by acknowledging English to be necessary to success and failing to provide English education, language and education legislation

often effectively bars immigrant students from success by denying them the educational resources they need.

School is one of the places where assimilation into the “American melting-pot” is supposed to happen. Language policy and education clearly shows that for now, this so-called “melting-pot” society is actually a coercive assimilation, where “established Americans insist on newcomers shedding whatever makes them different, in order to blend in with existing ideas and practices. At the same time, each new group has hung onto its identity, including its language, as long as possible, until shamed and intimidated into shedding all or most evidence of its “non-Americanness” (Dicker 52). One of the ways that immigrant children become assimilated into American society is through the acquisition of the English language. Various forms of language instruction programs have been designed for language minority students, including bilingual education programs, ESL, English-immersion, and dual-immersion programs. The education of immigrant children is an important issue because “first- and second-generation immigrant children are the most rapidly growing segment of the U.S. child population” (Landale and Oropresa 1995, 1). The country’s public school system has not ever adequately served minority and poor children, and it is even less prepared to serve immigrant, linguistic minority children. The increasing cultural and linguistic diversity and needs of these immigrant children are a unique challenge that more and more public school districts are facing. The language education of immigrants is an issue that is closely linked with attitudes and policies on immigration. It is also closely linked with public opinion on ongoing school reform legislation for the past few decades, including No Child Left Behind.

The tension between the different levels of government over language education policy is an indicator of the fundamental tension that exists in the US federal system. Unfortunately, while the various levels of government duke it out over education policy, language minority students remain without the means to meaningful education. The right to regulate immigration is one of the exclusive powers of the federal government; it is one of the delegated powers in the US Constitution. However, as one of the only developed countries with no national ministry of education, the responsibility lies with state legislatures to pursue this common goal of a well-educated citizenry in its own way. This is one of the “reserved powers” of the states, under the Tenth Amendment to the Constitution. Depending on the provisions contained in each state’s constitution, and the state’s political culture and atmosphere, states will take certain positions on education. State legislatures determine where policymaking authority lies – whether local control or centralized state control deals with major policy issues such as teacher certification and funding between districts. State education authorities are also responsible for setting civil rights standards and monitoring compliance with those standards. Thus, looking across different states and regions, much variation can be seen in the types of programs and the different strategies employed to fund and implement good schools. New immigrants are highly concentrated in a few states – California, New York, Florida, Texas, Illinois, and New Jersey to name a few – but foreign-born children are moving to urban, rural and particularly suburban communities and schools, and states everywhere are facing this crisis of inadequate public education services for immigrant children.

Whether well-intentioned or not, the different policies and approaches that legislators have taken at federal and state levels have been largely ineffective in improving educational conditions for immigrant or language minority students. A federal mandate with funding is necessary to encourage state-led programs for language education initiatives as well as to prohibit states from barring education to immigrant children.

The current federal approach of school reform in the form of punishments and unfunded mandates is not very effective. The trends for public school reform have tended toward standards and accountability since the 1980s during the Reagan administration, when Dr. Terrell Bell published *A Nation at Risk*, a report that lamented plummeting school achievement. The federal government has taken a larger role in creating these performance-oriented policies, such as Goals 2000 and No Child Left Behind, with the expected results of states fighting for their stake in the power. Increasingly, language education in its various forms – ESL, bilingual education, dual-immersion programs – has become a controversial issue, debated both in congresses at the state and national level as well as in local school districts and neighborhoods. Language education is an issue that touches on national and individual identity and reveals both values and the workings of power in the US. In the next section, I will examine some of the implications of Goals 2000 and No Child Left Behind on the educational situation of immigrant children, the roles of state and federal legislatures in passing legislation, as well as the role of the courts in deciding issues of contention – in essence, issues of federalism. I argue that this ground-breaking trend toward a convergence of federal power in directing educational

policies is unlikely to be successful without more input from states, especially in meeting the needs of immigrant groups within states.

The federal level of government has supported a move toward guaranteeing immigrant children's right to education, but this move has been stunted and is not fully supported by the states. Since the Constitution neither prohibits nor requires bilingual education, states have established their own policies on language education. Language minority students' protection from discrimination is based on the concept of national origin. Although debate over language minority education has waxed and waned throughout American history, it re-emerged especially as a part of the civil rights expansion movement in the 1960s and 70s. In 1968, the Bilingual Education Act is enacted as Title VII of the ESEA for economically disadvantaged language minority students. In 1974, the landmark US Supreme Court decision in *Lau v. Nichols* requires that school officials take action to provide limited-English-proficient (LEP) students appropriate services to permit their meaningful participation in the district's educational programs. Also in 1974, the passage of the Equal Educational Opportunity Act prohibits discrimination by the states whether or not federal funds are involved. Its provisions require states and school districts to take appropriate action to overcome language barriers that impede equal participation in the educational program. Also in this year, amendments to Title VII, the Bilingual Education Act, "eliminate the requirement that children receiving assistance must come from low-income families. This amendment also defines bilingual education as instruction in English and in the native language of the student to allow the student to progress effectively through the educational system" (Bangura 78).

