

Legal Barriers in the Educational Experiences of Mexican Origin Students in the United States

Harriett Romo and Carlos Romo

Mexican and Japanese immigrant groups to the United States have shared many similarities in educational experiences in terms of discrimination and language barriers in the schools. Attempts to maintain the heritage language in the second generation of children created many vigorous protests against both of these groups at various times claiming that they were failing to “Americanize.”¹ Despite antagonisms from white US citizens, both Latino and Japanese Americans promoted ethnic pride without giving up goals of becoming full American citizens.² Each of these ethnic groups has looked to education as a primary route to upward mobility and incorporation in US society, and the socialization dimension of educational attainment has had a great impact on acculturation and structural assimilation of both ethnic groups.

This chapter presents an overview of Mexican origin students’ experiences in education which we believe is helpful in understanding legal barriers that minority groups, including the Japanese, have faced in reaching educational goals the United

1. Noriko Asato, *Teaching Mikadoism: The Attack on Japanese Language Schools in Hawaii, California, and Washington, 1919–1927* (Honolulu, 2006), 86 found documents that showed that exclusionists in Washington state argued that “the Japanese cannot be assimilated.” He also found arguments in the 1919 Congressional immigration hearings in Washington, D.C. that demonstrated the Japanese language school issue was deeply rooted in exclusionists’ efforts to curtail Japanese land ownership. The language schools were also primary targets in the exclusionists’ campaign to contest Nisei American citizenship. Richard Valencia, *Chicano Students and the Courts: The Mexican American Legal Struggle for Educational Equality* (New York, 2008), 156–157 quoted Herschel T. Manuel who estimated that 90 percent of the Mexican children enrolled for the first time in US schools did not speak or understand English. Manuel noted that “language instruction is, therefore, one of the major aspects of the Mexican problem.”

2. Asato, *Teaching Mikadoism*, 44 proposed that “Japanese parents hoped that learning the language (Japanese) would help Nisei to advance their careers and to serve as bridges between Japan and the United States.” Valencia, *Chicano Students and the Courts*, 157 presented significant evidence that Mexican parents wanted their children to speak Spanish, but the Spanish language was banned in Southwestern schools well into the 1960s.

States. We also hope that it may suggest lines of useful comparative study of the impacts of educational law and implementing bureaucracies upon family life in Japan and other countries.

An Overview of the Latino Population

The Latino population in the United States, already the nation's largest minority group in the United States, is expected to triple in size by 2050.³ In the United States, the majority of Latinos are of Mexican origin.⁴ This Mexican population is the second oldest minority group in the United States after Native Americans, pre-dating African Americans in the country because of the founding of Santa Fe, New Mexico in 1608, eleven years before the first African slaves arrived in Virginia in 1619.⁵ Steadily growing immigration of Latinos since the mid-1960s and the fact that many of these immigrants are young and have a fertility rate that exceeds that of the native-born population assure that the number of persons in the school age population who are Latino will increase.⁶

Students of Latino and Asian background have long been projected to account for the majority of the school age population, with most of this growth occurring in the high-immigration states of the US Southwest, California, Florida, Illinois, New York and Texas.⁷ These projected population changes in the size, composition and geographic concentration of the school-age population are of particular concern because Hispanics—as a group—have lagged behind other ethnic groups in enrollment in early education, completion of high school and, most acutely, in college-going and college completion.⁸

3. Jeffery Passel and D'Vera Cohn, *Immigration to Play Lead Role In Future US Growth: US Population Projections: 2005–2050* (Pew Research Center Publications, 2008), <http://pewresearch.org/pubs/729/united-states-population-projections>.

4. US Bureau of the Census, *Persons of Spanish Origin by State, 2000*, (Washington, D.C. US Government Printing Office, 2002).

5. Douglas S. Massey, *Categorically Unequal: The American Stratification System* (New York, 2007).

6. Georges Vernez, Richard A. Krop, and C. Peter Rydell, *Closing the Education Gap: Benefits and Costs* (Santa Monica, Calif., 1999).

7. Diane August and Kenji Hakuta, eds., *Improving Schooling for Language-Minority Children: A Research Agenda* (Washington, D.C., 1997); Frank D. Bean and Marta Tienda, *The Hispanic Population of the United States* (New York, 1987); Massy, *Categorically Unequal*

8. Bean and Tienda, *The Hispanic Population of the United States*; Donald Macedo, "English Only: The Tongue-tying of America," in *Latinos and Education: A Critical Reader*, Antonia Darder, Rodolfo D. Torres, and Henry Gutierrez, eds. (New York, 1997), 269–278; Vernez, Krop and Rydell, *Closing the Education Gap*.

Evidence of the continuation of this gap in educational achievement was reported in testimony presented in the recent Texas federal court case, *GI Forum v. Texas Education Agency*,⁹ which challenged the adverse effects of the Texas school accountability testing program. Valenzuela¹⁰ highlighted documents submitted in the case and concluded that, in Texas, 87 percent of all students who failed the state's high school exit exam were either African American or Latina/o. Similar patterns occur in other areas with high Hispanic concentrations.¹¹

The assimilation of immigrants and the schooling of their children is an old problem in the social sciences and there is a huge literature on the subject. Many of these at-risk children are English language learners or bilingual in English and Spanish and come from homes where English is not the primary language spoken. Many of these students' parents have below poverty level incomes, do not have a deep history of formal education, and are not proficient in English themselves.¹² The educational predicament of children from Mexican immigrant and Mexican American families in the United States has been a focus of policy makers and the courts for over 150 years.

This paper looks at some of the structural factors that have accounted for the lack of access and lack of equitable outcomes in education for students of Mexican origin. A goal of this paper is a better understanding of language issues in the legal context and the role language has played in battles confronting inequities faced by Hispanic students. Our discussion may shed light on how policy-makers can better address language issues in the education of Mexican immigrant children particularly, and immigrant children in general.

The Origins of Latinos in the United States

The Latino community in the United States¹³ overall is made up of a mixture of native born and immigrant persons from several ethnic cultural backgrounds, such as

9. *GI Forum et al. v. Tex. Ed. Agency*, 87 F. Supp.2d 667 (W.D. Tex. 2000)

10. Angela Valenzuela, ed., *Leaving Children Behind: How "Texas-style" Accountability Fails Latino Youth* (Albany, N.Y., 2005).

11. Vernez, Krop, and Rydell, *Closing the Education Gap*.

12. August and Hakuta, *Improving Schooling for Language Minority Children*.

13. The term Latino is used in this paper interchangeably with the term Hispanic, a governmental term used in reporting statistics about Mexican origin, Puerto Rican, Cuban and Central and South American persons. "Latino/a" is preferred by many members of the groups from Mexico, Central and South America because it emphasized a link with Latin America. The term is inclusive of several cultural and historically distinct groups that speak Spanish. "Hispanic" is the term used by most US government census reports and does not distinguish among the various cultural groups

Mexican, Puerto Rican, Cuban, and Central and South American. The term “students of Mexican origin” encompasses both US-born Mexican American students of Mexican background, many of whom have a long heritage in the United States dating back prior to the Treaty of Guadalupe Hidalgo signed in 1848. That treaty made large portions of land belonging to Mexico part of the United States, and incorporated into the new territory the Mexicans who lived in those areas. Under the Treaty, which ended the US-Mexico War, persons who lived in the acquired territory had the choice of remaining in the United States and becoming US citizens “to enjoy all the rights of citizenship” or of remaining Mexican citizens.¹⁴ Many who became Americans are the early generations of the Mexican Americans in the US Southwest today. Mexican immigration continued throughout the 1900s and has increased since the 1960s. Thus, Mexican American students and Mexican first and second generation immigrant children make up a large percentage of the school-age population, especially in the high-immigration states identified above. This is important because, when we talk about Mexican origin students’ educational issues, it must be kept in mind that the educational challenges facing Latinos is a concern for both immigrants and native-born Mexican American students.

