

The effect of Arizona language policies on Arizona Indigenous students

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Abstract This article discusses the effect of Arizona's language policies on school districts serving Native American students. Although these policies were designed to restrict the access of Spanish-speaking immigrant and citizen students to bilingual education programs, their reach has extended into schools and school districts serving Native Americans. Arizona's coercive and contradictory language and education policies for English language learners thus provide an instructive example of the *phenomenon of unintended consequences*. Nonetheless, that such policies may be unintentional make them no less egregious. The authors argue that Arizona's language policies, together with the difficult reporting mandates of the federal No Child Left Behind Act, have compromised tribal efforts to revitalize endangered Indigenous languages and abrogated their federally recognized, though frequently ignored, rights to self-determination and sovereignty. The article discusses these and other inconsistencies between federal and state-supported policies that both create and foreclose educational opportunities and spaces for Indigenous communities.

Keywords Native American students · Indigenous language revitalization · Unintended consequences · Language policy · Sovereignty

THE LAW

1ST ONE

Hey, there's a law you know!

What law you talking about?

No Indians Allowed.

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I ain't no Indian. I'm Mexican.
 No Mexicans allowed either.
 Oh that law is an old one.

2ND ONE

Hey, there's a law you know!
 What law you talking about?
 No Mexicans allowed.
 I ain't no Mexican. I'm Indian.
 No Indians allowed either.
 Oh that law is an old one.

CONCLUSION

It's the same old law, the same one
 we're gonna break no matter what.

Simon Ortiz¹

It is axiomatic that attempts to intervene in complex systems through simplistic or one-dimensional means invariably produce consequences not originally anticipated. This is sometimes known as the “law of unintended consequences,” a situation in which the consequences of “purposive action” (Merton 1936) deviate from desired or expected outcomes. Robert Merton’s theory of unintended consequences, first postulated in 1936, argues that purposive action to exact an intended consequence generally results in another unintended consequence. A principal feature of Merton’s theory is “the imperious immediacy of interest,” which describes an action so deeply desired by certain individuals or groups that they willfully ignore its potential for unintended consequences.

Arizona’s coercive—and byzantine—language and education policies for English language learners provide an instructive example of the phenomenon of unintended consequences. Although these policies were overtly designed to restrict the access of Spanish-speaking students to bilingual education programs, their reach has extended to Native American children in Arizona’s rural and urban public schools. In this paper, we discuss the impact of Arizona’s language policies on school districts and schools serving Native students. These policies, together with the difficult and intensive mandates of the federal No Child Left Behind Act, have affected tribal efforts to revitalize endangered Indigenous languages and cultures. Also abrogated are tribal efforts to assert their federally recognized, though frequently ignored, rights to self-determination and sovereignty. These efforts are further complicated by tribal accountability to and negotiation with three competing and overlapping legal jurisdictions: tribal, state, and federal. Whether or not the “imperious immediacy” of interest that Arizona’s elected officials currently impose on the children of immigrants was also intended to reshape Indigenous education makes them no less questionable, and no less flawed.

¹ Ortiz (2002).

Ron Unz: The California-based architect of Arizona's Proposition 203

In order to fully appreciate the complexity of Arizona's ELL policies, we provide a brief history of the intersecting and contradictory actions—and actors—in this evolving narrative.² The narrative begins in California in the mid-1990s with Ron Unz, a Silicon Valley multimillionaire, who used his considerable wealth to finance the “English for the Children” campaign and the passage of Proposition 227, a ballot initiative designed to ban bilingual education in California, replacing it with “Sheltered English Immersion.”

Unz was not particularly knowledgeable about bilingual education, but in the campaign he characterized bilingual education as a failed and expensive Spanish-only program in which children languished for years, or as an entrenched bureaucracy seeking to preserve its financial stake (Crawford 2008; English for the Children-Arizona, no date; Unz 1997, 2001). Proposition 227 passed with 61% of the vote. His success in California inspired him in 2000 to export a similar measure to Arizona (Proposition 203). It passed with 63% of the vote.

