

## ***MEMENTO MORI*<sup>†</sup>: POLICING THE MINDS AND BODIES OF INDIGENOUS LATINAS/OS IN ARIZONA**

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### INTRODUCTION

The state of Arizona is home to a large number of American Indian communities. The majority of the state, and its current

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† “Memento Mori” is a Latin phrase that calls into question one’s mortality. Literally translated, “momento mori” means: ‘remember your mortality,’ ‘remember you must die,’ or ‘remember you will die.’ In this article, we use the phrase as a reminder of the historic and present-day ideology that drives attempts to dispossess and colonize the minds, bodies, and souls of Indigenous peoples from the knowledge(s) and homeland(s) of their ancestors. We also use the phrase as a “call to action.” We believe the phrase serves as a reminder for us, as people of color, to remember our individual and collective mortality and our individual and collective responsibility to fight to preserve what knowledge remains. Seen in this light, we can better understand and heed the prescient words of Caribbean-American poet Audre Lorde: “[f]or to survive in the mouth of this dragon we call america, we have had to learn this first and most vital lesson—that we were never meant to survive. Not as human beings.” AUDRE LORDE, *SISTER OUTSIDER: ESSAYS AND SPEECHES* 42 (2007). Although we fear there is truth in Poet Lorde’s sage words, we believe there remains hope to offset such a fate. We believe that by heeding this call to action by preserving and/or (re)claiming the knowledge of our ancestors, we (re)claim not just our connection to our (home)lands and our ancestors, but to our humanity.

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boundaries, arose as a result of the Mexican American War and the Treaty of Guadalupe-Hidalgo.<sup>1</sup> Today, Arizona houses the largest number of American Indian tribal reservations in the United States (currently twenty-two),<sup>2</sup> including the Tohono O’Odham Nation whose traditional homelands span the border from southern Arizona into northern Mexico. American Indians comprise 4.6% of the state’s population and are the second largest minority population in the state, following the Latina/o population.<sup>3</sup> Latinas/os, including a large number who are Indigenous to the area, comprise 29.6% of the total state population.<sup>4</sup> Although the history and experiences of Indigenous American Indian peoples in Arizona share some similarities to those of the Indigenous Latinos/as of the area, laws and forces shaping the experiences of the groups are different and often complicated by the complex relationship these groups have with the federal government and the state of Arizona.<sup>5</sup> One of the most distressing issues

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1. Guadalupe Hidalgo is a shortened, more common name for the Treaty of Peace, Friendship, Limits, and Settlement With the Republic of Mexico, Feb. 2, 1848, U.S.-Mex. 9 Stat. 922. The United States acquired the remainder of the state, most notably the southern area, a few years later under the Gadsden Purchase. Gadsden Treaty, Dec. 30, 1853, U.S.-Mex., 10 Stat. 1031. *See generally* THOMAS E. SHERIDAN, *ARIZONA: A HISTORY* 56 (1995).

2. *Arizona Tribal Leadership List*, ARIZ. COMM’N OF INDIAN AFFAIRS, [http://www.indianaffairs.state.az.us/tribes\\_of\\_arizona.asp](http://www.indianaffairs.state.az.us/tribes_of_arizona.asp) (last revised Mar. 5, 2012).

3. *State & County Quick Facts: Arizona*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/04000.html> (last revised Jan. 17, 2012, 16:41 EST).

4. *Id.*

5. *See generally* VINE DELORIA JR., *CUSTER DIED FOR YOUR SINS* (1988). In an influential chapter, *The Red and the Black*, Vine Deloria, Jr. explains, “rather than race or minority grouping, non-whites have often been defined according to their function within the American society.” *Id.* at 171. The lived experiences of American Indians and African Americans in the U.S. is largely differentiated by what each group had to offer the dominant peoples in power. For the American Indian, it was land; for African Americans, it was labor. Thus, the White world responded to non-White groups “according to the manner in which [Whites] believed the non-Whites could be rescued from their situation.” *Id.* at 171. The historical differences in these responses raise considerable implications for the discourse of civil and group rights as they relate to culture and legal status. Deloria notes that as a result of various treaties and agreements made with American Indians, Whites have been forced to work with them. *Id.* at 172. Thus, democratic senators have proposed plans to “help” Indians through the promotion of

immediately differentiating the struggles (on the federal and state level) between American Indians and Latinas/os of the Southwest include tensions surrounding citizenship and migration.

Because of its proximity to the Mexican border, laws targeting Latinas/os are not new. In fact, many scholars have examined the function of specific laws and policies used to police, control and/or regulate (im)migration, including the use of immigration raids, and have argued such tactics serve to “*maintain and reinforce subordinated status among working-class U.S. citizens and legal residents of Mexican ancestry.*”<sup>6</sup> Mary Romero, Professor of Justice and Social Inquiry at Arizona State University, argues that laws which target Latinas/os, specifically Mexicans and those of Mexican descent, create a social circumstance such that citizenship begins to appear as embodied in skin color.<sup>7</sup> As a result, phenotype and skin color become politicized and suspect. As Romero explains, “carrying a bodily ‘figurative border,’<sup>8</sup> ‘Mexicanness’ becomes the basis for suspecting criminality under immigration law.”<sup>9</sup> More recently,

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opportunities for cultural “enrichment.” *See id.* at 187. However, this type of “help” has often been driven by Whites’ need to control and wrestle away the commodity of lands. *See id.* at 172-73, 187. In the absence of legal agreements binding the two communities together, African Americans, on the other hand, had no such justification for being “help[ed].” *See id.* at 172-73. In considering the present day experiences of Indigenous Mexicans, there is a similar corresponding connection around labor. Because those in power in Arizona may see Indigenous Mexicans as a potential labor pool, their education is considered less important and more likely to come under fire when they succeed academically. *See id.*

6. Mary Romero, *Racial Profiling and Immigration Law Enforcement: Rounding Up of Usual Suspects in the Latino Community*, 32 CRITICAL SOC. 447, 450-51 (2006) (emphasis added). In this context, “legal residents of Mexican ancestry” is synonymous with the word “immigrants.”

7. *See id.* at 451.

8. *Id.* at 449 (citing ROBERT S. CHANG, DISORIENTED: ASIAN AMERICANS, LAW, AND THE NATION-STATE (1999)).

9. *Id.* at 449. On April 23, 2010, Governor Jan Brewer of Arizona signed Senate Bill (SB) 1070, Ariz. Rev. Stat. §§ 11-1051, 13-1509, 13-2319, 13-2928, 13-2929, 23-212, into law. SB 1070 “aims to identify, prosecute and deport [undocumented] immigrants.” Randal C. Archibold, *Arizona Enacts Stringent Law on Immigration*, N.Y. TIMES (Apr. 23, 2010), <http://www.nytimes.com/2010/04/24/us/politics/24immig.html>. “The law, which proponents and critics alike said was the broadest and strictest immigration measure in generations, would make the failure to carry immigration documents a crime and give the police broad power to detain anyone suspected of being in the country illegally.” *Id.* It was widely

legislation has expanded beyond issues of (im)migration control to address the type and nature of education available in public schools.

Using recently passed Arizona legislation House Bill 2281 (which places severe restrictions on the curriculum included in Ethnic Studies courses), this essay explores how issues of immigration and race intersect with citizenship to preclude the personal, academic, and economic advancement of historically marginalized and minoritized communities in the Southwest.

We begin by examining how, and in what ways, legislation like Arizona's House Bill (H.B.) 2281 reflects the historic legal and political treatment of Indigenous peoples in the United States. Second, we examine how, and in what ways, law and policy support one another to promote a homogeneous, cultural, nationalistic identity that promotes the interest of a U.S. American imperial agenda. Third, we examine how the skillful articulation of economic arguments and legislation used to pass this law serve to advance a nationalistic identity based on a particular kind of individual success. We conclude by arguing that Arizona's policymakers and legislators implemented this piece of legislation to police the minds of Indigenous Latinas/os in order to: (a) protect the economic interest and power of Whites while (b) preempting, disempowering, blocking, and/or mitigating the efforts to engage in self-determination for Latinos/as—specifically Mexicans and Mexican-Americans—in the state. Ultimately, we believe H.B. 2281 seeks to destroy not just the spiritual success of Indigenous people(s) by denying awareness of the history and experiences of their collective struggle(s), but also serves to impede the academic and economic success of historically marginalized and minoritized communities. We conclude by presenting a series of implications this type of legislation has for communities of color and for society in general.

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speculated that this law was intended to target Latinas/os specifically through the threat of policing and through control of their bodies. This law presents the potential threat of regulating immigration through the arbitrary identification of Brown bodies that are perceived to be in the country unlawfully. Although it is outside the scope of this article to fully address SB 1070, it is important to note that its presence in Arizona politics is indicative of the atmosphere surrounding the connections between public policy, race, and citizenship.

## A LAY OF THE LAND: H.B. 2281 IN CONTEXT

As a result of laws that seek to criminalize their presence and heighten their visibility, racialized citizens and legal residents in Arizona have become subjects of immigration stops and searches.<sup>10</sup> These individuals “pay the cost of increased racism—sometimes in the form of hate crimes or the decrease of government funding and services to their communities.”<sup>11</sup> In some instances, these searches and seizures are physical in nature; in others, the searches and seizures are metaphorical in nature.<sup>12</sup>

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10. Romero, *supra* note 6, at 450.

11. *Id.* (citing Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CALIF. L. REV. 1395 (1997); Kevin R. Johnson, *Los Olvidados: Images of the Immigrant, Political Power of Noncitizens, and Immigrant Law and Enforcement*, 1993 BYU L. REV. 1139 (1993); Hugh Mehan, *The Discourse of the Illegal Immigration Debate: A Case Study in the Politics of Representation*, 8 DISCOURSE & SOC’Y 249 (1997)).

