

WHY THE TURKS HAVE IT BETTER IN GERMANY: A COMPARATIVE,
HISTORICAL ANALYSIS OF POLICY TRAJECTORIES IN US BILINGUAL
EDUCATION AND GERMAN ISLAMIC RELIGIOUS INSTRUCTION FROM 1965-

2010

by

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A dissertation submitted to The Johns Hopkins University in conformity with
the requirements for the degree of Doctor of Philosophy

Baltimore, Maryland
November 2014

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Abstract

Since the 1980s, policy trends in US bilingual education (at the national and state level) indicate policy rollback. This is despite a long period of political incorporation of the main beneficiary of these policies, immigrants of Mexican descent. By contrast, policy trends in Islamic religious instruction in Germany indicate modest expansionary trends despite comparatively less political incorporation of and a shorter immigration history for its main beneficiaries, immigrants of Turkish descent. This belies the literature in political science that argues that entrenched groups are well positioned to secure/defend favorable policy outcomes in issue areas of interest.

Through a comparative study of national and sub-national variation in policy trajectories in Germany and the US, this study will argue that Turkish interests have been better positioned in Germany to attain their policy interests in religious instruction, situated in a setting characterized by corporatist interest intermediation and historic elite support for religious instruction as a means of integration. This contrasts with their Mexican counterparts in the US, whose prospects (historically) of attaining their desired outcomes in bilingual education policy have been less favorable. Mexican interests operate within the *laissez faire*, competitive, political marketplace of American pluralism where bilingual education has been a historically polarizing issue among elites. Through close rendering of primary and secondary sources, this study will build and compare national and subnational policy narratives in the issues areas of focus spanning from 1965 through 2010.

Primary Reader: Adam Sheingate

Secondary Reader: Steven Teles

Dissertation Committee: Lester Spence, Joel Andreas, and Eric Rice

Acknowledgements

Like a child, it takes a village or at least a strong supportive community to complete a dissertation. The endless slog, the financial uncertainty, the bouts of lost motivation and central arguments gone awry — these require a community to make you laugh, to prop you up, to send you to your proverbial room to rework your central argument. I would like to take a moment to acknowledge this community that has help me to raise my dissertation from a small baby idea.

First I would like to thank my advisor, Dr. Adam Sheingate. Adam has been both a great cheerleader and a harsh critic — both of which I have needed at different times during this process. His tireless ability to read through all of my drafts and alert me to the jewels in the (sometimes) dense sludge contributed greatly to the dissertation's progress and eventual completion. Whenever I submitted a chapter draft to Adam, I could always expect it to be returned with detailed comments, upon which I relied (especially early on) in the development of my argument and methodological approach. I especially thank him for constantly challenging me to more clearly state and more thoroughly prove the project's central claims. His constant constructive skepticism is what eventually led to its improvements. And I thank him dearly and am forever indebted for his efforts.

I would also like to thank my second reader Dr. Steven Teles. Although he was not as involved as Adam, when he did offer input, it often led to months of research to address his concerns. As with Adam, this helped to better the dissertation. And as with Adam, I thank Steven for his constructive contributions.

I would also like to extend my appreciation to Dr. Benjamin Ginsberg. I served as his teaching assistant, head-teaching assistant and eventually as the Program Coordinator of his Hopkins Center for Advanced Governmental Studies in Washington, DC. These opportunities sponsored the early years of my graduate school tenure. Since leaving the Center, Dr. Ginsberg has continued to support my various applications to jobs, fellowships, and postdocs. I am grateful for the opportunities he provided me as well as his continued support of my PhD candidacy and professional career.

I would like to express my gratitude to Dr. Mark Blyth. During the middle years of my studies, Mark was an important and mostly my only confidante during a period when I needed such counsel. Although it took me some time to actually follow his advice, his early bluntness and honesty helped me to make the necessary changes to my personal life. Mark was also an early role model to me in teaching and scholarly excellence to which I still aspire. I thank Mark dearly for his friendship and the bar he set for me professionally.

I extend a big thank you to Dr. Erin Ackerman for setting me up with every opportunity offered at JHU of which I took advantage. From teaching assistantships to the Mannheim exchange, Erin either served as either a liaison or recommended me to those with the power to decide. These opportunities provided both financial assistance and opportunities which profoundly affected my time in the program. I am very appreciative of Erin's efforts in helping me to realize these opportunities.

I would like to thank my family. They have been supportive in different ways, but all of them crucial. I would like to especially thank my parents, Elliott

and Phyllis, for the emotional and financial support during my studies. When I moved to Germany, I soon found myself in a dilemma: the amount I needed to work to support myself was too much for me to properly focus on the dissertation. During the last couple years when I cut back on my working hours, they stepped in and often made up the financial difference. This allowed me to put more focus on the dissertation, which was crucial to its completion. Additionally, the supportive emails and expressions of support (especially during the last year) were greatly appreciated and helped relieve the emotional burden that became an integral part of the dissertation process in the latter stages.

Along the same lines, I would like to thank my sister, Kesi, for her surprise calls to check in on me when she knew I was stressed. I am not one to reach out, so I very much appreciated her efforts. They really helped. And I also like to thank my two brothers, Jason and Brett, for their similar emails of support or just random chatter about anything other than the dissertation. This was also needed and greatly appreciated.

Ich möchte auch meiner deutschen Familie und der Gemeinschaft in Stockstadt, Biebesheim, Buettelborn und Gernsheim danken. Vom ersten Tag an haben Udo, Erika, Marc, Alfred und Gretl, Pumba, Ariela, Falko und Juergen mich in ihrer Familie aufgenommen. Nicht nur ihre Zeit, Liebe und Aufmerksamkeit haben sie mir geschenkt, sondern mich auch gleich als Begünstigter in den Kouba Hilfsfond fuer Notleidende Studenten aufgenommen. Ohne ihre Unterstützung wäre Deutschland in den letzten Jahren nie meine Heimat geworden. Das Geschenk

einer neuen Familie hat mich tief berührt und gluecklich gemacht. Dafür werde ich euch fuer immer dankbar sein.

I would also like to thank my many awesome friends. The good times, the random banter, camaraderie, the love, the shoulders to manly cry on, I am grateful for it all and a better person for it. Big shout outs to Bivs, Rocker, Tenley, G.Hale, Leah, Kat, Chase, CF, Newby, the Cartel, Melisa, George, CJ, Ruediger, my AOB crew '04-'06, MZES Summer '06, and Anglistik Fakultaet '09-'14.

Lastly, I would like to thank my partner Sabrina. From the moment she stepped into my life years ago, she has been a centering, grounding, and loving force that created the emotional atmosphere necessary to embark and complete such a project. Moreover, her advice over the years on research and the dissertation's structure were also crucial to its development. Her committed editing for the 3 months prior to the defense was an integral cog of the hard work needed to bring the dissertation to a finished product. I am forever indebted to the Fred Wesley role she played to my James Brown in the completion of the dissertation. Additionally, her random cards expressing love and support, emails, jokes all helped during the times when the dissertation tunnel was dark and cold with little light to be seen. Over the years, she has been the full package partner: supporting me both professionally and personally. And it is for these reasons, I dedicate this dissertation to her. Thank you for all you have done. I am forever lucky and grateful.

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CHAPTER 1

THE PUZZLE OF COUNTERINTUITIVE POLICY TRAJECTORIES IN AMERICAN BILINGUAL EDUCATION AND ISLAMIC RELIGIOUS INSTRUCTION IN GERMANY

Introduction

Since the 1980s, policy trends in US bilingual education (at the national and state level) indicate policy rollback. This is despite a long period of political incorporation of the main beneficiary of these policies, immigrants of Mexican descent. By contrast, policy trends in Islamic religious instruction in Germany indicate modest expansionary trends despite comparatively less political incorporation of and a shorter immigration history for its main beneficiaries, immigrants of Turkish descent. This belies the literature in political science that argues that entrenched groups are well positioned to secure/defend favorable policy outcomes in issue areas of interest (Joppke, 1999; Mollenkopf and Hochschild, 2010; Pierson, 1994; Richardson, 2000; Sheingate, 2000; Kurthen, 2009).

Through a comparative study of cross national and sub-national variation in Germany and the US, this study will argue that Turkish interests have been better positioned in Germany to attain their policy interests in religious instruction, situated in a setting characterized by corporatist interest intermediation and historic elite support for religious instruction as a means of integration. This contrasts with their Mexican counterparts in the US, whose prospects (historically) of attaining their desired outcomes in bilingual education policy have been less favorable. Mexican interests operate within the *laissez*

faire, competitive, political marketplace of American pluralism where bilingual education has been a historically polarizing issue among elites. In sum, the differences in attaining their desired policy prospects result from national differences in the institutional structure of the policy making process — the closed versus open policymaking systems in Germany and the US, respectively — combined with differences in how American and German elites have historically viewed bilingual education and religious instruction, respectively.

In Germany, elite agreement concerning religious instruction, situated in Germany's closed, corporatist policymaking context, allows for the maintenance of consistent sets of actors and policy venues in service of the policy definition that Islamic religious instruction is a means to integrate Muslims and the Islamic faith. This encourages institutional gatekeepers (the education ministry, Christian religious interests) to pursue the incorporation of *palatable* Muslim interests into the corporatist policymaking regime. Interest intermediation in the more open, pressure politics of American pluralism combined with historic elite disagreement concerning bilingual education results in the legitimation of new actors, venues, and policy definitions. This allowed for the legitimation of challenges to governing policy regimes and subsequently policy rollback after the 1970s. The study will investigate these variances in policy trajectories in US bilingual education and German Islamic religious instruction from 1965 - 2010.

The investigation will address the effects of elite views (historically) concerning the respective issues and open versus closed policy making systems through analysis of both national and sub-national policy trajectories and their variations in the US and Germany. California and Texas will be the sub-national (localities) foci of study in the US, and North Rhine Westphalia (NRW), Bavaria, and Berlin will be the focus in Germany. As

immigration politics is often locally construed and facilitated via local institutional and political contexts (Money, 1997), within these national variations, historic differences in local policy trajectories should also be expected (Money, 1997; Koopmans, 2004). The findings from the local cases of this study concur with previous findings (Money, 1997; Koopmans, 2004) concerning the local nature of immigration politics. Although the local cases conform to the varying trends in national policy trajectories explained in the opening paragraphs, local policy trajectories (intra-nationally) differ according to local variance of the two causal variables mentioned above: elite agreement/ disagreement and the open/ closed character of the policymaking systems.

In the US, the historic trajectories of elite perspectives towards bilingual education in California and Texas mirror one another throughout the period of study, 1965-2010. California, however, possesses the voter referendum as a policymaking mechanism while Texas does not, making California the more open policymaking system. The study finds that bilingual interests fare significantly worse in California once elite divisions over bilingual education intensified from the 1980s through the 1990s.

With respect to Germany, there is elite support for religious instruction in North Rhine Westphalia and Bavaria. Both of the policymaking systems are corporatist and closed as they are governed by Article 7 III of the Basic Law that guarantees religious instruction for recognized religious communities. Berlin, on the other hand, is not governed by Article 7 III — however the institutional arrangements which developed in religious instruction are still closed – and historically there has been elite disagreement concerning religious instruction. The study finds that North Rhine Westphalia and Bavaria are more accommodating to Muslim interests (although their policy trajectories also differ) while

policy negotiations were more conflictual in Berlin where Muslim interests only gained the right to offer Islamic religious instruction after winning a 20-year battle for state recognition in 2000 via court ruling. Assessing the local cases cross-nationally underscores the importance of particular national policymaking structures, integration schemes and elite relations. Yet, looking at the sub-national cases intra-nationally reveals how particular local institutional and political contexts likewise play a significant factor in the direction and quality of policy trajectories in these issues areas.

The study has three main endeavors. First, it aims to provide a test case for Zolberg and Woon's (1999) thesis that Spanish and Islam serve as comparable cultural threats to the place of English and Christianity in the US and Western Europe, respectively. This study aims to apply their theory to two issue areas that depict the threat that Spanish and Islam pose, and show how the different historical, political, and institutional settings facilitate how these threats manifest in policy outcomes where immigrants collectively organize to make claims on the state. Second, the study aims to apply Baumgartner and Jones punctuated equilibrium theory to more closed systems for comparative purposes. Lastly, the study aims to show how elite views (historically) concerning issue areas and institutional structure mitigate the supposed benefits (theorized in institutionalist literature) that political incorporation and entrenchment provide interests in their policy preferences.

The argument will be established through creating policy narratives of policy evolution for the US-state and German *Bundesland* cases over the period of study. To build these local narratives, the study will use secondary sources to build historical accounts of policy development in these issues areas from 1965-2010. These secondary sources will be supplemented with primary documents. The goal is to use the narratives to document and

assess the historical trajectories of elite views concerning the respective issues. The narratives will also be used to pin point the various policy venues involved in the historical evolution of the respective issue areas. Lastly, the narratives will be used to assess how issues were problematized by the actors and institutions within different historical periods. This will also be revealed through a close rendering of [mostly] secondary and primary documents. Subsequently, the building of the narratives involves documenting the major players/ political entrepreneurs involved in policy development and the legislative process as well as the institutions involved in shaping the political context and the policy venues in which major policy development occurred.

The study will employ the following concepts in its analysis: open versus closed policymaking systems; elite agreement versus disagreement; policy expansion; policy rollback; retrenchment politics; restrictionism; political incorporation; political entrenchment; policy regime; policy (issue) definition (image)/ issue problematization/ issue paradigm; policy venue; venue shifting; and venue shopping in its investigation. These terms will be defined later in the chapter.

The Argument

In this study, the openness of the American system pertains to the multiple policy venues involved in bilingual education policymaking. This specifically refers to the availability of multiple interactive policy forums of varied policymaking authority which can have an expansive or a contractive effect on policy through legitimizing particular actors/interests and/or providing multiple forums for policymakers to find favorable settings to achieve their desired policy outcomes. These multiple policy venues provided a

forum for elite divisions — whether between federal and state policymakers, within levels of government (legislative v. executive v. judicial), or via political partisanship — over bilingual education to play out in policy outcomes throughout the period of study.

The openness of the system and elite divisions have led to both policy expansion and policy rollback depending on the evolving politics of the players in the various venues (especially the judicial branch). The shared/ overlapping policymaking responsibilities and checks and balances inherent in intergovernmental relations and among the various branches of governments at the various levels results in policy that often evolves from the interaction of multiple policy venues. In such a setting — building on the findings of Baumgartner and Jones (1993) — governing policy definitions can be challenged by the legitimization of outside political actors and interests and the availability of alternative policy venues where new definitions can receive more favorable reception. Bilingual education policy in the US has evolved via the interactions of policy venues at the federal, state and local levels; from ordinances issued by the executive, legislative, and judicial branches at the federal and state level; and from the various state agencies involved in implementing state policy at the state and local level.

Within such a dynamic policymaking system, elite agreement or disagreement can have profound effects on policy outcomes. As issues are multi-dimensional (Baumgartner and Jones, 1993), elite disagreement, especially within an open system such as the US, results in perpetual competition among elites to problematize an issue along a particular issue dimension. This results in the *precarious equilibria* described by Baumgartner and Jones (1993) whereby political consensus is perpetually vulnerable to increases in salience of alternate issue dimensions. Additionally, however, this study will argue that elite

agreement/ disagreement consist of more than simply the status of consensus around a salient issue dimension. Elite sub-groups (academics, political officials, media, independent governmental agencies, etc.) have particular preferences concerning an issue. During periods of elite agreement, these various interests dovetail. Perhaps these preferences loosely or rhetorically orient around a particular issue dimension. However, this study will argue that these particular preferences of elite sub-groups and how they historically dovetail(ed) and separate(d) play an independent role in periods of political consensus in addition to the effects rendered by the salience of particular issue dimensions.

In the US, elite views concerning bilingual education have historically been ambivalent. State officials tolerated bilingual education locally in the 19th century (Crawford, 1999), and opposed it — successfully outlawing it once state capacity caught up to ideology (Blanton, 2004) — from World War I until the Civil Rights era; bilingual education enjoyed elite support in the late 1960s and early 1970s; and since, elites (at the federal and state level) have been divided or ambivalent concerning its use as a pedagogical tool. Housed within the institutional setting described, this has manifested in expansive policy trajectories (at the state and federal level) in the late 1960s and early 1970s and trajectories revealing policy rollback since the 1980s.

From approximately 1965-1975, there was elite agreement in support of bilingual education. During this period, the interactions of these various venues and institutions resulted in *issue expansion*.¹ This resulted in substantial expansionary policy change at the federal, state and local levels as the various venues built off of the policy outcomes/ politics

¹ Baumgartner and Jones (1993) reference political scientists use of the term, issue expansion, to describe positive feedback effects that result when small changes in one venue lead to further and more substantial changes across related venues.

of the others. However, when there was elite disagreement (as increasingly became the case from the late 1970s forward), policy expansion was slowed and began to experience rollback of the policy gains of the 1965-1975 period. In the US, after the 1970s, expansionist policy was moderated or experienced rollback through venue shifting efforts to venues where policy rollback was more favored — a consequence of the relaxation/reversal of federal and judicial mandates² concerning bilingual education, from the legitimization of local *English Only* groups/ bilingual education skeptics, and/ or from *issue expansion* resulting from the former two factors. Bilingual education policy trajectories were the byproduct of this dynamism inherent in the American policymaking process.

However, as immigration politics is also local, and as the local institutional and political contexts vary, there was also local variation in the US cases under study. As mentioned, the historic trajectories of elite relations in bilingual education in Texas and California mirror one another. The policymaking system in California, however, permits policy changes through voter referendums. This is not possible in Texas. California's policymaking system is subsequently more open than that of Texas as it facilitates more easy access to the policymaking process for outsiders. In California, the policy moderations and reversals culminated with the statutory elimination of bilingual education via the voter initiative, Proposition 227 in 1998 — an act of venue shifting by the *English Only* group *English for the Children*. In Texas (the more closed policymaking system), entrenched Latino interests were able to mitigate these *English Only*/ bilingual education skepticism

² Most indicative of this dynamic was the change in ideology in the federal judiciary. As the federal judiciary (the venue most responsible for policy expansion in bilingual education in the 1970s) cooled towards bilingual education, policy increasingly began to trend towards policy rollback at both the national and state level. This helped to legitimate interests favoring policy rollback and alternative policy definitions of bilingual education, which increasingly led to policy rollback in bilingual education at the national and state level.

trends — the benefit of Mexican political entrenchment. Nevertheless, bilingual education policy arrangements still experienced moderate policy rollback in Texas because of the aforementioned trends (which were experienced in states across the nation). These were facilitated by dissolving elite support situated within the open American policymaking system. These trajectories are unexpected considering that California is the more progressive state — a fact that should make it more favorable for bilingual education interests.

Germany's closed, corporatist setting is less dynamic. This references two aspects of German policymaking in religious instruction: corporatism and cooperative federalism. Regarding the former, German corporatism involves the divvying up of policy autonomy to para-public institutions (state-interest corporatist concertation) with broad autonomy over particular issue areas. Policymaking in these issue areas results from the partnerships — state-interest intermediation in non-competitive contexts — involved in these para-public institutions. Concerning the latter, Basic Law sanctioned cooperative federalism in education policymaking, this places predominantly all policymaking power concerning education at the state level. When policy change does occur, it is moderate and iterative and major swings in policy are less likely as particular policy definitions can be secured and maintained by the governing para-public institutions. The availability of multiple policy venues and the comparatively more market oriented approach to issue-policy venue pairings of the American setting is absent in the German policymaking context. *Issue expansion* only occurs within the state and generally does not take on the federal-state dynamic of the American example. And once a policy is established, entrenched interests ensure its sustenance through their privileged institutional positions—often locking out

emerging challengers and/or minority interests (Cox and McCubbins, 1997). Elite division can lead to policy change, but it is less abrupt as there are fewer alternative venues in the closed system for challengers to exploit. Para-public institutions generally have monopoly power over an issue and thus can maintain particular issue definitions that enjoy sufficient elite consensus. This minimizes the chances and scope of *issue expansion*. But as the Berlin example shows, venue shifting is still possible in this setting — but it is less dynamic.

Western German elites have supported (Christian) religious instruction as an integrative force for school children since the end of the Third Reich and support actually dates back to the Weimar Republic of the 19th century. After the terrorist attacks across Western Europe and the US in the early 21st century, as Islam was seen as the main stumbling block to integrating this growing population that was now perceived as a threat³, Islamic religious instruction came to be seen by all the major parties as an effective tool for the integration of this growing student population. However elite support for Islamic religious instruction at the local level dates back to the 1980s (or even the 1970s in the case of North Rhine Westphalia). With such elite consensus, ensconced within the institutional setting described, there has been moderate iterative policy expansion in Islamic religious instruction in the Western German states of this study since the 1980s and especially since the turn of the 21st century.

For Eastern German elites, religious instruction has been more divisive. The German Democratic Republic (GDR) stymied the churches, resulting in church affiliation

³ The terror attacks in New York, London, and Spain in the first half of the 2000s were carried out by terror cells that originated in Western Europe. One, the Hamburg Terror Cell, originated in Germany. This raised the issue salience of marginalized Muslim youth on the German political agenda and created an urgency for finding ways to integrate the growing Muslim population.

for only a minority of the population by the time of reunification in 1990. These demographics have persisted. In the eastern German state investigated in this study, Berlin, religious instruction is a divisive issue. Elites are split concerning support for mandatory religious instruction. The state is not governed by a constitutional amendment mandating religious instruction as a compulsory course (as is the case in the Western *Bundeslaender*). Nevertheless, religious instruction policy arrangements have evolved to take on a similar form to those of the Western *Bundeslaender*, and the policymaking system can also be described as closed. Still, elite support for religious instruction in general, and Islamic religious instruction in particular has been more ambivalent. Subsequently, the incorporation of Islamic religious instruction has been more conflictual as elite ambivalence concerning religious instruction has resulted in elites being less accommodating than in the Western *Bundeslaender* concerning the incorporation of Muslim interests into the religious instruction policy regime.

