

The Impact of Brown on the Education of Latinos

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INTRODUCTION

Brown v. Board of Education of Topeka, Kansas (1954) was the basis for a number of initiatives and strategies to improve the educational treatment of people of color. While it had a dramatic impact on the quality of education for African American youth in the United States, *Brown* also became a major force for improving the educational experience of other ethnic and racial groups as well, notably Latinos. The Court's decision in *Brown* created not just desegregation strategies such as busing and the changing of school funding allocations but also instructional approaches such as Title I programs, magnet schools, and bilingual and multicultural education.

As with any movement, an evolutionary development rather than a radical change occurred after *Brown*. This article reports the progress made to improve the educational experience of Latinos incident to *Brown* by describing the legal history of Latino desegregation. Accordingly, it focuses on bilingual education as a remedy for educational inequity, and on the rise of multicultural education, the latest instructional approach to emerge in the evolution of desegregation, as a step toward integrating society. The article concludes with a review of the trends shaping future desegregation efforts.

LEGAL ROOTS OF LATINO EDUCATION

Prior to *Brown*, the educational conditions and treatment of Latinos and African Americans were very much alike. Members of both groups were disenfranchised. Most Latino children, like their African American counterparts, were denied access to formal schooling. The few who received instruction attended segregated schools, commonly referred to in the Southwest as "Mexican schools," that were clearly not equal to schools for Whites.

Segregation, strictly speaking, refers to the setting apart and isolation of individuals or groups. In the United States, that practice resulted in the exclusion of non-White students from a fundamentally adequate education. The segregation of racial and ethnic minority children from White students in U.S. public schools has always been rooted in unfounded misconceptions, better known as racist attitudes. To condone this banal

irrational practice, various excuses were constructed. For example, prior to *Brown*, segregation was defended against attack by the misleading notion that "separate-but-equal" facilities were provided for Blacks and Whites. A similar excuse, based upon "language deficiency," was fabricated to justify the isolation of students with Spanish surnames. However, supporting separate and unequal school conditions throughout the U.S. for Latinos was not sanctioned by any state law except in California, where a statute providing for separate schools for "Mongolians" (Asian Americans) and "Indians" (Native Americans) was interpreted to include Mexican Americans as being in the latter category (National Association for Intergroup Relations, 1963). Generally, the placement of Spanish-surnamed students into separate schools or classrooms was an arbitrary action that lacked due process. No appropriate or systematic language assessment was made of these students for the purpose of pedagogical placement. Children with Spanish surnames who did not have a "language problem"—that is, those who were English-proficient—were automatically assigned to schools and classrooms composed of students of like ancestry.

For Latinos, the legal challenge against school segregation historically has been spearheaded by Mexican Americans. Judicial opposition to segregation of Latinos goes back to a 1930 Texas case, *Independent School District v. Salvatierra*, wherein the Del Rio Independent School District was charged with separating Mexican American children merely because of their race. In *Salvatierra*, the district successfully contended that the students' language deficiency warranted their separate schooling. The first federal court decision on the segregation of Mexican American students was handed down in California in *Mendez v. Westminster School District* (1946). In that case, the trial court ruled that separate schools with the same technical facilities did not satisfy the equal protection provisions of the Constitution. The Ninth Circuit Court affirmed the decision, finding that segregation of Mexican Americans denied them due process and equal protection. Despite this ruling, however, de facto segregation continued throughout California.

In Texas, where discrimination was more blatant and segregation more intensive than other states having large numbers of Spanish-surnamed people, *Delago v. Bastrop Independent School District* (1948) followed *Mendez* by stating that the district's segregative acts violated the 14th Amendment. Further, where the segregation of Mexican Americans was more by separate schools, the court directed that separate classes for non-English-proficient students must be held on the same campus. It thus forbade school authorities from further rationalizing the practice of completely separating Mexican American students into different schools based on their alleged language deficiencies.