In developing this paper, we have focused on language and some of the major historical patterns and legal issues that have influenced educational access and outcomes for Mexican origin youth. We begin by noting that, historically, Mexican workers have been recruited to work on US railroads, in agriculture, in construction, and in service industries in large numbers over the last century and a half and many of those workers brought their children with them or have had children born in the United States. The education of their children, who tended to be Spanish speaking, has often been an issue in the discussion of school inequality.

Second, throughout the 1940s, 1950s and 1960s educational equity issues for Latinos focused on segregation and quality of school programs offered to Hispanics compared to those offered to non-Hispanic Whites. Mexican origin students in the Southwestern states and Texas were often segregated in “Mexican schools” and experienced Jim Crow discrimination equal to that experienced by Blacks.¹⁵ In the

that are encompassed in the term. Some suggest that “Hispanic” emphasizes more links with Spain than Latin America. Both categories “Latino/a” and “Hispanic” include US born persons and recent immigrant persons, groups of people who have distinct experiences in the US but may share cultural origins.

14. David G. Gutiérrez, *Walls and Mirrors: Mexican Americans, Mexican Immigrants, and the Politics of Ethnicity* (Berkeley, 1995), 17.

15. Throughout the late nineteenth and early twentieth centuries, the dominant society extended a distinctly second-class citizenship to Mexican Americans, Native Americans, Asians, and African Americans. Native Americans could not vote, testify in court, or attend white schools.

1970s, a number of legal cases focused on the question of language of instruction and bilingual education as factors in equitable education for Hispanics, and this debate continued into the 1980s and 1990s when states began to pass English Only laws, ban bilingual education, and in some cases exclude Mexican immigrant children from school altogether. School districts often argued that providing bilingual services or bilingual teachers was too costly and too difficult.

In the 1990s and after, issues of equitable school financing, assessment, and access to higher education and college completion have become strong issues affecting Mexican origin students' educational outcomes. Our research indicates that legal challenges to Latino access to education often emerge in times of significant national discussion on the topic of immigration. The debates generally center on questions of language and citizenship, with arguments that Mexican origin students are not learning English and assimilating into the "melting pot" of the United States or that they are endangering our "common culture" if they maintain connections to their ethnic identity and language. Looking back at some of these educational debates from the last fifty-plus years illuminates the current challenges facing the education of Mexican American children.

The Early History of Inequities

Many of the Mexican laborers who entered California and Texas as agricultural workers in the 1920s–1940s brought families who helped work in the fields. Children spoke Spanish and were not welcomed in the few rural schools for white employers.¹⁶ Meyer Weinberg¹⁷ noted, "In the Southwest, patterns of discrimination, segregation, and financial deprivation dominated the education of Mexican-American children throughout the second and third quarters of the century as it had the first quarter: The consequences were predictably, underachievement and alienation." High dropout rates for agricultural workers' children resulted because children entered school late in the fall after the harvest season and departed for other harvests early in May. Spanish dominant children did not understand the English speaking teachers and could not read the English textbooks. Grebler, Moore and

Asians faced similar prohibitions and most could not own land in California. Mexican Americans experienced racism because of their Indian heritage. See Ricardo Romo, "Southern California and the Origins of Latino Civil-Rights Activism," *Western Legal History* 3 (1990), 379–406.

16. Carey McWilliams, *North from Mexico: The Spanish-Speaking People of the United States* (New York, 1968).

17. Meyer Weinberg, *A Chance to Learn: A History of Race and Education in the United States*, (1977), 146.

Guzman¹⁸ noted that the schooling of Mexican and Mexican American migratory workers was largely neglected and lowered the educational preparation of the Mexican American minority as a whole.

Those who attended school often attended segregated "Mexican schools." All Mexican origin children were placed in these Mexican schools, even if they spoke English. In 1946 parents, with the support of Mexican American organizations, initiated legal action against four Southern California elementary school districts decrying the inequities in educational programs and facilities offered to Mexican origin children.¹⁹ In *Mendez v. Westminster School District*, the plaintiffs claimed in federal district court that the school districts discriminated illegally against children of Mexican descent by maintaining separate facilities of those children.²⁰ The plaintiffs contended that such practices violated their constitutionally guaranteed rights to "due process and equal protection of the law."²¹ The courts ruled in favor of the parents and enjoined the districts from segregating, a decision upheld upon appeal.²² This was the first time a federal court had concluded that the segregation of Mexican Americans in public schools was a violation of law and a denial of equal protection of the laws and it was also nearly a decade before the historic Supreme Court decision in *Brown v. Board of Education*.²³

The district court in *Mendez* also acknowledged that Spanish speaking children learn English more readily in mixed than in segregated classes, which undercut a principal reason for the segregation of Mexican children.²⁴ The custom of segregation was clearly revealed in court findings where, instead of basing segregation on educational needs or language programs, children were assigned to Mexican schools on the basis of Mexican names, even if they were fluent in English. This case of segregation based on national origin had implications for other states since it involved the denial of constitutional rights under the Fourteenth Amendment's equal

18. Leo Grebler, Joan W. Moore, and Ralph C. Guzman, *The Mexican-American People: The Nation's Second Largest Minority* (New York, 1970).

19. *Mendez v. Westminster School Dist. of Orange County*, 64 F.Supp. 544 (D.C.CAL. 1946)

20. See Romo, "Latino Civil Rights." The Westminster school district cited in the *Mendez v. Westminster* case admitted to segregating the children only to keep Mexican children "separate and apart from English-speaking pupils." The court quoted the *Hirabayashi* decision arguing that that case had determined that distinctions among pupils based on race or ancestry had been declared by the Supreme Court 'by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.' See also *Hirabayashi v. United States*, 320 US 8a [1043] 100,106.

21. Grebler, Moore and Guzman, *The Mexican American People*, 172

22. *Westminster School Dist. of Orange County v. Mendez*, 161 F.2d 774 (9th Cir. 1947)

23. 347 US 483 (1954).

24. *Mendez*, 64 F.Supp. at 549.

protection clause and formed the legal groundwork for subsequent desegregation decisions of the 1950s.

After the success of the *Mendez* case in California, legal redress was sought in 1948 to end school segregation of Mexican Americans in Texas. In *Delgado v. Bastrop Independent School District*, a federal district court ruled in an unpublished opinion that segregation of Mexican origin students was illegal.²⁵ The parents of school-age Mexican American children alleged that school officials in four communities in Central Texas were segregating Spanish speaking children and children of Mexican descent from other children. The parents also claimed Mexican descent children were segregated into separate school buildings or classrooms based on ethnicity, not language instructional programs as some school districts claimed. The parents alleged the segregation was solely because they were of Mexican descent, and the segregation had been called to the attention of the state superintendent and the State Board of Education but neither had taken any actions to discontinue these practices.²⁶ The majority of the segregated "Mexican schools" had poorly qualified teachers, vastly inferior physical facilities, larger classes, and few textbooks.²⁷

However, even after the courts ruled in favor of the parents in the *Delgado* decision and ordered desegregation, when the American G.I. Forum surveyed fourteen school districts near Corpus Christi, Texas to see how districts were responding, they found little compliance with the desegregation ruling. Six of the fourteen had made no efforts to desegregate, one promised to do away with separate Mexican schools at a later time, and another stated that segregation was too far advanced to do anything about it.²⁸ Of course, similar stall tactics were used twenty years later in the aftermath of the *Brown v. Board* decision. The California and Texas cases argued that school desegregation was essential for the improvement of educational opportunities for children and that segregation led to psychological harm to children, arguments that were ultimately key to the *Brown v. Board of Education* decision.