12. We believe that when the physical exile of unwanted person(s) is not possible through stringent immigration legislation such as Senate Bill (S.B.) 1070, laws such as Arizona House Bill (H.B.) 2281 serve the function of policing and controlling the education, and thus the minds, of non-White youths who remain in the United States. We also believe H.B. 2281 is an extension of a series of state laws that have emerged across the nation to control access to the type of education and public resources available to the children of Indigenous Latinas/os and (im)migrants. See also California’s Proposition 187 (1994), which sought to deny undocumented students (illegal aliens) access to public education at the following levels: elementary, secondary, and post-secondary, CAL. SEC’Y OF STATE, CALIFORNIA BALLOT PAMPHLET: GENERAL ELECTION NOVEMBER 8, 1994 (1994), available at [http://library.uchastings.edu/ballot\\_pdf/1994g.pdf](http://library.uchastings.edu/ballot_pdf/1994g.pdf); Georgia’s Senate Bill 529 (2007), which prohibits the Board of Regents from granting in-state tuition or tuition waivers to undocumented students at the university level, Georgia Security and Immigration Compliance Act, S.B. 529, 148th Gen. Assemb., Reg. Sess. (Ga. 2007); and Utah’s House Bill 191 (2011), which seeks to repeal in-state tuition for undocumented immigrants who meet university admissions and other eligibility criteria, H.B. 191, 2011 Gen. Sess. (Utah 2011). Ironically, in each instance, the legislation listed above claims to be addressing the unfair ways in which certain peoples are able to benefit from public education benefits. Admittedly, H.B. 2281 does not preclude non-White and/or (im)migrant students from accessing public education or pursuing enrollment in postsecondary institutions. However, laws precluding undocumented students from paying in-state tuition rates unfairly penalize them, as many undocumented students may be long-time residents of the state and may have had no control over the conditions in which they were brought into the country. These laws threaten the already existing low

Arizona House Bill 2281, signed into law on May 11, 2010, is legislation intended to target racialized citizens and legal residents.<sup>13</sup> The bill, created to specifically target the Mexican-American/Raza Studies program in the Tucson Unified School District (MAS-

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postsecondary achievement rates of Latinas/os. See RICHARD FRY, PEW HISPANIC CENTER, *LATINOS IN HIGHER EDUCATION: MANY ENROLL, TOO FEW GRADUATE* (2002), available at <http://www.chavezcenter.org/pdf/education/latinos-in-higher-education.pdf>. In 2002, the PEW Hispanic Center found Latinos are “the most poorly educated major population in the United States” compared to Whites and Blacks. *Id.* at 1. “White males average 13.3 years of schooling and black males average 12.2. Latino males lag behind with 10.6 years of schooling.” *Id.* at 1. Perhaps it is unsurprising then, that “[t]here is a substantial [college] enrollment gap between Latinos and all other groups among 18- to 24-year-olds . . . .” *Id.* at v. Pursuing postsecondary education includes incurring expenses beyond the cost of tuition (e.g. the cost of various fees, books, supplies, transportation, lodging, etc.). Given that undocumented students do not qualify for public funding such as Pell grants and other forms of financial aid, qualifying for in-state tuition not only makes access to postsecondary education more viable, it makes it sustainable. That is, making college attendance more affordable may serve to improve college retention and graduation rates. Ultimately, the denial of in-state tuition rates as public benefits limits the educational achievement of Latinos/as as compared to Whites and Blacks. Finally, in seeking to control the content of instruction through H.B. 2281, the state relies on language rooted in notions of equality. However, the state fails to recognize the vast educational inequalities experienced by the groups it purports to protect. See Pat Kossan, *Report: Arizona Schools Score Poorly on Reading Tests*, THE ARIZ. REPUB. (Mar. 25, 2010), <http://www.azcentral.com/news/articles/2010/03/25/20100325arizona-schools-poor-reading-scores.html>. For example, according to the Department of Education’s National Assessment of Educational Progress (NAEP), only about 25% of Arizona students in the fourth and eighth grade achieved proficiency in critical subjects such as reading. *Id.* In 2010, the Arizona Instrument to Measure Standards (AIMS) exam found racial and class disparities in educational achievement across the state. “Driving much of Arizona’s lagging performance is a huge gap between scores of poor and minority students and those of their wealthier White peers. Arizona’s Latino eighth-graders, for example, scored 24 points lower than their White peers on the 2009 reading test, nearly equal to the 2009 national gap.” *Id.* Our point here is not to make any instance of regulatory measures seem more threatening than others. In fact, all are deeply problematic and the relationship between the physical and rhetorical aspects of how power is asserted in this type of legislation is deeply concerning.

13. Ariz. Rev. Stat. §§ 15-111, 15-112 (2011); H.B. 2281, 49th Leg., 2d Reg. Sess. (Ariz. 2010); Nicole Santa Cruz, *Arizona Bill Targeting Ethnic Studies Signed Into Law*, L.A. TIMES (May 12, 2010), <http://articles.latimes.com/2010/may/12/nation/la-na-ethnic-studies-20100512>.

TUSD),<sup>14</sup> seeks to decrease important government funding if a school is non-compliant with Arizona's vision and pedagogy for what makes an "ideal" citizen.<sup>15</sup> This ideal vision and pedagogy reflect particular values and beliefs about what knowledge is valid and "true." The bill's proposal and subsequent passage incited resistance and outrage among Indigenous Latina/o and American Indian<sup>16</sup> communities who

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14. Mary Jo Pitzl, *Arizona Bill Targets Ban on Ethnic Studies*, THE ARIZ. REPUB. (May 1, 2010), <http://www.azcentral.com/news/articles/2010/05/01/20100501arizona-bill-bans-ethnic-studies.html>. Tom Horne, the Bill's sponsor, has explicitly stated, "[the bill] would ban La Raza studies because it's a course that's aimed primarily at members of one race, and [the state Board of Education has] testimony that [the program] has promoted resentment toward one race." Beyond terminating the Raza studies program, Horne's hope was that the bill would go beyond Tucson's Mexican-American offerings and end other ethnic-centric courses. *Id.*

15. Ariz. Rev. Stat. § 15-112(B) (2011). H.B. 2281 applies to all public and charter schools in the K-12 system and bans classes that: "promote the overthrow of the United States government;" "promote resentment toward a race or class of people;" "are designed primarily for pupils of a particular ethnic group;" and/or "advocate ethnic solidarity instead of the treatment of pupils as individuals." H.B. 2281, 49th Leg., 2d Reg. Sess. (Ariz. 2010). The law is specific and explains that it shall not be construed to restrict or prohibit: (1) courses or classes for Native American pupils that are required to comply with federal law; (2) the grouping of pupils according to academic performance, including capability in the English language, that may result in a disparate impact by ethnicity; (3) courses or classes that include the history of any ethnic group and that are open to all students; or (4) courses or classes that include the discussion of controversial aspects of history. *Id.* This section of the bill concludes by stating that, "[n]othing in this section shall be construed to restrict or prohibit the instruction of the Holocaust, any other instance of genocide, or the historical oppression of a particular group of people based on ethnicity, race, or class." *Id.* Interestingly, teaching about genocidal acts toward residents of what was once Mexico and their brethren may be targeted by the law and, as such, appears to be speaking to conflicting points. While the law makes clear it does *not* outlaw Ethnic Studies programs/courses—it only places restrictions on what can be taught—it offers hefty financial incentives for following state-imposed constraints on curriculum. It establishes the following precedent: if schools are found to be non-compliant, "[t]he state board of education . . . may direct the department of education to withhold up to ten percent of the monthly apportionment of state aid that would otherwise be due the school district." Ariz. Rev. Stat. § 15-112(B). The full funding would not be restored until the State Board of Education or the Superintendent of Public Instruction determines the school has achieved compliance. *Id.*

16. For example, after the State passed S.B. 1070 and H.B. 2281, several groups—including American Indian community leaders and activists—circulated

knew legislators created the law to exert pressure to effectively dismantle TUSD's successful MAS program.

The law remains controversial and contested. While Latina/o community activists and allies, program educators, MAS students and graduates remain adamantly against the law, others argue the law is necessary to: (1) protect children from knowledge that is socially divisive; and (2) preserve peace within the state and nation. On April 28, 2011, just two weeks before the bill was signed into law, conservative radio talk-show personality Glenn Beck best captured the sentiments of the proponents of the bill when he spoke about the bill on his radio show. In response to a series of protests involving students from the MAS-TUSD who opposed the elimination of courses included in the MAS program, Beck explained that it was imperative to address the needs of "our" children and bring them back into "our values."<sup>17</sup> Beck's appeal to the public was simple: "we have got to have love and courage in our hearts and we've got to teach the truth to our children and make it a priority."<sup>18</sup> Ironically, Beck's call for teaching "the truth" and "making it a priority" is precisely what the MAS program is intended to do. What becomes apparent from Beck's appeal is the dispute among constituents in regards to which version of "the truth" students are taught.

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calls to institute a boycott on the state of Arizona. See *Indigenous and American Indian Studies Scholars Speak Out Against SB1070, Call for an Economic Boycott of Arizona*, INDIGENOUS ACTION MEDIA, (May 19, 2010), <http://www.indigenouaction.org/indigenous-and-american-indian-studies-scholars-speak-out-against-sb1070-call-for-an-economic-boycott-of-arizona/>.