Despite the rulings in *Mendez*, *Delago*, and *Brown*, school officials continued segregating Latinos from White students. This evasion was based on the technicality that Mexicans and other Latinos were also classified as "White" for desegregation purposes. As a result, in tri-ethnic settings, the post-*Brown* generation saw the desegregation of predominantly African American school settings with Latino students while White students continued to be assigned to all-White schools. Therefore, by pairing Black

students with Brown ones and excluding Whites, the two largest minority school populations in the U.S. continued to be exposed to inferior facilities, and unequal education prevailed.

The initial challenge to this technical subterfuge was raised by parents in California in *Romero v. Weakley* (1955); however, this case was settled out of court. It was not until *Cisneros v. Corpus Christi Independent School District* (1970) that the technical loophole was sealed off. *Cisneros* is of fundamental significance because, for the first time, a court declared Mexican Americans to be an identifiable ethnic minority group for the purposes of public school desegregation. Further, it was the first circuit court case to hold that the principles enunciated in *Brown* apply to Latinos as well as African Americans.

Subsequently, in *Keyes v. School District No 1, Denver, Colorado* (1973) the Supreme Court held that African American and Latino students suffered identical discrimination in treatment when compared to White students. Although *Keyes* was brought by African Americans and no proof of de jure segregation of Latino students was found, discrimination against Latino students was introduced at a remedy stage by intervenors. In support of its holding, the Court cited a report published by the United States Commission on Civil Rights (1967), which noted that, in parts of the Southwest, students with Spanish surnames suffered from the same educational inequities as African Americans.

The Latino community has expressed concern over the impact on the community of certain remedies ordered by the courts once constitutional violations are established (*Cisneros*, 1970). Often, because most school desegregation litigation as instituted by Black plaintiffs, remedies were framed in that context. Much of the relief sought by African American and Latinos has been the same; however, the special concerns of the Latino community often were not raised until the remedial phase. That Latino students may require, as part of any desegregation decree, special remedies not sought by litigants in multiracial desegregation cases, is a principal that has only gradually gained judicial recognition.

Cases following *Keyes* have treated discrimination against Latinos in the same manner as they did discrimination against African Americans. In tri-ethnic settings, this has often meant that the degree of segregation in any given school depends on the ratio of Whites to the combined number of identified minorities. In *Cisneros*, the court had already expressed the view that placing "Negroes and Mexican Americans in the same school does not achieve a minority system as contemplated by law" (p. 616). Although the court was concerned with the nature of the remedy rather than the violation, the underlying premise was the same: proving that the isolation of Latino students constitutes a violation of the Equal Protection Clause requires a showing of de jure segregation attributable to the action of school officials. In cases involving Latino students, the nation's courts seem to have applied a standard that places a heavy burden upon the plaintiff to establish a prima facie case of segregation. In the absence of a statutory history of de jure segregation, as in the case of African Americans, Latinos must show that schools are, in fact, segregated and that this condition is attributable to an intentional act by school authorities or other state officials.

In *United States v. Texas Education Agency* (1972), the Fifth Circuit found intentional segregative action by the school district, particularly in its choice of school sites, construction, drawing of attendance zones, student assignment and transfer policies, and faculty and staff assignments. Maintaining that *Texas* was "no different from any other school desegregation case" (p. 873), the court concluded that *de jure* segregation was present, despite the absence of a state law requiring segregation of Latino students. It noted that the pattern of segregation was nonstatutory because school board policies did nothing to counteract the effect of existing patterns of residential segregation, in light of existing viable alternatives to integrate Latino students. Thus, once the necessary intentional segregative actions were found, coupled with a large concentration of Latino students in specific schools, a *prima facie* case of unlawful segregation was established.