Despite these successful legal efforts over the years on the part of parents and community organizations, such as League of United Latin American Citizens (LU-

25. Carlos Kevin Blanton, *The Strange Career of Bilingual Education in Texas, 1836–1981* (College Station, Tex., 2004), 114.

26. Guadalupe San Miguel, Jr., *"Let All of Them Take Heed": Mexican Americans and the Campaign for Educational Equality in Texas, 1910–1981* (Austin, 1987).

27. Grebler, Moore and Guzman, *The Mexican-American People*, 174.

28. San Miguel, *"Let All of Them Take Heed"*, 126. Some legal commentators have suggested that state officials collaborated with local school districts to evade the force of the *Bastrop* decision. See for example Lani Guinier and Gerald Torres, *The Miner's Canary: Enlisting Race, Resisting Power, Transforming Democracy* (Cambridge, 2003), 231.

LAC) and the Mexican American Legal Defense and Education Fund (MALDEF), segregation has intensified. Gary Orfield and fellow researchers at the Harvard Civil Rights Project have shown that, on a national level, the segregation of Latino students has grown the most since the civil rights era. Orfield and Lee²⁹ claim that "Latino students have become, by some measures, the most segregated group by both race and poverty...." The three most segregated states for Latino students are consistently California, New York, and Texas, states with high concentrations of Mexican origin students. Attinasi³⁰ argued that the English Only movements and the concentration of Latinos in segregated schools represent both overt and covert racism and discrimination and attempts to degrade and repress the validity of ideas and speakers of languages other than English. Unfortunately, segregation has not been the only way of marginalizing Mexican American students. Many have been denied access to schooling at all.

The *Plyler v. Doe* Case

By the mid 1970s, advocates for Latino access to education were still frustrated by the earlier failure to end desegregation in Texas schools when a second major challenge to Latino student education arose. The *Plyler v. Doe* case emerged from two different legal challenges to Texas efforts to remove the children of undocumented immigrants from public schools. Public schools in Texas and in most states receive funds based on the daily attendance of students. In 1975 the State Commissioner of Education in Texas sought an opinion from the state attorney general as to the status of undocumented children in Texas schools and was told that there was no basis for denying access to educational opportunities to any children in the state and that local school boards did not have authority to deny education to such children.³¹

The Texas legislature ignored this ruling and passed legislation amending the education code by adding a provision stating that "all children who are citizens of the United States or legally admitted aliens" were permitted to attend free public school, but school districts were given permission to admit other students (i.e. children of undocumented immigrants) only if their parents paid the full cost of

29. Gary Orfield and Chungmei Lee, *Historic Reversals, Accelerating Resegregation, and the Need for New Integration Strategies*. A report of the Civil Rights Project/Proyecto Derechos Civiles, UCLA (Los Angeles, 2007), 32.

30. John J. Attinasi, "Racism, Language Variety, and Urban Minorities: Issues in Bilingualism and Bidialectalism", in *Latinos and Education: A Critical Reader*, Antonia Darder, Rodolfo D. Torres and Henry Gutierrez, eds. (New York, 1997), 279–301.

31. Phillip J. Cooper, "Plyler at the Core: Understanding the Proposition 187 Challenge," *Chicano-Latino Law Review* 17 (1995), 64.

tuition.³² The Tyler School District in the 1977–78 school year prohibited undocumented children unless their parents paid the cost of their schooling. The tuition cost was calculated based on the district operating costs divided by the number of students attending which averaged about US\$1,000 per year per child, a sum prohibitive for low-income migrant workers or service workers with several children. Districts argued that hiring bilingual teachers and providing the immigrant children English instruction added to the cost of educating those children.

MALDEF took up the case on behalf of undocumented children. The federal judge in the Tyler Division of the Eastern District of Texas, Judge William Wayne Justice, found that many of the children affected by the exclusion had lived in the community from 3–13 years, some were born in the US and were United States citizens whose parents were undocumented immigrants, and none of the families were able to pay the cost of tuition charged to admit their children to the public schools. The court found that the Texas policy was “an instance of complete deprivation of a government benefit on the grounds of status, for which there was no rational basis.”³³

Multiple challenges were brought in federal courts throughout Texas seeking a broader interpretation of the *Plyler* case. In a hearing of consolidated cases, “Alien Children Education Litigation” held in the Houston Division of the Southern District of Texas and decided in 1980, the judge found that Texas counted undocumented children in reporting to the federal government to generate Title I funds under the Elementary and Secondary Education Act of 1965 and simultaneously denied those same children access to the state’s schools.³⁴ In the decisions from these courts, the opinions pointed out that many of these children would ultimately become legal residents or citizens of the United States and remain in the country.³⁵ In being excluded from an education, the children suffered both educational and psychological damages.³⁶

In 1982 the US Supreme Court overturned the Texas law banning the children of undocumented immigrants from attending public schools.³⁷ Justice Brennan argued that although education may not be a fundamental right explicitly articulated in the Constitution, it had historically been regarded as extremely important in the

32. Tex. Educ. Code § 21.031 (repealed).

33. See *Doe v. Plyler*, 458 F. Supp. 569 (D.C. Tex. 1978).

34. See *in re Alien Children Ed. Litigation*, 501 F. Supp. 544 (D.C. Tex. 1980)

35. *Ibid.*, 558.

36. *Ibid.*, 562.

37. *Plyler v. Doe*, 457 US 202 (1982).

Supreme Court's rulings.³⁸ Additionally, he argued that educational access was an important consideration for the framers of the Fourteenth Amendment³⁹ and the exclusion of children from educational opportunities left children with an enduring disability if they had an inability to read and write and this deprivation would affect the economic, intellectual and psychological well-being of the children even into adulthood.⁴⁰

The ruling in *Plyler* did not stop attempts to exclude Mexican origin children from schools. Nearly 20 years after the Texas cases, Californians passed Proposition 187 in 1994, focusing on children whose parents entered the United States without authorized documents. The California statute placed almost 300,000 children, many of whom were Mexican immigrants, in circumstances similar to those in the *Plyler* case. Proposition 187 stated that "no public elementary or secondary school shall admit or permit the attendance of any child who is not a citizen of the United States" and required that beginning on January 1, 1995, each school district was to verify the legal status of each child enrolling in the school district and of each child already enrolled to ensure the enrollment or attendance only of citizens, lawful residents.⁴¹ The districts were required to verify the legal status of each parent or guardian of each child in the district as well and make the information available to the attorney general of California and the United States Immigration and Naturalization Service. The district was to report anyone determined to be "reasonably suspected" to be in violation of federal immigration laws. This ruling placed teachers and school administrators in particularly vulnerable positions because they were the ones most likely to know the child and his/her family best and it placed them in possible positions of violating the trust of the children in their classrooms. In addition, provisions of the measure prohibited public postsecondary educational institutions from admitting, enrolling or permitting attendance of these students. Proposition 187 was protested by public interest groups, individual citizens, and Latino community-based organizations, particularly LULAC. Among other challenges, the groups charged that the provision excluding illegal aliens from public elementary and secondary schools was preempted by federal law as being prohibited by the equal protection clause of the Fourteenth Amendment and *Plyler*. In the end, most of Proposition 187 was abandoned as a result of a settlement between California Governor Gray Davis and various civil rights activists and plaintiffs' attorneys,

38. That education is not considered a fundamental right for constitutional analysis purposes was determined in *San Antonio I.S.D. v. Rodriguez*, 411 US 1 (1973), discussed more fully below.