17. *Beck Ffarmongers About Tucson Ethnic Studies Program*, MEDIA MATTERS FOR AMERICA (Apr. 29, 2011), <http://mediamatters.org/research/201104290029>. It is outside of the scope of this essay, but, at one point in the conversation, Beck's executive producer, Stu Burguiere, says the students "look like wild animals" in their protests. *Id.* at 2:30-2:55. This reference to racialized students as animals is problematic on a number of fronts, including its racist undertones. Importantly, it also points to the notion that some people engage in "civilized behaviors" while others act as "animals." The larger point here is that Beck, like Horne, appears to be speaking as if there are shared beliefs of what constitutes "we" or "our" values. At the heart of Beck's statement is both an epistemic and ontological clash as related to what the MAS is working to achieve and Horne's mythical "we" of the State Board of Education.

18. *Id.* at 5:35-5:50.



Similar to the proponents of the bill, opponents of the bill, including the leaders of the MAS-TUSD program, also seek to educate students about “the truth,” as well as to empower and strengthen students and their communities.<sup>19</sup> This is accomplished by teaching lessons in history that are often omitted from mainstream history and civics courses.<sup>20</sup> The MAS program focuses on historic and contemporary contributions of Mexican Americans and places a heavy emphasis on leadership and community development.<sup>21</sup> Beck’s calling for “us” to tell “the truth” to our children and the state’s subsequent passage of the law is both telling and ironic. Indeed, it is telling of the particular type of truth that creates anxieties for policy

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19. The MAS-TUSD department is dedicated to the empowerment and strengthening of its students. The program focuses on historic and contemporary Mexican-American contributions and places a heavy emphasis on leadership and community development. Its stated goals include advocating for and providing: culturally relevant curriculum for grades K-12; curriculum that is centered within the pursuit of social justice; curriculum that is centered within the Mexican American/Chicano cultural and historical experience; the invoking of a critical consciousness within each and every student; teacher education that is centered within Critical Pedagogy, Latino Critical Race Pedagogy, and Authentic Caring; social and educational transformation, and; the demonstration of respect, understanding, appreciation, inclusion, and love at every level of service. See generally TUCSON UNIFIED SCHOOL DISTRICT-MEXICAN AMERICAN STUDIES DEPARTMENT, *Mexican American Studies*, <http://www.tusd.k12.az.us/contents/depart/mexicanam/index.asp> (last visited Dec. 8, 2011) [hereinafter TUSD-MASD: *Mexican American Studies*].

20. See generally Roberto Cintli Rodriguez, “*Greco-Roman Knowledge Only*” in *Arizona Schools: Indigenous Wisdom Outlawed Once Again*, 24 RETHINKING SCHOOLS 49 (2010). Dr. Rodriguez, Assistant Professor of Mexican American Studies at the University of Arizona, explains that H.B. 2281, which seeks to monitor and control the books and curriculum used in the MAS program, is based on the view “that the only facts and ideas that should be taught in Arizona schools are those that originated in ‘Western or Greco-Roman’ civilization.” *Id.* at 50. Given its biased viewpoint, the bill is strictly opposed to the types of lessons taught in MAS courses—Maiz or Mesoamerican knowledge (particularly the Indigenous knowledge/wisdom of In Lak Ech, Panche Be, and Hunab Ku). *Id.* at 49-51. At its core, the law targets and effectively seeks to silence the history, knowledges, and practices of the contemporary and historic Indigenous communities of the area. *Id.* While the law has the potential to dismantle Ethnic Studies K-12 throughout Arizona, the law’s true motive is to dismantle TUSD’s MAS program. *Id.* at 50.

21. TUSD-MASD: *Mexican American Studies*, *supra* note 19.

makers and politicians; and, ironically, it leads to calls to silence certain truths by framing them as both dangerous and problematic.<sup>22</sup>

Sean Arce, Director of the Mexican-American Studies Department, defends the program and asserts that, “in no way [does the MAS program] teach the resentment of any particular group of people.”<sup>23</sup> Rather, the program is based on Indigenous teachings that promote love, truth, and respect for all living things.<sup>24</sup> Additionally, Arce emphasizes that, “courses are open to all students, and they draw a mixed crowd.”<sup>25</sup> From its stated mission, it appears MAS is not seeking the overthrow of the U.S. government. It is, however, seeking to dismantle the status quo of U.S. education for certain minoritized peoples, which routinely places them well behind their White and

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22. Passing legislation intended to limit academic services and access to certain knowledges historically associated with fostering a sense of belonging and collective identity among Indigenous peoples within the United States is not a new tactic. *See generally* K. TSINANINA LOMAWAIMA & TERESA L. MCCARTY, “TO REMAIN AN INDIAN:” LESSONS IN DEMOCRACY FROM A CENTURY OF NATIVE AMERICAN EDUCATION (2006) [hereinafter TO REMAIN AN INDIAN]. Lomawaima and McCarty argue that in the case of American Indians, schools have historically been used as ‘civilizing’ and ‘homogenizing’ institutions. *Id.* at 4. Schooling for American Indians was initially based on the Carlisle model of “Save the Man, Kill the Indian,” in which Indigenous students were forcibly removed from their families, forced to change their style of dress and cut their hair, punished for speaking their Native language, and/or punished for engaging in their communities practices and spiritual ceremonies. *See generally* David Wallace Adams, *Fundamental Considerations: The Deep Meaning of Native American Schooling, 1880-1900*, 58 HARV. EDUC. L. REV. 1 (1988). Schools serve as homogenizing institutions that have been focused on creating a model (American) citizen and enforcing a staunch commitment to individualism at the expense of knowledge of Native languages and identity. This history of creating ideal citizens and effecting social change has, at times, extended beyond schooling of Indigenous (Native) children—it has also held implications for immigrants. *See generally* TO REMAIN AN INDIAN, *supra*. Moreover, these efforts to shape the mission of schooling into a project of advancing and creating the model American ‘citizen’ has not always entailed a unified vision “of a single ideal ‘American,’ but rather a vision of multiple roles and varying opportunities depending on a complex intersection of citizenship status, ‘race,’ color, gender, national origin, and religion.” *Id.* at 5.

23. Pitzl, *supra* note 14.

24. *See* TUSD-MASD: *Mexican American Studies*, *supra* note 19.

25. Pitzl, *supra* note 14.

Asian counterparts.<sup>26</sup> This lag is often referenced as the “achievement gap.”<sup>27</sup>

It appears that MAS seeks to lessen or remove the achievement gaps through educating minoritized students in ways that foster and encourage critical thinking skills and honest dialogue regarding the history of the U.S. The program also seeks to instill pride among students for minoritized people’s accomplishments. We believe there are similarities between the educational struggles of Indigenous

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26. Letter from Judy Burns, Governing Board President, to Hon. Tom Horne, State Superintendent of Public Instruction and Arizona Attorney General-Elect, and Hon. John Huppenthal, State Superintendent of Public Instruction-Elect (Dec. 30, 2010) [hereinafter Letter from Judy Burns]. In its official letter to the Honorable Tom Horne (State Superintendent of Public Instruction and Arizona Attorney General-Elect) and the Honorable John Huppenthal (State Superintendent of Public Instruction-Elect), the TUSD Governing Board wrote:

[o]n May 25, 2010, TUSD’s Governing Board adopted a Resolution declaring, in part, TUSD: “recognizes its Ethnic Studies courses in no way, shape or form promote the overthrow of the United States government;” “recognizes that the inclusion of historical oppression . . . within the curriculum does not inherently promote the resentment of a particular group of people nor does it promote anti-American sentiments;” [and] “recognizes its Ethnic Studies courses are not designed for any one ethnic group, but rather courses are designed for all students.

The Board further asserted that the students that partake in its Ethnic Studies courses “are more likely to pass the Arizona’s Instrument to Measure Standards exam than those students who do not partake in said courses; have a 97 percent graduation rate, and have a college matriculation rate 193 percent greater than the national average.” *Id.* Additionally, “on September 28, 2010, TUSD’s Governing Board adopted a second resolution re-affirming the May 25 Resolution and declaring further that the Board: ‘supports programs’ that result in ‘increased student achievement; increased graduation rates; and increased enrollment into institutions of higher learning.’” *Id.*

27. See *Closing the Gaps*, EDUC. TRUST, <http://www.edtrust.org/issues/pre-k-12/closing-the-gaps> (last visited Mar. 22, 2012). Additionally, while outside the scope of this essay, we believe that Gloria Ladson-Billings’s assertion—that there is an education debt (i.e., the U.S. owes a debt to underrepresented peoples for their mis-education as a way to demonstrate that there is a structural component in place, rather than a series of individual failures)—is particularly relevant here. See generally Gloria Ladson-Billings, *From the Achievement Gap to the Education Debt: Understanding Achievement in U.S. Schools*, 35 EDUC. RESEARCHER 3 (2008). We agree with Ladson-Billings on this point. The gap is not about individual failures, but about structural failures. See *id.*

American Indian communities and Indigenous Latinos/as<sup>28</sup> to engage in “self-determination through self-education.”<sup>29</sup>

Passing legislation such as H.B. 2281 serves to protect and promote White supremacist ideologies and practices, and it illustrates how legislation and schooling processes have been used to wage what Lomawaima has referred to as a “battle for power.”<sup>30</sup> Although this battle has been waging for quite some time, Arizona’s policymakers and legislators, through this piece of legislation, presented a new chapter to the struggle.

The goal of the type of policing afforded by H.B. 2281 is twofold: it seeks to impede community solidarity by denying awareness of the history and experiences of the collective struggle(s) of Indigenous peoples, and it also serves to impede the academic and economic success of these historically marginalized and minoritized communities. Before we go on, let us pause and reflect on the events and reasoning that preceded the law’s passage.