In *Morales v. Shannon* (1975), the Fifth Circuit court found that systematic segregation of Mexican Americans was evident in discriminatory school construction and assignment policies in Texas. Similarly, in *United States v. Midland Independent School District* (1975), the Fifth Circuit court, based on statistical evidence, found an overriding intent to isolate and segregate Mexican Americans and Blacks. This segregation was accomplished through the historical maintenance of "Mexican American" and "Black" schools; segregated transportation, construction and transfer practices; and the drawing of an attendance area circumscribing "El Barrio" or "Mexican Town."

THE INSTRUCTIONAL DIMENSION OF DESEGREGATION

In the four decades since *Brown* took dead aim at equal educational opportunity, a number of instructional programs were created in an attempt to bring into existence quality educational experiences for African Americans. The desegregation movement led to the creation of magnet schools in large metropolitan school districts. It was maintained that these schools, whose curricula focus on particular specialties such as the performing arts and whose enrollments are drawn from all areas within a district's attendance boundaries, would help eradicate segregation because they are open to students of all races and ethnicities regardless of residence.

Additionally, the federal government enacted and funded legislation to desegregate public schools and remediate the poor instruction previously provided to African Americans. The most prominent of these was Title I, which addressed education at the elementary and secondary school levels. Latinos, though classified as "White," also participated in these federally sponsored instructional programs. While Title I programs were created with African American students as the main recipients, Title VII established bilingual programs for Latinos. Title VII programs were targeted to accomplish two goals: first, to aid non- or limited-English-proficient (LEP) students to learn English and to thus move into full English-speaking classrooms; second, to help LEP students maintain their native language so as to become bilingual. This latter goal, that of an educated person knowing more than one language, was consistent with

long-standing educational values and with the requirements of most of the nation's higher education institutions.

BILINGUAL EDUCATION FOR DESEGREGATION

In 1968, President Lyndon B. Johnson signaled the nation's first commitment to addressing the English language skills of minority students by signing into law Title VII of the Elementary and Secondary Education Act: the Bilingual Education Act. Focusing primarily on children who were both poor and educationally disadvantaged due to their inability to speak English, Title VII authorized monetary resources to support educational programs and develop necessary instructional resources. Previously, many districts offered Latino students segregated bilingual education or integration without bilingual education (Cardenas, 1975). With this Act, the federal government established a two-track policy toward the education of Latino students comprised of financial support programs and civil rights efforts to ensure that LEP students get an equal chance to succeed. Although both tracks are aimed at enhancing educational opportunities for student English language development, they have not always run side by side. Funding for bilingual education programs received priority before attention was given to language discrimination in the schools.

After the Supreme Court's remand in *Keyes* in 1974, the district court heard testimony on proposed desegregation plans. Intervenor, most notably the Congress of Hispanic Educators (CHE), put forth a plan calling for the establishment of a bilingual educational program for Latino students. District court judges concurred with the intervenors, declaring the "bilingual-bicultural approach to the education of Mexican Americans to be a very sensible method," and concluding that "to the extent that [this approach] can be useful to building bridges between the Spanish and Anglo cultures, it is to be fully utilized" (p. 692). The Denver School District was ordered to develop a bilingual-bicultural education program in accordance with the CHE model.

Significantly, the court took cognizance of the desire of Latino students not to be desegregated if it meant giving up bilingual education. It also noted that representatives of Denver's Mexican American community had asked that the schools in which the pilot bilingual-bicultural programs were located not be desegregated during the early stages of the program's implementation. The court therefore held that desegregation was not in the best interest of the Mexican American community and declined to include some of these pilot schools in the overall desegregation plan. On appeal, the 10th Circuit reversed this part of the order, ruling that bilingual education is not a substitute for desegregation and that it is permissible as a means of reducing the isolation of minority students only if it is part of a desegregation plan. It further pointed out that the district court, in adopting what became known as the Cardenas Plan, was not merely removing obstacles to effective desegregation; rather, it was imposing a pervasive and detailed system for the education of minority children. The Cardenas Plan was an instructional program based upon the theory of incompatibilities, a tested belief that the failure of Black, Mexican Ameri-