Although education has traditionally been in the realm of state governance, the federal government has started taking more of a role in recent years. Public school reform has become more of a top-down process as the standards and accountability reform movement gains momentum. The Goals 2000 in 1994: Educate America Act was passed to provide a national framework for standards-based education to ensure equitable educational opportunities and high level of achievement for all students. The Improving America's Schools Act (IASA) reauthorized the Elementary and Secondary Education Act (ESEA). This act is the most comprehensive example of federal support for K-12 education. Originally designed as part of President Lyndon Johnson's War on Poverty, it currently provides \$12 billion in grants a year to increase access to educational opportunity and the quality of education. The 1994 ESEA reauthorization, like Goals 2000, stressed the education reform resolution that all students, including those disadvantaged or at risk, should be held to the same rigorous academic standards. The underlying premise is that if standards are raised, students and schools will rise to meet the expectations set for them. Several sections of IASA directly address bilingual programs including Title I, Helping Disadvantaged Children Meet High Standards, Education of Migratory Children, and the Bilingual Education Act. Title I: Helping Disadvantaged Children Meet High Standards funds programs directed to raising the achievement levels of high-poverty school districts. 17% of those served by Title I-funded programs in the 1996-1997 year were LEP students.

In 2002, President George W. Bush signed the No Child Left Behind Act into law. This was also a renewal of the ESEA, and did a few important things with regard to school reform and language education. First, the NCLB Act eliminates

requirements that the federal government give preference to requests for funding from the Bilingual Education Act for bilingual education rather than English-only programs. The plan proposes Title II, Moving Limited English Proficient Students to English Fluency, for programs that ensure LEP children achieve English fluency within three years. Penalties of up to 10 percent of states' administrative funds could be withheld for failure to meet this goal. Funding for the Title II is still limited, only \$665 million, but it's a move up as compared to the "\$406 million allocated in 2000" (Feinberg 164). NCLB also gives parents greater power over their children's assignment to bilingual classes, requires schools to give parents more information to make their decisions, and eliminates the directive that most federal bilingual funds be used to teach substantive subjects in the student's native language. Importantly, it moves programs towards transitory methods where the student is expected to move to English-only, sometimes in just one year. It also mandates that schools test English learners for proficiency in English after three years of attending schools in the United States and permits penalties to schools whose students do not increase in English fluency.

Beyond federal legislation, states have also been passing a flurry of legislation in response to the new challenge these immigrant children posed to the public school systems. "By the end of the 1990s, 9 states mandated bilingual education (programs that included teaching the students substantive courses in their native language), 25 states required help for English learners but did not specify programmatic content, 5 states forbade all but short-term transitional programs, and 11 had no laws" (Crawford 1999). Especially in high-immigration states, legislators and citizens' initiatives can bring about changes in state constitutions. Later on in

this paper, I will provide an in-depth example of state legislation concerning language education.

These federal programs have limited degrees of success in an educational system that is greatly varied among states, and largely state-run and state-funded. Some factors that confound the seemingly well-intentioned policies at the federal level are socioeconomic status, lack of funding, adverse effects of standards-based reform, and political culture of states. First, the students who qualify for special and bilingual aid, both the turf of the federal government, overlap somewhat, and limited English proficient (LEP) students are also disproportionately poor. "In fact, in the early 1990s the federal program to aid poor children (now known as Title I) aided more LEP students than did the federal bilingual education program targeted specifically at them. About two-thirds of English learners now receive support from these federal programs" (Hochschild 150). Unless the deeper socioeconomic causes are acknowledged and dealt with by policy-makers, and incentives are created to train good teachers in programs that are targeted at these immigrant populations, nothing is likely to change. State and federal governments have both avoided any official policy decisions and method implementations on this crucial issue of language teaching, swaying back and forth between English-only sympathies and bilingual education.

A second problem with the federal mandate for educational reforms is funding. "Education accounts for the largest share of state government spending – 35.4 percent of general funds" (Smith 397). Moreover, "states paid for 49.9 percent of school costs in 2003... in comparison to 43 percent from local districts and just 7 percent from the federal government" (Smith 402). Just because the federal

government is getting more involved with education policy doesn't mean that it is willing to fund all the necessary costs associated with the reforms. And it is unlikely that states will leap in to pay for federally-mandated programs. This leaves schools in a constantly critical condition of lacking funding for the programs that are required. In 2003, many states cut back on school funding because of a weak two-year growth rate just as the No Child Left Behind law was passed and getting started, and the Bush Administration was criticized for under-funding it by about \$6 billion dollars. Even though everyone agrees that education is important, neither state nor federal government really wants to take responsibility for funding it, and engages in a blame game instead.