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28. The distinction between Indigenous Latinas/os, and Latinos/as more generally, is purposeful and important here. While it is popularly believed that Senate Bill 1070 has the power to effect not just Latinos/as of Mexican heritage, but individuals of Caribbean, Central American, and South American heritage, the same is not true of House Bill 2281. In fact, Horne created House Bill 2281 to specifically target the Indigenous Latinas/os of Arizona—that is, individuals of Mexican and Mexican-American descent. See Rodriguez, *supra* note 20.

29. See generally Bryan McKinley Jones Brayboy & Emma Maughan, *Indigenous Knowledges and the Story of the Bean*, 79 HARV. EDUC. REV. 1, 6 (2009). Brayboy and Maughan’s argument, largely rooted in teacher and doctoral preparation programs Brayboy has created at a number of institutions wherein individual members in tribal communities earn credentials and develop skills that allow them to serve their communities, proposes that self-determination of Indigenous communities can be aided by self-education. See Bryan McKinley Jones Brayboy, Amy Fann, Angelina E. Castagno & Jessica A. Solyom, *Postsecondary Education for American Indian and Alaska Natives: Higher Education for Nation Building and Self-Determination*, 37 ASHE HIGHER EDUC. REP., no. 5, 2012, available at <http://onlinelibrary.wiley.com/doi/10.1002/aehe.3705/pdf>, for a more elaborate version of this model.

30. K. Tsianina Lomawaima, *Tribal Sovereigns: Reframing Research in American Indian Education*, 70 HARV. EDUC. R. 1, 2 (2000).

## STORIES FROM THE RIGHT: SETTING THE TERMS OF DEBATE

On June 11, 2007, Tom Horne, then-superintendent of Public Instruction in the State Department of Education, circulated *An Open Letter to the Citizens of Tucson* which urged district constituents to call for the termination of TUSD Ethnic Studies programs based on the following reasons: (1) the philosophy of the program is racist and segregationist;<sup>31</sup> (2) the program is encouraging students to become rude and engage in acts of resistance and/or protest in public settings;<sup>32</sup> (3) textbooks utilized by faculty in the program are perceived to foster a sense of racial resentment;<sup>33</sup> (4) the school's

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31. See Letter from Tom Horne, Superintendent of Public Institution, to the Citizens of Tucson (June 11, 2007) [hereinafter Letter from Tom Horne (June 11, 2007)]. Horne specifically states, "I believe people are individuals, not exemplars of racial groups. . . . It is fundamentally wrong to divide students up according to their racial group, and teach them separately." *Id.*

32. See *id.* Here, Horne uses the conduct of students he believes to be members of the La Raza courses during a speech delivered by his Deputy, Margaret Garcia Dugan (R), as evidence of the "rude" and inappropriate behavior the MAS program presumably fosters. During Ms. Dugan's speech, a small group of students from the Tucson Magnet School walked out of the assembly. Students staged the walkout in efforts to oppose a policy that sought to disregard the previous open-forum nature of school assemblies. Instead, the school chose to implement a new policy for Ms. Dugan's talk that would censor the students' voices and concerns. Students were expected to submit their questions to the speaker prior to the speech and the speaker's assistants were expected to evaluate and forward the inquiries they felt were most appropriate to the speaker. The criteria used to determine the appropriateness of inquiries was never disclosed to the students. Dr. Roberto Cintli Rodriguez, Panelist Speaker at Arizona State University's Panel Discussion and Fundraising Event: Save Ethnic Studies (Mar. 3, 2012); *AZ Daily Star Writes a Favorable Article in Support of Ethnic Studies—Almost*, TUCSONCITIZEN.COM: THREE SONORANS (Dec. 12, 2010), <http://tucsoncitizen.com/three-sonorans/tag/margaret-garcia-dugan/>; Mari Herreras, *Ethnic Studies Myths: It's Time to Separate Fact From Fiction Regarding TUSD's Mexican-American Studies Classes*, TUCSON WEEKLY (Nov. 17, 2011), <http://www.tucsonweekly.com/tucson/ethnic-studies-myths/Content?oid=3180662>.

33. See Letter from Tom Horne (June 11, 2007), *supra* note 31. In this section, Horne argues that the program is promoting ethnic chauvinism. He uses the program's name to demonstrate that the program is racist and separatist and explains, "[t]he very name 'Raza' is translated as 'the race,'" and that the program's basic text, "the pedagogy of oppression" flies in the face of the American Dream and the "[America as] the land of opportunity" philosophy. *Id.* Horne further argues that: (1) the books and materials used in the classes are teaching students that

curriculum is “teaching the wrong things about literature,” including urging students to think about how the race and gender of an author influences or colors the content and perspective of his/her writings;<sup>34</sup> (5) a series of reports, based mainly on interviews with one former TUSD employee, indicate the program is teaching students: (a) that the U.S. is a fundamentally racist country, and (b) to be anti-Western culture;<sup>35</sup> and (6) TUSD’s engagement in intimidation practices of employees, wherein one interviewee claimed he was threatened with defamation for questioning the nature of the curriculum of the program.<sup>36</sup> Horne then shifts from an argument grounded in an appeal to the reader’s moral and patriotic nature, to an economic argument of savings. He urges constituents to vote in favor of terminating the Ethnic Studies program, as such an action would “save \$2 million a year of your money.”<sup>37</sup>

Three years later, on August 3, 2010, Tom Horne, sent a letter to John Carroll, interim superintendent of TUSD, warning TUSD that the Department of Education perceived it to be in violation of H.B. 2281, which would go into effect on December 31, 2010, because all TUSD courses violate the principle that courses should not be designed specifically for pupils of a particular ethnic group. Horne explained that his office had received numerous complaints to this end and emphasized he had received letters from current and former teachers arguing that the MAS/Raza Studies program, in particular, (1) incited anger and resentment toward the U.S.; (2) intimidated teachers who were opposed to the program’s curriculum; and (3) hired a “group of radical socialist activists [to] promote an anti-capitalist and anti-

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they are oppressed; and (2) the “books paid for by American taxpayers [are being] used in American public schools [to] gloat over the difficulty [the U.S. is] having in controlling the border.” *Id.*

34. *See id.* In this section, Horne responds to a letter he received from a student who expressed that ethnic studies programs are important and necessary because, unlike the English classes, they incorporate the writing of diverse authors. In response to the student’s comment that “[a]ll that the English classes teach is mainly about some dead white people,” Horne explains, “I believe schools should teach the students to judge literature by its content and not by the race or gender of the author.” *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

Western Civilization ideology.” He went on to explain that this agenda was having dire effects on students, as “impressionable youth in TUSD have literally been reprogrammed<sup>38</sup> to believe that there is a concerted effort on the part of a White power structure to suppress them and relegate them to a second-class existence.” Horne further expressed concern the program is teaching students about institutional racism and that America is a ‘meritocracy’ in which Latinas/os have no opportunities.

Horne claimed that the name of the program, itself, is evidence that it is in direct violation of H.B. 2281. Quoting Augustine Romero, who is in charge of the Ethnic Studies program for the district, Horne explained the reason why the courses use the word “raza” as opposed to just “Mexican-American Studies:”

... so that our students could recognize and connect to their indigenous side, just like the word ‘dine’ for the Navajo translates to ‘the people,’ like the word ‘O’odham’ for the Tohono O’odham translates to ‘the people.’ The word ‘Yoeme’ for the Yoeme people translates to ‘the people.’ It was an attempt to connect to our indigenous sides, as well as our Mexican side.<sup>39</sup>

Horne believed Romero’s statement was a direct admission that the MAS program willfully violates H.B. 2281 and was “intended to do so by those who designed and implemented it.”<sup>40</sup> Horne concluded with a reminder that, if held in violation of the new law, 10% of the school’s budget would be withheld, thus presenting the District with a Catch-22—have the program or risk losing funding.

In the letter, Horne requested to videotape MAS/Raza Studies classes explaining that the videotape would become “helpful evidence to the administrative law judge.”<sup>41</sup> He warned that if the district did not consent to allowing the Board to videotape its classes, “we will offer that refusal as evidence to the administrative law judge that the

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38. We would be remiss if we did not point out that this statement begs the question: reprogrammed from what? The statement suggests an implicit agreement that programming is occurring.

39. Letter from Tom Horne, Superintendent of Public Instruction, to John Carroll, Tucson Unified School District Interim Superintendent (Aug. 3, 2010).

40. *Id.*

41. *Id.*

school district has deliberately hidden facts that would show that the district is in non-compliance with H.B. 2281.”<sup>42</sup>

Nearly five months later, on December 30, 2010 (two days before the law was to go into effect), the TUSD Governing Board sent an official letter to Tom Horne (State Superintendent of Public Instruction and Arizona Attorney General-Elect) and the Honorable John Huppenthal (State Superintendent of Public Instruction-Elect) to express that, on May 25, 2010, the Governing Board adopted a resolution declaring Ethnic Studies courses in no way promote the overthrow of the United States government. The Board further explained that Ethnic Studies courses, despite including historical oppression within the curriculum, neither inherently promote the resentment of a particular group of people nor promote anti-American sentiments. The Board concluded by explaining that, on September 28, 2010, it adopted a second resolution reaffirming the Board’s belief that their department is in full compliance with H.B. 2281 and that, “TUSD has attempted to sit down with representatives from the Arizona Department of Education (facilitated by the U.S. Department of Justice) to clarify certain provisions of the law, and to clarify the processes for identifying and curing alleged violations.”<sup>43</sup>

From this brief timeline, what becomes evident is that the Arizona Department of Education’s attack on the TUSD Ethnic Studies, specifically its Mexican-American/Raza Studies program, is rooted in several key factors. Based on the tenets of the law, when it comes to *Ethnic Studies courses promoting the overthrow of the U.S. government*, Superintendent Horne believes evidence of this critique lies in the program curriculum and in students’ acts of resistance during school events; when it comes to *promoting resentment toward a race or class of people*, Horne also believes evidence lies in the philosophy of the program and in the program curriculum. When it comes to whether courses are *designed primarily for pupils of a particular ethnic group*, Horne appears to believe the textbooks (written primarily by scholars of color), course materials, curriculum (based on a culturally relevant pedagogy which, by its very nature, is inclusive of the voices, stories, and histories of people of color), and

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42. *Id.*

43. Letter from Judy Burns, *supra* note 26.



high numbers of Latino/a student enrollment<sup>44</sup> serve as evidence that the courses are biased and encourage segregationist behaviors.<sup>45</sup> Finally, when it comes to *advocating ethnic solidarity instead of treating pupils as individuals*, Horne uses the very name of the program—Raza Studies—as evidence of this. Although Horne is careful to outline all the reasons for why the program is in violation of the law, he fails to address the larger implications such an allegation may have for pupils and educators at these schools.