can, and economically disadvantaged children can be attributed to a lack of compatibility between characteristics of minority children and the typical instructional program developed for White, Anglo-Saxon, English-speaking, middle-class children (Cardenas, 1975; Cardenas & Cardenas, 1972). The 10th Circuit implied that had there been proof that the school district's existing curricular offerings or its methods of educating minority students constituted illegal segregative conduct or resulted from such conduct, the trial court might not have overstepped the limits of its remedial powers. However, by doing so, the court appeared to endorse the idea that a meaningful desegregation plan must help Hispanic school children to reach the proficiency in English necessary to learn other basic subjects.

While the 10th Circuit's action stood as law within its jurisdiction, other circuits grappled with framing remedies in the absence of any clearly articulated policies, although intervention at the remedy stage was liberally granted. For example, in *Morgan v. Hennigan* (1974), a case originating in Boston, a brief was filed on behalf of Latino children as interveners to protect the state and federal statutory rights to bilingual education (The Aspira Association, 1975). The district court did not announce any general principles, but stated that *Keyes* would be observed and consideration given to the treatment of non-Whites other than Blacks. Therefore, bilingual students would be assigned before others to prevent their dispersal.

Similar cases arose in the Fifth Circuit. In *Tasby v. Estes* (1976), the district court directly confronted the dispersal of Latino children within the context of desegregation. It ordered bilingual education to be made available to all who needed it by permitting majority-to-minority transfers—that is, the transfer of students from schools with low concentrations of minority students to schools with high concentrations of minorities—wherever Mexican Americans constituted less than 5% of the originally assigned school. It further noted that Hispanic minorities are recognized as an ethnic group for the purposes of equal protection.

In an earlier case, *United States v. Texas* (1971, 1972), the courts deemed Mexican American students to be a recognizable ethnic group protected by the 14th Amendment. It held that because these students had been discriminated against by the school system and the state, a comprehensive remedial educational plan, including bilingual education and recruitment of minority staff, was justified. In *United States v. Texas Education Agency* (1972), the Fifth Circuit court recommended a bilingual education program because it held that no remedy for a dual system could be acceptable if it operated to deprive members of a third ethnic group of the benefits of equal educational opportunity. Similarly, in *Arvizu v. Waco Independent School District* (1973), the court noted that all too often the practical effect of the desegregation of tri-ethnic school systems has been that Black students are mixed with Mexican American students, thereby denying both groups the benefit of any meaningful desegregation. It therefore ordered the implementation and continual re-evaluation of bilingual programs. However, in *Morales v. Shannon* (1975), the court was reluctant to order a specific bilingual remedy, noting that the need for bilingual education is a matter reserved to educators.

In other cases, parents of Mexican American children sought to intervene in suits filed by African Americans. In the Fort Worth, Texas, case of *Flax v. Pott* (1972), they alleged that Latino students were denied equal educational opportunities by their assignment to segregated schools, by the failure of the school system to place qualified Latinos in faculty and administrative positions, and by the absence of a plan for the education of Latino students, and asked the court to order the school system to establish a bilingual curriculum. In *Milliken v. Bradley* (1975), even without the intervention of Latino complainants, the court included a requirement for bilingual instruction among the series of educational components. The court ordered this remedy because state law which required districts to provide such programs. It should be noted, however, that although the requirement for bilingual programs was part of the remedy, the order for educational components was in response to a finding that the school authorities had deliberately discriminated against African American students. The court made no such finding of discrimination against Latino students.