In Berlin, policy expansion in Islamic religious instruction first occurred via venue shifting. There was elite consensus in opposition to the lead Muslim organization's 20-year campaign for recognition, the Islamic Federation of Berlin (IFB). However, there was also elite ambivalence concerning the importance of finding an alternative partner due to elite disagreement over the benefits of religious instruction in general. The same accommodations that were made to find workable solutions in North Rhine Westphalia and Bavaria (with the failure in these *Bundeslaender* to find lead Muslim organizations with whom to form corporatist partnerships) were not explored in Berlin. Subsequently, the first Muslim group which was recognized by the state achieved this status via judicial ruling. However, the resolution of the Berlin episode via judicial ruling does show that venue

shifting to the courts could be a viable option for Muslim interests in the face of less accommodating German elites or implementation of Islamic religious instruction that is too iterative or incomplete (as could be argued is the case in North Rhine Westphalia and Bavaria). Hofhansel (2010) argues that the German courts are increasingly siding with Muslim interests in their claims to provide Islamic religious instruction according to Article 7 III. Thus, the courts appear to be a favorable venue for Muslim interests to achieve their policy goals. This differs from the US court system, which since the 1980s has grown more ambivalent towards bilingual education as the default pedagogical approach for Limited English Proficiency (LEP) students.

The practical implications of these findings are that due to the closed, corporatist policymaking system and support among German elites for religious instruction in general, and Islamic religious instruction in particular, as an integrative institution, Turkish groups advocating for Islamic religious instruction policies are better positioned politically and institutionally than their Mexican-American counterparts despite being less politically and institutionally incorporated and entrenched. In the US due to historic elite disagreement concerning bilingual education and the open policy system, advocates for bilingual education have had to fight a tougher battle to attain and maintain their policy goals. They were not only institutionally more vulnerable but also ideologically. The multiple policy forums involved in bilingual education policymaking provide forums for challengers and the strong support for *English Only* policies make bilingualism perennially controversial even in good political times. Subsequently, the institutional benefits of political incorporation and institutional entrenchment have less efficacy in the American setting whereas the non-competitive state-interest intermediation model of corporatism and

favorable use of church-state relations as an integrative institution provide Turkish interests with a favorable political and institutional setting for achieving their share of the corporatist pie.

Project Aim

According to Money (1999) political science has under theorized the causes of policy change in immigration policy (specifically in differentiating the politics of immigration control and immigrant integration policy). Givens (2005) has likewise argued that integration scholarship should further explore the politics behind policies that are targeted to integrate particular groups, how the intersection of party politics at the national and local level affect integration policy, and how theories in American politics, comparative politics and race can be combined to better explain the politics of integration. This study attempts to address these voids by identifying factors involved in shaping policy trajectories across these localities in US bilingual education and Islamic religious instruction in Germany.

This focus on policy areas that deal with political incorporation (such as education) is in recognition that these issue areas are sensitive to the increased issue salience of immigration. These issue areas involve the political and civic integration of immigrants into the society at large. In the localities affected by large populations of immigrants (via the social, political, and economic dislocations they render), immigrant integration policies are often a function of the politics created by the strains of immigrants on local resources and political institutions (Money, 1997). The local focus of this study, subsequently, pinpoints assessment on how the political and institutional domains affect immigrant

integration policy trajectories.

Additionally recent scholarship has called for the theoretical expansion of notions of political incorporation beyond state-centered issues of citizenship and immigration law. Freeman (2004) argues for a disaggregated theory of immigrant incorporation. He argues immigrant incorporation involves the intersection of migrant strategies and the relevant regulatory regime involved in the particular sector of the polity to which the immigrant seeks incorporation. He identifies these sectors as the state, market, cultural, and the welfare state. Scholarship on immigrant incorporation must also look at forms of immigrant collective action especially those in reaction to perceived exclusion from the polity, such as campaigns for bilingual education (Okamoto and Ebert, 2010). As the two policy areas under consideration here are educational policies, this presents a good test case concerning the influence of racial and ethnic politics in education (a salient issue in both the US and Germany; see Joppke, 1999; Crawford, 1999; Hofhansel, 2010) and how this is facilitated through the politics and institutional configurations of the welfare state in general and education policy in particular. In periods of high immigration, the provision of state benefits to growing immigrant groups is a recurring political theme.

Literature Pertaining to this Particular Puzzle

This puzzle is noteworthy since immigration and the pressure to integrate immigrants is an issue of growing salience throughout the developed world (Givens and Luedtke, 2005; Joppke, 1999; Money, 1999). Globalization and rights based politics have increased the demand for and decreased the ideational and institutional barriers to labor migration from the capital poor second and third world to countries in the capital-rich first

world (Joppke, 1999). As a consequence, immigration to these capital-rich countries has increased since the second half of the 20th century. Immigration creates political, social and economic dislocations for the receiving countries as these states must absorb additional populations with economic, political, and cultural needs — some of which may conflict with and/or create costs for the host population (Money, 1999). Immigration, however, has only recently received theoretical treatment in political science literature, leaving the issue mostly to the fields of sociology and anthropology (which investigate different aspects of the migration issue than political scientists) (Givens, 2007). Specifically, immigration policy and theories concerning the determinants of policy change and stasis has only recently received attention from political scientists (Hollifield, 1992; Joppke, 1999; Money, 1999, 2009; Freeman 2002; Givens and Luedtke, 2005). Mostly, when political science has addressed the issue of immigration, it has mostly pertained to political development in immigration and citizenship law (Tichenor, 2002), rates of individual political participation measured in the traditional indicators of voting participation and naturalization rates (Freeman, 2004; Okamoto and Ebert, 2010), and integration/immigration regime typologies (Kurthen and Schmitter Heisler, 2009). And these treatments have tended to clump the different facets of immigration law — immigrant control and immigrant integration — as if they were conceptually identical, and thus shared the same political origins (Givens and Luedtke, 2005; Money, 1999; 2009). Although these are justifiable areas for scholarly focus, as Money (1999; 2009) and Givens and Luedtke (2005) argue, expanding the purview of immigration politics to focus on the sub-issue area of political incorporation can help to reveal the particular politics (and thus the factors involved in policy stasis or change) involved in immigrant integration policies (Givens and

Luedtke, 2005).

This study will build on several streams in the immigration literature. These include the operationalization of immigration policy, the role of issue salience and government partisanship on policy outcomes, the role of political incorporation and entrenchment for state-interest intermediation outcomes, elite driven immigration politics, institutional change, and the institutional effects on state-interest intermediation rendered from the open/ closed American and German policymaking systems, respectively. As these areas of study are centrally relevant to this study, this dissertation will build on what others have already found. An extended literary review will follow in chapter 3. However, it is necessary to identify the theoretical foundations upon which this study will rest in order to justify the central argument of this study.

Recent research has found that *immigrant control policies* in Western democracies have converged. *Policies of immigrant integration* have not, however, experienced this same convergence (Joppke, 1999; Givens and Luedtke, 2005; Money, 1999; Freeman, 2004). Theoretical work concerning the reasons behind national divergence in immigrant integration policies has been scant in political science (Money, 1999; Givens and Luedtke, 2005; Givens, 2007). There have been attempts to disaggregate immigrant integration regimes, however (Freeman, 2004; Entzinger 2000; Mollenkopf and Cropper, 2010; Ramakrishnan and Epenshade, 2001). These researchers have argued that immigrant integration is facilitated via immigration law and pre-existing domestic institutions that facilitate individual interactions with the market, welfare state, civil society, and education arenas. Although these are useful metrics to help explain integration patterns across nations, they lack political explanations which in tandem with the aforementioned

institutions facilitate the incorporation of immigrants.

Building on Money's (1999) dichotomous operationalization of immigration policy (to be discussed below), Givens and Luedtke (2005) empirically tested the impact of issue salience and partisan politics on immigration control policy and immigrant integration policies. They found that issue salience led to more restrictive policies in immigration control and immigrant integration, but that partisan politics was a more relevant predictor of immigrant integration policy. Additionally, governments controlled by political parties of the right were shown to be more restrictive (Givens and Luedtke, 2005). Joppke (2003) makes a partisanship argument concerning Leftist governments and immigration control policy, arguing that those governments tend to lower the barriers to citizenship.

However, issue salience and partisan politics do not adequately explain the variance of the aforementioned policy trends in bilingual education and Islamic religious instruction. In both Germany and the US, the partisan composition of local governments has sometimes yielded policy results contrary to Joppke (2003) and Givens and Luedtke (2005) with conservative governments at times pushing through more expansive integration policies (in Germany, conservative Bavarian officials have overseen the creation of quasi-Islamic instruction policy arrangements and the conservative American state of Texas' long history of bipartisan support for bilingual education) than their theories would predict. This speaks directly to the dearth of research on the political origins of immigrant integration policies.

With respect to issue salience, immigration has been increasing in salience since the early 1990s in Germany and the early 1980s in the US (Givens and Luedtke, 2005). This has affected policy trajectories in both US bilingual education and Islamic religious instruction in Germany, but these issue areas have trended in opposite directions over these

periods. Moreover, issue salience may be able to explain general trends in the US but not the variance of policies at the local level, including this study's US cases of focus, California and Texas. Baumgartner and Jones (1993) theorize that issue salience can transform dormant issues to those primed for policy change. It is clear that issue salience has had an effect on these trends in both countries (Money, 1999; Joppke, 1999). However, issue salience cannot provide a complete explanation, of why particular policy changes occurred. For example, referencing two cases from this study, in North Rhine Westphalia (NRW) national anxiety over the increased presence of Turkish immigrants led to attempts by NRW officials to incorporate Muslim interests into the religious instruction policy regime. In California, however, similar anxieties led to the passage of the *English Only* language amendment and Proposition 227, which ended bilingual education. Issue salience can explain policy change but not the direction of policy change. Why have policy trends in the US and Germany taken on these particular trajectories? As national and sub-national policy trends do not conform to previous theoretical accounts of the effects of issue salience and partisan politics (Givens and Luedtke, 2005; Money, 1999), other factors must be at play.

In addition, the study will build on Money's (1999) dichotomous operationalization of immigration policy. Money argues that immigration policy consists of two sub-policy areas: policies of immigration control and policies of immigrant integration. According to Money (1999), the politics vary in these two policy areas and so investigations concerning the political origins of particular policy outcomes must be cognizant of this dichotomy. This study will treat bilingual education and religious instruction as integration policy areas in which causes of policy change and stasis are distinct from those of immigration control

policy (although particular factors may be influential in both policy areas) (Joppke, 1999). This investigation will address the politics of immigrant integration policymaking in these issue areas as they have been under theorized by political science yet are quite relevant in the US and Germany. Both nations experienced high immigration rates for most of the period of study. This led to the increased salience of the integration of these growing immigrant populations on the public agenda in both countries. Subsequently, these two issue areas were central in the debates concerning the incorporation of these respective immigrant groups during the period of study.

The study will also build on literature on political incorporation that claims that Mexican Americans should have more favorable conditions for securing and defending favored policy positions (Kurthen, 2009; Mollenkopf and Hochschild, 2010). Mollenkopf and Hochschild (2010) argue that because of the historical symbiosis between immigration and nation-building, Americans have a favorable view of immigration. And according to Kurthen (2009), American immigrants naturalize at higher rates and face lower barriers to participation in the party system. The latter facilitates easier access to political representation through interest groups and office holding. Additionally, the presence of African Americans both places a more disliked minority with whom they can differentiate themselves in socially beneficial ways but also provides a template of how such a marginalized group can mobilize and secure favorable policies (Kurthen, 2009).

Concerning the latter, the successful African American civil rights movement and its iconic status in American culture, in addition to providing a blueprint for successful mobilization, also bequeathed an institutional legacy that minority immigrants have used to facilitate their incorporation (Mollenkopf and Hochschild, 2010; Joppke, 1999). Soysal

(1994) and Joppke (1999) also hold that the institutional legacy of the Civil Rights era — civil rights liberalism — facilitated the political incorporation of post 1965 immigrants — permitting them to take advantage of redistributive policies (such as affirmative action policies in employment and education) that were originally designed to compensate for the historic discrimination of African Americans. This was employed, for example, in the incorporation of the Bilingual Education Act of 1968 into the Elementary and Secondary Education Act as Title VII of the education act. Institutionally the civic organizations and institutional mechanisms used to incorporate African Americans have been expanded to include the political incorporation of immigrants, greatly benefiting immigrants (Mollenkopf and Hochschild, 2010; Joppke, 1999). For example, the Voting Rights Law (originally enacted in 1965 to ensure the enfranchisement of southern blacks) was amended and expanded in 1975 to include voting rights protections for Spanish and Asian minority language populations (Mollenkopf and Hochschild, 2010; Crawford, 1999).

Mollenkopf and Hochschild (2010) maintain that these two factors have a self-reinforcing quality that encourages further political development in immigrant political incorporation. They conclude that the post-war immigrants in Europe — as they were the first acknowledged wave of immigrants in Europe — lacked the ideological acceptance of immigration, the presence of a more despised minority with whom they could favorably differentiate themselves, and the institutional legacy established by a marginalized minority to facilitate their incorporation.

This study will contest these accounts. It will argue that in the issues areas of focus, Turkish-German immigrants are in a more favorable political and institutional setting than their Mexican-American counterparts.

In addition, the study will build on literature in which elites are the main actors in immigration politics (Joppke, 1999; Faist, 1994; Freeman, 1995; Strahan, 1995). On the American side, the project of applying civil rights liberalism to the issue of incorporating the growing Latino population was a bipartisan endeavor (Joppke, 1999; Crawford, 1999; Freeman, 1995). Bilingual education was a byproduct of elites' view that bilingual education was compensation for historic discrimination, a pedagogical improvement to punitive *English Only* methods (Blanton, 2004), electorally convenient, and/or as a way of appeasing/ courting the growing Latino interest coalition (Crawford, 1999). And this policy was pursued without much research proving the efficacy of the bilingual pedagogical approach nor public support for its enactment (Crawford, 1999).

On the German side, Faist (1994), Joppke (1999), and Fuess (2007) discuss how German elites pursued religious instruction as a means to integrate the growing Muslim population. German elites in general have historically bent to international human rights norms and pursued immigration policy that stressed family reunification (through administrative fiat as opposed to the politically polarizing avenue of immigration law reform) policies at the local level and encouraged integration via corporatist initiatives such as pilot programs in Islamic religious instruction (Joppke, 1999). These policies were pursued in the 1980s and 1990s before Germany officially acknowledged its status as a country of immigrants (at a time when immigration polarized the major parties) and amid growing public discomfort with the growing Muslim population (Joppke, 1999).

The study will also build on Baumgartner and Jones (1991; 1993) theory that policy change results from the interaction between policy definition and policy venues. Their theory is based on the multidimensionality of issues and the limited attention spans of

political actors and the public (Baumgartner and Jones, 1993). They hold that policy venues secure particular problematizations — the policy definitions — of issues (Baumgartner and Jones, 1991). Periods of policy stasis result from the institutionalization of these problematizations and policy solutions that are either publicly accepted or register low on the public agenda but enjoy consensus among elites influential in this policy area. Generally, policy stasis involves an issue area problematized in a particular manner favorable to the participants of the governing policy venue — the political institutions involved in policy making. Political debate subsequently is oriented around this particular issue dimension. Periods of change (often rapid and dramatic) result when challenges to the governing problematizations, often staged in alternate policy venues, are successful in supplanting the legitimacy of the governing policy definition. Alternate venues serve as potential sites where alternate policy definitions can receive favorable reception (because of the alternate roster of participants in these venues) and subsequently result in policy change favorable for challengers. Baumgartner and Jones (1991) argue that in periods of high issue salience or if other exogenous occurrences allow for other dimensions to become relevant, outside venues or political challengers (political entrepreneurs) can stress alternative policy definitions, leading to venue shifting, the dilution of previous consensus and subsequently policy change via the building of a new consensus around a new policy definition/ issue dimension. Through its comparative focus, this study shows how the presence of a multitude of venues in the American case provide outsiders additional means to influence policy outcomes. Baumgartner and Jones (1991; 1993) imply that the openness of the American system inherently creates opportunities for alternate voices to influence policy, creating a system where political consensus is perpetually precarious. As it will be

shown in the chapters to follow, this study confirms their implication and discusses how this theory can be applied to non-American settings for comparative purposes. Specifically, this study will show how the relative openness and closeness, respectively, of the American and German local policymaking systems affect prospects for securing particular issue definitions and/or facilitating outside challengers to the status quo.

Additionally, the study will maintain that there is a role played by elites independent of the governing issue dimension. Baumgartner and Jones (1993) assert that issue dimension is the key determinant of political consensus. It will be argued that when elite views toward an issue are looked at historically, the issue dimensions that vie for legitimacy are a function of the various debates that have oriented political discussion among elites concerning the issue. In the US, equality, efficacy and the role of English (integration/ assimilation v. imperialism/ ethnic persecution) have been the ideas around which bilingual education has been contested by elites (Crawford, 1999; Blanton, 2004; Joppke, 1999). In Germany, it has only been religious instruction as an institution of integration and the role of religion (religious instruction) in the modern German polity (Hofhansel, 2010; Nordbruch, 2011). The study will demonstrate how these issue dimensions have been a byproduct of elite views towards these issues. And thus, subsequently, the historic trajectory of elite views concerning an issue area plays a significant role in the issue dimensions that are at play.

Lastly, the literature speaking to the open and closed characteristics of American and German policymaking systems, respectively, will provide another theoretical foundation for this study. *Openness* refers to the relative ease with which policy outsiders can influence policymaking. Berry (1993) refers to interest group proliferation in the 1960s

and the reform of the policymaking establishment to accommodate them in the wake of the Civil Rights movement. This made it easier for more interests to influence the policymaking system. Cooper (2009) discusses the institutional reforms coinciding with doctrinal evolution towards more plebiscitary forms of governing. These reforms emerged with the Progressive movement at the turn of the 20th century and came to fruition from the 1970s forward (Cooper, 2009). Through the democratization of the electoral and policymaking system throughout the 20th century, Progressive era reforms weakened political parties, eventually empowering interest groups, issue advocates, the media, financial donors, and the general population (Cooper, 2009). This led to policymaking that was closer to the perceived public will. The issue networks that govern the modern American policymaking systems are fluid as policy and political expertise are premium in gaining influence in the reformed modern American system. This has weakened political parties but increased the influence of the media, interest advocacy and individual political entrepreneurship on policymaking outcomes — as these groups have policy and political expertise (Berry, 1993; Cooper 2009). This has resulted in a system where, as Baumgartner and Jones (1991; 1993) theorize, the endogenous characteristics of pluralism have provided opportunities for challengers to contest governing policy problematizations and, if successful, secure venue shifting that can lead to policy change. Additionally, the American policymaking process in education is more intergovernmental than in Germany. In education policymaking, local, state, and national policy venues have overlapping roles, leading to the interaction of policy venues and the potential for *issue expansion* as well as providing alternate venues for outsiders to influence the policymaking system.

The closed German policymaking system has been described as ‘centralized’ and

corporatist in which issues are governed by concertation between the state and recognized interests — para-public institutions — in shared issue areas of concern (Musch, 2010; Lembruch, 1984). Katzenstein (1987) referred to this as the semi-sovereign state in which policy making was decentralized (also via cooperative federalism) but centralized under the various para-public institutions which have a high degree of autonomy in particular issue areas. These systems can be described as closed, as the state must recognize and sanction outsider entry into the policymaking process. Additionally, recognized lead organizations have monopoly power in interest representation, thus creating another gatekeeper to the policymaking process (Cox and McCubbins, 1997; Cawson, 1988).

The study, subsequently, will demonstrate how the open and closed political systems provide different opportunities and hurdles for attaining, sustaining and challenging policy regimes and will, thus, provide an example of how Baumgartner and Jones' *punctuated equilibrium theory* can be made transportable to more closed systems: *issue expansion* via the expansion of conflict is more limited and smaller in scope when it does occur. In more open systems, concurring with Baumgartner and Jones (1993), the multitude of access points provided by the preponderance of venues makes the expansion of conflict more likely. Change is subsequently more frequent in the more open system, and often more substantial in scope (policy/ ideological change in multiple levels of government) when it does occur as *issue expansion* is greater in scope. This leads to more substantial policy change as the larger number of venues provides more forums where the politics of change can be replicated during periods of issue saliency.

The study will use these theories in this literature to depict how evolving elite views on the issues of focus play out in the different institutional settings.

The Issue of Language and Religion as Cultural Signifiers in the US and Germany, Respectively

The study will apply Zolberg and Woon's (1999) theory that Christianity and English are cultural signifiers in Germany and the US, respectively. In comparing religious instruction policy in Germany and bilingual education policy in the US, the study applies Zolberg and Woon's (1999) argument that Islam and Spanish pose cultural threats to the privileged positions of Christianity and English in Western European states (in this case Germany) and the US, respectively. This rests on the notion that Western European states are culturally rooted in Christianity⁴ and the US in English (Woon and Zolberg, 1999). The increased presence of immigrant populations with different languages and/ or religions, concentrated in particular localities, threatens established understandings of cultural identities (Zolberg and Woon, 1999). Issue areas concerning the incorporation of Islam and Spanish, subsequently become areas of political contestation. This theory will be disaggregated further in the literature review. Still, here it is important to note that this study will show how differing elite views, historically, of the particular issues and different institutional contexts facilitate how these threats are resolved in policy areas where immigrants collectively organize to make claims on the state.