In the hands of skilled legislators and educational leaders, House Bill 2281, with its provision that allows much needed funding to be withheld from schools, becomes a tool wielded to silence, curtail, and control the actions and education offered in MAS and Ethnic Studies courses. The resulting law effectively places pressure to either: (1) completely overhaul the curriculum (and in so doing, eradicate some of the important knowledge(s) and voices of the people who have historically inhabited the area); and/or (2) terminate the program entirely. This type of suppression, erosion, and control of Indigenous knowledge(s) is historic and endemic to the history of imperialism and colonization in the United States and in the Southwest.<sup>46</sup> Robert A.

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44. According to an independent audit of the program, commissioned by the Arizona Department of Education, conducted by Cambium Learning Group and published on May 2, 2011,

As of April 20, 2011 there were 52,987 students enrolled in the Tucson Unified School District. The ethnic breakdown of the entire population consisted of: 60% Hispanic, 24% White/Anglo, 5.6% African American, 3.9% Native American, 2.6% Asian American, and 2.4% Multi-Racial.

*Curriculum Audit of the Mexican American Studies Department, Tucson Unified School District, Tucson, Arizona*, CAMBIUM LEARNING, INC. & NAT'L ACAD. EDUC. P'SHIP 4-5 (May 2, 2011), [http://www.tucsonweekly.com/images/blogimages/2011/06/16/1308282079-az\\_masd\\_audit\\_final\\_1\\_.pdf](http://www.tucsonweekly.com/images/blogimages/2011/06/16/1308282079-az_masd_audit_final_1_.pdf). Additionally,

The population of students enrolled in Mexican American Studies Department Programs within Tucson Unified School District consists of 1,343 Middle and High School students. The ethnic breakdown of the population involves over 90% Hispanic, followed by 5% White/Anglo, 2% Native American, 1.5% African American, and just under 0.50% for both Asian American and Multi-Racial ethnicities.

*Id.* at 6. Thus it is possible the reason for such high Latina/o student enrollment is due to the high percentage of Latino/a students enrolled in TUSD to begin with.

45. And yet, there is not the same kind of critique of the State's Advanced Placement (AP) Physics courses, which are overwhelmingly comprised of students who are White, male, and of middle and upper socioeconomic status.

46. See generally Robert A. Williams, Jr., *Taking Rights Aggressively: The*

Williams (Lumbee), Professor of Law and American Indian Studies and Director of the Indigenous Peoples Law and Policy Program at the University of Arizona's James E. Rogers College of Law, explains that in addition to the area of education the general nature of the relationship between Indigenous and European (colonizing) communities has been historically characterized by two discourses: the discourse of superiority and the discourse of paternalism.<sup>47</sup> These discourses of superiority and paternalism are rooted in the notion of language as the legal and political instrument of empire that began in 1492 with Spanish linguist and scholar Elio Antonio de Nebrija.<sup>48</sup>

Nebrija is believed to have approached Queen Isabella fifteen days after Columbus set sail to find a new route to Asia, with a copy of his *Gramatica Castellana*,<sup>49</sup> and argued that, “language has always been the consort of empire, and forever shall remain its mate. Together they come into being, together they grow and flower.”<sup>50</sup> Thus Nebrija presented a vision by which to control not merely the bodies, but the minds and knowledge bases, of those who would be conquered. Nebrija's vision was to use language and education as a colonial tool to promote an imperialist agenda. He believed artificial linguistic constructions could be imposed on the social, spiritual, legal, and political conditions of Indigenous peoples, first in the Americas and then across the globe, through the process of *semantic imperialism*.<sup>51</sup>

In other words, by controlling the education and language of Indigenous peoples, the colonizers believed they would foster a sense of dependency by creating a new need for the colonized—“*the need for the laws the victor owes to the vanquished*,” and the need for the

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*Perils and Promise of Critical Legal Theory for Peoples of Color*, 5 LAW & INEQ. 103 (1988).

47. *Id.* at 109.

48. Glenn T. Morris, *Vine Deloria, Jr., and the Development of a Decolonizing Critique of Indigenous Peoples and International Relations*, in NATIVE VOICES: AMERICAN INDIAN IDENTITY AND RESISTANCE 97, 103 (Richard A. Grounds, George E. Tinker & David E. Wilkins eds., 2003).

49. *Id.* (“The first grammar and semantic road map for Christian Europeans intent on colonization.”).

50. *Id.*

51. Morris has referred to this process as semantic imperialism. *Id.* at 104.

language of the colonizer.<sup>52</sup> In short, it was an ingenious method of control. Nebrija was ahead of his time, and his legacy lives on in Arizona. Horne's concern with eradicating the name of the MAS/Raza studies program, for example, is the modern-day manifestation of a desire for semantic imperialism.

The process of semantic and rhetorical imperialism<sup>53</sup> has been made manifest in the replacement and/or extermination of Indigenous names, terms, and ideas related to bodies, places, spiritual and physical experiences, with those of the colonist. And, "[t]he process of devaluing, dispossessing, dehumanizing, and redefining Indigenous peoples by the colonial-settler powers has been, and continues to be, relentless and pervasive—in religion, history, law, politics, economics, science, and popular culture."<sup>54</sup> Unsurprisingly, these processes have had profound effects on Indigenous communities, many of which have come to internalize the colonizer's language and adopt not only the superficial forms of words, but also the overt and implied meanings and corresponding attitudes attached to them. As Morris emphasizes, this emphasis on control of knowledge and language can lead to 'colonization of the mind,'<sup>55</sup> the consequence of which is a "'mental state that blocks recognition of the existence or viability of traditional [Indigenous] perspectives [preventing] people from seeing beyond the conditions created by white society to serve its own interests."<sup>56</sup>

Morris argues colonization of the mind occurs through the imposition of linguistic norms onto Indigenous communities. Relatedly, Scott Richard Lyons (Ojibwe/Dakota), Associate Professor in the Department of English, Language, and Literature at the University of Michigan, in response to what he calls "rhetorical imperialism" or "the ability of dominant powers to assert control of others by setting the terms of the debate," outlines a vision for "rhetorical sovereignty."<sup>57</sup> Lyons writes, "[t]he [Indigenous] people

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52. *Id.* (emphasis in original).

53. See Scott Richard Lyons, *Rhetorical Sovereignty: What do American Indians Want from Writing?*, 51 *C. COMPOSITION & COMM.* 447 (2000), for a more detailed argument on rhetorical imperialism.

54. Morris, *supra* note 48, at 105.

55. *Id.* at 125.

56. *Id.*

57. Lyons, *supra* note 53, at 452.

want sovereignty, and in the context of the colonized scene of writing, rhetorical sovereignty. *As the inherent right and ability of peoples to determine their own communicative needs and desires in the pursuit of self-determination*, rhetorical sovereignty requires above all the presence of an [Indigenous] voice, speaking or writing in an ongoing context of colonization and setting at least some of the terms of debate.”<sup>58</sup> In Arizona, “setting the terms of debate” is an integral part of the story regarding H.B. 2281.

Brayboy adds that tactics such as linguistic imperialism and other forms of colonialist practices aimed to control marginalized people’s minds and knowledge bases, contribute to a type of genesis amnesia that causes a deep historical trauma within Indigenous communities.<sup>59</sup> According to Brayboy, who builds his argument from an earlier argument presented by Bourdieu and Passeron,<sup>60</sup> the concept of genesis amnesia argues that knowledge is promoted and protected by those in power such that those who lack power (in this case, Indigenous and minoritized/racialized peoples) are socialized to believe in the victor’s version of history (which omits the language, experiences and struggles of those who have been oppressed).

Simply stated, genesis amnesia refers to the process of how people come to literally “forget the beginning.”<sup>61</sup> They forget how social processes, including knowledge disseminated in schools, originated and how they have been perpetuated. Because people do not question the veracity, completeness, or history of social processes and knowledge bases, the existing social orders and practices become normalized. The basic struggle over which particular sets of practices and concomitant beliefs, ideologies, and version(s) of history become adopted arises precisely because genesis amnesia is rooted in power.

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58. *Id.* at 462 (emphasis added).

59. Bryan McKinley Jones Brayboy presented a more substantial version of this idea at the American Educational Research Association 2011 meetings. For a more in-depth discussion on genesis amnesia, see Brian McKinley Jones Brayboy, *Genesis Amnesia, Indigenous Knowledge Systems, and Indigenous Peoples*, presented before the Annual Meeting of the Am. Educ. Research Ass’n (Presidential Session) (Apr. 11, 2011) [hereinafter *Genesis Amnesia Presentation*].

60. PIERRE BOURDIEU & JEAN-CLAUDE PASSERON, *REPRODUCTION IN EDUCATION, SOCIETY AND CULTURE* (Richard Nice trans., 2d ed. 1990).

61. *Genesis Amnesia Presentation*, *supra* note 59.