Latino students also benefitted from litigation involved other language-minority students. A major decision on the language rights of minority students, and the only such ruling by the Supreme Court, *Lau v. Nichols* (1974) was a class-action suit filed on behalf of Chinese-speaking youngsters in San Francisco. The plaintiffs in this case alleged that these students were being denied an education on equal terms, the standard in *Brown*, because of their limited English skills. In 1974, the Supreme Court unanimously ruled in favor of the plaintiffs, embracing the logic that equality of treatment consists of more than merely providing students with the same facilities, textbooks, teachers, and curriculum. Students who do not understand English are effectively foreclosed from any meaningful education, the Court noted. It subsequently ruled that, under Title VI of the Civil Rights Act of 1964, Chinese-speaking children were entitled to special assistance to enable them to participate equally in school programs.

In response to *Lau*, federal guidelines, called the Lau Remedies, were drawn up for "educational approaches which would constitute appropriate 'affirmative steps' to be taken by a school district 'to open up its instructional program'" (Crawford, 1989, p. 37). The remedies required adequate proficiency in English as an essential element for access to equal educational opportunities.

MULTICULTURAL EDUCATION AS A MEANS OF ADDRESSING DIVERSITY: LATINO PERSPECTIVES

While judicial initiatives and strategies were necessary to bring about equal educational opportunity for minority youngsters, it became apparent to many leaders and educators in the Latino community that pedagogical and curricular innovations were necessary if students of different Latino origins, as well as those of other races and ethnicities, were to understand and respect one another. The racial conflicts of the 1960s and the resulting consciousness of ethnic diversity accelerated by the Immigration Act of 1965 made the need to meet a broader spectrum of social and cultural needs of students more explicit. Voices of the civil rights movement sought transformation of the curriculum. They argued

for a curriculum that provides equitable opportunities to benefit from educational experiences, one with a relevant social and cultural basis in the structure, process, and content of schooling for all students regardless of their racial and ethnic roots. Thus, the multicultural education began to emerge in the mid- to late 1970s.

Multicultural education has multiple purposes but, in the main, there are four. The first involves content—that is, if persons are to understand each other, they must know about one another. Multicultural education addresses this lack of knowledge by providing information about various cultures, their histories, their customs, their languages, and their traditions. The second purpose is psychological: if persons are to respect and accept others, they must learn about the values, beliefs, and religion of others. They will need to appreciate differences and be able to feel comfortable with individuals who do not look like themselves. The third purpose is pedagogical in that it recognizes that all students do not learn in similar ways. For example, Ramirez and Castaneda (1974) maintain that Mexican American students are more field-dependent learners while White students are more field-independent. The fourth purpose involves motivation: students will learn only if they believe in themselves and if teachers believe in their ability. For Latinos, a primary outgrowth of multicultural education has been the resulting development, enhancement, and reinforcement of a positive self-image among members of minority groups. Moreover, multicultural education has helped many teachers overcome the stereotypical view that Latino students are deficient.

The impetus for multicultural education as an alternative pedagogical approach to integration escalated in the 1980s with the publication of reports such as *One-Third of a Nation* (Commission on Minority Education and American Life, 1987) and *Workforce 2000* (Johnston, 1987). Both reports document the extent to which the United States is changing and how the demand for education that can effectively prepare the citizenry and workforce for the high-tech future is accelerating. Additionally, they highlight the nation's need to develop the ability to relate more intimately with the people and nations of Central and South America as well as the Pacific Rim.

The most significant contribution of *Brown* for Latinos was the promotion of multicultural education which assures that all ethnic and racial minority students are seen as wholesome and capable. Prior to *Brown* and during the first 30 years thereafter, African American, Latino, and Native American students were viewed as educationally and culturally disadvantaged. Presently, the concept of "disadvantage" is viewed as being just as fallacious as the premise of "separate but equal." It is only now, 40 years post-*Brown*, that research and practice are giving credence to the view of minority students as being able to respond intellectually to their environments and to environmental stimuli. This evolution is, in part, the direct result of *Brown*.