During the campaign for Proposition 203, Ron Unz expressed surprise that Arizona tribes were concerned about his ballot initiative. He said he had not given much thought to its effect on Native students, because he believed California had fewer Native Americans than Arizona.³ But Maria Mendoza, Arizona Co-Chair of English for the Children, declared that Native children had to learn English, using peremptory and indignant words which suggested something unfathomable to her: “I think the tribal leaders should be focusing on getting their children to learn English. Why do they want to keep them as prisoners in their culture and their heritage?” (quoted in Gonzalez 2000, p. B1). During the election, Unz said he believed tribal sovereignty would protect school-based language programs. When tribal leaders rejected his offer to exempt Indigenous language classes in exchange for their support of Proposition 203, however, he threatened that “Proposition 203 leadership might be far less willing to work with [tribal leaders] after the election” (quoted in Shaffer 2000, p. A1).

Imposing a procrustean California template on a state as different and culturally diverse as Arizona is bound to produce unintended consequences. There are 22 Native American tribes in the state, and tribal lands comprise approximately 25% of the total area (see Figure 1). According to the U.S. Census, Arizona has a population of 6,595,778, of whom 284,265, or 4.5% statewide, are Native American. This percentage increases greatly when considering population numbers by county, particularly those with Indian reservations. For example, in Apache County, Native American residents make up nearly 73% of the total population, followed by Navajo County with almost 43.2%, Coconino and Cochise Counties

² For a fuller description of this history see Combs (in press), Combs et al. (2005), Iddings et al. (in press), and Wright (2005).

³ Unz was confused on this point. In fact, California has the largest self-identified Native American population in the United States. According to the 2000 U.S. Census, California reported a total of 333,346 Native Americans, Oklahoma, 273,230, and Arizona, 255,879. These rankings remained the same in the 2010 Census (U.S. Census, retrieved November 12, 2011, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_00_SF2_DP1&prodType=table).

Table 1 Native American Population by County (from highest to lowest numbers)

County	Total population (all groups)	Percentage Native American
Apache	71,518	72.9
Navajo	107,449	43.4
Coconino	134,421	27.3
Cochise	131,346	27.3
Gila	53,597	14.8
Graham	37,220	14.4
La Paz	20,489	12.8
Pinal	375,770	5.6
Pima	980,263	3.3
Greenlee	8,437	2.3
Mohave	200,186	2.2
Maricopa	3,817,117	2.1
Yavapai	211,033	1.7
Yuma	195,751	1.6
Santa Cruz	47,420	0.7
15	6,392,017	4.6 (average statewide)

Source U.S. Census,
<http://quickfacts.census.gov/qfd/states/04/04027.html>

Indigenous languages in Arizona and Native children's linguistic repertoires

Among Arizona's 22 tribes, 19 Indigenous languages are still spoken, with most speakers in the Navajo, Apache, Tohono O'odham, Paiute, Havasupai, and Hopi communities. These tribes represent the largest tribal populations in Arizona as well as nationally, and tribal members still transmit Indigenous languages intergenerationally, which means that children learn them as a home and community language, or as a first language. Nevertheless, the shift to English is proceeding rapidly in these tribes, with fewer children acquiring them each generation. Among the other Arizona tribes, speakers tend to be middle age or older and beyond childbearing age. Thus, when elderly speakers die, their languages die with them. The phenomenon of language shift, when a speech community shifts from its first language to the more dominant second, is common in Indigenous and immigrant communities (Fishman 1991). In the nineteenth and early twentieth centuries, federal Indian education policy forcibly removed Native children from their families and communities and placed them in harsh, often military-style schools. The goal of "Indian schools" was to "civilize" Native children through coercive English Only schooling. Students were beaten and ridiculed for speaking their native languages, a practice which continued even into the twentieth century (McCarty 2009). This experience remains a part of the historical memory of tribal communities throughout the United States and "has left a residue of linguistic ambivalence and mistrust of Anglo-American education that continues today" (McCarty 2009, p. 11).

A disconcerting consequence of this history visible today is that Native American children increasingly enter school speaking English as their primary language,

although they may retain varying receptive abilities in their Native tongues. However, the variety of English typically spoken by Native students is a social dialect of English, sometimes called “American Indian English” or “Indian English.” This variety of English is influenced by grammatical, phonological, or syntactic features in the Indigenous language (Arviso and Holm 2001; Leap 1993; McCarty 2009). Because Indian English is different from the English spoken by most non-Native teachers serving Native American children, students frequently are labeled “limited English proficient,” an ironic designation which significantly affects the kind of instruction in English they receive. On state tests to determine proficiency in “Standard” English, students often do not score high enough to be considered fluent English speakers. As a result, even though English is their primary or only language, the law mandates that they be placed in Structured English Immersion programs. Prior to the passage of Proposition 203, Indigenous students may or may not have been enrolled in bilingual education. After passage of the law, enrollment in Indigenous language revitalization programs became, if not illegal, certainly more complicated, an unintended consequence of the new state language policy (Zehr 2007a, b).