Genesis amnesia allows those in power to control the knowledge publicly available of those in subordinate positions. One way this is achieved is through the generation of laws and policies that regulate the type of education, theories, and information students are exposed to, as well as the particular versions of history that are taught and promulgated. Over time, pedagogy and curriculum become regulated and normalized to reflect the ideology of those in power, and to protect the victor's interests, so people become convinced that "this is the way it's always been" and cease to wonder why curriculum appears the way it does. This is what has happened through the process of imperialism and colonization.<sup>62</sup>

This type of amnesia devastates knowledge of Indigenous beliefs, ideologies, and practices, and slowly works to eradicate entirely the presence of this knowledge. "[G]enesis amnesia . . . finds expression in the naive illusion that things have always been as they are,' as well as in the substantialist uses made of the notion of the cultural unconscious, [and] can [thereby] lead to the 'naturalizing' of signifying relations which are the product of history."<sup>63</sup> Consider the arguments radio personality Glenn Beck put forth, as well as Tom Horne's commentary that, in Arizona, the teaching of the historical elements that devastated Indigenous peoples is "treasonous." It strikes us that, in "telling the truth" of the past brutalities perpetrated against the original inhabitants of the land and highlighting the beauties of these Indigenous people's knowledge systems, somehow these truths can be reframed as "treasonous." Reframing it as such highlights the ways public officials, who claim to be serving the needs of all the children of Arizona, enact/effectuate semantic and rhetorical imperialism.

Many individuals both within and outside of schools believe in the notion that knowledge is objective, even though it is not.<sup>64</sup> In fact, the knowledge presented and promoted to students in the school setting has purposefully been shaped and carved to reflect a particular cultural, historical, and social reality.<sup>65</sup> Bourdieu and Passeron

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62. Bryan McKinley Jones Brayboy, *Unpacking Remembrance* (in progress) (unpublished manuscript) (on file with author).

63. BOURDIEU & PASSERON, *supra* note 60, at 9.

64. *See* Genesis Amnesia Presentation, *supra* note 59.

65. There is a whole body of research around the hidden curriculum. *See, e.g.,*

explain that, “every power which manages to impose meanings and to impose them as legitimate by concealing the power relations which are the basis of its force, adds its own specifically symbolic force to those power relations.”<sup>66</sup> Actively taking away other knowledges appears to have been a genocidal move rooted in a desire for power and presents serious implications for promoting the experience of historical trauma for Indigenous peoples.<sup>67</sup>

From this discussion we can see how legislation such as H.B. 2281, which seeks to control and police the curriculum of the Mexican-American/Raza Studies program, presents potential implications as a form of linguistic imperialism. The legislation targets a program that incorporates notions of Indigenous and contemporary issues of Mexican language, identity, history, and ideologies into its curriculum. As noted above, this is concerning, as linguistic imperialism presents implications for colonization of the mind, presentation of genesis amnesia, and the furtherance of historical trauma for Indigenous peoples. Linguistic imperialism also has educational and monetary implications that adversely affect the lives of real people, in real places, with real dreams of what the educational system might provide them in terms of life chances and choices.

Superintendent Horne’s letters and the subsequent passage of H.B. 2281 outline an intent to silence and/or suppress the history, experiences, and collective struggle of Indigenous Latinos/as in Arizona. Horne’s critique of the language used by the program to describe itself highlights a tension between the content and nature of

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THE HIDDEN CURRICULUM AND MORAL EDUCATION (Henry Giroux & David Purpel eds., 1983).

66. BOURDIEU & PASSERON, *supra* note 60, at xv.

67. Genesis Amnesia Presentation, *supra* note 59. Unfortunately, this essay’s narrow scope limits how much detail we can provide on the relationship between genesis amnesia and historical trauma. For a more detailed analysis of this concept, see generally Maria Yellow Horse Brave Heart, *The Historical Trauma Response Among Natives and Its Relationship with Substance Abuse: A Lakota Illustration*, 35 J. PSYCHOACTIVE DRUGS 7 (2003); Maria Yellow Horse Brave Heart, *Wakiksuyapi: Carrying the Historical Trauma of the Lakota*, 21-22 TUL. STUD. SOC. WELFARE 245 (2000); Maria Yellow Horse Brave Heart, *The Return to the Sacred Path: Healing the Historical Trauma and Historical Unresolved Grief Response Among the Lakota Through a Psychoeducational Group Intervention*, 68 SMITH C. STUD. SOC. WORK 287 (1998).

the term *raza*. The term, which the state seized as an opportunity to exercise semantic imperialism, shifts from a tool of empowerment for Indigenous peoples, to a tool used to oppress and silence them. Imperialism becomes manifest as the translation of the term changes from notions of ‘the people’ as inclusive of groups of humanity to notions of ‘race’ as a stratified classificatory system. This strategic appropriation and subsequent mis-translation serves as a tactic to tap into the already established fear of reconquest and separatism achieved through what others have referred to as the “Latino Threat Narrative.”<sup>68</sup>

Presenting student walkouts as evidence of resentment being fostered toward the United States demonstrates the state’s fear of militancy and is, again, reminiscent that the Latino Threat Narrative is ever-present and lurking. Identifying and describing the program on racial grounds (i.e. mis-translating the term *raza* to race)<sup>69</sup> serves to

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68. See generally LEO R. CHAVEZ, *THE LATINO THREAT: CONSTRUCTING IMMIGRANTS, CITIZENS, AND THE NATION* (2008). Chavez argues there is a relationship between the legal and political struggles Latinos/as face, and the perceived contemporary and historic threat they have presented to the United States. Latinos, specifically those of Mexican ancestry, appear to present a threat to national security. This threat has proliferated throughout the media and gained clout with the rising number of crimes reportedly committed by Latinos. The media representation and larger social narrative of Latinos as criminals has served to create what is referred to as the ‘Latino Threat Narrative.’ *Id.* at 22-43. When comparing Latinos, especially Mexicans, to earlier waves of European immigrants, many argue that, “unlike past immigrant groups, Mexicans and other Latinos have not assimilated into mainstream U.S. culture, forming instead their own political and linguistic enclaves—from Los Angeles to Miami—and rejecting the Anglo-Protestant values that built the American dream.” *Id.* at 21. From this, the “Latino threat” has been based on a belief that the “single most immediate and most serious challenge to America’s traditional identity comes from the immense and continuing immigration from Latin America, especially from Mexico, and the fertility rates of those immigrants compared to black and white American natives.” *Id.* at 22. As a result of this narrative, Latinos come to present a triple threat to the United States: invasion, reconquest, and cultural and ethnic separatism. The threat of reconquest is articulated in the following manner, “Mexicans, who, because the Southwest was once part of Mexico, arrived ‘feeling as much like a migrant as an immigrant, not an illegal alien but a *reconquistador*,’ or reconqueror”). *Id.* at 29. These threats present the Latino, especially the Mexican and Mexican-American, as militant and in need of policing and control.

69. We are concerned with the notion that, here, “*raza*” translates to mean “race,” yet the original intent was to reference “the people.” According to the Royal

reify a racial order and places Whites as “universal human [beings].”<sup>70</sup> According to Nirmal Puwar, Senior Lecturer in Sociology and Co-Director of the Methods Lab at Goldsmiths-University of London, social and political representation, leadership, and Whiteness coalesce in such a way that Whites are viewed as the natural choice for leading humanity forward. House Bill 2281 seeks to render race and difference invisible by creating a universal, *individual* American citizen through the process of controlling, terminating, or seeking to destroy a program that recognizes, acknowledges, and validates the collective experiences and struggles of Latinos/as and/or Mexicans as a *people*.

RACISM, GENESIS AMNESIA, AND COLORBLIND IDEOLOGIES:  
WHOSE STORY IS TOLD?

Critical Race Theorists argue racism is endemic to society but Superintendent Horne never mentions race (except to point out the purportedly racist and exclusionary nature of the Raza studies program). Rather, Horne bases his argument for terminating and/or disciplining the program in a colorblind theory that students should be taught to view themselves as individuals—not as belonging to a particular (ethnic/racial) group. This argument attempts to render invisible the knowledge, voices, and experiences of minoritized and marginalized peoples—in the context of MAS, those who have been

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Spanish Academy (El Real Academia Española), which is a part of the Association of Spanish Language Academies (La Asociación de Academias de la Lengua Española), and is also the body of representatives which regulate the Spanish language, “raza” can refer to la “raza humana.” Literally translated, “raza” can mean *all* of humanity or human-kind. See *Raza*, REAL ACADEMIA ESPAÑOLA, DICCIONARIO DE LA LENGUA ESPAÑOLA, [http://buscon.rae.es/draeI/SrvltConsulta?TIPO\\_BUS=3&LEMA=raza](http://buscon.rae.es/draeI/SrvltConsulta?TIPO_BUS=3&LEMA=raza) (last visited Mar. 23, 2012). Interestingly, the term becomes politicized when Horne references race in a way which appeals to constituents in Tucson who are concerned with a race war. This mistranslation is intentional; if not overtly intentional, it still serves to incite antipathy toward a certain faction of the population and demonstrates intent to promote genesis amnesia. Horne appears to have forgotten the origins of the word. And, as the top education leader for the state of Arizona, he has also failed to understand the intent of the founders of the program he is attacking.

70. See NIRMAL PUWAR, *(In)Visibile Universal Bodies*, in *SPACE INVADERS: RACE, GENDER AND BODIES OUT OF PLACE* 55, 56 (2004).



racialized regularly in social, legal, and political settings since the inception of the U.S. Thus, while Horne seeks to have the ability to speak on behalf of all U.S. Americans when he proposes legislation that is believed to lead to a more peaceful, unified nation, his comments also suggest that the curriculum and teachers in the program (i.e. those who belong to groups that are regularly racialized, minoritized and/or marginalized) are unable to speak, teach, or think in a manner that is unfettered and unbiased by their experiences as racialized persons. Puwar argues that visibility, and consequently *invisibility*, works differently for Black and Brown bodies than it does for White ones.