Bilingual Education and Islamic Religious Instruction

Bilingual education and Islamic religious instruction policy were chosen as the issue areas of focus as they are education policy areas involved in the incorporation of

⁴ The Protestant and Catholic Church enjoy corporate status in Germany, which permits the state to collect taxes on their behalf and permits the religious communities to provide social services on the state's behalf.

second languages and Islam, respectively and/or the political incorporation of those who speak and practice these non-native cultural amenities. Building on the comparable dilemmas Spanish and Islam bring to the US and Europe from their respective immigrant streams, this study will treat bilingual education and Islamic religious instruction as comparable policy areas in integration politics in the US and Germany. The comparison is employed to assess how integration policy is processed in the two political and institutional settings.

As immigration has been a constant throughout American history — ebbing and flowing since its inception — the English language has served as a cultural unifier, providing a common cultural bond for a society continuously diversifying because of immigration (Zolberg and Woon, 1999). In Germany, officially recognized religious communities — specifically Christianity — have served this role of unifying the various regions and classes of German society (Zolberg and Woon, 1999). As a consequence, political and cultural integration in these two polities is (along with national/local ideational and institutional configurations) facilitated by the politics associated with integrating particular populations. Language and religion are central fault lines in this debate in the respective countries.

Additionally, religious instruction and bilingual education have been interpreted as civil rights issues as its target populations are to some extent entitled (constitutionally sanctioned) to their provision or similar provisions provided certain legal conditions are met. However, in both the US and Germany not only are policy issues decided in the courts, they also result from legislation and thus are political decisions. In the US case, court rulings in the 1970s sparked *issue expansion* in bilingual education — those in the

mid-1970s accelerating policy expansion and those in the late 1970s contributing to policy rollback from the 1980s forward. After 1980, elite support dissolved for bilingual education as *English Only* forces gained political support. Subsequently, for political reasons executive and legislative support dissipated for bilingual education. At the national level, by 2000 with George Bush's No Child Left Behind (NCLB), the federal government no longer mandated bilingual education as the default pedagogical approach for English Language Learner (ELL) students. At the local level, local political decisions rolled back bilingual education policy arrangements — limiting the program in years and its pedagogical focus to mainstreaming students to all English instruction. Thus, politics also played a role in the fate of bilingual education.

In the German case, the Basic Law guarantees that recognized religious communities are entitled to provide religious instruction in public schools. However, for the exception of the Ahmadiyya Muslims in Hessen (in 2013), no Muslim group has yet to meet the Basic Law criteria for recognition as a religious community. This relieves the federal state of its legal responsibility to grant requests from Muslim communities to provide religious instruction. Despite these favorable legal conditions for the continued exclusion of Islamic religious instruction, localities have increasingly embraced provisional and pilot programs in Islamic religious instruction. These are the result of political decisions. Nevertheless, the only Muslim religious community to have won the right to provide confessional religious instruction closely adhering to the Basic Law criteria attained it through a 2000 court ruling— the Islamic Federation of Berlin (IFB) in Berlin. And such favorable rulings are beginning to increase the pressure on German *Bundeslaender* officials to accommodate the requests of Muslim communities (Hofhansel,

2010). In total, policy outcomes originating from the political and legal institutions have also played a role in the policy evolution of Islamic religious instruction in Germany.

The common political-legal nature of these two policy areas, makes this fertile ground for comparing how the institutional variations of the two policymaking systems and differing elite views (historically) of the issues affect the politics of these two comparable issue areas.

Defense of Case Selections: Why Germany v. United States

Germany and the US present an ideal pair for comparing the effects of institutions and elite views on policy outcomes because of differences in their normative conceptions of immigration, the role it played in the state-building myth, the institutional characteristics of the policymaking systems, similarities in the timing of immigration waves, the role of judicial overview in immigration law, and the role of federalism in policymaking. The similarities allow for a focus on how the normative conception of immigration and incorporation — captured in elite debates concerning the issues of focus — and open/closed policymaking systems play prominent roles in shaping policy trajectories.

Concerning the similarities, the US and Germany share historic parallels in the timing of their current immigration cycles. Trends in political liberalization and economic neoliberalism have brought increased immigration to these countries since the latter third of the 20th century. This has brought populations of different cultures, races, languages, and/ or religions to Germany and the US (Joppke, 1999).

In Germany, the Turkish immigrants arrived in large numbers via the guest worker program (*Gastarbeiterprogramm*) beginning in 1961. They soon became the largest

population of foreign labor. When Germany ended the guest worker program in the early 1970s, the families of the mostly male immigrants migrated to Germany as immigration policy favored family reunification. Immigration from Turkey, subsequently, increased (through the 1990s) — the consequence of this immigration policy shift (Joppke, 1999).

In the US, the Immigration Act of 1965 ended the ethnic and racial quota system of the former immigration law (Immigration Acts of 1924 and 1952) which had substantially reduced immigration from 1930 through 1960 (Joppke, 1999; Ngai, 1999). Subsequently, from the mid-1960s through 2007, immigration increased, mostly from populations originating from Latin America, Africa and Asia — attracted by the labor needs from various sectors of the American economy (Joppke, 1999). The increase in legal immigration was accompanied by a concurrent flow of illegal immigration — also attracted by the labor demands of the US economy. Nevertheless, the American immigration increase occurred parallel to that of Germany.

Another similarity is that both German and American immigration policies are subject to judicial overview as immigrants enjoy substantial constitutional rights (Joppke, 1999). This has been deepened by the institutionalization of egalitarian reactions to their respective atrocities of the past — America's discrimination of non-whites and Germany's Nazism — which legitimized the more egalitarian streams of constitutional law in both countries. This has benefited immigrants in both settings in times when their numeric and/or naturalization rates may have precluded an electoral influence on policy via the traditional democratic avenues. The courts in both polities have prioritized the protection of human rights over questions of citizenship as they relate to immigrant rights as non-citizens. This is due to both the US Constitution and the Basic Law having legal

foundations based on the idea of universal human rights, which the state cannot supersede but should merely protect (Joppke, 1999). This aspect of immigration law in both countries has played a role in policy development in US bilingual education and Islamic religious instruction in Germany.

Moreover, federalism — a federal union which assigns basic competencies to its constituent states unless specified — plays a primary role in policymaking in both polities. Secular reforms have brought the two nations to similar power sharing relationships between the states and national governments, specifically in the realm of education policymaking (although the federal government plays a larger role in the American setting) (Joppke, 1999). This also drives the study's methodological focus on localities of the study as these are the primary loci of education policy making in both nations.

As for the differences, ideationally, Joppke (1999) argues that Germany and the US — the world's two largest permanent immigrant-receiving countries — are guided by different concepts of nationhood and have responded in fundamentally different ways to immigration. The US has been an official immigrant state since its inception while Germany has only acknowledged its status as an immigration nation since the turn of the 21st century, ending its official stance as an ethnocultural state (Joppke, 1999; Givens, 2007). The US is the classic settler nation where immigration is part of the state-building reality and lore as nationhood is built around a common creed not ethnicity (Joppke, 1999; Mollenkopf and Hochschild, 2010). The American response to immigration has been to see it (not without its conflicts and policy paradoxes) as an opportunity for periodic rebirth (Joppke, 1999; Zolberg, 2006). Thus, institutionally concerning immigrant incorporation, citizenship law and the criteria for entry are comparatively low.

The American public has been more receptive to immigration than the German state (Mollenkopf and Hochschild, 2010 23; Joppke, 1999). Survey data indicates that across a number of issues meant to represent immigrant acceptance, Americans indicate more of an acceptance of immigration than their German counterparts (Mollenkopf and Hochschild, 2010 24-25).

Germany, on the other hand, is the classic ethnic nation where immigration is a historic anomaly (Joppke, 1999). For much of its history, Germany's official *raison d'être* was to serve as the state of return for the forcibly dispersed German diaspora (a product of the 20th century World Wars and the Cold War) (Nordbruch, 2011). Immigration and citizenship policy developed in service of this state goal. Germany's immigration regime, thus, developed a comparatively strict criteria for entry and citizenship of non-ethnic Germans, which had to be revisited and reformed after a torturous, protracted acknowledgment of its status as a nation with guest workers who had since become permanent settlers (Joppke, 1999; Nordbruch, 2011).

Subsequently, in the typologies of integration regimes literature, scholars have often categorized the US and Germany as opposing integration regime types (Castle and Miller, 2003; Brubaker, 1999; Kurthen and Schmitter Heisler, 2009; Mollenkopf and Hochschild, 2010). Despite the questionable empirical validity of such typologies (Freeman, 2004 948), there are stark differences in the two nations concerning the institutional and political contexts through which immigration policy is facilitated (Mollenkopf and Hochschild, 2010).

With respect to the governing institutions of the two countries, Germany's governing institutions are also less susceptible to the political pressures of immigration.

The frequent elections and weak political parties of the American system, make American political officials vulnerable to polarizing issues such as immigration (as elaborated previously). Germany, by contrast, has strong political parties, which are ideologically weak; policy-making power is divided between the federal government, the *Bundeslaender* and para-public institutions, which interact in a corporate fashion via state-interest concertation (Katzenstein, 2005). German policymaking is, subsequently, consensual, marked by incremental policy evolution. The issue of immigration does also polarize the electorate as well as the political elites (Katzenstein, 2005; Green, 2001). However, since the German policymaking system is more closed, the political establishment, for example, could and did avoid the messy politics of the immigration debate until the 1990s when the simultaneous immigration spikes in asylum refugees, returning German diaspora and Turkish immigration created social and political dislocations that could no longer be ignored (Nordbruch, 2011). In sum, German elites have more political and institutional support to ignore reactionary, populist appeals (regardless of their popular support) and pursue egalitarian *client politics*.

Local Case Selections

This study argues that elite consensus and the open/closed nature of the political system are determinative of policy trajectories in bilingual education and Islamic religious instruction in the US and Germany, respectively, over the period of study. These trajectories not only vary nationally but also intra-nationally per US state and German *Bundesland*. Case selections were chosen to control for these variables along with partisanship of the state government as this has been cited in the literature as a

determinative factor in immigrant integration policy direction (Money, 2009; Givens 2005; Givens and Luedtke, 2005; Joppke, 1999). Subsequently, the following local cases were chosen in the US and Germany.

US Local Cases

The historic trajectory of elite views towards bilingual education are essentially identical in California and Texas. Texas is the more conservative state while California is the progressive state with the more open system. However, policy outcomes have experienced more policy rollback in California since the mid-1980s — a finding that is contrary to the literature concerning the effects of partisanship on integration politics (Joppke, 1999). Thus, the choice of California and Texas is meant to show the effects the openness of the policymaking system (in interaction with elite relations) is a better explanation than partisanship of government in explaining policy trajectories in bilingual education.

The case of California

California serves as the left-leaning,⁵ more open political system with a ten year period of elite agreement concerning bilingual education from approximately 1965 through

⁵ The state legislature has been dominated by the Democratic party since 1959 except for 1969 to 1971 when Republicans controlled both chambers and from 1994 to 1996 when Republicans held a majority in the Assembly (balotpedia.org). From 1959 through 2011, California has elected 4 Republican and 3 Democratic governors. Governors Edmund Brown (D), Ronald Reagan (R) and Jerry Brown (D) supported bilingual education (the period from 1959-1983). From 1983-1999, the Governor's office was occupied by two Republicans who opposed bilingual education, George Deukmejian and Pete Wilson. From 1952 to 1988, California's electoral votes were cast for the Republican presidential candidate (270towin.com). Since 1988, they have been cast for Democratic candidates (270towin.com).

1975.

Concerning elite agreement pertaining to bilingual education, academic and bipartisan support existed for bilingual education among the state's elites from the mid-1960s through the early 1970s.⁶ From the late 1970s forward, California Republicans began to oppose bilingual education policy arrangements in larger numbers. This increased through the 1980s and 1990s as immigration rates spiked.

With regard to the openness of California's policymaking system, it will be argued that it has a more open political system than Texas. This is mainly attributable to the voter initiative which allows policy legislation through direct voter initiatives and presents outside challengers and political entrepreneurs a venue to sell their alternative issue definitions directly to the voters. Provided that initiative sponsors satisfy the criteria for putting an initiative on the ballot, sponsors can affect policy outcome without having to overcome legislative institutional gatekeepers and/ or be subject to the institutional policy dynamics of retrenchment politics (this will be discussed in detail in the literature review) prevalent in settled issues in which only legislative action can change policy outcomes and a policy regime and/or a mobilized constituency are present to defend policy arrangements.

The case of Texas

Texas is the right-leaning,⁷ less open political system with a ten year period of elite

⁶ Both Governor's Ronald Reagan and President Richard Nixon (from California) were supporters of state and federal legislation to expand bilingual education policy arrangements. The 1970 OCR memorandum was drafted by Leon Panetta, a prominent Republican lawyer from the state. Support from bilingual education was also bipartisan among local and state officials during the late 1960s and early 1970s.

⁷ From 1963 through 1979, Democrats held the governor's office. Beginning in 1979 with Bill Clemens, Republicans began to take a firmer hold of the office. Clemens was succeeded by Democrat Mark White,

agreement in support of bilingual education from 1965-1975. From the late 1970s forward, there was increasing elite division concerning bilingual education.

Concerning Texas' comparatively closed political setting, this designation is only in comparison to California. Compared to the German localities, Texas (like all US states) has a comparatively open policymaking system. However, compared to California, it is less open as it does not have the voter initiative as a policymaking option. Consequently, education legislation must go through the district and/or state legislative bodies. Issue areas are subsequently controlled by policy subsystems which have gatekeeping power to preclude political outsiders and can rely on the dynamics of policy retrenchment (Pierson, 1994) to favor the policy status quo.

German Local Cases

Compared to the American cases, the German cases will be considered closed policymaking systems. Policymaking in religious instruction is characterized by corporatist interest intermediation in non-competitive contexts where para-public institutions have a high degree of autonomy in issue areas and serve essentially as policy monopolies. However, the cases do vary in the historic partisanship of the *Bundeslaender* government

who was succeeded by Bill Clemens' return to the office. Democrat Ann Richards succeeded Clemens and she was succeeded by George W. Bush in 1995. Since 1994, Texas has not elected a Democrat to the governor's office or any statewide office. However, all of the aforementioned governors were supportive of or at least silent on the issue of bilingual education. The state legislature has been controlled by Republicans since 2003. Prior to that it had predominantly been in Democratic control. Through 1980, the state electoral votes were cast for Democratic presidential candidates. From 1980 forward, the state has supported Republican presidential candidates. Texas' bipartisan history should not be confused for political moderatism, however. Texas is a fiscally and socially conservative state. Its partisan history is reflective of the south which went through a thirty year period of electoral realignment after the 1960s Civil Rights legislation made the Democratic Party officially the progressive party (shedding its southern segregationist ties). The realignment took effect first at the presidential level with the state legislatures following in the mid-1990s as was the case for other Southern states.

and elite views concerning religious instruction. The German cases were chosen to show how differing elite relations concerning religious instruction in closed policymaking systems provide better explanations for policy outcomes than the partisanship of government.

The Case of North Rhine Westphalia (NRW)

North Rhine Westphalia was ruled by the SPD (the center-left party) for all but two years of the period of study. Elites supported religious instruction as a means for integrating the youth in general and Islamic religious instruction for Muslim youth in particular. Generally, the SPD is the party that immigrants of the guest worker (*Gastarbeiter*) generation and their descendants feel the most welcome by and, if they are voting, for whom they vote.

NRW has been governed by Article 7 III which mandates religious instruction in NRW public schools. Consequently, corporatist policy arrangements typified the *Bundesland's* attempts to incorporate Muslim lead communities to establish corporatist para-public institutions for the provision of Islamic religious instruction. However, as the NRW authorities did not officially recognize a Muslim lead organization, the corporatist partnerships formed with various Muslim communities in the provision of NRW's version of Islamic religious instruction were informal variations of the Article 7 III state-interest partnerships.

The Case of Bavaria

Bavaria was ruled by the CSU (the local sister party of the center-right CDU) throughout the period of study. As with NRW, elites have supported religious instruction and Islamic religious instruction as a means for integrating German youth and Muslim youth, respectively. Bavaria is likewise governed by Article 7 III, thus mandating religious instruction and establishing corporatist state-interest intermediation in the provision of religious instruction as the legitimate institutional paradigm. However, as in NRW, Bavarian officials were unable to find a suitable Muslim lead organization at the state level to recognize. Instead Bavarian officials eventually allowed localities to recognize local Muslim lead organizations. As this also did not satisfy Article 7 III requirements, these were also policy arrangements that operated outside Article 7 III but operated within the Article 7 III normative paradigm for the structure of state-interest intermediation.

The Case of Berlin

Berlin was ruled by the SPD for the period of study. Unlike the other cases, Berlin is *not* governed by Article 7 III. Instead, religious instruction is offered on a voluntary basis. Elites in this *Bundesland* have been divided concerning religious instruction. This division led to a voter initiative that nearly made religious instruction mandatory. Although the status of religious instruction is less certain in Berlin, the policymaking system because of institutional practices and reforms to the education law is as closed as the other two *Bundeslaender*. The provision of religious instruction by the religious communities is heavily subsidized by the state and the accompanying policy arrangements closely resembled those called for by Article 7 III. Similar to Article 7 III regimes, the education

ministry maintains near monopoly control over which religious community it recognizes for subsidies and subsequently brings into the policymaking process. Thus, the policy arrangements pursued are also informal and are guided by the normative paradigm of Article 7 III for state-interest intermediation in religious instruction policymaking.

Definition of Concepts Used in the Study

Elites: The following groups will be considered elites: political parties, government officials, public officials, academics, issue advocates, interest groups, political entrepreneurs and the media. These have been classic proxies used to describe elite behavior (Burk, 1999: 60). The use of elites, however, will mostly refer to political elites, which includes all of the above with the exception of the media.

Elite Agreement: When there is general consensus among elites concerning the problematization of a policy area and its proposed solution. Opposition still exists but it is generally considered fringe or extremist or its political influence is not sufficient to control or affect the direction of policy outcomes. This will be ascertained primarily through a close rendering of secondary accounts of elite views concerning the relevant issues overtime.

Elite Disagreement: When there is general divisions among elites concerning the problematization of a policy and its proposed solution. This will also be ascertained via the methods described above.

Policy Venue: The institutional location of policymaking (Baumgartner and Jones, 1991; 1993)

Venue Shifting: The change of policy venue via a strategic gambit by those outside

the policy regime to shift policymaking authority to another policy venue (Baumgartner and Jones, 1991)

Issue Definition: How a particular interest is problematized and the appropriate options for solutions (Baumgartner and Jones, 1993).

Venue Shopping: The search by those outside the policy regime for more favorable policy venues for their alternative policy definitions (Baumgartner and Jones, 1993).

Policy Regime: The set of ideas, interests and institutions that govern policy (King and Smith, 2005; 2008).

Learning English Proficient (LEP) students/ English Language Learner (ELL): These are the terms used for designating those students who are not proficient in English. They will be used interchangeably as they are also both used in the literature.

Bilingual Education: This is instruction that uses the native language in the instruction of LEP/ ELL students. And this does not include English as a Second Language (ESL) instruction. This is the distinction used in Texas. However, in California, ESL instruction is often categorized under bilingual education. Throughout the literature on bilingual education, the two instructional methods are separately characterized and thus this study will use the same operationalization.

Policy Retrenchment: This study will assume that initiatives to rollback bilingual education policy arrangements share similar political dynamics as retrenchment efforts — specifically, the political dynamic that the costs of rollback are concentrated while its benefits are diffusely spread among the population. This creates a status quo bias unless government officials can find ways to mitigate blame. Pierson (1994) establishes that initiatives to rollback or eliminate mature welfare state programs carries with it unique

challenges for its proponents. He argues that mature programs encourage policy feedback which leads to the development of administrative capacities and interests. These interests benefit from the program's presence and thus have a stake in its existence. Subsequently, retrenchment politics involves taking on these entrenched interests. This creates a dynamic in which the costs of retrenchment is concentrated on these interests and the benefits [to society at large] are diffuse. This leads to a situation that biases the status quo since the risks for elected officials — electoral retribution from the aggrieved interests — outweigh the rewards of retrenchment (Sheingate, 2000). Although bilingual education is an education program, it has also functioned as social policy subsidized by federal and state expenditures (Moran, 1988). Since its establishment, an administrative apparatus has developed at the federal and state level (bureaucratic administrators at the federal and state levels; and teachers locally) from which some of its staunchest advocates have emerged. An interest advocacy network (ranging from civil rights organizations to community parent and education professional activists groups) developed in the 1970s which not only have defended its existence, but also claim to speak for the program's constituency, Latinos. Hispanics are the largest minority group in the US and are expected to become the largest ethnic group in the middle of the current century. Political officials throughout the period of study have recognized the potential political perils of repealing bilingual education programs — potentially waking the sleeping giant that is the Latino vote.

Client Politics: This study employs Joppke's (1999) definition which states that policies in which the organized potential recipients of 'concentrated benefits' prevail over the non-organized carriers of 'diffuse costs' (Joppke, 1999 1).