Tribal reactions to Proposition 203

It is not surprising that during the campaign for Proposition 203, all of the state’s 22 Native American tribes opposed the measure. Nearly a dozen tribal councils issued resolutions warning of its threat to tribal efforts to revitalize their ancestral languages. Unlike Spanish–English bilingual models in which instruction in Spanish is provided to help facilitate the acquisition of English, bilingual programs on the Navajo, Apache, Hualapai, and Tohono O’odham reservations, for example, are designed to revitalize the Indigenous language. Schools on these reservations use a variety of bilingual approaches, including partial or total immersion in the Indigenous language. Tribal elders were concerned that if Native students were no longer learning their ancestral languages at home, the schools’ role in teaching it would be compromised with the implementation of Proposition 203 (Schmidt 2000; Shaffer 2000; Zehr 2000).

Tribal authorities throughout the state were especially concerned because Proposition 203 explicitly applied to language programs in the *public* schools: “All children in Arizona public schools shall be taught English by being taught in English and all children shall be placed in English language classrooms” (ARS Statutes, 15 § 3.1, 752). Most Native American students in Arizona attend public schools, even on the reservations. When Proposition 203 passed, there were 58,000 Native students in public schools statewide, compared to 11,000 in Bureau of Indian Affairs (BIA) schools. On the Navajo reservation, nearly all of the public schools provided some kind of Navajo language program, from one period of Navajo immersion a day to partial and total immersion classrooms. Education officials were worried that the law would affect all of these programs (Zehr 2000).

In addition to the wishes of all of Arizona’s Native nations to assert their sovereignty in education decision-making, there was another reason for tribal

officials and educators to be concerned about the new English Only law. In the decade and a half leading up to passage of Proposition 203, achievement data from Navajo bilingual–bicultural and immersion programs were encouraging. Students in bilingual–bicultural programs at Rock Point and Rough Rock consistently outperformed their peers in mainstream English programs at these schools, acquiring literacy in both English and Navajo. They also came to appreciate and value their Navajo identities (McCarty 2003). Navajo children in an immersion program in Ft. Defiance performed as well or better than children in non-immersion classrooms on tests of English and mathematics (Holm and Holm 1995; McCarty 2003). By the fourth grade, Navajo students outperformed their non-immersion peers in the Navajo language. Non-immersion fourth graders actually performed lower on Navajo assessments than they had in kindergarten (McCarty 2003). As McCarty (2003, p. 156) has pointed out, “the Fort Defiance data demonstrate the powerful negative effect of the *absence* of bilingual/immersion schooling and, conversely, its positive effect on the maintenance of the heritage language as well as on students’ acquisition of English and mathematics.”

Blurred boundaries between state and federal language policies

The Arizona Attorney General’s opinion on the applicability of Proposition 203 to Native American language programs

Shortly after the election, Navajo State Senator Jack Jackson (D-Window Rock)⁴ submitted a formal request to State Attorney General Janet Napolitano to determine whether Proposition 203 applied to schools serving the Navajo reservation. In February 2001, she issued a somewhat contradictory opinion in which she seemed to appease both sides in the debate. She unequivocally exempted tribal and BIA schools from Proposition 203. But Napolitano’s ruling was more ambiguous with respect to Navajo language programs in the public schools, where most of them are located. On the one hand, she wrote that state public schools were “generally subject to Proposition 203.” On the other, the new law had to be “applied in a manner consistent with federal law, including principles of tribal sovereignty and the federally-recognized inherent right of Native Americans to express themselves through the use of Native American languages” (Attorney General Opinion I01-006, R00-062, February 15, 2001).