39. Cooper, "Plyler at the Core."

40. *Plyler*, 457 US at 203.

41. Codified at California Educ. Code § 48215.

leaving many questions about language and educational access and the best ways to close the educational gaps for Hispanics.

Quality of Education and Language Inequities

A third major barrier for Mexican Americans and Mexican immigrant children in the quest for equitable educational opportunities, after segregation and outright denial of access to schools, has been the issue of quality of educational programs the students receive. Quality issues have centered on language of instruction, Mexican origin students' parents' abilities to communicate with the schools, and equitable facilities and funding.

When children of Mexican origin who are more proficient in Spanish than in English are placed in English language classrooms, they cannot experience the same quality of education experienced by an English proficient child in that classroom. Debates continue to rage over how to provide an equitable education to the many children who arrive at the schools speaking little English or language of instruction for Mexican American children who speak varieties of English that are different from the formal English used by teachers. Many other children code-switch between English and their home language and desire to be fluently bilingual and biliterate in both English and Spanish.

Despite the strong pull of English when children enter formal educational programs in the United States, Hispanics have a higher rate of native language maintenance than do other language minority groups.⁴² In reality, a plurality of second generation linguistic adaptation types exist, especially in the US Southwest, and among them fluent bilingualism is consistently preferable among Latinos.⁴³ Additional conditions that account for this ability to maintain the Spanish language are the high rates of Mexican and Latin American immigration to the United States, the concentration of Mexican origin population in the US Southwest, the proximity of Spanish speaking countries, particularly Mexico which shares an extensive border with the US Southwest, and the extended close Latino family networks that provide opportunities for children to hear a variety of Spanish speakers. Rumbaut et. al⁴⁴ in an analysis of the Hispanic population in the US 2000 census, reported

42. Amy Lutz, "Spanish Maintenance among English-Speaking Latino Youth: The Role of Individual and Social Characteristics," *Social Forces* 84 (2006), 1417–1433.

43. Alejandro Portes and Lingxin Hao. "E Pluribus Unum: Bilingualism and Loss of Language in the Second Generation," *Sociology of Education* 71 (1998), 269–294.

44. Rubén G. Rumbaut, Douglas S. Massey, and Frank D. Bean, "Linguistic Life Expectancies: Immigrant Language Retention in Southern California," *Population and Development Review* 32 (2006), 447–460.

that almost 94 percent of Hispanic immigrants to the United States speak Spanish at home, while only slightly more than six percent speak English only. Thus, Mexican origin families continue to maintain strong identification with Spanish. The importance of language to Mexican Americans is central in the educational context because, as we have shown above in the segregation cases and the *Plyler* debates, the maintenance of Spanish has been in conflict with the schools in the United States and access to bilingual instruction has been a contentious issue throughout the history of the education of Mexican origin children.

Much of the research on Mexican American schooling has shown that the US Southwest has a long history of prohibiting the speaking of Spanish in schools, which many Mexican origin families have interpreted as degrading their homes and culture. Carter⁴⁵ identified common specious institutional arguments used to justify the prohibitions of Spanish—many of which are often repeated today: English is the national language and must be learned; bilingualism is confusing to learners; the Spanish spoken in the US Southwest is a substandard dialect; and teachers do not understand Spanish. In tape-recorded interviews with immigrant families,⁴⁶ persons from the older generation in Texas recounted incidents of being stood in the corner or smacked on the knuckles with a ruler for speaking Spanish, even on the playground. Reluctant to have their children experience these negative consequences for speaking Spanish, many tried to teach their children only English. In the 1960s, with the Chicano movement and school walkouts in California and Texas protesting inequities in the schools, Mexican origin activists reclaimed their heritage language and demanded bilingual educational programs for their children. After the influx of Cuban refugees in 1961, the federal government made Title VII funds available for bilingual programs, but most were targeted for recent immigrant children who were learning English and most were not dual language programs, but instead served to transition students into English language classrooms. The US Department of Health, Education, and Welfare made this adamant in a memorandum signed by Frank Carlucci, the Under Secretary in 1974, “It is clearly the intent of

45. Thomas P. Carter, *Mexican Americans in School: A History of Educational Neglect* (New York, 1970), 97.

46. Dr. Harriett Romo, a sociologist, has conducted numerous studies of Mexican immigrant families and parents’ and children’s experiences with US schools. See Harriett Romo and Toni Falbo, *Latino High School Graduation* (Austin, 1996); Harriett Romo, “Inequality in Bilingual Education: School Organizational Factors,” *La Raza Law Journal* 1(3) (1986), 227–294; and Harriett Romo, “The Mexican Origin Population’s Differing Perceptions of Their Children’s Schooling,” in *The Mexican American Experience: An Interdisciplinary Anthology*, Rodolfo de la Garza et al., eds. (Austin, 1985), 317–332. See also David G. Gutierrez, *Walls and Mirrors: Mexican Americans, Mexican Immigrants, and the Politics of Ethnicity* (Berkeley, 1995).

Congress that the goal of Federally-funded capacity building programs in bilingual education be to assist children of limited or non-English speaking ability to gain competency in English so that they may enjoy equal educational opportunity—and *not* to require cultural pluralism.⁴⁷ Still, school districts denied immigrant children access to such programs.

In 1974 Chinese students who did not speak English challenged alleged unequal educational opportunities in San Francisco in the case of *Lau v. Nichols*.⁴⁸ The case has had an influential impact on equality of school programs for all English language learners, particularly Mexican origin students. With Justice Douglas writing for the majority, the Supreme Court held in *Lau* that the San Francisco school system's failure to provide English language instruction denied meaningful opportunity to participate in public educational programs in violation of the Civil Rights Act of 1964. The decision did not mandate bilingual instruction, but left it up to school districts to determine appropriate ways to "open the curriculum" for English language learners. The decision did, however, place the burden upon school districts to find appropriate ways to provide meaningful opportunities to participate in public educational programs.

The *Lau* decision specifically said, "Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students."⁴⁹ The Supreme Court decision led to the formation of a Task Force to determine how to implement the decision and the funding of seven Lau Centers to provide professional assistance in designing programs that complied with the decision.⁵⁰ The report of that task force, *The Lau Task Force Findings Specifying Remedies*, concluded that when there were concentrations of 20 or more students of one language group at a particular grade level, then bilin-

47. Memorandum from the Under Secretary of the Department of Health, Education, and Welfare, Office of the Secretary to the Assistant Secretary for Education dated December 2, 1974 regarding Departmental Position on Bilingual Education.

48. 414 US 563.

49. *Ibid.*, 568.