English Only: This refers to the political movement that both aims to make English

the official language and is against policy arrangements that sanction bilingualism.

Official English: Official English refers to the political movement that aims to make English the official language of the nation and/or of particular states.

Restrictionism (concerning language): Prohibitions on the use of languages other than English (Galindo, 2000).

Restrictionism (in immigration): Efforts to reduce immigration streams.

Expansionary (concerning language): Initiatives to encourage bilingualism, multilingualism, and multiculturalism

Immigrant incorporation/ political incorporation: The process through which immigrants become part of the mainstream (Okamoto and Ebert, 2010 529).

Dissertation Outline

The remainder of the dissertation will proceed as follows. Chapter 2 will present a brief historical account of the political incorporation of Mexicans in the US and Turkish immigrants in Germany. It will also provide a summation of policy developments in US bilingual education and Islamic religious instruction in Germany to detail the varying policy trends in the two nations that inspired the study. Chapter 3 will offer a review of the literature upon which this study was built upon. Chapters 4, 5, and 6 will deal with the American case. Chapter 4 will offer as background information, the Politics of Bilingual education, showing how bilingual education has been a historically contested policy area among elites. This chapter provides a historical account of the politics of bilingual education with a focus on national level political development. Chapters 5 and 6 will deal with the individual cases of California and Texas, respectively. Chapter 5 and 6 will also

provide the subnational comparative analysis of the American cases, assessing the different prospects for Mexican interests in the two open policymaking settings. Chapters 7 and 8 will deal with the German case. Similar to Chapter 4, Chapter 7 will provide a historical overview of the politics of religious instruction with a focus on national political development in religious instruction. Chapter 8 will present the three German cases, allowing for subnational comparisons of how differing elite views in the respective *Bundeslaender* concerning religious instruction play out in the closed German settings. The final chapter, Chapter 9, will provide a discussion mostly focused around the national comparison of prospects for Mexicans and Turks in the American and German settings

CHAPTER 2

THE POLITICAL INCORPORATION OF TURKISH AND MEXICAN IMMIGRANTS AND COUNTER INTUITIVE POLICY DEVELOPMENTS IN GERMAN ISLAMIC RELIGIOUS INSTRUCTION AND AMERICAN BILINGUAL EDUCATION

The first chapter introduces the rationale for why Germany and the US serve as excellent examples to illustrate the points made by Woon and Zolberg (1999). The following chapter provides a concise history of the political incorporation of Mexicans in the US and Turks in Germany followed by the current trends in these policy realms and historical backgrounds. This aims to provide an understanding of the more detailed history of the policies discussed in chapters 4 through 8.

The Political Incorporation of Mexicans and Turks in Comparison

With respect to the immigrant groups themselves, Turkish immigrants in Germany and Mexicans in the US represent the largest immigrant populations but the least integrated according to standard measures of immigrant integration (Kurthen and Schmitter Heisler, 2009). Mexicans and Turks also share many “similar demographic characteristics, such as age distribution, educational attainment, occupational position, household size, and labour market participation” (Kurthen and Schmitter Heisler, 2009).

Due to the efforts of multiple research institutions, demographic data on Hispanics in the US has been well documented. The same cannot be said of Muslims in Germany. Data collection of this subpopulation has only recently begun with the commissioned

efforts of the German Islam Conference. With respect to Hispanics in the US, the study will make use of data provided by the Pew Research Hispanic Center. In addition to showing the demographic similarities between Mexican immigrants in the US and Turkish immigrants in Germany, this data will also help to provide socioeconomic context for the subnational case studies to follow in Chapters 5, 6 and 8.

According to the Pew Research Center, Hispanics represent 17 percent of the American population. These numbers are up from 6.4 percent in 1980; 9 percent in 1990; and 12.5 percent in 2000. With respect to this study, all of the top 10 counties with the highest share of the Latinos among the population are in Texas, ranging from 88.1 to 95.6 percent. This trend has been prevalent since the 1980s. As ethnic concentration in the US has been a primary factor in immigrant political representation historically in the US (Mollenkopf and Hochschild, 2010), these numbers speak to the substantial increase in Latino (predominantly Mexican) political representation in Texas over this period (to be discussed below). The maps in the appendix (Appendix 1) provide visual evidence of these trends. These maps reveal increasing Latino concentration in California as well but to a lesser degree which speaks to the slightly lower numbers in political representation experienced in California since the 1980s. California does have a larger aggregate share of Latinos but proportionately, Latinos make up 38.2 percent of the population in both Texas and California. Since the 1980s Texas has experienced a 49.7 percent increase of its Latino population while California's share of Hispanics has increased by 33 percent. And as mentioned and will be shown below this has translated into an increased political presence in the state legislatures in both states since the 1980s.

Mexicans are by far the largest immigrant group making 64.2 percent of Latinos

nationwide. Among the Mexican population one-third is foreign born. And similar to the Turkish population in Germany, Mexicans are substantially younger than native-Americans: the median age of both native and foreign-born Mexicans is 27 compared to 42 for White Americans.

Concerning education attainment, Hispanics lag behind all other groups. Only 18 percent of native-born Latinos and 10.6 of the foreign born have college degrees. This is compared with the national average of 29.2 percent.

Of those with less than a 9th grade education, Hispanics by far have the highest percentage at 21.1 percent with the foreign born being hit particularly hard in this area with 32.3 percent with less than a 9th grade education. Poor educational outcomes have historically been a primary impetus for advocacy among Latino interests groups, and bilingual education has always been trumpeted by its supporters as (and detractors for failing at) addressing this issue.

In terms of income, the median Latino household income is 9,500 USD below the national median income. Native born Latinos had a median income of 43,400 USD in 2012 while the foreign born median income was 37,000 USD. Although these numbers are low, black household median income is still lower at 33,600 USD. Nevertheless this translates into the increased likelihood of Latino children living in poverty: 41.3 percent of Hispanic children live in poverty. These numbers only trump black children who are also more likely to live in poverty.

Demographic figures for Muslims in Germany bare similar patterns. The largest immigrant group is of Turkish descent, making up 63.2 percent of the immigrant population (a comparable figure to the Mexican share of the American immigrant population at 64.2).

Additionally, the German micro census indicates that the German population with a migrant background are also far younger than their native German peers (Haug et al, 2009 106).

As evident from the table in appendix 2, 98.4 percent of all Muslims live in the Western *Bundeslaender*. The case studies under investigation here, are among the *Bundeslaender* with the highest distribution of Muslims with North Rhine Westphalia alone hosting 33.1 percent of all Muslims in Germany.

Comparable to Latinos in the US, generally those in Germany with a migration background are less educated than their native counterparts (Haug et al, 2009 211). This is particularly true of Muslim immigrants: while 6.9 percent of the Christians (or of other religious persuasion) immigrants surveyed do not hold a high school diploma, 14.8 percent of Muslim immigrants stated that they had never graduated high school. The former group was also more likely to possess the highest secondary school diploma that allows them to attend university (42.2 percent), but only 34.1 percent of all Muslim immigrants stated the same. Of all Muslim groups, Shiites are doing the best while Alevites have the worst educational outcomes. This is connected with their respective homelands and their motivations for their initial emigration to Germany: while Shiites mostly fled from Iran, Alevites came to Germany via the guest worker program. The same pattern repeats itself with immigrants of the second generation (Haug et al, 2009 212ff).

These numbers show how Mexicans and Turkish immigrant populations in the US and Germany are equally marginalized socioeconomically but being younger with higher fertility rates than their native peers, are projected to be the majority populations later in the century. This has created an urgency among elites (both from the immigrant groups and

the political establishment) to integrate these populations. The politics and institutional structures, however, manifest in differing policy outcomes in issues pertaining to integrating these populations in the different national settings.

As Turkish immigrants and Mexican immigrants are comparable populations, so are the issue areas in which they are the main beneficiaries. Both bilingual education and Islamic religious instruction are not institutions of political incorporation solely targeted at Mexicans and the Turkish population exclusively. However, they both make up the largest foreign born ethnic groups and more importantly, Turkish and Mexican interests have been the lead interests in establishing and defending policy arrangements in these respective policy areas (Crawford, 1999; Joppke, 1999; Nordbruch, 2011; Hofhansel, 2010).

As the demographic characteristics of Mexicans and Turks and the policy areas of bilingual education and Islamic religious instruction are comparable, they make for an appropriate comparison. This specifically allows for analysis on how preexisting institutional configurations and elite views at the local and federal level affect the politics of two policy areas involved in incorporating two similar demographic groups marginalized from these modern industrialized societies.

The Long History of Political Incorporation and Entrenchment of Mexicans in the US

Mexican immigration to the US dates back to the late 19th century. Subsequently, immigrant destinations in the US for Mexican communities have developed in states and localities, such as Texas, New Mexico, Arizona, California, and Chicago, Illinois, and

recently expanding to more interior western areas, such as Colorado⁸ as well as the south especially Arkansas, North Carolina and Georgia (Singer, 2004; 2009). Present-day Texas, New Mexico, Nevada, Utah and California were annexed from Mexico after the Mexican-American War with the Treaty of Hidalgo Guadalupe in 1848 (Ngai, 1999). Thus, Mexican populations predate the acquisition of these territories by the US. Mexicans have been able to naturalize since the Treaty. As of 2009, 40 percent of the Mexican population are citizens and, therefore, can exercise their vote in issue areas of importance (Okomoto and Ebert, 2010).

As the previous paragraph makes clear, these older immigrant destinations have existed for over a century. This favors the incorporation of Mexicans. Once favorable institutional configurations have been established concerning immigrant integration, literature in policy retrenchment and path dependency argue that particular policy arrangements favorable to entrenched groups should make them well-positioned to impede initiatives in policy rollback (Pierson, 1994; Sheingate, 2000; Bamgartner and Jones, 1993; Joppke, 1999). Unfavorable policy change in issues of interests to Mexicans should be far more limited in a polity, such as the United States in which immigration is a normative aspect of its state building project, and because Mexicans are an immigrant group with a longer history of political, cultural, and social entrenchment in the US (Mollenkopf and Hochschild, 2010 22). This should also favor further policy designed to facilitate the continued political incorporation of this politically entrenched immigrant group

⁸ Colorado was actually a destination hub for Mexican immigrants in the 19th century but immigration curtailed after the first two decades of the 20th century (Singer, 2004).

(Mollenkopf and Hochschild, 2010 22). In fact, there is ample evidence that *client politics*⁹ has permitted continued unabated immigration to the US because of the entrenchment of Latino advocates despite the public's lukewarm idea to liberal immigration control policy (Joppke, 1999; Givens and Luedtke, 2005). Especially when compared to a state such as Germany, where the normative idea of immigration as well as the incorporation of immigrant groups is relatively new, prospects should be more favorable for policy accommodation — path dependency¹⁰ or policy liberalization — concerning policies and structures to incorporate or integrate immigrants (Mollenkopf and Hochschild, 2010).

In addition, Mexican immigrant interest groups (or in combination with pan-ethnic Latino organizations) have been in existence since the late 19th century, campaigning against residential and educational segregation, for better working conditions, and bilingual education (Joppke, 1999). Through the 1950s, American Hispanic organizations mostly catered to Mexican-Americans. It was not until the 1960s that Mexican organization began to partner with other Hispanic ethnics or evolved into pan-Latino organizations. The historical political involvement of these groups as well as the political incorporation of Mexican-Americans will be the focus of the next section.

Joppke (1999) provides a detailed account of the history of the political incorporation of Mexican-Americans. A selective summation of the narrative (supplemented with other references) will be used to provide this account. Mexican political mobilization began in the early 1900s with the founding of the Japanese-Mexican

⁹ Wilson (1980) and Joppke (1999) found that *client politics* induces collective action problems where organized beneficiaries of concentrated benefits triumph over the unorganized bearing the diffuse costs (Givens and Luedtke, 2005).

¹⁰ Where *client politics* and institutional inertia makes the costs of policy change not in the interests of the small group of policy beneficiaries.

Labor Association in 1903 (Latino Civil Rights Timeline). The Union consisted of over 1200 Mexican and Japanese farm labor and would later become the first union to successfully win a labor dispute against the California agricultural industry (Latino Civil Rights Timeline). The oldest of the Mexican-American civil rights organizations is the League of United Latin American Citizens (LULAC) (Joppke, 1999). Formed in 1929, its rank-and-file membership extended across class lines — lower middle class professionals and businessmen. It was devoted to pursuing integration for Mexicans suffering from segregation in residence and in school. In service of this goal, LULAC pushed for English acquisition among its members in the pre-Civil Rights years (Joppke, 1999). In 1946, LULAC successfully won the first federal desegregation case in education, *Mendez v. Westminster* (discussed in the Politics of Bilingual Education chapter), ruling that segregating Mexicans was unconstitutional as they were not of the black race¹¹ (Latino Civil Rights Timeline).

After the success of the African American civil rights movement in securing redistributive legislation designed to compensate for historic state-sanctioned discrimination (Civil Rights Act of 1964, the Voting Rights Act of 1965, the Education, Secondary Education Act of 1965), Latino organizations reoriented their organizational ideology and turned their focus to winning redistributive policy concessions. For example, the founding of the Mexican-American Legal Defense and Education Fund (MALDEF) in the 1960s was a paragon of such political organization. Initially sponsored by a grant from the Ford Foundation, it was modeled after the National Association for Colored Peoples (NAACP). It represents Hispanics and is predominantly a litigation organization without a

¹¹ This was the pre-Brown era where racial segregation in schools was still legal.

rank-and-file membership. It has been a lead organization in the fight for the political and legal rights of American Latinos. During the late 1960s, bipartisan courtship of Latinos, Nixon affiliates as well as those of the Ford Foundation encouraged MALDEF to organize and mobilize the growing Latino population into a formidable political force in the image of the African American Civil Rights movement. It has been the predominant player in most legal matters concerning the Hispanic community since its inception (Joppke, 1999). MALDEF contributed to the drafting of the Bilingual Education Act of 1967, which would eventually become the Bilingual Education Act of 1968. It was also the lead interest organization in securing passage of the 1975 and 1982 amendments to the Voting Rights Act, which legally recognized Latinos as a protected “language minority” (Joppke, 1999). Additionally, MALDEF was one of the primary litigators involved in the *Lau v. Nichols* (1974/1975) and *Plyer v. Doe* rulings (both will be discussed in the Politics of Religious Instruction chapter) (Joppke, 1999). Other interest groups/ congressional caucuses that emerged in the 1960s and 1970s include the *National Council of La Raza*, the Congressional Hispanic Caucus, the National Association of Latino Elected Officials, and the Tomas Rivera Policy Institute (DeSipio, 2006).

Immigration legislation historically has tended to be dominated by well-organized client groups as opposed to being dictated by public opinion (Joppke, 1999; Freeman, 2004). This is especially true of Mexican political organization in which elite participation has far outpaced Mexican electoral participation (DeSipio, 2006). Nevertheless, this should be well suited to Mexican interests. As the previous paragraphs established, Mexican elites have had an organizational presence and a track record of achieving legislative accomplishments especially since the 1960s via elite interest mobilization.

By the 1980s, the growing Latino population combined with its organizational presence at the national and local levels allowed Latino organizations to effectively influence national immigration legislation. Latino interests were able to both ward off anti-immigrant policy, which they characterized as anti-Latino, and successfully coerce expansive legislation from officials weary of alienating the Latino constituency (Joppke, 1999). Joppke (1999) cites the provisions added to the Immigration Reform and Control Act of 1986 as an example of the then growing influence of the Latino interest advocacy network. The 1986 Act legalized the status of approximately 3 million illegal immigrants and left the inflow of illegal immigrants unimpeded. Concerning the effectiveness of Latino groups in defeating restrictive measures in the original draft of the 1986 bill, Joppke adds that since the majority of illegal immigrants are Mexicans, Mexicans view anti-illegal immigrant policy as anti-Mexican policy. Latino interest used such a framing to characterize these policies as anti-Mexican, galvanizing support for eliminating or limiting anti-illegal immigration measures in the 1986 bill. This strategy was also employed in the Immigration Act of 1990. Mexican interests succeeded in securing additional amendments to the Immigration Act of 1990. The 1990 Act resulted in an overall increase in the cap on legal immigration — gestures to immigrant and business groups (Joppke, 1999). Since the normative political culture favors anti-discrimination in the post-civil rights era in public and private spheres, this has allowed Latino groups to effectively defeat restrictive measures, claiming that defeating these measures equated with defeating provisions that fostered ethnic discrimination against Mexicans. Joppke cited Latino victories in blocking employer sanctions and gaining amnesty for 3 million immigrants in the 1986 bill as a significant moment in Latino political history, showing the rise of Latino immigrant groups

and their ability to block federal legislation contrary to their perceived interests. Such political influence would appear to advantage Latino groups in the bilingual education argument as well, since anti-bilingual education provisions (which predominantly benefited Mexicans) were also sold by Latino leadership as anti-Latino and anti-Mexican in Latino communities.

Additionally, according to Mollenkopf and Hochschild (2010) the American electoral process is more open to insurgency candidates (such as Mexican candidates, who were not home grown in one of the major parties), responsive to geographically concentrated demographic groups, and less dominated by party control. Parties gain power by mobilizing ethnic and/ or interest concentrated groups to support party candidates. Party leaders are less inclined to exercise veto power in candidate selection if it goes against the will of party supporters. Thus, insurgency candidates can place themselves on ballots through mass mobilization even when lacking the support of party leaders. Less stringent naturalization processes (compared to Germany) make this process more open to immigrants. Subsequently, as the US has a tradition of immigrant mobilization and immigrant political participation, there are a plethora of non-profit organizations devoted to immigrant political incorporation (Mollenkopf and Hochschild, 2010).

These factors have allowed for Latinos to hold political office dating back to the 19th century (DeSipio, 2006). Latinos have a history of holding major political offices in California, New Mexico, Texas and New York — all states with concentrated Latino populations (Manning, 2014; DeSipio, 2006). Because of poll taxes and gerrymandering, however, political representation was stifled from the turn of the 20th century to the 1960s — coinciding with the disenfranchisement of African Americans in the South. From the

1960s forward, however, Latino political representation has increased dramatically at the state level. The following details the increase of Latino representation in state legislatures across the nation from 1952-2010:

In 1952, 22 Latinos served in state legislatures. Nineteen of them served in New Mexico with 1 each in the state legislatures of Colorado, Arizona and Texas. Between 1952 and 1962, the number of Latinos in state legislatures increased to 35 with Texas increasing from 1 to 7 (including its first senator) and California from 0 to 2 (the first representatives since 1907). Between 1962 and 1970, the number of Hispanic representatives increased from 35 to 59 with California holding at 2 and Texas increasing to 12. New Mexico continued to have the most representatives, increasing to 36. By 1980, there were 111 Latinos in state legislatures across the country with California increasing to 7 representatives and Texas to 24. However making up 26 percent of the population in the 1990 census, the California Hispanic population remained a meager electoral presence, making up only 5 percent of the electorate. Their share of the electorate would increase to 14 percent by 1998 (much of this inspired by the passage of Proposition 187) (see California chapter). The number of Latino state representatives increased to 120 by 1984. By the 1990 election, the number of Latino representatives increased to 128 with Texas increasing to 27; however, California dropped to 6. By 1995, the number would increase nationwide to 163; Texas increased to 33 and California increased to 14. By 2000, this number would increase to 198 nationwide; Texas jumped to 35; and California to 27. In both states Hispanics made up 32 percent of the population by 2000. However, they only made up 17.8 percent and 16.5 percent of the electorate, respectively. Nevertheless they experienced increases in Hispanic representation in the legislature between 1996 and 2003.

Texas increased from 27 to 33 and California from 14 to 27 during this period. By 2004, the number of Latino state representatives nationwide increased to 231. By the 2010 election, Latinos in the state legislature increased to 246 nationwide (Schmal, 2011).

Latino politicians at the federal level that serve in Congress are organized in either the Congressional Hispanic Caucus or Congressional Hispanic Conference. As of 2014 (the 113th Congress), there are currently four US senators of Latino descent serving in the Senate and 33 representatives of Latino descent in the US House of Representatives (representing 4 and 7 percent of those respective bodies). This is comparable with two African American (a minority group of similar population size) US senators and 42 members in the House of Representative (Manning, 2014).

These are fairly high numbers for an immigrant group that only makes up 14 percent of the overall population (comparable to African Americans who make up 12 percent of the population and generally have a comparably high voter turnout rate) and in a body, the US Congress, that has historically and disproportionately been dominated by white males. Furthermore, 40 percent of Latinos are eligible to vote. And with 30 percent of the population under the age of 18, these numbers are expected to increase. The real difference, however, is in the aggregate numbers of political representatives of Mexican descent at both the state and national level. This will become apparent when the demographics of the German parliamentary body are assessed in the subsequent paragraphs.

Turkish Political Representation in Germany

Non-German ethnics have only been able to naturalize since the early 1990s. Subsequently, their political representation in the German parliament is a recent phenomenon (to be discussed below). In the German example, there are only a handful of Turkish political officials in higher political office. Both major parties, the SPD and CDU, proclaimed an urgent need for regeneration and backlog demand, respectively, when it comes to attracting and promoting potential candidates with migration background.