The federal law the Attorney General referenced was the 1990/1992 Native American Languages Act, which recognized the special status of Indigenous languages and cultures of Native Americans, and authorized funding in support of their use as a means of ensuring their survival. The Native American Languages Act promoted tribal sovereignty and self-determination in education and language policy, and declared that the traditional languages of Native Americans were integral to their cultures and identities, and thus formed the basic medium for the transmission and survival of Native American cultures, literatures, histories, religions, political institutions, and values (Native American Languages Act of 1990, PL 101 477, Sec. 102 #3).

⁴ Window Rock is the capitol of the Navajo Nation.

Identification of Indigenous students as English language learners: the home language survey

Nearly 40 years ago, the U.S. Supreme Court's unanimous decision in *Lau v. Nichols* (414 US 563, 1974) made illegal "sink or swim" approaches to education. School districts were subsequently obligated to provide English learners with linguistic and curricular support through "alternative language programs." Identifying students who qualified as English learners became paramount, as did their appropriate placement in the new programs. The U.S. Department of Education does not mandate a uniform method of identifying English language learners. This responsibility is left to the states, and nearly all of them use a relatively informal survey to determine language knowledge and use in the home (Bailey and Kelly 2010). In Arizona, the Home Language Survey (HLS) is given to all parents at the time they enroll their child in school, and typically asks three questions:

- (1) What is the language the child first learned to speak?
- (2) What is the language spoken by other family members in the home?
- (3) What language does the child speak most frequently?

The Home Language Survey is designed to gauge the child's language use across several domains. If parents indicate the presence of another language in the home, their child is assessed by a language proficiency test to determine whether she is an English learner and thus entitled to language assistance from the district. Ideally, the test will determine whether the child is an ELL or a "PHLOTE"—a pupil with a home language other than English. As with the Home Language Survey, states may design and implement their own proficiency tests.

Native American parents are also required to complete a Home Language Survey when they register their child at school. If parents indicate that an Indigenous language is present in the home, whether or not the child speaks it, the child is subject to the same state assessment requirements as all other children in similar circumstances. If the assessment indicates she is a PHLOTE, she is legally eligible to enroll in an English medium classroom, or in an Indigenous immersion program if one is provided. If the child's scores are low, however, she will be designated as "limited English proficient" and must be placed in a Structured English Immersion program. In Arizona, the latter outcome often occurs with Native American speakers of Indian English. Data on the specific difficulties Native American students experience on the state's proficiency test (the AZELLA, or Arizona English Language Learner Assessment) is difficult to obtain, but the fact remains that Native children typically do not score highly on the test.

More unintended consequences: changes to the HLS support Native students but not for Spanish-speaking ELLs

As noted earlier, the Arizona Department of Education used a Home Language Survey that asked three questions. In July 2009, the State Superintendent of Public Instruction reduced the survey to one question: What is the primary language of the student? (Arizona Department of Education 2009). He rationalized this change by

arguing that identification of the language the child used most was more important in determining whether she was an English language learner. Less critical was what the child's parents spoke at home or what language she learned first. The Superintendent also argued the revised Survey would prevent the misclassification of Indigenous students as English learners "simply because some other language is spoken in their homes and they have a reading or writing problem" (Office for Civil Rights Letter to Tom Horne 2010). Indeed, there is anecdotal evidence that after the Home Language Survey was simplified, the numbers of English language learners on the Navajo Reservation dropped dramatically. How Navajo parents answered the one question determined whether or not their children were tested for proficiency in English (Zehr 2007a). If the students' primary language was English, they were now eligible for placement into a Navajo immersion program. Paradoxically, while the one question survey enabled some school districts to preserve Indigenous language programs, the potential for under-identifying English language learners elsewhere in Arizona was real. If parents answered the one-question Home Language Survey with "English," they might not be providing enough information about their children's actual level of English proficiency. As a result, the children would be excluded from the English language acquisition services that federal law required districts to provide. This was the finding from two studies conducted in large urban districts in Arizona, which suggested that from 11 to 18% of students eligible for services did not receive them (Goldenberg and Rutherford-Quach 2010).