50. Proceedings of National Conference on Research & Policy Implications. Lau Task Force Report, *Findings Specifying Remedies for Eliminating Past Educational Practices Ruled Unlawful Under Lau v. Nichols* (Austin, Texas, June 17–18, 1976), ERIC Document ED151905. Dr. Harriett Romo worked at the Southern California Lau Center located at San Diego State University and, as an educational consultant, was sent to school districts all over Southern California to help administrators, teachers and parents develop plans to better serve national origin minority students and comply with the *Lau* decision.

gual instruction was an appropriate remedy. With lesser concentrations and varieties of languages, intensive English instruction might be appropriate, according to the *Remedies*. Since Mexican origin students tended to be highly concentrated in urban school districts in Los Angeles, California and Houston, Dallas, and San Antonio in Texas they qualified to receive bilingual instruction. The Office for Civil Rights used the Task Force Remedies as guidelines to determine if districts were in compliance with the *Lau* decision. However, in late 1980, the Department of Education diluted the *Lau Remedies* by stating that the basic educational requirement of *Lau* could be met by any instruction designed to teach English to students with limited English proficiency.⁵¹

These examples demonstrate that the right of Mexican origin students to have instruction in their home language of Spanish and in English has long been contentious, but the remedy has not always been a clear one and schools have been left without a clear statement from the courts as to the best way to educate students. Zabetakis⁵² argues that at the heart of the disagreement over how languages should be taught and how opportunities can be expanded for English language learners is the issue of public schools as vehicles for assimilation or for pluralism.⁵³ For example, bilingual programs have been accused of keeping children in classrooms where only Spanish is spoken instead of teaching them both English and Spanish, thus delaying their assimilation as Americans. Others have complained that bilingual transition programs do not provide students with literacy and oral skills in both languages which are needed to reap the benefits of bilingualism, an argument by those promoting pluralism. Some have argued that bilingual education creates ethnic and linguistic segregation and denies immigrant children the right to learn English. Others have pointed to excellent bilingual programs that have very high academic success rates.⁵⁴

51. Zabetakis, Amy S. "Proposition 227: Death for Bilingual Education?" *Georgetown Immigration Law Journal* 13 (1998), 105.

52. *Ibid.*

53. Assimilation has been perceived as expecting immigrants to give up their home language and culture and become "American." Sociologists have identified various assimilation processes and learning English is identified as a part of cultural assimilation in the United States. Pluralism refers to a model of society in which newcomers take on what aspects of the larger culture are necessary for accommodation, such as the English language, but also maintain the heritage culture and language and many aspects of the home country's ways.

54. Tamara Lucas, Rosemary Henze, and Ruben Donato. "Promoting the Success of Latino Language-Minority Students: An Exploratory Study of Six High Schools," in *Latinos and Education: A Critical Reader*, Antonia Darder, Rodolfo D. Torres, and Henry Gutierrez, eds., (New York, 1997), 373-397.

Although attitudes are changing somewhat toward more positive realizations of the economic, social and personal benefits of bilingualism in a global society, that has not prevented negative reactions toward bilingual education in the form of English Only legislation in Florida, California, Colorado and Arizona, states with high populations of Mexican origin population. In 1997, the US House of Representatives passed H.R. 123 declaring English as the official language of the United States.⁵⁵ Despite arguments on the House floor that immigrants were not assimilating and the national unity of the United States was threatened, H.R. 123 died because of Senate inaction. However, the inaction in the Senate did not deter state initiatives directed against immigrant students.

The very next year in 1998, Proposition 227 passed in California and banned bilingual education stating that "all children in California public schools shall be taught English by being taught in English."⁵⁶ Children who speak no English are allowed one year of "sheltered English immersion" but once they have acquired a good working knowledge of English, they must be transferred to English language mainstream classrooms. The California Teachers Association lost a federal court lawsuit in August of 2001 challenging the provision of Proposition 227 requiring students to be taught in English. And the Ninth US Circuit Court of Appeals, in agreeing with a lower court, left intact the right of parents and guardians to sue a teacher if the teacher "willfully and repeatedly" violates Proposition 227.⁵⁷ While many recent Mexican immigrants want their children to be taught in English so they will learn the English language, they often believe, mistakenly, that they can maintain Spanish skills in the home. Many of these children will become like the third and fourth generation Mexican American English speaking students whose parents were punished for speaking Spanish and who now regret that they did not maintain oral and literacy skills in their heritage language.

Communication within the Schools

Research in urban schools⁵⁸ has shown that language issues affect both students and parents.⁵⁹ Mexican immigrant parents are intimidated by schools in which only

55. English Language Empowerment Act of 1996, H.R. 123, 104th Cong. (1997)

56. Codified in California Education Code § 305 (1998).

57. *California Teachers Ass'n v. Davis*, 64 F.Supp.2d 945, 959 (C.D.Cal. 1999)

58. Romo and Falbo, *Latino High School Graduation*; Angela Valenzuela. *Subtractive Schooling: US-Mexican Youth and the Politics of Caring* (Albany, N.Y., 1999).

59. A number of studies on parental involvement in their children's schooling have illustrated how parental-school partnerships positively affect student achievement. See for example Guadalupe Valdes, *Con Respeto: Bridging the Distances Between Culturally Diverse Families and Schools* (New

English is spoken when they have limited English skills themselves. Teachers tend to talk down to them or cannot communicate with them without having children or colleagues serve as translators.

In one school district, immigrant parents were accompanied to evening meetings, parent conferences, and other school meetings and a series of twelve meetings held specifically for parents were tape-recorded with the permission of the school administrators.⁶⁰ Mexican origin parents were invited to the schools for various purposes, such as Parent-Teacher Association meetings, Advisory Council meetings, open house receptions for parents, and parent-teacher conferences. The following occurred at one evening meeting at which parents were asked to help the school staff, all Mexican Americans, to decide which programs would receive funding in the following year.

About 50 parents attended the meeting, including about a third who were not English proficient. The staff translated the meeting, but the summaries given in Spanish condensed the lengthy narratives in the discussion leaving out details important to more complete understanding of the issues. Most of the questions asked by parents, and there were very few parents who participated, were questions requesting clarification of information presented. Finally, one bilingual parent raised her hand and asked in English, "Don't we need to know how many children are served by each program, how much each one costs, and what the outcomes of the programs have been before we decide which ones to fund?" The staff were thrown into confusion because they did not have any of the important information the parent asked for present. They talked among themselves in English and finally decided that they could request the information from the district office and call another meeting. Parents left frustrated at the time wasted in the two hour meeting and did not look forward to another long meeting on the same topic. This meeting demonstrated that the staff had expected the parents to agree to fund programs without the crucial data needed to evaluate them. One parent commented that she could not spend more time attending meetings where the parents were not given sufficient information to make decisions about the schools.

In a second school district in a city that has a majority Latino population and a majority of Mexican origin students in the district, similar language issues arose in a 2008 meeting of a parent-school partnership believed to be exemplary in terms

York, 1996) and Alice M. Quioco and Annette M. Daoud, "Dispelling myths about Latino parent participation in schools," *The Education Forum* 70 (2006), 255-267.

60. Romo, Harriett, "Status Attainment of Undocumented Mexican Immigrant Children: Language and Education Issues in a Family Context," (Ph.D. Diss., University of California, San Diego, 1985).

of parent involvement in the schools.⁶¹ The meeting was conducted by Mexican American and Anglo American staff. They presented a video about the technology gap but the sound on the video did not work and the English captions on the screens flashed too quickly for parents with little education to read rapidly. The staff used school jargon in the presentation that was not understandable to the parents with little experience in US schools, such as referring to a program for children with learning disabilities by its acronym ADHD in a lengthy discussion without describing the program or explaining the term. Although this meeting was more sophisticated than the earlier one, and provided earphones with Spanish translation for the six parents who spoke little English, no one translated the questions and comments of the Spanish speaking parents for the sixteen other Mexican American parents who may or may not have been completely bilingual.

Mexican American and Mexican immigrant parents interviewed in the second study, from a middle school that is 99 percent Latino students, were well aware of the barriers that teachers face when trying to communicate with the families of recent immigrant students. One mother explained:

There is a cultural barrier a lot of teachers don't understand 'cause they've never lived in this area [Spanish speaking neighborhood]. They are not from here. So they don't understand the community and how it works. I don't think they've taken the time to get to know the parents and to get to know the area and to get to know the community.... They haven't taken the time to relate with the parents. I mean, even though they are different and they come from different backgrounds and different cultures, there's still something that we can relate to. I feel that the school should have a translator or someone designated to just translate meetings with parents. I feel that they should have a person in charge of translating forms and documents because they don't. Everything they send out is in English and if they do translate, if it is maybe the secretary translating it, and she's not equipped to translate it, somebody who has the knowledge and the skills to speak Spanish fluently.