POST-BROWN PROSPECTS

The Increasing Segregation of Latinos

While the diversity of Latinos has increased over the past two decades, a striking observation is that Latino students face high and increasing

levels of segregation in all parts of the United States (Orfield, 1993; Orfield, Monfort, & Aaron, 1989). Contemporary data indicate that Latinos are highly educationally disadvantaged and segregated. The very rapid growth of Latino enrollment in the U.S. public schools, the disproportionate concentration of Latino students in urban school districts with large minority enrollments, and lack of any significant initiatives for desegregation in schools when Latinos are the primary minority group all contribute to this pattern.

The trend in Latino education in the U.S. is increasingly negative. Latino students continue to be disadvantaged in schools. Their dropout rate continues to be high and achievement levels low (Espinosa & Ochoa, 1986). Additionally, Latino students of every major Latino ethnic group are becoming more highly segregated in virtually every part of the country. No recent judicial, legislative, or pedagogical initiative has been strong enough to overcome this negative trend, although Latino areas with mandatory desegregation plans are far less segregated than others.

The Shift in Focus from Race to Resources

The issue of resources for desegregation assumed a central role in the late 1970s and 1980s, especially within inner-city districts (Berg & Colton, 1982). The case of *Milliken v. Bradley* (1977) linked race and resources to create a second focus: resource acquisition and allocation. New fiscal issues, goals, and policy questions arose, along with new relationships among interest groups. District budgeting and management procedures were altered as large sums of funds for desegregation purposes were mediated by the courts. Desegregation policies changed from the single-issue politics of busing to multiple-issue politics involving freedom of choice, quality of education, and district management and control. The relationship between state and local educational authorities was altered as the issues of law became a convoluted mixture of race and resource questions.

In 1990, nearly four decades after *Brown*, the Supreme Court addressed the issue of resources by asking whether a court could require authorities in Kansas City, Missouri, to set aside state tax limitation statutes in order to levy taxes for new programs and facilities in a desegregation plan (*Missouri v. Jenkins*, 1990). By a narrow margin, the Court declined to review the Kansas City desegregation plan, holding that the district could be ordered to levy taxes to pay for the plan even if this approach bypassed tax limitation statutes. *Jenkins* represented a major shift in the focus of school desegregation efforts from attention to racial balances and techniques for achieving racial balance to the provision of adequate resources to do the same (Foster, 1973; Orfield, 1978).

The Development of a Multicultural Education "Critical Mass"

Those who have shaped the knowledge base, practices, and attitudes of multicultural education in the past decade have obtained wide agreement on the goal of multicultural education. That goal is generally viewed as the restructuring of schools in such a fashion that all students will

acquire the knowledge, attitudes, and skills needed to function in an ethnically and racially diverse world. While debates over multicultural education will continue, they will now occur within the boundaries of democracy and diversity.

The pace at which multicultural education is being progressively institutionalized in the structure, process, and content of U.S. schools, colleges, and universities is increasing. Yet, despite its success, multicultural education continues to face serious challenges. Therefore reformers cannot rest on their laurels but must continue to forge ahead in seeking to ensure equal educational opportunities for all students.

CONCLUSION

While the educational unfolding of *Brown* and its progeny has produced progress for Latinos, its speed has been slowed. A recent study by Orfield (1993) reports that schools in the United States are becoming more segregated than before 1954. Civil rights enforcement by national and state governments has been almost nonexistent since the Reagan administration. Bilingual education has recently been challenged during hearings on the reauthorization of the Elementary and Secondary Education Act (Garcia, 1994; Office of Bilingual Education and Minority Language Affairs, 1994). Multicultural education is repeatedly assaulted in discussions of "political correctness." The source of this resistance is the same as the source of its energy: politics (Crawford, 1989).

Counteracting these negative elements are the positive forces within education such as enlightened superintendents, progressive university faculty, and advocacy by national educational organizations. As long as open-minded professionals work at providing the best education for all children, then the promise of equal educational opportunities enunciated in *Brown* remains alive. The struggle to improve the educational experience of Latino students, especially those enrolled in schools that remain unequal, continues.

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