After the last federal election in 2013, the number of members of the *Bundestag* (the German parliament) with *Migrationshintergrund* (migration background) rose from 21 to 35 which represents 5.6 percent of the total number of the body's membership (After the second-to-last election, the share was only 3.4 percent). The number of people of migration background in the German population at large is more than three times as high (19 percent).¹² The number of members of parliament of Turkish descent has more than doubled and is currently 11, up from 5. Those with Turkish roots in Germany represent 3.7 percent of the German population while those 11 current parliamentarians represent only 1.75 percent of total number of members of the *Bundestag* (Haug et al, 2009).

At the *Bundesland* level, the lack of non-German presence is similar. In 2010, out of the 1825 members of the 16 parliaments of the *Bundeslaender*, 46 had a migration background. That is a (massive) jump over 2000 when only 12 members of the parliaments were either born abroad or whose parent(s) were/was born abroad.

NRW has one of the highest number of migrant representatives in Germany: 80 members with migration background were voted into the various city councils in 2009. To

¹² This percentage can be slightly different depending on who is counted as a person with migration background, see Gathmann and Keller (2014 6) who cite 13 percent.

put this in perspective, at the time of the election, between 13 and 20 percent of the population in NRW's cities had migration backgrounds, but only 4 percent of the elected council members were non-Germans ethnics. In the current NRW *Landesparlament*, six members have migrant backgrounds; all but one were of Turkish descent (three for the Green Party, two for the SPD, and one for the CDU).

Berlin currently has 12 *Senat* (this City-Bundesland's parliament) members of migration background; 8 of them have Turkish roots. Again, the majority of them belonged to the SPD, followed by the Greens (Gruene) Party, the Left (Linke) Party, and the CDU.

Before the 2013 *Landesparlament* election in Bavaria, a total of 13 candidates with migration background were nominated by the SPD, Gruene, Linke, FDP and Pirate Party. The Bavarian CSU did not have a candidate. In the end, only the SPD candidate prevailed and is now a member of the *Landesparlament* in Munich. This is the first time that a Turkish-born German has served in the conservative Bundesland parliament.

As is evident, these numbers are on the rise — similar to the Mexican rates — however, the Turkish presence in the *Bundestag* and at the *Bundesland* level has a far shorter history than that of its Mexican counterparts and has a much smaller presence currently.

This, thus, should speak to the favorable conditions under which Mexicans should be able to exercise their political will as compared to the Turkish population. The long history of immigration, the political entrenchment of Mexican/ Latino organizations in national and political life, the naturalization rates of Mexicans, and the long history of bilingual education for Mexicans all indicate that policy regimes, such as those associated with bilingual education, should be able to defend against political attack (according to the

logic of concentrated costs and diffuse benefits, iron triangle policymaking, and *client politics*). Current political trends, however, indicate a move away from bilingual education. This is one of the central questions of the puzzle to be solved in this study.

Political Incorporation of Turkish Immigrants

The Turkish population is also considerably smaller as they comprise approximately 4 percent of the German population as opposed to the 10.3 percent that Mexican Americans account for in the US population.¹³ This being the case, they are not large enough to affect public policy as a voting bloc (although their growing numbers locally are changing this political dynamic) (Pfaff and Gill, 2006). Also, they have not been incorporated into any of the major political parties, despite the recruitment efforts from all parties.¹⁴ Subsequently, their interests have been represented by various Muslim and Turkish interest groups (Pfaff and Gill, 2006). These groups, however, have remained fragmented, thus, precluding the formation of national Muslim interest groups similar to pan-Latino national organizations in the US (Pfaff and Gill, 2006).

With respect to the political incorporation of Turkish immigrants, it pales in comparison to their Mexican counterparts (as outlined above). With respect to naturalization, Turkish immigrants were mostly¹⁵ excluded from citizenship through the

¹³ Mexicans make up 10.3 percent of the population as July 2009 (US Census Bureau 2009). If the 7 million undocumented Mexican immigrants are included in the Mexican immigrant population total, their percentage increases to over 28 percent (as of 2008).

¹⁴ Especially the conservative CDU have realized that they could not leave the political playing field to the left-of-center parties, which have been the traditional party for citizens of Turkish descent.

¹⁵ An exception was made for immigrant offspring born on German soil who could become citizens after the age of 16 with residency in Germany of at least 15 consecutive years.

early 1990s because of Germany's citizenship law, which was based on the possession of German blood (*jus sanguinis*). Prior to 1991, only German ethnics could legally naturalize — there was no official law concerning the naturalization of immigrants of non-German ethnicity (Gathmann and Keller, 2014 7). After 1991, adolescents (ages 16-22) could naturalize after 8 years of residency and adults (those over 23) could naturalize after 15 years of residency (Gathmann and Keller, 2014 7). Reforms in 2000, lowered the residency requirements to 8 years for adults and allowed naturalization for those born on German soil provided at least one parent had been a legal resident for 8 years and held a permanent resident permit for at least 3 years (Gathmann and Keller, 2014 7-9). In comparison to the 5-year residency requirement for American naturalization and the automatic citizenship for those born on US soil (regardless of the parents' legal status), German naturalization criteria, post reform, are still stiffer than their American counterparts (Mollenkopf and Hochschild, 2010). Also, lower naturalization rates (20 percent of Turks have German citizenship) and German law concerning non-citizens (prior to the early 1990s) have precluded Turkish migrants from forming political parties and holding public office — two important ingredients involved in political incorporation (Pfaff and Gill, 2006).

As mentioned, according to Mollenkopf and Hochschild (2010), the party system is also less open to ethnic insurgency. The more stringent naturalization requirements have discouraged large numbers of eligible ethnic voters (Gathmann and Keller, 2014 6). Proportional representation and strong centralized parties preclude candidate insurgency and dilute the power of concentrated populations (even if naturalized). Candidates must serve in the party for years before party leaders will back their candidacy for major office which (at least partially) explains the low numbers of persons of Turkish descent at the

national and *Bundeslaender* level (Mollenkopf and Hochschild, 2010).

In addition, the history of Turkish immigration to Germany is significantly shorter as it primarily dates back to the 1950s. The increase in immigration caused by families joining guest workers in the 1970s sparked the development of Islamic civic organizations as the Turkish population took on a more permanent nature. From the 1970s, these groups began to advocate for Muslim interests, one of their primary pursuits was the recognition of a Muslim religious community. As the Basic Law sanctions corporate status (which comes with educational and political privileges) to recognized religious communities, this became an avenue for the political incorporation of Muslim immigrant groups. Islam's decentralized institutional structure, however, has made it problematic to satisfy the Basic Law's structural prerequisites for religious communities. Subsequently, no Muslim group has been granted corporate status at the national level and only recently at the state level (in Berlin in 2000 and Hesse in 2013). It would, thus, appear that Muslim interests (consisting mostly of Turkish organizations) lack the political incorporation necessary in the German system to secure favorable policy positions. The political efficacy of these Turkish organizations pales in comparison to the history of advocacy and incorporation afforded Mexicans in the American setting. Thus, the process of moving from outsider to insider status — placing immigrants in an institutional position to influence policy and fight for their interests — is less established in Germany (Mollenkopf and Hochschild, 2010).

In total, the political incorporation of Germany's Turkish immigrants is less substantial than its Mexican immigrant counterparts in the US. Turkish immigrant history in Germany is shorter, their rates of naturalization are less, the barriers to naturalization are

higher, the incorporation of Islam into the official German policymaking system has yet to occur, and Muslim incorporation into the normative conception of German culture is a polarizing issue. It is only in this last issue where there is a similarity with the plight of Mexican interests in the US. Latino immigration in general and bilingual education in particular are polarizing issues. However, the aforementioned levels of incorporation of Mexican immigrants should place them in a better position to fight for or defend policy arrangements that favor bilingual education. Since the 1980s, however, this has not been the case. Despite the lesser degree of political incorporation and the polarizing nature of Islam in Germany, policy trends in the German state have moved towards incorporating Islamic religious instruction into the public school curricula. While in the US, the entrenched Mexican immigrant community is increasingly impotent in defending or establishing (in the southern US states where they are not entrenched) bilingual education programs.

Overview of Policy Developments to Date: Efforts to Roll Back Bilingual Instruction v. Efforts to Establish/Expand Islamic Religious Instruction

The discussion will now turn to a review of current policy trends in bilingual education and religious instruction. The discussion will begin with current trends in bilingual education in the US. German developments will follow thereafter.

United States: Current Trends in Bilingual Education and Historical Background

Excluding local projects of bilingualism in pre-20th century America, normatively, American immigration has operated on the assumption that all immigrants must learn English (Ngai, 1999; Zolberg and Woon, 1999). This changed in the 1960s with the enactment of the Bilingual Education Act of 1968, which induced localities to offer programs designed to assist language minority students in exchange for limited federal assistance. All localities with the requisite language minority populations were eligible. The OCR memorandum of 1970 and the Lau ruling (1974/75) mandated and led to the adoption of bilingual education at the state level as the preferred method to address the educational instruction for LEP students. Additionally, in 1974, Congress passed the Equal Education Opportunity Act, which made it legal for citizens to bring civil action against districts when they were denied equal education opportunity — the legal rationale that was often invoked by linguistic minority plaintiffs in suits claiming inadequate support from districts in addressing their needs. In sum, by the mid-1970s, bilingual education policy trends were expansionary at the state and national level, sanctioned by all three branches of the federal government. These were bilingual education programs that, while they stressed English language acquisition and proficiency, also had as pedagogical goals, cultural maintenance and bilingualism. Bilingual education also enjoyed bipartisan support at the local, state and federal level during these years (Petrzela, 2010; Crawford, 1999). This was part of the 1960s legacy of liberalization in immigration and racial policy in the US — a political and institutional legacy of the Civil Rights movement.

Over time (beginning in the late 1970s and accelerating in the mid to late 1990s),

however, this political consensus in support of bilingual education dissolved. Bilingual education policy arrangements across localities nationwide increasingly came under political attack in the 1980s and 1990s, ending some such as in California in the mid-1990s. At the local level, (spurred by 3-year federal funding caps) state initiatives were passed which modified bilingual education to 1-3 year transition programs after which students were transferred to English immersion instruction; bilingual education programs were reformed as strictly transitional bilingual education (TBE) programs, eliminating cultural maintenance and bilingualism as pedagogical goals; and/or states eliminated bilingual education programs completely. The initiatives that statutorily ended bilingual education arrangements at the state level include Proposition 227 California English for the Children Initiative (1998) in California; the 1999 Utah state initiative that promotes *English Only* laws in state government (including education); Proposition 203 (2000) in Arizona; and Question 2 in Massachusetts in 2002.

Nationally, beginning with the 1978 Congress, federal funding to states began to be restricted to only those programs considered transitional bilingual education (TBE) — programs with the goal of mainstreaming students. For the next decade, little money was directed towards state bilingual education programs that encouraged cultural maintenance or bilingualism (Crawford, 1998). As these multicultural/ cultural maintenance paradigms fell out of political favor, defenders of the bilingual programs focused less on the multicultural/ bilingual rationales (Crawford, 1998). By the end of the 1980s, political discourse surrounding the normative goals of bilingual education, instead, existed within the language (lack of English proficiency) as the problem paradigm (Crawford, 1998). Bilingual programs were debated solely on the merits of whether or not they contributed

to mainstreaming LEP students (Crawford, 1998). Victories for proponents of bilingual education, subsequently, resulted in federal funds devoted to programs aimed at mainstreaming children (Crawford, 1998). In the 1990s, this political trend intensified and by the middle of the decade, federal reauthorizations of BEA placed a 3-year limit on state bilingual education programs after which LEP students were to be transitioned to English instruction.

In 2002, the No Child Left Behind Act (NCLB) effectively ended the Bilingual Education Act, replacing it with the English Language Acquisition, Language Enhancement, and Academic Achievement Act. The Act afforded localities pedagogical discretion in dealing with English Language Learning (ELL) students, but stressed English acquisition as the normative pedagogical goal for public schools. NCLB aimed to create accountability structures/ goals for student performance. Schools were required to meet Annual Yearly Progress (AYP) targets. Those schools which failed to meet such targets for three straight years risked losing federal funding or closure. NCLB requires that all Limited English Proficiency (LEP) students must pass their state's accountability test by 2014 (regardless of their length of stay in the United States (Wright, 2006). Thus, normatively, NCLB stressed English acquisition through mainstreaming students as quickly as possible so that they too could be subjected to the testing assessment paradigm sanctioned by NCLB. NCLB created incentives for states to abandon bilingual education since meeting AYP targets and meeting the 2014 accountability test equated with more students performing at standardized performance goals [in English] (Wright, 2006).

In conclusion, bilingual programs at the state and national level have either ended or their pedagogical goals have been significantly altered. The bilingual education

programs that emerged in the 1970s at the state level stressed cultural maintenance and bilingualism in addition to English acquisition. All three branches played a role in enforcing bilingual education as the chosen pedagogical method to address the educational needs of Latino (mostly Mexican) students. And these initiatives had bipartisan and academic support from the mid-1960s through the mid-1970s. However, beginning in the late 1970s, the elite agreement in the three branches of government that spurred expansionary policies began to dissolve. Elements of the federal government (Congress and the executive branch), the courts and academics began to change their tune towards bilingual education, creating majorities in favor of policy rollback. Major academic studies questioned its pedagogical efficacy in improving student outcomes. The courts subsequently permitted the use of other pedagogical approaches if it was proven to be endorsed by pedagogical scholarship. And Congress began to withhold funding for all bilingual programs except those dedicated to transitioning students to all English instruction. By 2001, the No Child Left Behind Act ended the Bilingual Education Act replacing it with the English Language Acquisition, Language Enhancement, and Academic Achievement Act. The Act permitted bilingualism but stressed English acquisition. State policies also had increasingly either transitioned to using only transitional bilingual education, using bilingual education for limited periods or ending their bilingual education programs all together.

Locally, however, policy trajectories have varied. Although policy trajectories have trended towards policy rollback in bilingual education programs nationwide, bilingual programs were ended in some states (California, Arizona, Massachusetts) while in others, they simply trended towards policy rollback, such as Texas. In the latter, programs have

dropped cultural maintenance and bilingualism as pedagogical goals and have become more oriented strictly towards transitioning students to English only instruction.

Germany: Current Trends in Religious Instruction and Historical Background

As Germany reformed its immigration and citizenship laws in 1999 (*Bundesregierung of 1999*), the issue of religion's role in the state (especially concerning the place of Islam in Germany) rose on the political agenda (Nordbruch, 2011). The Basic Law implicitly sanctions religious pluralism and civic religious pluralism. However, since Germany only opened its borders to immigration in the latter half of the 20th century through temporary measures to fill labor needs (*Gastarbeiterprogramm*) and for political asylum applicants, religious pluralism only pertained to German [ethnic] citizens and the various permutations of Christianity (specifically the Catholics and the Protestants) typically practiced by ethnic Germans. The permanent presence of Muslim immigrants — and the official recognition of this fact — challenged this normative conception (Hofhansel, 2010).

Article 140 and Article 7 III institutionalize the recognition of religious communities as public corporate entities, enabling them (in conjunction with the respective German *Bundeslaender*) to provide religious instruction courses among other privileges (Avenarius, 2006). However, the incorporation of Islamic communities into the German polity via state recognition has become a political and cultural debate over how this will affect the national political and cultural character of the German polity (the so-called *Leitkultur* which roughly translates to “leading culture”) and if Islam is compatible with the German polity (Nordbruch, 2011).

Since the 1970s as it became apparent that a significant faction of the Turkish immigrant population would not be returning to their homeland,¹⁶ Islamic religious communities have campaigned for recognition in the various *Bundesländer* with sizable Muslim populations (Hofhansel, 2010; Nordbruch, 2011). One of their primary goals has been to attain official recognition to create and provide Islamic religious instruction in German public schools (as Christian religious communities are afforded through state recognition as public corporate entities). However, aside from the Alevites — whom some Muslim religious communities do not recognize as Muslims — only the the Islamic Federation of Berlin (IFB), a lead Muslim community in Berlin, and the Ahmadiyya Muslims in Hessen in 2013, another Muslim sect with scant support from the more established Muslim groups in Germany, have been officially afforded the privilege of providing religious instruction. National and *Bundesländer* authorities have repeatedly ruled that the various Muslim applicants do not meet the criteria for recognition. This has relieved *Bundesländer* of their legal obligation to provide Islamic religious instruction. Nevertheless, German *Bundesländer* authorities have pursued accommodating the requests of selected Muslim local communities. *Bundesländer* authorities have supported/lead pilot initiatives in Islamic religious instruction in selected localities. Many have expanded to other localities since implementation. Localities in Bavaria, Berlin, North Rhine Westphalia, Hesse (prior to the official recognition of Ahmadiyya Muslims in 2013), Baden Wuerttemberg, Rhineland-Palatinate, Lower Saxony, and Hamburg have (since the 1980s) offered some form of Islamic religious education.

¹⁶ It should be noted, however, that a majority of the guest workers eventually returned to their homeland. This was partially encouraged by the German government's 1982/1983 "Gesetz zur befristeten Förderung der Rückkehrbereitschaft von Ausländern."

As mentioned, the western *Bundeslaender* and the German federal authorities have been reluctant to grant corporate status to Muslim religious communities (The process for corporate recognition will be discussed further in the Politics of Religious Instruction chapter). This has prevented these religious communities from offering Islamic religious instruction on par with the Christian communities as sanctioned by the Basic Law. Subsequently, Islamic religious instruction policy regimes across the various *Bundeslaender* have taken on sundry approaches. More importantly, instruction has been provided mostly by German education officials as opposed to a representative of a Muslim community as enumerated in the Basic Law. Thus, most programs have fallen short of the Basic Law requirement that religious instruction is confessional instruction offered by members of the community as is the case with the recognized Christian religious communities. In 2000, Berlin became the first state to officially grant a Muslim community the privilege to provide Islamic religious instruction, closely approximating the provisions called for in Article 7 III of the Basic Law¹⁷ and (as mentioned) Hessen became the first state to grant public corporate status to a Muslim community. The latter falls outside of the purview of this as study as it occurred in 2013. However, it underscores the German aspect of the puzzle of this study: German policy trends in Islamic religious instruction have been moderately expansionary.

¹⁷ However, since Berlin is not governed by Article 7 III. Religious instruction is heavily subsidized by the state which unofficially recognizes religious communities. The Islamic Federation of Berlin had unsuccessfully campaigned for over 20 years for similar recognition from the Berlin state. The Berlin education ministry had continually declared that the IFB was not a religious community according to Article 140 of the Basic Law. An administrative court in 2000 ruled that the Berlin education ministry could not deny the IFB recognition based on Article 140 since it is not governed by Article 7 III. This will be discussed further in the Politics of Religious Instruction chapter.

As mentioned however, locally, these trends have varied. Although Berlin's IFB has become the first Muslim group to be officially recognized, they had to fight a 20 year court battle to achieve this status. And their recognition has been opposed across the political spectrum due to their official designation as a terrorist organization. Meanwhile, although a Muslim group has not been officially recognized in the other western states outside of Hessen, pilot projects in Islamic religious instruction have gradually expanded, providing a semblance of Islamic religious instruction with increasing influence from Muslim organizations as these programs mature.

The eastern *Bundesländer* have minuscule immigrant populations and majorities of the respective populations are not affiliated with a religious community (because of the GDR's historic antagonism towards the organized churches; see Politics for Religious Instruction chapter for a more detailed explanation). Subsequently, Islamic religious instruction is not an issue in the eastern *Bundesländer*. The eastern *Bundesländer* of Brandenburg, however, has adopted a solution similar to Berlin. Neither are governed by Article 7 III and the majority of their populations are not affiliated with a religious community. But they do have sizable Muslim immigrant communities. Brandenburg, like Berlin, does not offer a mandatory religious instruction course but allows the respective religious communities to provide religious instruction courses. These are by offered on a voluntary basis.¹⁸ The provisions are solely the responsibility of the respective religious communities although they have come to be heavily subsidized the by *Bundesländer*.

¹⁸ The *Bundesländer* subsidizes these classes. Students are required to take a mandatory ethics course (Lebensgestaltung— Ethik— Religionskunde (LER)). However the issue of religious instruction is also controversial as religious communities have continually campaigned for religious instruction to be at least on par with LER. A 2001 court ruling brought by the religious communities brought religious instruction on more equal footing with LER (increased state funding and provided a way for students to be exempted from LER). Nevertheless, the issue of religious instruction remains controversial (Avenarius, 2006).

Conclusion

In sum, the issue of Islamic religious instruction is an issue that pertains mostly to the western *Bundeslaender*. Thus, to conclude and compare, in the US, since the 1980s, bilingual education programs have come under fire and/ or have been terminated while Germany [incrementally] eases its way towards providing Islamic religious instruction. Nevertheless, within both settings, and considering these general trends, policy trajectories have varied locally.

CHAPTER 3

LITERATURE REVIEW

Introduction

Using a comparative study of policy trajectories in US bilingual education and German Islamic religious instruction in 5 localities, this study will make the argument that Turkish-German interests are better situated in Germany's closed, corporatist setting than are their Mexican-American counterparts in the more open, laissez faire political marketplace of American pluralism. This literature review discusses the literature upon which this study was built, extending the discussion from chapter 1. First, the chapter will review the literature that forms the foundation of this study: justifying the comparison of Spanish in the US and Islam in Europe, and the chosen issue areas of bilingual education and Islamic religious instruction. The review will then cover literature concerning the respective political contexts. It first deals with immigration politics (with a focus on the elite driven, clientele politics of immigration policy) and the incorporation regimes in the US and Germany and then moves on to the respective national contexts and policymaking systems. Concerning the latter, the discussion will focus on the literature pertaining to what specifically makes the two respective policymaking systems more open or more closed. It will conclude the discussion of the literature with a review of literature on policy change (institutional dynamics, policy retrenchment, and policy feedback) as the crux of the study addresses the direction of policy trajectories — policy expansion versus policy retrenchment.