Under-identification of English learners was a principal concern of the Federal Office for Civil Rights as well, which in 2010 found the State of Arizona had violated Title VI of the Civil Rights Act and the Equal Educational Opportunities Act. Analyzing data from the state's English proficiency assessment instrument, OCR determined that the one-question Home Language Survey had led to a sharp decline in the number of students identified as PHLOTE, ELLs, or ELLs who after reclassification still needed to be monitored for academic progress (OCR Letter to Tom Horne 2010).⁵ The state has had to reinstate the earlier three-question Home Language Survey in order to identify all English learners legally entitled to language assistance. On the other hand, redressing the under-identification of these students may yield yet another unintentional consequence for Indigenous language programs by leaving the placement of Native students into them in a state of political limbo.

Civil disobedience or sovereignty? Navajo immersion programs on the ground

Tsehootsooi' Diné Bi'ólta'

After passage of Proposition 203 and the Arizona Attorney General's opinion about its application to Indigenous language programs, Diné (Navajo) school officials in

⁵ OCR found, for instance, that the number of students assessed with the AZELLA in school year 2008-09 was 250,092; in school year 2009-10 that number dropped to 136,245, a decline of nearly 114,000 students. In addition, the State's own data indicated that the number of *newly identified* English learners similarly decreased dramatically, from 132,213 ELL students in 2008-09 to 98,831 students in 2009-2010, a decline of 33,382 (OCR Letter to Tom Horne 2010).

the Window Rock Unified School District continued to place Navajo students in *Tsehootsooi' Diné Bi'ólta'* ("Navajo School in the Meadow Between the Rocks"), the Fort Defiance Navajo immersion public school, because they believed the Native American Languages Act protected their tribal sovereignty rights. Established as its own school in 2004, *Tsehootsooi' Diné Bi'ólta'* evolved from an earlier Navajo immersion program in the district that had demonstrated significant academic success well before passage of Proposition 203 (Holm et al. 1990; Holm and Holm 1995; Holm 2006). Navajo parents enrolled their English-speaking children at the school in order for them to become proficient in the Diné language, and their support was the driving force behind the school. *Tsehootsooi' Diné Bi'ólta'* lists as "innovative features" use of the Diné Cultural Content Standards, a Diné language and culture rich environment, parent involvement, technology, and a largely Diné staff committed to "maintaining and revitalizing the Diné language and share a belief of an educational system that is based on Diné tradition" (Johnson and Legatz 2006, p. 31).

Window Rock officials argued that the Native American Languages Act protected and promoted the right of tribal communities to teach Native languages in the public schools and that, in addition, the Navajo Nation Education Code—a specific example of asserted sovereignty—required that all Navajo children be educated in both English and Navajo (Navajo Nation Council 2005). At the time, Navajo parents of students at *Tsehootsooi' Diné Bi'ólta'* continued to complete the earlier version of the Home Language Survey (with three questions), with many of them indicating the presence of Navajo in the homes or in the extended family. Regardless of how their children scored on the Arizona English Language Learner Assessment, parents wanted them in the Navajo immersion program and school officials honored their wishes.

When Arizona Department of Education officials learned that Window Rock school district administrators were continuing to place Navajo "English language learners" in its immersion program, they accused the district of being out of compliance with Proposition 203. After communication with district staff, Department officials suggested that the immersion program would comply with the law if it included more instruction in English. Window Rock School District educators were reluctant to do this because in the full immersion model implemented, students were outscoring their peers in English Only programs on state achievement tests in math and reading (Johnson and Legatz 2006; Zehr 2007b). The Department of Education began to withhold state funding from the district, which had no choice but to use federal Title III funds from No Child Left Behind. State officials were unhappy with this development as well, because, they declared, "Title III funding was only to be used to develop and implement programs that serve ELLs and supplement English instruction towards meeting the Arizona academic and proficiency standards" (correspondence from Hufford, Horstman, Mongini, Parnell and McCarthy, PCs to Arizona Associate Superintendent Margaret Garcia Dugan).

In the meantime, the Window Rock Board of Education drafted a resolution calling upon the Arizona Congressional delegation to intervene in the controversy and to support legislative changes enabling the immersion program to continue. District staff also began counseling Navajo parents about the way they completed the Home Language Survey, so that if parents indicated that the Navajo language

was *not* present in the home, their children would be allowed to attend the immersion program.