These two meetings demonstrate clearly the complexity of communicating effectively with parents from minority-language backgrounds and the language difficulties parents from minority ethnic groups face in trying to help their children in

61. This meeting was observed by Harriett Romo as part of an evaluation of a parent-school partnership in a major Southwestern city school district. The meeting occurred in February 2008 in a community-based organization setting and involved parents from three elementary schools and two middle schools.

the schools. Another parent interviewed in an evaluation of Latino parent participation in six schools in an urban Southwestern city⁶² explained:

We have a lot of Spanish speaking parents and the teachers do not understand Spanish. So, if we had bilingual teachers or if we had translators, I think it would be better because the teachers and the parents could communicate more. Because the student is only going to tell you so much. When you are having a meeting with the teacher and the parent, the student is not going to tell you the whole thing. They are only going to tell the parents what they want them to hear...

Parents' inability to become involved in the educational experiences of their children has a negative impact on student achievement and educational success. Recent immigrant parents as well as parents who are long time residents of the United States but who still struggle with English are often limited in their interactions with the schools because of language barriers.

The diversity of English and Spanish language skills that Mexican immigrant families and Mexican origin children bring with them to the schools also demonstrates that "one size does not fit all," and perhaps decisions of the types of programs that create the most equitable outcomes should be left to educators and parents to decide, and courts to reinforce, rather than allowing legislators or voters whose children are not affected to mandate certain types of programs.

The Dream Act and Barriers to Higher Education

Community advocacy and legal challenges remain an important process in the battle for equity and quality education as attempts to abrogate Latino access to education continue today. For example, legislation attempting to provide access to immigrant children to postsecondary education, "The Dream Act" was defeated in Congress in October 2007. Each year throughout the United States, many children who are the children of undocumented immigrants are graduates of US secondary schools but are denied opportunities for pursuing higher education because of their immigration status. As undocumented immigrants, they do not qualify for permanent residency status in any of the states and must pay higher out-of-state tuition. Additionally, they cannot obtain federal grants or loans. Many of these students are Mexican origin youths who were brought to the United States as infants by their undocumented worker parents and have resided in their US communities

62. Harriett Romo Project Evaluator, United Way of Texas and Bexar County Parent-School-Community Partnership, Final Report and Evaluation, July 2008. Student editors Elizabeth Aguilar, Mary Hansen, Ann Hurley, James Ordner, and Ashley Pleasant worked on the report.

all of their lives and consider themselves to be Americans. These were the English language learners who defied the barriers and excelled. While *Plyler* assured access to education in public elementary and secondary schools, once an undocumented student receives a high school diploma, that guarantee no longer applies. As in the *Plyler* situation, students from families struggling for basic subsistence cannot afford college if they have to pay out-of-state tuition and loans or scholarships are not available.

While Proposition 187 was being litigated, the Congressional Personal Responsibility and Work Opportunity Reconciliation Act ("Welfare Reform") was passed which restricts states from allowing undocumented immigrants access to state and local public benefits, including postsecondary education and precludes undocumented students from qualifying for federal financial aid or student loans to cover college expenses.⁶³ Janice Alfred⁶⁴ argues that legislation such as Welfare Reform and the Texas and California efforts to exclude immigrant students are responses to fears of increasing numbers of non-European immigrants and demographic changes of the immigrant population which is increasingly Mexican and Asian origin. She suggests that "the ban on higher education financial assistance for undocumented students is deliberate racism" and an attempt to "subdue an undesirable class of immigrants."⁶⁵

While these efforts to restrict access to education in more recent times have been aimed at immigrants in general, they disproportionately affect Mexican origin youths because Mexicans comprise the largest proportion of immigrants to the United States today.⁶⁶

Wealth as a Basis of Educational Inequities

Another on-going debate about educational inequities and Mexican origin children indirectly related to language and schooling has been that of equitable funding for schools. A key case that illustrated the disparate education received by low-income

63. Pub.L. No 104-193, 110 Stat. 2105 (1996).

64. Janice Alfred, "Denial of the American Dream: The Plight of Undocumented High School Students within the US Educational System." *New York Law School Journal of Human Rights* 19 (2003), 615.

65. *Ibid.*

66. Efforts at the state level have opened some opportunities. An example is H.B. 1403 in Texas which allows undocumented students to pay in-state tuition in post secondary institutions and qualify for state financial aid provided they have resided in Texas for three or more years, are graduates of Texas high schools or have GEDs issued in Texas, and sign an affidavit promising to file an application to legalize status.

Mexican American and immigrant children was the 1973 Texas school finance case of *San Antonio Independent School District v. Rodriguez*.⁶⁷ Although the case never mentions language of instruction or bilingual education, at the heart of the *Rodriguez* case is the issue of providing schools with adequate funding to provide the best programs for children and the pursuit of equal education.⁶⁸ The case was a class action brought on behalf of school children who were members of poor families residing in school districts having low property tax bases, challenging reliance by Texas school-financing based on local property taxation. The children in the San Antonio school district were predominantly Mexican origin. Justice Powell, writing for the majority, wrote that "it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."⁶⁹ While the court found in the *Rodriguez* case that education was not a fundamental right and that differential opportunities in education based upon wealth did not present a suspect classification, the case did raise the issue of inequality and whether differing wealth in local tax bases could provide equal educational opportunities. Examples of inequity given in the case focused on Alamo Heights, a property-rich district and Edgewood, a property-poor district. Alamo Heights was able to raise us\$333 per pupil on an equalized tax rate of us\$.85 per us\$100 evaluation, while Edgewood raised only us\$26 per pupil with an equalized tax rate of us\$.05 per us\$100 valuation.⁷⁰ The majority of the students in Alamo Heights at the time of *Rodriguez* were, and presently still are, non-Hispanic White and the majority of the students in Edgewood district were and still are Hispanic--mostly Mexican American and Mexican immigrants. What confounded the issues in the *Rodriguez* was that evidence was presented that demonstrated that there were concentrations of poor families in high property-wealth districts when the property wealth was business and industrial based. Jurors were convinced that *Rodriguez* did not factually establish that poor families cluster in poor spending school districts in Texas. The Court implicitly assumed that the findings from data presented in a Connecticut study finding no such clustering were relevant to the *Rodriguez* case.⁷¹

67. 411 US 1 (1973).

68. Paul A. Sracic, *San Antonio v. Rodriguez and the Pursuit of Equal Education: The Debate over Discrimination and School Funding* (Lawrence, Kans., 2006).

69. *Rodriguez*, 411 US at 28, citing *Brown v. Bd. of Ed.*, 347 US at 493.

70. *Ibid.*, 79.

71. Michael Heise. 2007. "The Story of *San Antonio Independent School Dist. V. Rodriguez*: School Finance, Local Control, and Constitutional Limits." Cornell Law School Legal Studies Research Paper Series, No. 07-015 (Ithaca, NY, 2007).