According to Puwar, current U.S. society is focused on normalizing White racial bodies, behaviors, and belief systems such that only those who reflect the normalized expectations (in terms of phenotype, ideology, and social interactive practices) come to represent the universal human form (and, by extension, possess knowledge that would comprise universal human curriculum). What makes the universal human form so important is the freedom to distance, completely dissociate, or just dabble briefly, in issues of race. The universal human form becomes a representation of the most knowledgeable human on the planet—one who is unfettered by his experiences as a racialized person and can thus represent the interest of all of humankind. The universal human form at once transcends all bodily markings while at the same time renders itself the representative voice for those remaining humans who cannot achieve this state of transcendence. This is a view that demonstrates genesis amnesia at work. It has forgotten the beginning and seeks to erase the reality that all viewpoints contain individual and some group biases. Indeed, the status quo of our schools is rooted in the beliefs of its powerbrokers. It is neither objective nor value free. House Bill 2281 represents the subjective nature of knowledge, its production, and its reproduction.

Puwar further explains that those who lack the ability to achieve this state of racial invisibility/transcendence are painted with a different kind of invisibility.<sup>71</sup> While their comparatively dark(er) skin renders them visible inasmuch as it serves as a marker of deviance from the expected norm, their perceived tainted presence

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71. *Id.*

also renders their voices, experiences, preferences, and presence *invisible*. The idea of universal human bodies is premised on the belief that those who do not meet the universal state are influenced so deeply by their racialized identity that they cannot possibly understand the experiences of others without acting in a manner that expresses a bias toward their respective racial group. That is, unlike his/her White counterparts, a racialized, minoritized and/or marginalized person is not believed to possess the same capability of “colorblindness” as those who have transcended race.<sup>72</sup> This line of thinking leads to a sense of ‘normalcy’ for some and ‘abnormality’ for others; this is, of course, rooted in imperialism and racism.

PROTECTING THE STATUS QUO:  
LEGISLATIVE AND SOCIAL CONTROL OF INDIGENOUS PEOPLES

Exploring the introduction and enactment of H.B. 2281 highlights the notion that some ideas have become viewed as natural and the norm, while others are viewed as deviant. It is, in short, apparent that there can only be a singular truth within schools; alternative versions are seen as destructive, anti-American, or treasonous. Linguistic and rhetorical imperialism as well as colonization of the mind resulted from a desire of empire expansion. However, once the representatives of empire arrived onto the shores of the communities who would later be slaughtered, murdered, enslaved, or colonized, a rationale had to be created in order to legitimate the brutality and savagery of the colonialists. Thus, law too, has served as a tool of empire.

House Bill 2281 and Senate Bill 1070 are contemporary examples of how law has been wielded as a tool of social and political control of Indigenous peoples. While linguistic and rhetorical imperialism, and genesis amnesia, are ideological tools used to oppress and suppress the power and knowledge of Indigenous peoples in the United States, H.B. 2281 presents an extension of efforts made in legal avenues to further protect and promote the power of these ideological tools in tangible ways. Because law and policy have been used to perpetuate harm and actively disempower and marginalize communities of color,

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72. We are not suggesting here that attaining a color-blind stance is either ideal or a desired goal for race relations.

critical race scholars contend that it is not enough to be aware of the inequalities and exploitation that exists within society—we must also understand *how* law serves to contribute to the creation, sustainment, and maintenance of inequality in society.<sup>73</sup>

Kenneth B. Nunn, Professor of Law at the University of Florida, posits that, “law works to legitimate white institutions and practices by helping to place the imprimatur of universality on European practices and champion the desirability and inevitability of white dominance,” thus “[w]henver the European American majority in the United States desires to ostracize, control, or mistreat a group of people perceived as different, it passes a law—an immigration law, a zoning law, or a criminal law.”<sup>74</sup> According to this argument, law possesses the potential to serve as a tool by those in power to set the boundaries for acceptable forms of resistance to White oppression and dominance. This has important implications for programs like the MAS/Raza Studies program under assault in Arizona. Julie A. Su, Labor Commissioner for the State of California, has pointed out the role of institutions in perpetuating practices that protect corporate and material interest at the expense of the human and civil rights of minoritized and marginalized peoples. “[N]o one will give you a social and economic structure governed by principles of compassion and equality over corporate profit, particularly if you are poor, non-English speaking, an immigrant, a woman of color, a garment worker—unless you fight for it yourself.”<sup>75</sup> To this end, we believe the most recent attacks—and resultant resistance to these attacks—on programs that are successfully educating historically underrepresented and underserved students, and sending them to college at record rates, is worthy of further examination.

Su’s point raises a number of implications for the extensive role legal actors might play in serving to defend or actively silence and suppress oppressed communities and individuals. Law is an ideology

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73. See generally Richard Delgado, *Crossroads and Blind Alleys: A Critical Examination of Recent Writings about Race*, 82 TEX. L. REV. 121 (2003) (discussing the evolution of Critical Race Theory).

74. See Kenneth B. Nunn, *Law as a Eurocentric Enterprise*, in CRITICAL RACE THEORY: THE CUTTING EDGE, 429, 432-33 (Richard Delgado & Jean Stefancic eds., 2d ed. 2000).

75. See Julie A. Su, *Making the Invisible Visible: The Garment Industry’s Dirty Laundry*, 1 J. GENDER, RACE & JUST. 405, 411 (1998).

and a cultural institution.<sup>76</sup> Moreover, law and race are mutually constitutive and serve to “coconstruct each other.”<sup>77</sup> The belief that law and race are co-constructed to reproduce and transform racial inequality in society is a primary reason for why critical race scholars view racism as institutionalized and endemic to society and law. Furthermore, law has also been used to protect not just the interests, but the perceived property and rights of those in power. “Western European culture is highly materialistic, competitive, individualistic, and narcissistic . . . .”<sup>78</sup> Law, then, becomes part of a “broader cultural endeavor that attempts to promote European values and interests at the expense of all others.”<sup>79</sup> By focusing on how law carries out a Eurocentric program, as it organizes and directs culture, an emphasis is placed on materiality. Cheryl Harris, Professor of Civil Liberties and Civil Rights at the UCLA School of Law, has skillfully revealed the ways in which racial identity and property have become interrelated in U.S. society such that Whiteness is associated with power and the preservation of economic, political, and social interests.<sup>80</sup>

House Bill 2281 serves to preempt any attempt of Indigenous peoples to exercise self-determination, something that this essay has already addressed. However, one of the most significant implications of the legislation is that it affects the academic *and* economic success of historically marginalized and minoritized communities.

Because the product of the program are students who become more active in their community and who find unprecedented success in the classroom, it seems ironic that Horne—as the chief educational officer of the state of Arizona—would work so adamantly to

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76. See Nunn, *supra* note 74, at 434-35.

77. Laura E. Gómez, *Understanding Law and Race as Mutually Constitutive: An Invitation to Explore an Emerging Field*, 6 ANN. REV. L. AND SOC. SCI. 487, 488-89 (2010). See also Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993); Mae M. Ngai, *The Architecture of Race in American Immigration Law: A Reexamination of the Immigration Act of 1924*, 86 J. AM. HIST. 67 (1999).

78. Nunn, *supra* note 74, at 429.

79. *Id.*

80. Harris, *supra* note 77, at 1731 (“When the law recognizes, either implicitly or explicitly, the settled expectations of whites built on the privileges and benefits produced by white supremacy, it acknowledges and reinforces a property interest in whiteness that reproduces [the] subordination [of people of color].”).

dismantle such a successful program. In fact, students who attend MAS courses are more involved in their communities, graduate in higher numbers, and tend to go on to college at higher rates. Sean Arce, Director of the Mexican-American Studies Department has asserted, “[i]n no way do we [educators in the MAS program] teach the resentment of any particular group of people.”<sup>81</sup> And, “contrary to Horne’s assertions, the courses are open to all students, and they draw a mixed crowd.”<sup>82</sup> Thus, it appears success is not limited to just Latinos/as enrolled in the courses. Rather *all* students enrolled in MAS courses have the potential to experience high rates of academic and social success. Certain students’ success appears to create discomfort for state officials; the content of courses also leads to concerns for the status quo.

Maria F. Brummer, teacher in the MAS program, explains the program teaches the relationship between (im)migration and economic forces—people migrate for the opportunity to earn money. Recall, students in the program are more likely to “outperform their peers on Arizona’s assessments. They are three times more likely to pass in reading, four times more likely in writing, and two and a half times more likely in math.”<sup>83</sup> Students in the program are also more likely to graduate high school and go on to college (or are finishing college) in fields such as medicine, social work, and education.<sup>84</sup> From this data, it would appear that students are not just learning about the motivating factors for (im)migration, but are taking up the knowledge and tools to remain as long-term residents (and contributing to larger society in interesting and profound ways). Graduates of MAS are advancing academically and professionally in fields where people of color have been historically underrepresented. This consideration, when juxtaposed with the economic argument of high savings

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81. Pitzl, *supra* note 14.

82. *Id.*

83. Maria Federico Brummer, ‘*My Other Me*’: *Why Ethnic Studies are Good for All*, NAT’L EDUC. ASS’N. (Jan.-Feb. 2011), <http://www.nea.org/home/41846.htm>.

84. *Id.* Given this, we are left asking, what is it that Horne finds so problematic about a program that benefits so many students? It seems that real patriots want everyone to have an opportunity to succeed and engage the world through a life filled with agency and a wide array of choices to pursue liberty and the pursuit of happiness.