Importance of English and Christianity in the US and Germany and Their Respective Effects on the Issue of Immigration

This is a comparative study of the politics of bilingual education and religious instruction. These are issue areas of immigrant incorporation as they facilitate the institutionalization of Spanish and Islam into the American and German polity (Fetzer and Soper, 2005; Woon and Zolberg, 1999).

The comparative aspect of the case selection rests on the Zolberg and Woon (1999) assertion that English and Christianity perform similar functions for the US and Western European cultures, respectively. As mentioned in Chapter 1, Zolberg and Woon (1999) argue that based on the cultural, ethnic histories and institutional settings of the respective polities, English and Christianity have served as cultural unifiers. The institutionalization of English and Christianity in the US and Germany, respectively, has been beneficial (politically and institutionally) to the ethnic majorities/ political establishments of both countries. Growing immigrant populations in both countries present challenges to the cultural/ political hegemony of English and Christianity in the US and Germany respectively — a development that has made efforts of immigrant incorporation problematic (Zolberg and Woon, 1999; Kastoryano, 2004). Such efforts have, thus, become contentious as debates focus around the cultural conflicts brought into relief through the integration of immigrant cultures (Zolberg and Woon, 1999 8; Kastoryano, 2004).

Zolberg and Woon (1999) base this argument on their theory of boundary formations by collectives. This refers to a self-referential process whereby a collectivity distinguishes themselves by delineating who they are and who they are not (Zolberg and Woon, 1999 8). The authors argue that this process manifests itself in the creation of

cultural boundaries and theorize how these boundaries are negotiated and/or transcended in the process of immigrant integration. They establish the concepts of *boundary crossing*, *boundary blurring*, and *boundary shifting* to theorize the different means by which immigrant incorporation is resolved in this theoretical paradigm (Zolberg and Woon, 1999 9).

The category of *boundary blurring* is especially relevant to this study. They theorize this term as the acceptance of multiple memberships and an overlapping of collective identities via a structural change (legal, social, or cultural boundaries) to the polity — domesticating what was once seen as alien (Zolberg and Woon, 1999 9). The two examples they provide are public bilingualism and the institutionalization of immigrant faiths (such as public recognition). This study will use their conceptualization of English and Christianity as cultural unifiers and compare how the politics in US and Germany concerning policy areas involving boundary blurring (bilingual education and Islamic religious instruction) play out in the different institutional and political contexts.

Zolberg and Woon (1999) argue that the US presents an unprecedented situation concerning the expected structural changes that will move the US more towards bilingualism. The dominance of Spanish among the post-1965 immigrants, legal legacies of the Civil Rights movement, and market embrace of Spanish because of the growing Spanish speaking middle class will move the US to increasingly incorporate Spanish institutionally into the polity. Concerning religion, Zolberg and Woon (1999) hold that the history of anti-semitism and the institutionalization of religious plurality that it spawned as an institutional remedy ensures that Europe will move incrementally towards incorporating Islam in a manner conducive with the institutionalization of already established religions.

This study compliments this argument, addressing the debate over structural changes invoked through public and official responses to the immigration booms since the 1960s in the US and Europe. There is an assumption by Zolberg and Woon (1999) that the market's embrace of bilingualism combined with public policy responses will eventually transcend the boundaries that empower English and Christianity and exclude Spanish and Islam in multiple settings in the US and Western Europe. This study will assess the state of that assertion by focusing on how local institutional arrangements and elite views affect cultural boundaries and prospects for structural change.

Alba (1998) previously had expanded on the immigrant-ethnic majority boundary theories which were also an aspect of Zolberg and Woon (1999). Alba (1998) argues that these boundaries are varied in types and are permeable. Alba employs the same conceptions of boundaries used in Zolberg and Woon (1999) to discuss the varying quality of immigrant assimilation and the various ethnic boundary constructions. These ethnic boundary constructions are based on the existing institutionalized boundaries in the receiving country and the various histories of the respective immigrant groups (Alba, 1998). Alba maintains that these boundaries are not constructed anew with the arrival of the immigrant populations but are the results of path dependent processes present in the receiving countries prior to the arrival of immigrant groups in significant numbers (Alba, 1998 22). Alba (1998) uses the constructions of boundaries in citizenship, religion, language, and race to illustrate the contextual, contingent, path dependent nature of the construction of these ethnic boundaries. He references the boundaries created by the historic involvement and institutional embedded-ness of Christian faiths in the process of state building in the German polity (Alba, 1998). Despite the Basic Law protection of religious pluralism, this

has resulted in the institutionally induced privileged status of Christianity in various policy and public areas of the German polity (Alba, 1998). For example (with respect to this study), the criteria necessary to grant corporate recognition to religious communities is based on the Christian notions of hierarchical administrative organization. This has impeded the recognition of Islamic communities as corporate entities (Alba, 1998 32). This is not the only example as the existence of the head scarf debate amid widely visible Christian symbols in Bavarian schools brings into relief the privileged status of Christianity and the outsider status of Islam despite the Basic Law's protection religious pluralism (Alba, 1998 32).

In his discussion of boundaries, Alba (1998) argues that language boundaries are more blurry than religious boundaries as bilingualism is easier for the individual and society to reconcile in various settings compared to practicing two religions. Inter-marriage rates of Jews in the US from the 1960s through 1990s offers conflicting evidence of this claim, however (Alba, 1998 35). Alba holds that immigration societies are often tolerant or accommodating of immigrant languages in public settings where large populations of immigrants who use the language are present (Alba, 1993 35). Thus, bilingual signage or services are available in immigrant cities such as Paris, France and Los Angeles, USA (Alba, 1993 35). Alba also refers to the blurred boundaries in the public schools of the US. In the US, a foreign language requirement is often standard in American public schools, and Spanish is the most widely studied language these days (Alba, 1993 35). The researcher notes that these findings differ from France and Germany where Arabic and Turkish are not widely available nor studied in the respective public schools (Alba, 1993 35). Alba, however, in reference to the blurriness of language boundaries exempts from discussion

the issue of bilingual education, which he notes are limited to minority students and are highly contested programs (Alba, 1993 35). These findings beg the question why bilingual education is so contested in a polity which embraces the study of Spanish— the predominant language minority at which bilingual education is aimed.

A common feature of the literature on Muslims in Germany and Latinos in the US is that religion and language (respectively) play pivotal roles in the incorporation process (Kastoryano, 2004; Sanchez, 1997; Soper and Fetzer, 2007; Ngai, 1999).

In the US, English has been considered a part of the Americanization process required of immigrants since the mid-19th century (Ngai, 1999; Sanchez, 1997). It is also viewed as a core concept of what it means to be American (Sanchez, 1997). Thus, since the 19th century, issues of immigrant integration have often involved English acquisition (Sanchez, 1997). In Germany the politics of immigrant integration has evolved differently. The influence of religious wars and the Reformation on Germany's state building project allowed religious communities (specifically Christian religious communities) to assume a corporate character in relations with the German state (Kastoryano, 2004 1234).

Prior to the mid-1990s public discourse concerning integration and incorporation had been solely in terms of German ethnic identity— reuniting the German diaspora in Germany. Beginning in the late 1990s, however, immigrant integration/ incorporation began rose on the political agenda due to the increasing Muslim presence — Islam's cultural conformity with the German culture (Nordbuch, 2012). Nordbuch (2012) argues that German reunification in the early 1990s and citizenship reform that came with the 1998 election of the SPD/Green government— transforming Germany to a jus soli polity — settled the debate concerning the unification of German ethnics. Debate transitioned to

integrating its remaining guest worker population (the majority of who were Muslims) (Nordbruch, 2012). Nordbruch (2012) argues that Islam's compatibility with secular German democracy became the core issue of the integration debate. Hence, Islam's cultural conformity became the new issue dimension of focus in integration politics (Nordbruch, 2012 9).

Political Incorporation As a Collective Action Problem

As discussed above, this study will treat bilingual education and Islamic religious instruction as forms of political incorporation. Political incorporation scholars have traditionally focused on the fate of immigrants as individuals, and subsequently, their rates of naturalization, voting behavior, and other forms of political participation (financial contributions, protest involvement, partisanship, community organization involvement, etc.) have been the main variables tracked (Okamoto and Ebert, 2010 530; Brubaker, 1992; Joppke, 1999; Ramakrishnan and Epenshade, 2001 870). Specifically concerning the preoccupation with citizenship, the argument was that only through citizenship can immigrants enjoy full membership in the polity and thus access to the full array of state protections and benefits (Money, 2009). Much of this research involves assessments of citizenship policy, typologies and analysis of policy trajectories (Money, 2009; Brubaker, 1992; Joppke, 1999; Money, 2009b).

However, it is also argued that scholars have prioritized the individual at the expense of a focus on the contextual factors involved in immigrant collective action (Okamoto and Ebert, 2010 531). Kastoryano (2004) offers that a focus on individual rates of naturalization and voting miss the collective action in service of cultural, religious,

identity related collective goods, which is a major aspect of the integration experience. Rocco (2010) also questions the limited focus on individuals and the electoral process, arguing that such a focus only addresses a limited aspect of full immigrant incorporation in US society (Rocco, 2010 40). He describes full incorporation as involving collective action. Such collective action is pursued across multiple dimensions of political activity including local interest groups, non-profit organizations, labor groups, student groups, and professional organizations (Rocco, 2010 40). Relying solely on the traditional individualistic assimilationist model problematizes political incorporation as pertaining only to individuals who have or have not naturalized (Okamoto and Ebert, 2010 532). With respect to this study, this ignores most of the political activities of both Mexicans and Turks (as a majority of both populations are non-citizens) as well as the contextual factors involved in collective action measures pursued by elites representing these minority communities.

To address the political participation of non-citizens, other studies have expanded the criteria for political participation by looking at forms of participation outside efforts that require naturalization. These studies have measured rates of participation in protests, contacting media and government officials directly, signing petitions, and working in political organizations (Junn, 1999 and Ulainer, Cain, and Kiewiet, 1989).

Okomoto and Ebert (2010) compliments the former literature with research concerning the collective action efforts of minority communities to secure favorable public policy arrangements, arguing that such a perspective provides a more comprehensive assessment of the process of political incorporation (Okamoto and Ebert, 2010 533). Okamoto and Ebert (2010) contest that these processes can capture activities outside of

naturalization and voter behavior where migrant political sentiments are incorporated into the polity via the political endeavors of collectives. Collective action by migrants can develop in response to imposed categorizations by the host society concerning the migrants' perceived differences from (and sometimes threat to) the host society (Alba, 1999; Okamoto and Ebert, 2010; Woon and Zolberg, 1999). These categorizations can emerge through policy responses to perceived threats against full social and political immigrant integration or via the economic and residential segregation of immigrants (Okamoto and Ebert, 2010 534-536). Both conditions encourage group solidarity to defend immigrant interests via forms of exclusive immigrant congregation, an inherent part of residential or economic segregation (Okamoto and Ebert, 2010 534-536).

In the American and German cases, bilingual education and Islamic religious instruction are examples of such collective action projects of political incorporation brought about by the social conditions and political opportunities¹⁹ available to immigrants (Wenner and Warner, 2006; Joppke, 1999; Soper and Fetzer, 2007). In these examples, migrants respond to the host polity. In both the German and American cases certain cultural attributes (in this case language and religion) of the migrants have been categorized as different than their counterparts in the host society and thus problematic in terms of incorporation (Woon and Zolberg, 1999; Okomoto and Ebert 2010 533). Additionally, the individual polities provide particular national/ local political opportunity structures that encourage collective action (Joppke, 1999). In the German case, the Basic Law provisions concerning religious instruction and its institutionalization of particular and potential

¹⁹ This study will use Tarrow's (1994) definition of political opportunity as stated used by Okomoto and Ebert (2010): "elements and conditions of the political environment that provide incentives for political action" (Okomoto and Ebert, 2010 532).

policy actors shapes the political opportunity structure. This pre-existing church-state institutional configuration has structured the political mobilization of Muslim communities in the campaign to establish Islamic religious instruction.

Civil rights legislation of the 1960s in the American case institutionalized the policymaking template for aggrieved minority collectives to secure policy arrangements that sanction government protection and/ political integration. Bilingual education was incorporated into the umbrella meriting state intervention in these two areas. As political incorporation is an interactive process (Woon and Zolberg, 1999), migrants formulate group identities based on the categorization imposed upon and opportunities available to them in the host society (Okomoto and Ebert, 2010). As the differentiation between natives and immigrants is replicated in multiple settings, immigrants, subsequently formulate group identities around these markings and political opportunities imposed by/ available in the host society. Immigrant political entrepreneurs and/or interest groups use these to mobilize immigrants (Alba, 1998). These markings and opportunities can also evolve into issues that represent real or symbolic political incorporation depending on the institutionalization of the particular markings and political opportunities available (Okomoto and Ebert, 2010). This study will operate under the assumption that bilingual education and Islamic religious instruction are issue areas that serve as real forms of political incorporation.

Political Elites

In Germany, political elites pursued policies to incorporate its Muslim immigrants, such as Islamic religious instruction pilot programs (Joppke, 1999). In doing so, political

elites pursued the resuscitation of Germany's international reputation²⁰ and ignored growing public aversion to the incorporation of Islam into the Germany polity (Joppke, 1999). In the US, the civil rights legislative victories of the 1960s ushered in political development via redistributive policies targeting aggrieved groups. These policies were elite driven (as the population as a whole was still ambivalent concerning the social and legislative progress made by the Civil Rights movement) by a Democratic Party that had finally won a substantial majority, but also emancipated itself from southern Democrats who had frustrated progressive initiatives in the decades prior to the 1960s (Cooper and Bombardier, 1968 1015-1016; Joppke, 1999). These redistributive institutional apparatuses were originally designed to fully incorporate (politically, socio-economically, and socially) African Americans. However, by the early 1970s they would expand to also include women, the disabled, environmental groups, and (with respect to this study), linguistic minorities (Joppke, 1999). Joppke (1999) argues that the aforementioned political and institutional contexts privileged elite driven, clientele politics. This is despite polling in both countries that a majority of both populations had a growing aversion to the increases in immigration rates (Joppke, 1999).

Freeman (1995) also holds that clientele politics typifies immigration policies as employers, ethnic advocacy groups, civil and human rights groups are the recipients of concentrated benefits while the diffuse public bears the costs (as cited in Money, 2009).

²⁰ International human rights norms have also affected the German case. Joppke argues that the negative international media attention brought by the refugee violence in the early 1990s led to the compromise the brought both refugee policy and citizenship policy closer in line with other western polities (Joppke, 1999). This led to a more restrictive refugee policy but a transition of the German polity from *jus sanguinis* based citizen to *jus soli* based citizenship (Joppke, 1999). Joppke argues that international pressure and the German elite desire to rebuild Germany's international standing in wake of the refugee controversy but also as a part of its post war project to compensate for its Nazi mistake (Joppke, 1999; Nordbruch, 2012).

Thus, the former are more incentivized to overcome the costs of collective action (Money, 2009). Consequently, Western democracies tend towards liberalization of immigration policy via clientele politics (Money, 2009).

This study will build on the theories of Freeman (1995) and Joppke (1999). As they argue, since the 1960s, clientele politics typifies immigrant policies due to the incentives created by international and domestic norms concerning immigrant and ethnic relations in Germany and Civil Rights-induced political development in the US. Both of these theories argue that elites drove these policies serving clientele groups while ignoring popular opinions concerning these incorporation projects. This study will concur with Joppke (1999) that elite consensus concerning incorporation of Muslims via religious instruction is an important determiner of policy trajectories. Likewise Joppke (1999) holds that US immigration politics has ultimately been driven by elite politics, especially political elites responding to the pressure of mobilized minority interests due to the dynamic of concentrated costs and diffuse benefits of retrenchment politics (Joppke, 1999; Pierson, 1994; 1993; Sheingate, 2000). This has become especially true for both polities after the traumatic protests in the late 1960s as elites looked for ways to institutionalize aggrieved minority protest (Crawford, 1999).

Joppke (1999) further argues that this tension between popular support for immigration restrictionism and the clientele politics of immigration (control) policy brought about the California initiative trilogy in the mid-1990s. The study will build on Joppke's contention concerning the retrenchment politics of the California initiative trilogy of the mid-1990s. Instead of merely arguing that this was a populist reaction to expansionary elitist policies lacking popular support, this study will argue that the

California example provides evidence of a situation when retrenchment policy can be successful — when venue shifting to the voter initiative venue is possible. The initiative forum provided a venue where the dynamics of retrenchment politics (to be discussed later in this chapter) — concentrated costs and diffuse benefits — was eliminated, allowing for outside actors to make their case directly to the voters instead of to public officials fearful of alienating a mobilized clientele. This differed from Texas (the other US case of focus) where such an option was not possible and policy rollback efforts failed due to the dynamics of retrenchment politics.

Another stream of the literature, what Stratan (2003) calls the *racist public thesis*, focuses on elites' role in shaping immigration politics and stresses a more involved role in public opinion and how it influenced restrictionist trends in immigration law in the 1990s and early 2000s. In this line of the literature in the heat of party competition, elites shape the contours of debate, problematizing issues through the prism of xenophobic stereotypes of non-European immigrants often as a last resort when challenging incumbents. They argued that the manner in which an issue is politicized played a great role shaping the political context²¹ within which party competition occurs. Thus elites simultaneously respond to and contribute to shaping the political context. Elite politicization of immigration structured how the mass public viewed the immigration issue, but also how other issues were supposedly affected by immigration. Elites created the range in which public opinion would develop and the contours of debate. This also provided opportunities for political entrepreneurs to exploit macro contexts to scapegoat immigrants for the societal problems (Strathan, 2003 168). However, again elite — civil society, media elites

²¹ The political context refers to the mass public and the macro conditions that affect politics such as the economy. The aspect that elites can shape is the mass public.

— are the players politicizing immigration to affect mass popular opinion in a particular direction.

Faist (1994) discusses how German elites constructed an immigration ideology that denied that Germany had become a de facto immigration country in the decades after World War II and the political consequences of such an ideology. The author finds that through an ethnocultural conception of citizenship, German elites legitimized ethnic German immigration and stigmatized non-ethnic German immigrants (especially Muslim immigrants) as illegitimate (Faist, 1994). Subsequently, issues of integration concerning the guest workers were not addressed within the traditional public forum. Non-ethnic Germans were viewed as a problem, taxing the increasingly scarce resources (welfare state and employment) of the German state. Guest workers were stigmatized as taking advantage of the German welfare system and asylum seekers of the asylum process to then unfairly tax the resources of the state.

Subsequently, if elites are the primary game in town, historical trends concerning their conflict and consensus within a policy area should be an important causal mechanism in the direction of policy outcomes.

(Local) Immigrant Incorporation Literature

The counter intuitiveness of the central puzzle concerning variances in policy trajectories in bilingual education and Islamic religious instruction is based on theories concerning the benefits of political incorporation: Because of Mexicans' longer history of immigration and political incorporation in the US, they should be more likely to secure and maintain policy outcomes in issues areas of interest. Bilingual education is such an issue

area (Crawford, 1999). Latino interests pursued and secured bilingual education policy arrangements at the national and state level in the 1960s and 1970s and successfully maintained those through the 1980s. However, beginning in the late 1970s, policy trends in bilingual education began to reveal policy rollback, a trend that continued through the mid-1990s. And from the mid-1990s through the early 2000s rollback increased as bilingual programs were eliminated at the state and national level including in California via Proposition 227 and with the passage of the No Child Left Behind Act at the national level.

The study will build on literature in political incorporation that Mexican Americans should have more favorable conditions for securing and defending favored policy positions. Mollenkopf and Hochschild (2010) argue that because of the historical symbiosis between immigration and nation-building, Americans have a favorable view concerning immigration. American immigrants generally naturalize at higher rates, face lower barriers to participation in the party system. The latter facilitates easier access to political representation through interest groups and office holding. Additionally, the presence of African Americans both places a more disliked minority with whom they can differentiate themselves in socially beneficial ways and an example of a marginalized group that successfully mobilized to secure favorable legislation for its political and social integration while concurrently becoming influential in electoral politics at the state and national level. The successful African American civil rights movement and its iconic status in American culture provided a blueprint for successful mobilization as well as an institutional legacy that minority immigrants have used for facilitating incorporation (Mollenkopf and Hochschild, 2010 28). Joppke (1999) also argued that the institutional legacy of the Civil

Rights era — civil rights liberalism — permitted post-1965 immigrants to take advantage of redistributive policies (such as affirmative action policies in employment and education) that facilitated their political incorporation. Mollenkopf and Hochschild (2010 28) argue these two factors have a self-reinforcing quality that encourages further political development in political incorporation for immigrants. They conclude that the post-war European immigrants — as they were the first acknowledged wave of immigrants — lacked both the ideological acceptance and the institutional template that facilitated the incorporation of their American counterparts (Mollenkopf and Hochschild, 2010 26-28).

Soysal (1994) argues that immigrant incorporation is a function of the emergence of rights based politics as an international paradigm. This international paradigm structures state domestic politics and nation-specific institutional configurations, which she terms “models of membership” (Soysal 1994 36). Models of membership are institutional resources and legitimated models for interest to forge membership in the polity. These interest intermediation models that facilitate membership are replicated to resolve the problem of integrating immigrants. From this, Soysal (1994) offers a 4-part typology from a 2 dimensional operationalization of her models of membership: liberal, corporatist, statist, and fragmental. Germany is categorized as a statist-corporatist model for its reliance on corporatist intermediaries that are centrally organized.