The plaintiffs lost the *Rodriguez* case in the United States Supreme Court. However, the case continues to have an impact as the debate on equity in schools continues. Heise argues that the Supreme Court's deference to federalism in *Rodriguez* redirected the school finance reform movement to state legislatures, courts and state constitutions. As a result, inequality of wealth and tax base is still contentious, as Texas and other states struggle with how to fund public schools to provide more equitable facilities and resources.⁷² Low-income residential areas, which tend to be primarily minority concentrated student populations, still raise less money per pupil with higher tax rates than do high wealth-based districts. According to Heise, the two zip code areas at issue in *Rodriguez* (78237 in Edgewood and 78209 in Alamo Heights) remain apart in terms of educational futures. Edgewood spends about US\$600 less per pupil than Alamo Heights and has higher teacher student ratios, less experienced teachers, and lower test scores and graduation rates. Edgewood's students score below the state average on statewide standardized math and reading tests and have lower scores on SAT tests than the state average. The Edgewood schools are almost 99 percent Latino, with a small percentage of African American students, while the Alamo Heights schools remain predominantly non-Hispanic white and consistently report higher than average state test scores. Subsequent data have shown direct correlations between a school district's concentration of low-income students and student outcomes in terms of SAT test scores.⁷³ These inequities in test scores and the quality of schooling for Mexican origin youth who are concentrated in low-wealth neighborhoods, such as Edgewood, have consequences from preschool to postsecondary education.

Ironically, the wealthier Alamo Heights school district provides an intensive Spanish bilingual program for children. The program immerses the students in Spanish language instruction in the early grades through middle school so that students will be biliterate and bilingual in Spanish and English. The parents in this wealthier district recognize the economic and social value of bilingualism in a world that is increasingly global and transnational. Meanwhile, the children who come from bilingual homes and bring the potential for bilingualism and biliteracy from those homes are denied the right to maintain their heritage language because their schools do not offer dual language bilingual programs.

72. For example, equity was a subtext in the recent Texas Supreme Court case of *Neely v. West Orange Cove Consol. ISD*, 176 S.W.3d 746 (2005) challenging the state's reliance on property taxes to fund schools in Texas.

73. Fernando Guerra and Brad Pollock, "Public Health, Community and Population-Based Research," paper presented at Children's Health Research Summit, January 28, 2008 University of Texas-San Antonio.

Comparisons with the Japanese Experience

In early waves of Japanese immigration in the 1800s, government policies discouraged family-wide migration and did not welcome Japanese families and children.⁷⁴ The majority of the first Japanese immigrants came in 1868 as contract workers with a fixed-term contract to work in exchange for wages and passage to the United States. The second stage of emigration initially went to Hawaii to work on the sugar plantations and to West Coast states to work in railroads, agriculture, mining, lumber and fishing industries. With the passage of America's Chinese Exclusion Act on 1882, Japanese laborers were recruited to fill the labor shortage. Most of the first generation of Japanese immigrants or Issei were single men who were sojourners whose intentions were to return to Japan after their labor contracts ended, so there was not a concern for children's education. As plantation owners in Hawaii encouraged Japanese laborers to remain beyond their contracts, they began to bring wives and have children born in the United States. Some of the plantation owners began underwriting Japanese language schools for workers' children. Issei parents desired these schools to help their children learn Japanese so they could make a smooth transition to schools in Japan when the parents ended their labor contracts in the United States. Some blamed the Japanese schools for delaying Nisei pupils' mastery of English and assimilation into American society while others argued that learning Japanese was crucial because as discrimination narrowed opportunities the second generation's economic relationships were largely with the first generation.⁷⁵

Japanese Americans' active participation in Japanese language education over time in the United States was evident even when there was a climate of racial oppression was at its peak.⁷⁶ Japanese language schools were called "Jap schools" and antagonists argued that Nisei children were being "Japanized" by "Oriental teachers."⁷⁷ The Japanese consul and the ethnic community supported these Japanese

74. Daisuke Akiba, "Japanese Americans," in *Asian Americans: Contemporary Trends and Issues*, Pyong Gap Min, ed., 2nd ed. (Thousand Oaks, Calif., 2006), 148–177. There were groups of single Japanese young men who came to the US during the 1800s as elite students to attend universities and young male student laborers who attended school in western states, such as California and Oregon. Some remained in the United States and contributed to the growth of the Japanese American communities.

75. Asato, *Teaching Mikadoism*, 99–100. Asato also argued that Issei parents felt ethnic pride, heritage and morals taught at the Japanese language schools were needed to protect Nisei from a sense of racial inferiority.

76. S. Flewelling and G. Hirabayashi, *Shirakawa: Stories from a Pacific Northwest Japanese American Community* (Seattle, 2002).

77. Asato, *Teaching Mikadoism*, 88–89.

language schools, and by 1909 there were 75 Japanese language schools in Hawaii with some 87 teachers, many of whom spoke Japanese and did not speak English. The states of Washington and California also had large numbers of Japanese language schools.⁷⁸

In the early days of the formation of Japanese communities, many Japanese children attended these Japanese language schools in addition to public schools to promote intergenerational maintenance of traditional Japanese culture and language, although these language schools were never substitutes for public schools.⁷⁹ Noriko Asato discussed in detail how these Japanese language schools came under attack as waves of xenophobia caused individuals, groups, and the federal government to refer to these schools as the “Japanese problem”. The schools were accused of instilling “anti-Americanism” in children of Japanese immigrants, they were attacked for teaching loyalty to the Japanese government and the Buddhist religion, and they were criticized for keeping children of Japanese immigrants “removed from American life.”⁸⁰

Language differences between students’ families and the teachers, staff and school curricula in public schools have made it difficult for all groups of immigrant parents to collaborate with the schools to promote their children’s academic success. Asato noted that the origins of California’s Japanese language schools were rooted in the desire of immigrant parents to impart their heritage language and culture to their children. In his study of the Japanese language schools, Asato detailed the communication problems Issei parents faced when their Nisei children started attending US public schools. Children began to use English exclusively and the parents could no longer understand what they said or thought.⁸¹

78. Ibid., II, 47, 82. Asato provides charts identifying the Japanese language schools and their enrollment as well as many details of the attacks on Japanese language schools in Hawaii, California, and Washington state. In 1923, 28 of California’s 55 Japanese language schools were secular (independent or run by a local Japanese association, 10 were Buddhist, and 6 were run by Christians, whereas the affiliation of 11 was unknown (p. 61).

79. Among the Nisei, or immigrant generation, attending Japanese language schools was the norm. According to Fugita and O’Brien, *Japanese American Ethnicity*, 88, 87 percent of the Nisei attended such schools. Attendance dramatically declined among the Sansei, or third generation, but compared to other immigrant groups Japanese children’s exposure to formal language schooling in their home language was high.

80. Asato, *Teaching Mikadonism*, 55 demonstrated how the Japanese Exclusion League of California and the Native Sons and Native Daughters of the Golden West joined together to agitate against Japanese language schools. They also attempted to deny “the right of citizenship to all Asiatics.”

81. Asato, *Teaching Mikadoism*, 44.

Anti-Japanese campaigns in the 1900s, including anti-Japanese articles and “scare” headlines by the San Francisco Chronicle and the formation of the Asiatic Exclusion League, focused on economic and racial reasons for exclusion of Japanese children from white public schools. Agitation by the League led the San Francisco board of education to implement a school segregation plan ordering all Japanese, Chinese, and Korean pupils to attend a separate school for Orientals.⁸² Also, during the United States’ World War II internments of Japanese families and children, Japanese students attended schools behind barbed wire organized voluntarily by the Japanese teachers and professionals in the internment camps. For example, in the Manzanar camp in Inyo County, California, over 2,000 Japanese students were organized in classes under volunteer instructors using benches made from scrap lumber and chairs from their apartments as classrooms. There were shortages of supplies, no classroom partitions, no playgrounds or equipment.⁸³

Although the early generation of Issei entered the United States and the Hawaiian territory as plantation workers and later as railroad and construction laborers and in most cases were probably illiterate or poorly educated, overall, the Japanese community has continued to attain higher education degrees in numbers that surpass the achievements of White Americans.⁸⁴

Both ethnic groups, the Japanese and Latinos, have attempted to preserve their language and culture while aspiring to participate as full American citizens, overcoming hostility from anti-immigrant forces. Both groups have looked to the schooling of their children as routes to upward mobility and incorporation and have often relied on the law or community organizations to argue for their rights.