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presented in Horne's 2007 argument (recall he stated voters would save \$2 million by calling for the termination of the program), suggests a concern with which populations deserve to save and access economic benefits.

We want to argue here that the larger social good—economically, socially, and academically—far outweighs any singular economic argument as posed by Horne; importantly, we also want to point to the ways that these students are engaging in academic processes in ways that should be celebrated by Arizona's chief educational officer, rather than curtailed.

Through the skillful articulation of economic arguments and legislation that advance a nationalistic identity based on individual success, political leaders in the state of Arizona have used legislation such as H.B. 2281 and S.B. 1070 as a tool to limit the success and education of Indigenous Latinas/os. This tactic also serves as a way to police the minds and bodies of Indigenous and minoritized/marginalized peoples. These types of legislation are driven by a desire to (a) protect the economic and powerful interest of Whites while (b) disempowering and blocking efforts to engage in self-determination for Indigenous and minoritized/marginalized peoples. Ultimately, these laws seek to destroy not only the spiritual success of a people, by denying awareness of the history and experiences of their collective struggle(s), they also serve to impede the academic and economic success of targeted communities by terminating programs that have served to promote the academic, economic, and personal success of these communities. Lopez explains:

[T]he significance of legally mandated segregation does not lie primarily in its power to police indeterminate identities through neighborhood affiliation . . . . It lies instead in the power of segregation to create and maintain the poverty and prosperity that society views as the results of innate racial character, rather than as predictable consequences of social and specifically legal discrimination.<sup>85</sup>

Ultimately, we must recognize that attacks on education are not new. Past legislation has sought to prevent (im)migrant children from

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85. IAN HANEY LÓPEZ, *WHITE BY LAW* 92 (2006).

accessing education due to his/her documentation status (e.g. California's Proposition 187) and limit the opportunities of (undocumented) (im)migrant students' access to postsecondary education (e.g. Utah's House Bill 191). What *is* new about this legislation such as Arizona's House Bill 2281, is its preemptive nature. House Bill 2281 seeks to preempt the academic, professional, personal, and economic success—and self-determination—of Latino/a students. This is achieved by denying them access to a program that is inspiring them to graduate high school at higher rates, pass state assessment exams at higher levels, matriculate and graduate from college programs at higher rates, enter professional fields at higher rates, and generally engage and emerge as leaders and advocates among their communities.<sup>86</sup>

In this manner, the legislation puts an ironic spin on the motto that has been used to destroy and alienate Indigenous peoples. House Bill 2281 comes to represent the antithesis of the “civilizing” nature of education. In the quest to create the ‘ideal’ individual U.S. American citizen, the educational system unveils the savage nature of the education and legal system. Rather than the colonist “saving” the “savage” by following his motto of “Kill the Indian, Save the Man,” it is the colonist who is revealed to have been savage all along by seeking to control and police the minds and bodies of Indigenous peoples. This savagery becomes evident in the very structure of an education and legal system that supports and promotes legislation such as H.B. 2281 which promotes an educational structure that is inherently violent and that engages in savage ends as it seeks to destroy the knowledge, success, and spirit of Indigenous peoples. Educational savagery manifests itself in semantic imperialism, engaging in practices that lead to colonization of the mind, perpetuate genesis amnesia, and ultimately possess the sole task of engaging in the spiritual and intellectual genocide of a people.

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86. In some ways, Horne seems to be contradicting and abdicating his fiduciary responsibility to the students of the state's educational programs. He is, in short, overstepping his bounds by policing the minds of young people.

## IMPLICATIONS &amp; CONCLUSION

Harlon L. Dalton, Professor Emeritus of Law at Yale Law School, has argued that a project focused on racial justice should include a focus on racial healing.<sup>87</sup> Dalton admonishes communities that engage in what other scholars have deemed as “the oppression Olympics”<sup>88</sup> in the pursuit of racial justice, and believes that racialized, minoritized and/or marginalized peoples must free themselves from a frame of mind that centers on race relations as solely located on a Black/White binary with little to no room for consideration and knowledge of the experiences of other communities. For Dalton, the cost of ignoring the plights of others who have similarly been oppressed and mistreated by White America has hurt communities of color because it has served to forge a rivalry and sustain a massive disengagement that denies them the opportunity to build coalitions and relationships. Dalton believes the only way to free ourselves from our own prejudice and willful ignorance of the struggles of other groups is to be reflexive of our own prejudice and willful ignorance, accept it, and work toward educating ourselves by engaging in dialogue with others aimed at understanding the commonalities we share and the historical struggles faced by different groups.<sup>89</sup> While Dalton admonishes the African American community for having little awareness and/or understanding of the history and struggles of other groups of color, few others would argue this is not also the case for many other non-African American people(s).

Beyond noting the distinct similarities among the educational experiences of Indigenous American Indians and Indigenous Latinas/os, it occurred to us that one of the glaring connections between these groups arises from something one of the panelists

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87. See generally Henry L. Dalton, *Racial Healing*, in RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA 1231-37 (Juan F. Perea, Richard Delgado, Angela P. Harris & Stephanie M. Wildman eds., Thomson/West) (2007).

88. *Coalition Building Among People of Color: A Discussion with Angela Y. Davis and Elizabeth Martínez*, in INSCRIPTIONS 7: ENUNCIATING OUR TERMS: WOMEN OF COLOR IN COLLABORATION AND CONFLICT (María Ochoa & Teresia Teaiwa eds., 1994), [http://www2.ucsc.edu/culturalstudies/PUBS/Inscriptions/vol\\_7/Davis.html](http://www2.ucsc.edu/culturalstudies/PUBS/Inscriptions/vol_7/Davis.html).

89. See Henry L. Dalton, *supra* note 87.



mentioned: some Indigenous nations/people(s) have mixed heritage (e.g., the T.O. nation extends through U.S. and Mexico) and while some courses for Native Americans are protected by this law, students interested in learning about other knowledges, culture(s), and historical experiences may not be able to learn about them. Furthermore, not only does this legislation thwart the development of students as citizens of the U.S., and of the world, it thwarts leadership within historically disenfranchised communities. House Bill 2281 prevents/lowers the rate of students of color going to college while simultaneously reinscribing a criminalizing and dehumanizing fear frame surrounding Latino/a youth (i.e., it is rooted in the perpetuation of the Latino Threat Narrative).

In a national context that is wrestling with the notion of keeping and/or eradicating Affirmative Action policies, perhaps programs such as this should be given extra consideration. For if students are doing better in their classes and on their standardized tests, schools are not only meeting their goals toward Annual Yearly Progress (AYP),<sup>90</sup> they are also more likely to graduate students who are more competitive in the postsecondary admissions process and in the workforce. The success rates of these students remain important not just to the communities from which they hail, but to society in general. Ironically, with enough of these programs, students will be able to do *exactly* what the state wants them to do—succeed academically based on their own individual merit. The rising rates of student academic success both within and beyond high school, for students who participate in this program, should be worthy enough to merit saving programs such as this one.

We conclude with a final thought: recall that H.B. 2281 withholds a certain percentage of funding to schools that are found to be out of

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90. AYP is the manner in which No Child Left Behind (P.L. 107-110) measures academic success for schools. AYP is rooted in standardized, state assessments, which are intended to be objective and neutral, establishing a timeline for the success of the schools. Those schools that fail to make AYP for either two (Title I schools) or three years must allow their students a choice to attend another school. Those schools that continue to not make AYP face more severe consequences. It is clear that the poorer schools in underserved areas (Title I schools) face an uphill climb in this system, which rewards academic success on standardized tests that are, in fact, biased and do not fully test what these students know.

compliance with the law. This deliberate attention to material consequence suggests a possible concern with potential loss of social and material benefits later for the status quo. Earlier, we mentioned this law presents a conflict for Indigenous Mexican communities to engage in self-determination through self-education. The irony does not escape us that, through acts of legislation such as the passage of the 1975 Indian Self-Determination and Education Assistance Act,<sup>91</sup> Indigenous American Indian communities have been encouraged to develop a curriculum that is culturally relevant, while Indigenous Mexicans have been presented with H.B. 2281—legislation that seeks to exterminate these efforts in the Latino/a community. This glaring difference suggests Latinas/os are perceived as currently presenting a threat to the status quo through their educational successes. Could the difference in legal treatment also be backlash against recent studies that have found that Latinas/os are playing a larger, stronger, and growing role in the economy?

In 2007, the census reported Latinas/os owned 2.3 million businesses, a 43.6% increase from 2002.<sup>92</sup> Given Latina/o population growth, as well as growing economic success and academic achievement, this rise in economic, academic, and community empowerment presents a threat to the status quo. Furthermore, considering that Latinas/os comprise a large portion of workers in the service industry in the state of Arizona, and that H.B. 2281 was passed during a time when the economy of the state was at its lowest (for example, unemployment rates were high and, perhaps subsequently, the rates of foreclosure were among the highest in the nation), the legislation comes to represent a deliberate effort to limit the type of access Latinas/os have to opportunities that would allow them to compete for higher paying professional and/or leadership positions.

Ultimately, we believe House Bill 2281 is an act of legislation steeped in racist notions of who deserves the right to property, public benefits, and personal and academic success. It protects the economic and powerful interest of Whites by preempting, disempowering, blocking, and/or mitigating efforts of Indigenous communities to

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91. See generally Indian Self-Determination and Education Assistance Act, Pub. L. No. 95-638.

92. *Hispanic Americans by the Numbers*, U.S. CENSUS BUREAU (2007), <http://www.infoplease.com/spot/hhmcensus1.html>.

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interrupt the very education practices, curriculum, and pedagogy that establishes, maintains, and sustains the power enjoyed by the status quo.