This argument certainly applies to both the US and Germany in the cases of study. International human rights norms coerced German administrators at the *Bundeslaender* level to implement family reunification interpretations of immigration law in Germany, which led to the increase of Turkish populations after the OPEC-induced recruitment stop in 1973. Subsequently, when increasing demands from Turkish populations increased with

their growth in the 1970s and 1980s, localities applied existing religious instruction policy arrangements to integrate Turkish youth via quasi-religious instruction courses in the teaching of Islam.

The same holds true for the US, where the increasing legitimacy of human rights legitimized the plight of America's ethnic and racial minorities in the post-war years. This was amplified within the Cold War paradigm of the era. Political development resulting from Civil Rights victories led to redistributive policy arrangements aimed at integrating racially and ethnically persecuted minorities. Latino immigrants were incorporated as linguistic minorities. Bilingual education policy arrangements resulted from the legacies of this Civil Rights-induced political development (King and Smith, 2005).

Immigration Regime Typologies

The most typical way in which the literature has assessed the variation in immigration incorporation across states is via typology (Money, 2009). The general argument is that the different types of immigrant incorporation models provide crucial insights into how the state incorporates its immigrants. These typologies are relevant for this study as they all provide heuristics concerning the different institutions and opportunity structures available to immigrants and sympathetic interests concerning immigrant incorporation. These opportunity structures facilitate state-interest intermediation concerning the respective interests that campaign for bilingual education and Islamic religious instruction. This study will build on the general consensus of this scholars that particular national institutional configurations which facilitate the incorporation of immigrants will have varying effects (as these configurations vary per state or as some

argue per sector or issue area within the polity) on immigrant integration and specifically on policy trajectories for relevant issue areas. However, they in and of themselves cannot explain the policy variations in this study especially those at the local level.

Freeman (2004) criticizes the integration regime typology literature that aims to group nations into categories that describe their overall integration regimes. He finds that this is far too simplistic a characterization of the incorporation process. Instead Freeman (2004) maintains that states incorporate immigrants via pre-existing institutional configurations. Four sets of regulatory institutions of the polity are relevant to the immigrant integration experience according to Freeman (2004): states, welfare, culture, and market. Freeman argues that incorporation varies for immigrants depending on the particular regulatory institutional sector as these configurations vary. These domains are also independent and thus incorporation in one domain has little effect on prospects for incorporation in another. Subsequently, national regime categorizations miss much of the complexity of the immigrant integration experience. Freeman, however, does cluster the Western democracies into what he coins syndromes consisting of particular combinations of regulatory institutional configurations. He slots the US into the syndrome with open citizenship and immigration practices, a liberal welfare and market economy, and *laissez faire* and formal multiculturalism (961). Germany, on the other hand, he slots into the syndrome with restrictive citizenship practices and permanent settlement but which is open to labor recruitment (961). Germany also has coordinated market economies and corporate welfare states (961). Freeman (2004) does argue that western democracies have merged towards a “middling” form of immigrant integration. Its neither straight line assimilation nor formal multiculturalism. It seeks to integrate immigrants as it rejects permanent

exclusion due to the legitimacy of the international rights-based paradigm. Although he cites a general trend towards this ‘middling’ integration, he argues that national incorporation institutions facilitate integration and thus outcomes vary per state (nation) as individual states have varying combinations of regulatory institutional configurations (Freeman, 2004 945).

Ireland (1994) employs the concept of institutional channeling to explain patterns of migrant mobilization. Institutional channeling refers to the different national forms of institutionalized participation and this shapes political activism. In his comparison of migrant political activism in France and Switzerland, he finds that comparable migrant groups mobilize differently in the two countries. Thus, he concludes that national institutional configurations are a better explanation of the efficacy of migrant mobilization than ethnicity or class (as cited in Koopmans and Statham, 2000).

Koopmans and Statham (2000) compare the effectiveness of three models— post-nationalist, the multiculturalist challenge, national modes of incorporation— in explaining the quality and kind of claims making and its effects on the sovereignty of the state. The post-nationalist challenge refers to the international human rights norms that coerce nation-states to conform to liberal citizenship laws. The multiculturalist challenge refers to the effect of pluralism in the context of mass immigration and its effects for the cultural and political coherency of the nation-state. The national modes of incorporation refers to the effects of national opportunity structures in shaping the quality and kind of claims making immigrants make on the state. Koopmans and Statham (2000) find that the national modes of incorporation model is the most explanatory concerning immigrant incorporation.

Castles and Miller (2003) offer a three-part typology of immigrant incorporation

schemes based on the “histories, ideologies and structures” (Castles and Miller, 2003 cited in Money, 2009) of the relevant states: the differential exclusion model; assimilationist model; and the multiculturalist model. Germany is categorized as the differential exclusionist model while the US is slotted as a qualified multiculturalist state (due to its lack of social provisions). In the differential exclusionary model, immigrants are segmented into lower pay jobs in the labor market, segregated in housing via residential policies, and discriminated in the provision of social policies. Barriers to citizenship are comparatively high. The assimilationist model argues that immigrants are assimilated into society and granted equal access to housing, employment and social provisions provided that they acquire the language and cultural traits of the state (Castles and Miller, 2003 as cited in Money, 2009). Citizenship is accorded via a form of the *jus soli* model and is thus the criteria for attaining citizenship is comparatively modest. The multiculturalism model concedes that the formation of immigrant communities is part of the process of immigrant incorporation. Thus the state provides these communities access to services to facilitate incorporation (Money, 2009). Although this typology partially captures how bilingual education fits into the assimilation strategies of the US (and why it is contested), with respect to religious instruction, this categorization does not capture the political opportunities structures available to Muslim groups in Germany especially the informal ones at the local level that are of focus in this study. Religious corporatism has provided Muslim groups with institutionalized access to negotiate with the state that is almost on par in some localities with their American counterparts. Additionally, it does not speak to the local variations in historical developments, political and institutional structures that also manifest in differing policy trajectories.

The trichotomous scheme offered by Castles and Miller (similar to Brubaker, 1992 *jus soli v. jus sanguinis* typology) theorizes how incorporation regimes affect the process of integrating migrants into the polity. Although as argued in the institutional section, such typologies do not account for the local institutional opportunity structures at work in the cases of this investigation, the regime type does structure the national debate (which subsequently filters down to the state level). This plays out in redefinition efforts and venue shifting as particular issue dimensions and venues are more prominent in particular incorporation regime types.

Kurthen (1997) argues that Germany and the US represent opposing immigrant incorporation models. Germany is classified as a corporatist welfare state offering aliens comparatively easy access to welfare benefits but is highly restrictive in its access to naturalization and citizenship (Kurthen, 1997 722). He classifies the US, on the other hand, as a pluralist liberal capitalist immigration model (Kurthen, 1997 722-723). Lacking the corporatist structure of Germany, immigrant incorporation is structured by the ideology of individual responsibility to work, equality of opportunity in the labor market and a subsequent preference for *laissez faire* market forces over government intervention in matters of immigrant incorporation and integration (Kurthen, 1997 722). Access to citizenship is comparatively more open in the US while access to welfare benefits is more restricted (Kurthen, 1997). Thus, in Germany, debates in political incorporation concern corporate recognition to secure the policy and institutional benefits of German corporatism. In the US political incorporation involves pluralist competition for policy outcomes that contribute to bettering the individual's ability to compete in the American economy. Subsequently, Islamic religious instruction contestation is oriented around the recognition

of Islam as part of the German corporatist state. Its realization would mean the German state subsidizing the teachings of Islam as a means of integrating Muslim youth — thus placing Islam on par with Christianity’s well-established role in doing the same for Christian youth. Bilingual education concerns cultural recognition and incorporation and questions of pedagogy for immigrant students. These concern creating individuals that can effectively compete in the American market place.

In summation, these typologies offer incomplete heuristics in understanding how national institutional configurations involved in immigrant integration affect policy trajectories in related issue areas. They are incomplete concerning the puzzle of this study as they do not account for local variations and changes in policy trajectories (as is the case in the US example with its trending towards policy rollback in bilingual education after the 1970s).

Koopmans (2004), however, attempts to address this gap in the literature (also see Money 1997). Koopmans (2004) builds on Koopmans and Stratham (2000) findings in his comparative study of German, British and Dutch localities. In his work Koopmans (2004) tests the theory that national regimes of incorporation and citizenship law are less explanatory than supranational and international norms concerning immigrants as well as the transnational forces that had become fashionable in the explanations of immigrant politics and integration (see Joppke, 1999). Koopmans (2004) conducts an intra-national comparison of German localities and international comparison of localities in Germany, Britain and the Netherlands. He finds that local integration regimes in Germany are determinative of claims making in German localities. In those regimes that have progressive, pro-immigrant integration regimes (such as Berlin and Frankfurt), immigrants

are more involved in public discourse and make more public claims concerning immigrant rights and integration policies. Those in more exclusive immigrant regimes (such as Bavaria), immigrants are less involved and make less claims concerning immigrant rights and integration policies and are more concerned with the politics of the homeland.²²

These findings, however, do not negate the effect of national regimes on immigrant claims making. When German localities are compared to those of Britain and the Netherlands, immigrants in German localities make less public claims and are less involved in public discourse concerning immigrant rights and integration issues than their brethren in British and Dutch localities. These findings lead Koopmans (2004) to the conclusion that although local political opportunity structures are determinative of immigrant integration prospects, national political opportunity structures are still the determinative institutional paradigm for immigrant integration. Local political opportunity structures vary within the national political opportunity structures facilitated by national immigrant integration and citizenship regime types.

Along these same lines, Money (1997) argues that actor interests are filtered through local institutions. More specifically, the geographical concentration of immigrants leads to geographically specific interests (both for and against immigration) because of the uneven costs and benefits of immigrant concentration (Money, 1997 687). Immigrant concentration creates strains on local education systems, employment markets and benefit provisions. These can be beneficial to immigrants but problematic for natives (Money, 1997 687). These are then filtered through state (national and local) institutions, greatly affecting coalition building and mobilization efforts (Money, 2009). This study will focus

²² This will be further discussed in the chapter on Religious Instruction in Germany.

on policy developments in German *Bundesländer* and US states, building on this idea that geographical concentration of immigrants in localities means their incorporation will be facilitated by local institutions. Differences in these institutions affect prospects for incorporation, and in this study, policy trajectories for issues of interests to the collective action pursuits of immigrants.

Koopmans (2004) and Money's (2009) findings are relevant for this study as their theories support the research design of this dissertation. As the study offers sub-national comparisons of policy trajectories in bilingual education and Islamic religious instruction as well as national comparisons of policy trajectories in the aforementioned issue areas, it also aims to build on the conclusions drawn by Koopmans (2004) and Money (2009): although local political opportunity structures facilitate prospects of collective mobilization, these political opportunity structures share national characteristics; consequently, despite local variations, prospects for collective mobilization will have national variations that trump those of the local.

Specifically, this study will focus on church-state relations and its effects on policy development in Islamic religious instruction in Germany. The Basic Law guarantees and corporatism structures the politics of religious/ political incorporation for Muslim immigrants. While in the US, incorporation efforts are a function of market forces, ethnic and race relations, and the institutional developments that facilitate policymaking in issue areas concerning welfare provisions, ethnic and race relations (Portes, 1997). Local institutional and political configurations — variations of these national integration regime types — however, were determinative of policy trajectories in the issue areas of focus. Both the politics of bilingual education and religious instruction are facilitated through

local policy networks and institutional configurations because of the predominance of local policy venues in these issue areas.

Other relevant themes in the incorporation literature are the roles played by race, ethnicity, and religion in the migrant experience, especially with respect to immigrant incorporation into the host society. This next section will treat the relevant literature in these areas as the politics of race, ethnicity and religion are a crucial aspect to the politics of immigrant incorporation in these two issue areas.

Immigration and Nativism

Immigrant incorporation is not uncontested. Contestation plays a role that is sometimes muted by the elite nature of these politics but periodically can prove decisive in policy trajectories at critical junctures. This study focuses on two contested issue areas of political incorporation. Scholars have suggested that the political problems of immigration surges have led to an inevitable nativist backlash (Calavita, 1996; Johnson, Farrell and Guinn, 1997; Huber and Espenshade, 1997; Sanchez, 1997; Espenshade and Calhoun, 1993; Calavita, 1996; Nordbruch, 2012). Despite the differences in immigration policy history and philosophy in the US and Germany, attitudes on immigration have been comparable. In American history, immigrant backlashes have accompanied every immigration wave since the mid-19th century with claims of society's peril if immigration was not better controlled/ restricted (Ngai, 1999; Calavita, 1996). American nativism has been documented in reaction to German immigration in the mid-19th century, Asian immigration in the late 19th century, Southern and Eastern European immigration in the beginning of the 20th century and now because of Latino immigration in the late 20th

century/ early 21st century (Ngai, 1999; Calavita, 1996; Sanchez, 1997). And language often factored as a state provision to promote integration or an area of contestation (usually over bilingualism, such as was the case with the Germans and now with Latinos) (Calavita, 1996; Furhman et al, 2007).

In Europe the politics of immigration is mostly a post-1960s phenomenon. Yet nativism in response to increased immigration from the developed world especially Muslim immigrants has led to similar alarms that German/Western European culture is in danger of extinction or ruin (Sarrazin, 2011; Huntington, 1993). In Germany, public aversion accompanied the increasing guest worker population in the 1970s and 1980s, the refugee influx from Eastern Europe of the early 1990s and now the integration of second and third generation immigrants in the late 20th century and early 21st century (Nordbruch, 2012, Thielmann, 2010). Concerning the latter, SPD member Thilo Sarrazin in his book, "Deutschland schafft sich ab," (German Does Away with Itself), argues that Muslim integration (the cultural threat their high birthrates and a 'backwards' value system mean for German culture; the drain on the resources brought about by Muslims' low participation in the labor market but high claims on the welfare state) will lead to the denigration of German society (Kern, 2010).

Such sentiments are evident in the politics of localities as they are affected acutely by immigrant waves (Money, 1997). If present, this should be manifested in clear differences in political views of different groupings depending on the effect of immigration on them personally (Johnson, Farrell, Guinn, 1997; Calavita, 1996). This may affect mobilization of particular movements for or against immigration-related issues depending upon the ethnic/ racial makeup of the residential areas of the localities affected.

Simon and Lynch (1999), in their six country comparative study of public opinion data from 1970-1995, find that a majority favor decreasing the legal rate of immigration, the amount of colored (non-Northern European) immigrants, and prefer that priority in immigration law should rest with special skills over family reunification (464). Their study assesses public opinion data in the US, Great Britain, Canada, Australia, France, and Japan. Simon and Lynch (1999) do concede that these restrictive sentiments vary throughout the period of study and the variation differs per country (465).

On the American side, in their study of the effects of immigration on interethnic relations, Johnson, Farrell and Guinn (1997) argue that the influx of immigrants into Los Angeles in the midst of deindustrialization created interethnic competition for dwindling resources. They chronicle the economic and political changes (such as deindustrialization and welfare state retrenchment) that coincided with the influx of immigrants into the Los Angeles area between 1970 and 1990. They argue that the economic and political context played a great deal in inter-ethnic relations and subsequently on immigration related issues (such as bilingual education) (Johnson, Farrell, and Guinn, 1997).

Calavita (1996) argues that developments in political economy and the emergence of symbolic politics shaped the restrictionism of late 20th century American nativism. Specifically, he argues that nativism (which he holds is prevalent during economic downturns, social transformations, and national security scares) emerges within the context of the current economic, political, cultural debates of the day. In that sense, Calavita (1996) echoes Kingdon's (1984) theory that nativism (like all policy entrepreneurship) emerges from the marriage of a policy solution to a politically resonant issue.

Espenshade and Huber (1997) discuss the merging of neo-isolationism and fiscal

conservatism in the US among the public and its effects on policy outcomes. They argue that this ideological fusion translated into restrictive public policies at the federal and state level against immigrants and a retrenchment of the welfare state (Espenshade and Huber, 1997). They define neo-isolationism as the meeting of isolationism in foreign policy and balanced budget conservatism brought on by economic insecurity and the change in population demographics brought on by the post-1965 immigration boom. Neo-isolationism is a preference for reduced US involvement internationally (diplomatic/military commitments), restricted immigration, and less government spending on the welfare state. Balanced budget conservatism is the preference for reducing public spending across the board to reduce the national/ state debts (Espenshade and Huber, 1997). These studies discuss public opinion and depict the potential for the mobilization of coalitions to enact restrictionist/ retrenchment policy. In this sense, Espenshade and Huber (1997) echo Pierson's (1994; 1996) discussion of systemic retrenchment efforts— taking advantage of macroeconomic factors (budget scarcity, unemployment concerns and slow growth— a culture of austerity) to argue for retrenchment.²³ Specifically, they show how the social and political dislocations created by immigration increases can manifest in opportunities for policy change at the local and national level— legitimated via plebiscitary politics. Although these studies refer to plebiscitary politics as evidence of the enactment of nativist public sentiment into policy, plebiscitary politics is not theorized as an aspect of policy change. This study will add to this by showing how plebiscitary institutional and political configurations can be a mechanism to give this sentiment more influence on the policymaking process, allowing for advocates of policy rollback to overcome the

²³ However, contrary to Pierson, interests supporting redistributive policies were more marginalized than their brethren, the old-pension lobby, in US social security (see Pierson 1994; 1996).

institutional dynamics of retrenchment politics that make such initiatives difficult to achieve. This subsequently provides a contribution to retrenchment politics literature (to be discussed below) — offering institutional settings when retrenchment politics is more feasible.

American Integration Structures

Joppke (1999) focuses on the institutionally-induced aspect of immigrant incorporation practices to bring into relief his theory concerning immigration politics in both the US and Germany: Despite negative public sentiments towards immigrants, evident in polls in both the US and Germany, liberal immigration policy persists. Joppke (1999) argues that clientele politics and national/ international human rights norms are the primary factors in the convergence towards liberal immigration policies in the developed Western world (Joppke, 1999). In the US, the institutional and normative victories of the African-American Civil Rights movement concerning equality and political incorporation were extended to all categories of subpopulations defined as minorities (ethnic, linguistic, disabled persons, gender, etc.) (Joppke, 1999). As mentioned above, the redistributive policy arrangements that followed were the result of clientele politics: the concentrated costs and benefits of integration policy as well as the institutional contexts encouraged immigrant collective action whereby the diffuse benefits of anti-immigration policy discouraged mobilization of anti-immigrant forces (also see Ellermann (2009) for the effects of *client politics* on deportation policy in the US and Germany), at least within the legislative arena (see HoSang, 2010 for anti-fair housing voter initiative in California in the 1960s that overturned civil rights fair housing legislation). Immigrant interests

resonated with the emergent international human rights norms and rights-based politics (Levin and Landy, 1995; see also Soysal, 1994 for the effects of international human rights norms on domestic immigration policy), which used the redistributive institutional apparatus designed to compensate for a systemically sexist, racist, ethnist polity (Joppke, 1998; Levin and Landy, 1995; also see Hollifield 1992 for a discussion of rights triumphing over market forces).

Race and Immigration

Race has also been an important aspect. Racial contestations have led to political development resulting in particular institutional configurations that not only affect race relations but have also facilitated immigrant integration. Ngai (1999) cites the substantial influence of ethnic prejudice and racism in the creation of the 1924 Immigration Act in the US. The racial nature of this Act set the political stage for Immigration Act of 1965, which aimed to remove race from immigration law. Joppke (1999) refers to the role of affirmative action redistributive institutional arrangements — the institutional legacy of the Civil Rights movement — and their effects on the political incorporation of immigrants from the post 1965 immigration wave. King and Smith (2005) cite the effect of racial contestations on the immigration debate and the institutional development, which has greatly affected immigrant incorporation — an effect rendered not only through its effect on coalitions which overlap in issues of race and ethnic incorporation, but also institutionally as dominant political orders successfully altered institutional arrangements, redistributing status, power, and resources along racial lines. This subsequently affected the institutions charged with facilitating immigrant incorporation.

Although American immigration theorists speak of the cyclical character of nativist

backlash with every new immigrant wave (Ngai, 1999; Calavita, 1997), there is also a general acknowledgement of a racial element in the immigration debate. King and Smith (2005) within their paradigm of race and American political development included immigration as a related issue area affected by racially induced political development. The research team holds that American political development has been substantially influenced, historically, by the outcomes of racial orders contestations (King and Smith, 2005). They describe racial orders as coalitions of institutions, political actors and elites united in their preferences to publicly authorize, secure and structure institutions and coalitions to serve what are perceived as particular racial distributions of power, status and resources (King and Smith, 2005 75). Periodic contestations concerning race relations produce victors who win authority over the control of institutional configurations, securing particular kinds of institutional configurations that allocate power, status and resources along racial lines. Immigration is a particular area in which this racial order contestation plays out (King and Smith, 2005 78). The authors operationalize two competing orders: an egalitarian order and a segregationist order (which would later evolve into a non-expansionist order devoted to containing or ending race conscious policies (75). With respect to this study, the institutional configurations created by the victory of the egalitarian racial order— civil rights liberalism— became the dominant institutional paradigm through which post-1965 Latino immigrant incorporation would be facilitated (Joppke, 1999).