Puente de Hózhó

In 2001, the Flagstaff Unified School District in northern Arizona established a trilingual magnet school for English, Navajo and Spanish-speaking students. Designed to provide students with “the power of two” languages, Puente de Hózhó (“Bridge of Beauty”) provides a two-way immersion model in the Spanish–English program, and a one-way immersion model in the Navajo–English program (Puente de Hózhó School Website). Michael Fillerup, Director for Bilingual Education in FUSD, explains:

The vision was to create a school where each child’s language and culture was regarded not as a problem to be solved but as an indispensable resource, the very heart and soul of the school itself. Such a school could be a symbiotic juggernaut, mutually beneficial to all: English speakers would learn Spanish, Spanish speakers would learn English, Navajo children would acquire their tribal language, and all students would interact harmoniously and achieve academically (Puente de Hózhó School Website).

Most students at Puente de Hózhó are proficient English speakers who are learning Navajo and Spanish as heritage languages. They therefore qualify for placement into either the Navajo or Spanish immersion programs. There are fewer than 10 English language learners at the school, all Spanish-speakers. Some of them qualify for “Type 2” waivers because they are over the age of 10, and others for “Type 3” waivers (for children with special individual needs).⁶ Parents of children

⁶ Proposition 203, now incorporated into the Arizona Revised Statutes as Title 15, Article 3.1, Sections 751–757, specifies three conditions that students must meet in order to qualify for waivers from Structured English Immersion programs: “(1) Children who already know English: the child already possesses good English language skills, as measured by oral evaluation or standardized tests of English vocabulary comprehension, reading, and writing, in which the child scores approximately at or above the state average for his grade level or at or above the 5th grade average, whichever is lower; or (2) Older children: the child is age 10 years or older, and it is the informed belief of the school principal and educational staff that an alternate course of educational study would be better suited to the child’s overall educational progress and rapid acquisition of basic English language skills; or (3) Children with special individual needs: the child already has been placed for a period of not less than thirty calendar days during that school year in an English language classroom and it is subsequently the informed belief of the school principal and educational staff that the child has such special and individual physical or psychological needs, above and beyond the child’s lack of English proficiency, that an alternate course of educational study would be better suited to the child’s overall educational development and rapid acquisition of English. A written description of no less than 250 words documenting these special individual needs for the specific child must be provided and permanently added to the child’s official school records, and the waiver application must contain the original authorizing signatures of both the school principal and the local superintendent of schools. Any such decision to issue such an individual waiver is to be made subject to the examination and approval of the local school superintendent, under guidelines established by and subject to the review of the local governing board and ultimately the state board of education. Teachers and local school districts may reject waiver requests without explanation or legal consequence, the existence of such special individual needs shall not compel issuance of a waiver, and the parents shall be fully informed of their right to refuse to agree to a waiver” (A.R.S. § 15–573 [B1]).

receiving Type 3 waivers must provide a 250 word description of their child's special physical or psychological needs "above and beyond the child's lack of English proficiency"; the description is then "permanently added to the child's official school records" (A.R.S. § 15-573 [B1]). A handful of Spanish-speaking ELLs receives intensive English instruction, as the State requires, within 4-hour English Language Development blocks, although they may receive instruction in Spanish during the remaining two and half hours in the school day. Adherence to the law's waiver requirements in this way enables the school to successfully navigate the State's restrictive language policies (Michael Fillerup, Personal Communication, November 21, 2011).

Academic achievement data from the Arizona Instrument to Measure Standards (AIMS) for students at Puente de Hózhó have been positive; for example, 2008 AIMS reading scores showed that the percentage of 3rd and 4th grade Hispanic students "meeting or exceeding state standards for reading was 10 and 11% higher" than their peers in other district schools. AIMS readings scores for Native American students in 3rd and 4th grades were higher than for Native students in English-only programs elsewhere in the district. Finally, reading scores for the school's English language learners in the same grades were significantly higher than ELLs in English-only programs even though they were receiving 50% of their instruction in Spanish (Fillerup 2011, pp. 160–161). For Fillerup, using the school's test scores to celebrate its success was a political strategy:

The bottom line was this: We needed to ensure that our scores on tests in English were at least on par with the scores of students in English-only programs in our state and in our school district. As long as our scores were competitive, outsiders could not accuse our school of being educationally unfit or impeding the linguistic and academic progress of our students (2011, p. 159).