82. The work of Jacobus tenBroek, Edward Barnhart, and Floyd Matson, *Prejudice, War, and the Constitution* (Berkeley, CA, 1954) expands on the period of Asian exclusion. The San Francisco school segregation affected only a small number of pupils, but this conflict spiraled into a tense confrontation between the governments of the United States and Japan. See also the discussion in S. Dale McLemore and Harriett D. Romo, *Racial and Ethnic Relations in America*, 7th ed. (Boston, 2005), 337–339.

83. See John Armor and Peter Wright, *Manzanar: Photographs by Ansel Adams with commentary by John Hersey* (New York, 1988), 107–113. In March of 1943 the first senior class graduated from the Manzanar High School. Approximately 3,500 of the Nisei who were interned were college students from West Coast universities. Some students were able to transfer out to other universities but none received any help with their tuition and many universities refused to accept them.

84. Stephen S. Fugita and David J. O’Brien, *Japanese American Ethnicity: The Persistence of Community* (Seattle, 1994), 84–88. In 1940 the median educational level of the Nisei was 12.2 years compared to 10.1 years for American-born whites on the Pacific Coast and in 1980, 26 percent of persons of Japanese heritage over age 25 living in the United States were college graduates compared to 16 percent of this same age group in the total US population.

Concluding Thoughts

This brief review of key points in the battle for educational equity for Latinos with a few examples of experiences shared by the Japanese highlights legal barriers that minority ethnic groups have faced and certainly reinforces the need for federal protection against state infringement of minority students' rights to educational opportunities. At the state level, Mexican students were segregated in inferior "Mexican schools" and Japanese language schools were subjected to state controls that made them ineffective.⁸⁵ The history of Latino education in states with high concentrations of Mexican immigrant population, and other language minority immigrants, also indicates the importance of federal constitutional protection in cases related to language and access to schooling, such as the successes in examples of *Lau* and *Plyler* and its failures in the final decisions in *Rodriguez*. Educational goals for Mexican immigrants and Mexican Americans and for Japanese and other Asian immigrant students who are learning English have been significantly affected by federal court decisions. The courts intervened positively in terms of *Lau* and *Plyler* and negatively in terms of *Rodriguez*, and the state challenges to heritage language schooling remain, as demonstrated in California's Proposition 227.

Still, we cannot rely on federal protection alone. The Lau Task Force provides a good example of the importance of local community involvement in the formation of adequate remedies for students not familiar with English. The cases and examples cited here suggest there is a strong need for models of how educators should decide approaches within a particular legal framework that values diversity and bilingualism. Perhaps a task force at the state level comprised of community business leaders, parents, and educators and scholars with expertise in areas relevant to educational equity (similar to that set up in the *Lau* decision) could be effective in addressing contemporary language education issues.⁸⁶ Indeed, almost 40 years after *Lau*, there is a great need for better understanding of the complexity of language learning to inform debates about bilingualism, English only initiatives, and efforts to reach language minority families and involve them in the education of their children. A large and growing segment of the population of students in the United States comes from homes where English is not the primary language spoken. Nearly 80 percent of English-language learner students in US schools to-

85. Asato, *Teaching Mikadoism*, Chapters 2 and 3 have extensive discussions about Hawaii's control of Japanese language schools and the Japanese control bill in California.

86. It is important that many of the second and third generation Japanese and Mexican citizens participate in these protests and campaigns for immigrant rights. Anti-immigrant sentiment is often increased when persons perceived as foreigners participate in politics as Asato, *Teaching Mikadoism*, 65–66 demonstrated in the California 1920 Alien Land Law initiative.

day are Hispanics whose native language is Spanish and nearly half of all Hispanic children in our public schools are English language learners.⁸⁷ US public schools and educational systems are not adequately prepared to respond to these changing student demographics, although they do much better than in the past. Inadequate resources and lack of ability to meet the needs of English language learners assure that the gap in education between Latino students and non-Hispanic whites will not be eliminated without further intervention by the courts. Today's Japanese immigrant children often arrive with parents with high levels of education, but the Japanese community too has looked to the courts to counter discrimination and segregation. As their children compete for jobs in the United States, they are likely to experience anti-immigrant hostilities and xenophobia that often emerges in the United States in difficult economic times.

The debate over what constitutes educational equity has been shaped significantly by political factors that transcend educational techniques or programs. Talk radio and television hosts who frighten Americans about immigration and challenges to the English language to create controversy, the reluctance of legislators to produce a sound immigration policy, and politicians who try to define themselves to voters as "keepers of the culture" continue to cloud the educational debates over how to best teach language-minority students. The Japanese experience is an example of a group that has overcome extreme discrimination and language differences and succeeded in accomplishing high levels of educational achievement because education has been viewed as a major route to upward mobility.

Educators must continue to ask why federal and state courts have intervened in some cases, are reluctant to address equity issues in others, and may oppose the efforts of heritage language maintenance in decisions and reports in still other cases. We must also ask why state laws and federal case protections ebb and flow with anti-immigrant sentiments. At a time when immigration is on the rise, English language learners and bilingual students need to be priorities, especially in the high immigration states mentioned in the introduction to this paper.

The most successful reforms in the education of Mexican origin children have been driven from the bottom up through the courts, with community-based organizations representing children and families willing to stand up to injustices. Japanese families relied on US courts and community associations in early cases of segregation, in efforts to prevent access to citizenship, and in cases of discrimination and exclusion in Hawaii and on the West Coast. Citizen groups have used the legal system to point out barriers to educational achievement and call wider attention to

87. Adriana Kohler and Melissa Lazarin, *Hispanic Education in the United States*. Statistical Brief 8 (Washington, D.C., 2007)

the plight of the most vulnerable families and children—those with few legal rights as undocumented immigrants or minor children. Many of these immigrant children will remain in the United States and will be the next generation of Americans. Much remains to be done to close the gap in educational achievement and overcome barriers to equal educational opportunities.

Data quality in determining where those gaps lie is also an issue. There are problems in data collected at the school district level and at the aggregated data level collected by the state departments of education concerning language minority students. School districts, more or less, do assess the academic achievement of English-language learners and minority students, however, the assessments are often only in English or are inadequate translations from native languages. Some districts do not assess the English language learners at all. It is important that educational achievement data, numbers of school dropouts, college attendance rates, and other measures of equity be as accurate as possible to provide courts with basic information about the schooling processes, achievement gaps, and progress made to narrow them. Data must be available locally to parents and teachers to allow them to make educated decisions about how to best educate their children. Progress reports must be available to community-based organizations and advocacy groups that have led many of the challenges to inequities in the education of Mexican origin and Japanese children.

Changing educational institutions to provide more equitable opportunities is a major means of reform and is essential in a democracy. People in all levels of a society have to believe that public institutions provide opportunities for upward mobility and full participation in the democracy. Litigation has played an important role in fulfilling (*Lau*) or in some cases failing to fulfill (*Rodriguez*) education goals for Latinos. This history suggests that, as anti-immigrant legislation continues to arise, the courts will continue to be an important avenue to address educational barriers and access.