A third factor in the disarray of language programs in the US is that in some cases, reforms such as increased graduation requirements, school choice, and intensive testing may actually have worsened the situation for LEP students. In particular, the current move toward standardized testing and rigorous assessment may have potentially negative consequences on these students. In addition, schools with more LEP students may be punished for it, since the LEP students are evaluated by the same state or national test, and this gives schools an incentive to steer away from LEP students and programs.

Finally, the political culture of a state and people's attitudes toward immigration can largely affect the types of state policies on the education of immigrant children. This can perhaps best be seen in some state policy attempts to exclude undocumented immigrant children from public educational (among other) services. In 1982, the US Supreme Court struck down a Texas statute that denied school enrollment to undocumented immigrant children. The Court ruled in *Plyler v.*

Doe, that “even if public education is not a ‘right’ granted to individuals by the Constitution, it is neither ‘merely some governmental benefit indistinguishable from other forms of social welfare’ (*Plyler v. Doe*, 1982, 221)” (Suárez 183). In spite of this Supreme Court ruling, many subtle efforts to exclude immigrant students using practices such as requiring proof of residency, or Social Security cards.

For example, in California, Proposition 187 was approved in 1994, known as the “Save Our State” initiative. This stated an intention to “establish a system of required notification by and between such agencies to prevent illegal aliens in the United States from receiving benefits or public services in the State of California” (Proposition 187, 1994, 91). This legislation, overwhelmingly approved, was aimed toward excluding “an estimated 300,000 undocumented immigrant children from public elementary and secondary schools” (Suárez 185). Currently, Proposition 187 is facing several legal challenges, at both the federal and the state courts. At the state level, the challenge rests on the equal protection clause in the state constitution, which deems education to be “fundamental.” The federal challenge is based on the federal equal protection clause, and it is also argued that Proposition 187 interferes with the federal government’s exclusive right to regulate immigration. Other states have similar bills and initiatives under consideration, such as Florida and Arizona. Exclusionary legislation will only perpetuate marginalization of immigrant children – as the Supreme Court noted in the *Plyler* case, excluding undocumented children from school is not likely to make families return to their country of origin, and will “permanently lock children into the lowest socio-economic class” (207).

In my opinion, especially considering the current public interest and debate over the immigration legislation in the Senate, and the concern over too-exclusionary or too-lenient immigration policy, language education policy is one of the big fields up for grabs in the federalist system of the US. It is an issue of state sovereignty and jurisdiction, historically and constitutionally, yet it also has federal hooks in terms of its appeal to education as a “fundamental right.” Ideally, states should have more room to develop fitting methods and curricula for these students, but the historical record has often shown that given their own way, states will tend to discriminate against immigrant children rather than develop good programs. In general, it seems that while at the federal level the Supreme Court has upheld decisions that grant language minority children the right to a free and comprehensible public education, neither federal nor state legislation has been successful at implementing reforms that provide better services. State legislation has often sought to block immigrants from public services, and at the national level NCLB focuses on standards and accountability that leave language minority students at a disadvantage and schools with inflexible methods because of relentless testing. It will be interesting to see how the Court rules on this issue in years to come, as well as how the pending immigration legislation and public opinion will affect language education policies.

Recently, two proposals to make English the “national common and unifying language” have passed in the U.S. Senate and will be added to the Immigration Bill, now to be discussed in the House. Recriminating arguments and debates on the Senate floor about racism and definitions of “common” v. “national” language reflected the highly emotional nature of this issue. I will argue that the emotional nature of this discussion is because language and education are issues that are

inseparable from individual and national identity. Proponents of writing English dominance into law argue that it's already the language of the majority of Americans, and that a national language policy will reinforce the sense of national unity. It is unclear whether this is the case, and it remains to be seen what repercussions this legislation may have on language education policy. Twenty-seven states have already passed state legislation making English the state language, some having passed exclusionary practices toward immigrant and language minority students as well.

The crucial question that arises from the recent legislation is not whether English is or is not the dominant language of the United States. The fundamental issue is one of identity and power – who is *really* an American? Masked in the seemingly neutral terms of “learning English” and “common and unifying” language, its subtext, like that of movements like Official English, is that “if you want to be a real American, you have to be just like us, and we speak only English. This law would also prohibit public funds from going to educational and cultural programs promoting minority languages, discouraging the use of such languages in American society” (Dicker 52). If the law making English the United States’ “national common and unifying language” passes in the House, what remains to be seen is what kind of education policy this will mean for language minority students. Taking education and language policy to the federal level could be a good thing, if it leads to the coordination of disparate systems and the consolidation of resources to devote to language minority students. It's about time Americans stopped hiding behind a complicated federal system and took responsibility for the education of its children and its immigrant children. However, the consolidation of language and education

policy at the federal level could also lead to a more unified discriminatory education policy concerning language minority students. Ultimately at stake in this debate and its outcome is the character and identity of America: whether we are truly still a “nation of immigrants,” whether we truly believe in the American Dream of education and equality, and whether we will continue to be a “land of opportunity.” Or not.

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