No Child Left Behind

Thus far in this article we have discussed some of the conflicts that the State of Arizona has created for Native American communities within its boundaries. Clearly, the State's interpretation and implementation of its own restrictive language policies has challenged tribal efforts to revitalize endangered languages. However, there is also a growing body of research about the devastating effects of the Federal No Child Left Behind Act (NCLB) on Indigenous language education, particularly with respect to the use of Native language and culture in school programs (Beaulieu 2008; McCarty 2009; Patrick 2008; Reyhner and Hurtado 2008; Romero-Little et al. 2007; Winstead et al. 2008; Watanabe 2008; Wyman et al. 2010).

No Child Left Behind was signed into law in early 2002, and fundamentally changed the way that all public schools in the United States educate students, primarily through a new and complex structure of goals, incentives, and penalties (Crawford 2004). A hallmark of the law was the accountability system known as

“adequate yearly progress” (AYP). All K-12 schools are required to test students using assessment instruments tied to state standards in reading and mathematics. AYP must be reported for all students, including designated subgroups: economically disadvantaged students, racial and ethnic minorities, students with disabilities and English language learners. Schools that do not make AYP for two consecutive years move into “school improvement” status, which requires them to develop improvement plans for each subgroup. If these schools do not make AYP in subsequent years, they undergo “corrective action,” which entails increasingly severe penalties (McCarty 2009; Ovando and Combs 2012). No Child Left Behind’s Adequate Yearly Progress requirements affect Indigenous language revitalization programs in at least three unique and problematic ways (McCarty 2009). First, NCLB eliminated some of the traditional funding sources for language and culture instruction, like the Bilingual Education Act. The elimination of these funds effectively ended Indigenous bilingual-bicultural programs in many schools. Second, NCLB required schools on improvement plans to adopt highly scripted, primarily phonics-focused reading programs that required so much time to implement they replaced other content areas, including Indigenous language and culture teaching (McCarty 2009). Third, NCLB uses high stakes English language standardized tests as the sole indicator of AYP. As a consequence, many schools serving Native students have been forced to prioritize instructional time for test preparation. In combination, AYP requirements have severely reduced the ability of schools serving Native American students to participate in efforts to revitalize Indigenous languages and incorporate Indigenous cultures into the curriculum. In a state like Arizona, with its own restrictive laws against bilingual education in the public schools, NCLB’s requirements assert even more pressure on school-based language and culture programs (McCarty 2009; Romero-Little et al. 2007; Wyman et al. 2010).

Tribal sovereignty and self-determination

We’re fighting for our kids to have the right to learn their heritage language and culture!

Diné teacher⁷

The Diné teacher’s assertion confirms that school and classroom sites remain a political battleground in exercising educational and cultural self-determination through the authority granted by tribal sovereignty. *Tribal sovereignty* refers to the “inherent, intangible, and incontestable” power of Indigenous tribes to control their destiny (Winstead et al. 2008, p. 49). Tribal sovereignty involves *self-determination*, a concept which dates back to the 1930s and was strengthened by the 1960s Civil Rights movement and official U.S. policy from the 1970s until the beginning of the 21st Century. Self-determination refers to the social movements, legislation, and beliefs supporting and enabling Native Americans’ *control over their own affairs* (Grande 2004). The history of Indian educational self-determination, itself an

⁷ McCarty et al. (2011, p. 45).

exercise of cultural and political sovereignty, is rife with conflict and contradiction within the educational terrain.

An early example of educational self-determination through tribal sovereignty is that of the Cherokee Nation from 1802, the removal period, and on into the mid-1800s. The Cherokees objected to the racial ideologies characterizing the curriculum designed for Indian students compared to that provided to white students and took steps to address these concerns (Huff 1997). Cherokee tribal schools began to use the Cherokee syllabary developed by Sequoyah in 1821. Schools developed bilingual textbooks and went on to establish a comprehensive kindergarten through college bilingual/bicultural education system. This system produced “a 90% literate population within a decade... By the end of the nineteenth century, most Cherokee were literate...and in control of their destiny” (Huff 1997, p. 3). During the same period, the Chickasaw, Creek, Choctaw and Seminole tribes also established “200 schools, seminaries, and academies...before their forced removal to Oklahoma (Manuelito 2005, p. 75). In 1906, Congress ended the Oklahoma Cherokee tribal school system, which was then taken over by the Bureau of Indian Affairs and English Only policies imposed (Crawford 2004). Attempts to assert tribal sovereignty succumbed to U.S. assimilationist pressures and policies. Nevertheless, the Cherokee example illustrates the potential of tribal sovereignty in educational self-determination that tribal nations continue to pursue.

Why NCLB and Arizona State language policies are at odds with tribal sovereignty and self-determination

The federal mandates of NCLB, as well as the fluctuating Arizona state language policies, represent a current challenge to tribal sovereignty. The legal status of tribes as sovereign nations predates and is codified in the U.S. Constitution’s Commerce Clause (Lomawaima and McCarty 2006). As such, Native Americans in the United States are distinguished from “ethnic” minorities as members of their respective tribal nations. Native American communities have fought for their continued existence as *peoples*, “defined politically by their government-to-government relationship with the United States, and culturally by their diverse governments, languages, land bases, religions, economics, education systems, and family organizations” (Lomawaima and McCarty 2006, p. 7). The technical and political discourse regarding sovereignty as interpreted and implemented as legal text and legislation is seriously at odds with the “notion of Indian cultural sovereignty as it is exercised and understood within tribal communities” (Winstead et al. 2008, p. 49). Coffey and Tsosie (2001) describe the distinction between political and cultural sovereignty as currently manifested in “a profound lack of understanding of the inherent sovereignty of Indian nations” (cited in Winstead et al. 2008, p. 49).

The Indian Education Act of 1972 authorized tribes to initiate new educational programs as well as determine the level of tribal participation in new and existing programs. Three years later, the Indian Self-Determination and Educational Assistance Act of 1975 (PL 93-638) provided the mechanisms for placing control

of these programs within the tribes and Native communities, by enabling them to contract directly with the federal government. By 1978, thirty-four tribally controlled community schools had been established.

The No Child Left Behind Act, with its complex penalty system and extensive reach into all education domains, including education in Native communities, seriously limits tribal exercise over how Indigenous children should be educated and in what language (Winstead et al. 2008). Arizona state policies that dictate how Indigenous children should be educated and in what language similarly challenge tribal sovereignty and efforts to revitalize Indigenous languages.

The past and future again

The Native American experience in Arizona with Proposition 203 and related policies must be viewed within larger social, economic, and demographic contexts. This experience provides yet another example of the dominant reactionary response of a larger governmental system, in this case the State of Arizona, to tribal innovation and sovereignty. State efforts to “develop educational policies that obviate diversity in favor of practices that seek to control the student population” (Moll in Lomawaima and McCarty 2006, p. 158) coincide with demographic shifts in Arizona, most visibly, a significant increase in the state’s immigrant population. This article has highlighted the inconsistencies and contradictions of federal and state-supported policies that both create and foreclose educational opportunities and spaces for Indigenous communities to exercise tribal sovereignty and self-determination. The stakes underlying Indigenous efforts to protect and promote their languages are extremely high. Unlike immigrant minorities, Native communities cannot draw from other nation-states or homelands to secure the future of their languages (Lomawaima and McCarty 2006).

It is difficult to make the case that Arizona’s English Only language policies have produced any benefits other than to further the political agendas of their sponsors. The intended targets—English language learners—are not learning English more efficiently, and certainly not in 1 year (Garcia et al. 2010; Lillie et al. 2010). Instead, they are segregated in English Only classrooms from their English speaking peers and receive a rigid grammar and reading based pedagogy (Combs, in press). Native American students are also negatively affected by these policies, although perhaps in “unintended” ways. Whether or not the effect on Native students was unintended or not is irrelevant for at least two reasons. First, after state authorities discovered that Navajo educators were circumventing the policy to preserve an exemplary immersion program, they intervened to discourage tribal educational decision-making. That Navajo students were excelling in both English and Navajo was beside the point; because tribal leaders opposed state English Only mandates, state authorities felt compelled to discipline them (somewhat like an authoritarian adult would discipline a recalcitrant child). Second, at play are larger issues of power and control. Who or what drives education and language policies for minoritized populations? Majority policymakers at the state level? Or the policies

they impose on other people's children? It is possible that at some future time more reasonable policymakers in state government will respect both tribal sovereignty and research in second language education acquisition. In that hoped for time, language policies will recognize the right of Indigenous people to "remain Indians" on their own terms (Lomawaima and McCarty 2006).

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