The Bilingual Education Act of 1968 was Title VII of the Elementary, Secondary Education Act (a Civil Rights bill) and the legal foundation of the Lau ruling as well as the 1970 OCR memorandum, which mandated districts to make accommodations for LEP students, was Title VI of the Civil Rights Act (as well as the 14th Amendment — won by

the egalitarian order after the Civil War). Both ESEA and the Civil Rights Act were legislation secured by the egalitarian racial order in the mid-1960s. The Office of Civil Rights (OCR) was part of the bureaucratic expansion to enforce Civil Rights legislation, which also resulted from the victories of the egalitarian order in the 1960s. These were three of the primary pieces of legislation/ executive mandates/ bureaucratic expansion that drove bilingual education expansion at the district level in the 1970s.

Later in the 1970s when the political fault line between the racial orders changed from segregation/ desegregation to the battle over the use/ legitimacy of race conscious policies, the politics of bilingual education would also change as it was viewed as part of the race conscious policies of the pro-Civil rights (egalitarian racial order) political order. Bilingual education was viewed as linguistic affirmative action by its critics on the right (Crawford, 1999; Moran, 1988). The politics of *English Only* and especially that of the restrictionist/retrenchment voter initiative trilogy in California in the mid-1990s were continuations of the backlash against big government/ civil rights liberalism (Crawford, 1999). The non-expansionary racial order was among the main players in the *English Only* and California initiative movements (King and Smith, 2005; Crawford, 1999).

Subsequently, this study will build on the findings of King and Smith (2005; 2008), investigating how these national trends played out in the linguistic politics of California and Texas.

Joppke (1999) fits within this Civil Rights institutional explanation for particular policy trajectories in immigration politics in his assessment of the ideational and institutional structures that structured immigration policy and incorporation strategies pursued by the US, Germany, and Great Britain. Concerning the US, he contests that the

institutional outcomes of the Civil Rights era (redistributive affirmative action policy) structured immigrant incorporation (Joppke, 1999). Immigrants qualified for affirmative action policies, and these policy arrangements structured immigrant political efforts towards incorporation (Joppke, 1999). Soysal (1994), Freeman (1995) and Mollenkopf and Hochschild (2010) also concur that the Civil Rights movement provided the institutional and rhetorical framework that framed immigrant incorporation politics in the decades that followed. These show the historic influence of race in both the institutional configurations of immigration policy and the opposing coalitions that contest for policy control in issue areas of immigration. Both of these aspects affect strategies for venue shifting and redefinition efforts, which will be a focus of this study on the American side.

Ngai (1999) describes the deep involvement of race historically in the politics concerning the Immigration Act of 1924. The researcher outlines how race played a role in the provisions concerning the establishment of the racial quota for the Southern and Eastern European immigrants, the barring of Asians from immigration, and the racialization of Mexicans through associating illegal immigration solely with them (and not their European counterparts) (Ngai, 1999). Additionally, Ngai (1999) argues that the legacy of this Act is relevant for current immigration debates. The racial nature of the 1924 Act politically set the stage for immigration reform in the mid-1960s when the Johnson administration and the 94th Congress were politically set to implement major civil rights reforms. The 1965 Immigration Act that resulted changed the racial and ethnic composition of immigration (immigrants instead of originating from Europe, afterwards mostly came from Latin America, Asia, the Caribbean, and Africa). Additionally, the racialization of Mexicans equating them with illegal immigration is a trope that has endured and influenced

immigration politics including the politics of bilingual education (Crawford, 1999).

Several studies focus on immigration in California to discuss the political impact of demographic changes induced by mass immigration since the 1965 Act. California is the most ethnically diverse state in the US. Thus, political problems in California are viewed as forerunners of political issues that will develop in the rest of the nation as immigrant populations spread across the US (Calavita, 1996; Johnson, Farrell, Guinn, 1997; Joppke, 1999). As California is one of the cases in this study, these studies are of relevance. Specifically, the voter initiative policymaking mechanism in California permitted the macroeconomic issues that these studies reference to have more of an impact on the politics of bilingual education. English for the Children could be more easily reframed within the policy venue of the voter referendum than in the legislature as the anxiety created by macro-context changes (such as a slowing economy and rising unemployment) could have more of an impact on voter decisions than in the legislature where legislators also had to take into account the future political costs of alienating a mobilized Latino collective.

German Integration Structures

On the German side, Brubaker (1992) discusses the role of ethnicity in the incorporation of non-German ethnics. Brubaker (1992) holds that the citizenship by blood requirement of German citizenship law through the 1990s created second and third generation “aliens” (as cited in Money, 2009).

Nordbruch (2012) outlines the evolution of the immigration debate from one of ethnicity to one of religion in the 1990s. He maintains that the German elites had long

pursued the reunification of the German diaspora as the polity's *raison d'être* (Nordbruch, 2012; also see Brubaker, 1992). Thus citizenship law was based on ethnic blood lines (*jus sanguinis*). The reunification of Germany in 1991 and return migration of German ethnics reconciled this pursuit. Citizenship reform transitioned the debate to integrating its non-German migrants (who had become second and third generation “aliens” as noted by Brubaker, 1992) and the emergence of the subsequent problem of cultural compatibility of Islam (Nordbruch, 2012). This became the paradigm within which immigrant integration was debated.

Several studies have addressed church-state relations as a way of addressing the political incorporation of Muslim immigrants. In these articles religion is seen as a tool of mobilization and organization for immigrants, but also as an established institutional mechanism for dealing with this new “problem” of integrating Muslim populations. In this sense, this literature speaks to Pierson's (1994) policy feedback theory of learning effects — applying established institutional policy configurations to new policy issues. These arguments as mentioned in the institutional section treat the new migrants as the latest in a long tradition of European states negotiating with religious communities (Kastoryano, 2004, Warner and Wenner, 2006; Soper and Fetzer, 2007). Hence, the preexisting institutional structures and political biases will structure the incorporation of Islam in the different European states (Kastoryano, 2004; Warner and Wenner, 2005; Soper and Fetzer, 2007).

These studies are relevant for the German case as church-state institutions and the closed, corporative nature of these arrangements facilitate the incorporation of Turkish-Germans. Specifically, historical and international pressures (see Nordbruch 2012; Joppke,

1999; Soysal, 1994) have led to elite consensus concerning state initiatives to integrate Turkish-Germans. The church-state institutions are closed, corporatist policymaking environments where interest intermediation operates in relative isolation from the increasing anxiety that the increasing presence of Islam in public life has for the German population. The heterogeneity within the Muslim community has created difficulties for the Muslim community to unify behind an umbrella organization that could serve as a corporate partner with the German state. Nevertheless church-state institutions and elite consensus have both encouraged Muslim attempts at umbrella groups as well as encouraged *Bundeslaender* with elite consensus in support of religious instruction to pursue alternative arrangements to incorporate Muslim communities via religious instruction church-state institutions.

German National Institution Context

Laurence (2009) argues that the recent proliferation of European state-Islam councils fits within the European neo-corporatist tradition of state initiatives to incorporate potentially threatening, underrepresented minority groups in hopes of both encouraging policy demands from Muslim interests that are more moderate and state friendly and the articulation of these demands through democratic institutions as opposed to violent or disruptive protests. These councils normally take on the tripartite form of corporatism including members from the European state (in an advisory or steering capacity), chosen representatives of palatable Muslim lead organizations, and representatives of the relevant Muslim states (308). This trend emerged from the political opportunity structure of existing church-state relations in European states (306). This created an incentive among Muslim

associations for state recognition so that the state could address policy demands with respect to religious practice, religious education as well as addressing issues that have made the increasing presence of Muslim populations in public life controversial (such as, what are Muslim communities' loyalties to their European states of residence?) (303).

Laurence (2009) traces this to corporatism's origins in the late 19th century. During this period, European states pursued extra-parliamentary means for incorporating minorities which could not be done through the democratic politics of the party system (304). European states pursued similar corporatist initiatives to incorporate Jews and radical labor groups. Laurence includes the German-Islamic Conference (*Deutsche Islamkonferenz*, DIK) among similar state-Islam councils in France, Belgium, Austria, Spain, Italy and the Netherlands as attempts by these governments to influence the development and policy demands of various Muslim associations through informal recognition and partial political incorporation for these chosen organizations.

According to Musch (2012), the German federal government has historically attempted to influence immigrant integration via informal round table initiatives in which the German state invites acceptable immigrant lead associations to informal discussions concerning issues of interest (85). She uses Lehbruch's expression when she calls this process "administrative interest intermediation" and categorizes it as typical of Germany's "ephemeral corporatism" (this is contrary to the strong corporatism with more formalized linkages between the state and society found in the Netherlands and Austria; see Lehbruch, 1984; Molina and Rhodes, 2002). The latter refers to Germany's practice of informal state-society relationships where the state seeks consensus with representatives of civil society via informal consensus-oriented collaborations (Musch, 2012 86). She

contests the political opportunities literature, which argues that interest group formation is a bottom up process based on the group's recognition of the institutional configurations that facilitate interest group influence (Musch, 2012). The bottom-up political opportunities argument is that groups subsequently shape their strategies according to and their structures are shaped by the external institutional configurations they must navigate in order to have influence (Musch, 2012 85). Instead Musch (2012) argues that the German government has a history of acting as mediators and organizers of interactions of chosen lead organizations representing immigrant interests (85). Typically, the goal of the German state is that through invitation to round tables the German government can convey an informal recognition to immigrant-lead organizations (Musch, 2012 85). In exchange for this informal recognition, German administrators hope to gain expertise concerning immigrant issues and concerns, political control and support of state policy prerogatives from lead organizations concerning integration policies (Musch, 2012 85). In this sense, Musch (2012) builds on Lembruch's (1984) neocorporatist exchange paradigm, whereby consensus among conflicting parties results from a bartering of resources.

Musch (2012) details the federal government's historic record in pursuing such concertation concerning Turkish immigrant integration (86). She notes that such attempts in the arenas of education, religion, and cultural affairs have often been problematic at the federal level because of German federalism which assigns most responsibility in these areas to the individual *Bundeslaender*. This, thus, has influenced how the German government has responded in these areas (Musch, 2012 86). This study will build on these findings of Musch (2012). In North Rhine Westphalia and Bavaria, the state governments took the initiative in a similar fashion to foster arrangements with lead Muslim

organizations to foster the provision of Islamic religious instruction, as the case studies illustrate. These efforts have proceeded despite the inability to conceive corporatist partnerships with lead Muslim organizations at the *Bundeslaender* level. Additionally, that these initiatives were *Bundeslaender* initiatives speaks to Musch's (2012) assertion that German federalism precludes such initiatives occurring at the federal level. Thus, this provides further support of the research design: a focus on *Bundeslaender* policy trajectories in the issue area of Islamic religious instruction.

Additionally, the German state has been described as a semi-sovereign state (Katzenstein, 1987). Kurthen (1997) describes Germany as a corporatist welfare state. Its political parties are non-ideological and tend towards consensual politics; para-public institutions have vast amounts of autonomy in issue areas. The institutional setting of the German polity also allows for many veto points for recognized participants and encourages consensus politics, all of which favors the status quo (Katzenstein, 2005 293; Nordbruch 2012). Subsequently, contrary to the American example, policymaking is governed by a more fixed policy subsystems consisting primarily of para-public institutions (government officials and recognized interests) (Katzenstein, 2005 293). This often results in path dependent policy where reform occurs through incremental adjustments (Katzenstein, 2005 293). However, elite consensus concerning the integration of Muslims via Islamic religious instruction has made policy expansion feasible. In North Rhine Westphalia and Bavaria, consensus among the major parties, academics and Christian religious groups have led to incremental inclusion of Muslim influence via pilot projects and state-initiated variations of Islamic religious instruction.

German Opportunity Structures

Much of the relevant literature on incorporation of Muslims in Europe deals with the existing church-state institutional structures and how they facilitate both Muslim incorporation and collective action among Muslim interests.

Alba (1998) argues that the corporate structure of German church-state relations, and the small non-Christian population for most of the 20th century has resulted in a German polity that has institutionalized Christian normative conceptions in multiple public settings and political processes (Alba, 1998). This has had the effect of problematizing the incorporation of Islam despite the Basic Law's protection of religious pluralism (Alba, 1998).

Kastoryano (2004) argues that a focus on church-state relations provides the most insightful view of the immigrant experience of Muslim populations in Western Europe. According to Kastoryano (2004), as it is the immigrants' religion which is seen as a threat, church-state relations will play a significant role in the integration process. Kastoryano (2004) offers that a focus on individual rates of naturalization and voting miss the collective action in pursuit of cultural, religious, identity related collective goods that is a major aspect of the integration experience.

Soper and Fetzer (2007) argue that church-state practices structured state accommodations of the religious needs of its Muslim immigrant populations. They hold that the current literature on the Muslim immigrant experience concentrates solely on the political and economic effects of Muslim immigration to the West (Soper and Fetzer, 2007). While acknowledging the value of this work, they argue that academic focus should also look at how religion is incorporated since religious difference seems to be at the core

of the controversy over Muslim immigration (Soper and Fetzer, 2007 934).

Warner and Wenner (2006) argue that Western fears of the growing Muslim presence leading to a Muslim electoral bloc that fundamentally transforms Western societies are wildly exaggerated. They demonstrate that the decentralization of Islam (both institutionally and theologically) has resulted in immigrant populations that lack the political and social homogeneity to produce the suggested electoral bloc with homogenous interests. This heterogeneity exists not only between Western states which have sizable Muslim immigrant populations, but within the immigrant populations in these states (as the hundred plus Muslim organizations can attest) (Warner and Wenner, 2006 458). Citing the lack of literature on the effects of the institutional features of organized religion, they aim to use Islam in Europe as a case study in how the institutional features of Islam preclude collective action on the level feared by Western immigration-phobes.

Pfaff and Gill (2006) offer a complimentary argument concerning collective action by Muslims in Berlin. They also argue for focusing on the church-state relations of the receiving country, the institutional features of Islam, and the political and social stratification of the Muslim diaspora as the best approach to offering prognoses concerning the political potential of Muslim immigrants. They find that the heterogeneity of the Muslim diaspora both ideologically and organizationally create incentives for organizations to act as spoilers (Pfaff and Gill, 2006). These spoilers disrupt the coalition building necessary to build representative entities that can participate in German corporatism.

Hofhansel (2007) adds to the findings of Pfaff and Gill (2006) and Wenner and Warner (2006). He concedes that the institutional features of Islam and German church-

state practices are important in understanding Muslim integration, but they are not the whole picture. He argues that these institutional features are funneled through the local politics and practices and vary per issue area. Using the case of Germany, Switzerland and Austria, Hofhansel (2007) finds that local politics and varying practices per issue area are as determinative of policy accommodations to Muslim groups as the countries' church-state relations and the institutional features of the country's Muslim diaspora. In this sense, Hofhansel's (2007) argument compliments Koopmans (2004) and Money (1997) by adding the church-state institutional configurations to the local contexts, arguing that both of these make up the local contexts that are determinative of immigrant integration.

This study will build on these findings citing the importance of institutional features of Islam, German church-state relations in structuring political opportunity, the particular historical and local politics through which attempts at policy change must contend, and the varying practices (institutions and politics) per issue area that affect policymaking.

The Influence of National Contexts - Plebiscitary Politics Literature

In Cooper's (2009) discussion of the transformation of the American political system — from one characterized by congressional preeminence to one of presidential preeminence — Cooper theorizes the emergence of plebiscitarian politics in the 1980s as the realization of the progressive doctrine — equating popular representative rule with governing according to the people's will (318). Twentieth century institutional reforms allowed for more popular and special interest participation and influence in agenda setting, candidate selection, electoral and policy campaigns (Cooper, 2009 318). All of this came at the expense of state and local party leadership in these realms. Plebiscitarian politics was

suited for the emergence of a political system focused on policy goals and greatly affected by media coverage (Cooper, 2009). This, according to Cooper (2009), contrasted with the traditional party system which focused on party loyalty and party patronage (378). Anti-bilingual education forces in California (but also in other states) employed the rhetoric of plebiscitary politics to legitimate their campaign to end bilingual education. They argued that these were failed programs, controlled by and for the sole benefit of special interests, operating without public support. This study will argue that the plebiscitary policymaking mechanism provided an alternative policy venue to challengers to bilingual education that was free of the legislative dynamics that favor entrenched interests such as Latino interests groups in California.

As mentioned, Joppke (1999) cites the California plebiscite movement of the 1990s as an important signpost of the incongruence between policy outcomes produced by post-1960s rights-based elite politics (Levin and Landy, 1995) and public sentiment (Joppke, 1999). This is the ideological core of plebiscitary politics (Laycock and Barney, 1999). This study will take Joppke's findings and address them from another angle: how does plebiscitary politics function within policy subsystems/ issue networks of the post-1960s institutional and political context.

Lupia and Mutsusaka (2004) address traditional theories of direct democracy, highlighting new findings. They argue that studies of direct democracy prior to the 1990s were mostly descriptive and normative. New studies they contend apply these questions to more scientific methodological treatment— inferring scientific propositions which “could be evaluated theoretically and tested empirically” (Lupia and Mutsusaka, 2004 464). One of the issues addressed is the effect of money. Traditional theories have argued that policy

outcomes can be bought via wealthy initiative sponsors. Lupia and Mutsusaka (2004 472) cite findings that show that policy outcomes are more dependent on policy legitimacy which requires legitimation by well-known elites or institutions. Money has more of an effect when marshaled to defeat proposals than in sponsorship for enacting such legislation through direct democratic means (Lupia and Matsusaka, 2004 472). The researchers, thus, conclude that pre-existing public support is an equally important factor in the passage of citizen-initiatives²⁴ (Lupia and Matsusaka, 2004 472).

Lupia and Matsusaka (2004) also assess recent research on the effects of direct democracy on policy outcomes. Direct democracy legislation has not always been conservative. They cite evidence from Matsusaka (2004) and Gerber (1999) revealing that liberal trends in policy outcomes in the first half of the 20th century gave way to conservative trends in recent fiscal and social policy since the latter half of the 20th century (Lupia and Matsusaka, 2004 473). During the first half of the 20th century (1902-1942), direct democracy legislation led to general increases in state government spending as opposed to current trends of fiscal austerity (Lupia and Matsusaka, 2004 474). Subsequently, they conclude that the presence of direct democratic institutions tend to move policy back to a median voter position. The authors maintain that these findings are important for those who make claims that direct democracy encourages policy movement to the right (Lupia and Matsusaka, 2004 474).

There is debate within the plebiscitary literature whether plebiscitary politics sanctions tyranny of the majority. This is especially relevant to bilingual education since a

²⁴ Referendums — the other most commonly used form of direct democracy — are initiated by legislatures.

sizable portion of the target group, Mexicans, are not citizens and subsequently cannot vote in addition to being a minority²⁵ in the electorate.²⁶ With respect to the effects of plebiscitary politics on minority rights, the literature offers contradictory findings.

Butler and Ranney (1994) argue that [theoretically] plebiscitarian politics can strive for two goals: It can be a mechanism used by political elites to augment or legitimate representational democracy, or it can be used to circumvent mediational actors in pursuit of a more pure form of direct democracy. The former has traditionally been the normative foundation of plebiscitarian instruments (Butler and Ranney, 1994). The latter has played an increasing role in the increased use of plebiscitarian instruments since the 1970s (Butler and Ranney, 1994 13). In either of its varieties, Butler and Ranney (1994 20) find that fears of majority tyranny are exaggerated, arguing that evidence indicating the restriction of minority rights through referendum-induced legislation is marginal at best. They highlight that most referendums are initiated through governing elites— thus are subject to the same processes of deliberation in the formation of their wording. And citizen initiatives formulated by citizen demand which lack the backing or sponsorship of political elites rarely succeed (Butler and Ranney, 1994 21). The Unz anti-bilingual education campaign, English for the Children, is the exception to this theory. It lacked sponsorship from California legislators even from the Republican officials (Crawford, 1999). The latter feared alienating the Latino constituency as was the case with Republican support of Proposition 187 (HoSang, 2010; Crawford, 1999).

²⁵ Approximately, seventy-three percent of the electorate were non-Hispanic whites during the 1990s when the California voter initiative trilogy. Although the passage of Proposition 187 did spark a substantially naturalization bump among Latinos in California.

²⁶ According to the PewResearch Hispanics Trends Project, only 36 percent of all eligible Mexicans have naturalized in the US.

Magelby (1999) cites the agenda setting power of citizen initiatives as the major reason for its increased use by political elites from the mid-1970s forward (218). By the mid-1970s, the traditional party system of the 19th century had been completely dismantled as congressional reforms weakened party leaders and committee chairs, completing the aforementioned Progressive era reforms detailed by Cooper (2009). The political system became more oriented towards representing the popular will — bringing to fruition an ideological development that began in the late 19th century (Cooper, 2009). Concurrently, the emergence of interest group politics, party polarization — secular party realignment which made the parties more ideologically consistent — the emergence of the media's role in policymaking, and issue advocacy required aspiring political office holders and incumbents to rely more on independent political resources (and less on party resources as political parties had weakened) to influence their political fate (Cooper, 2009 318). Subsequently, influence in issues of saliency became a prized commodity for political officials looking to strengthen their political position without the assistance of the Party. Thus, agenda setting power became an important tool to employ for these [now] independent political actors.

In this sense plebiscitary politics is used to disrupt policymaking subsystems that subsist through elite representational subsystems disconnected from popular politics. Using the rhetoric of plebiscitarian politics, politicians have used specific initiatives to facilitate their own electoral and political interests (Magelby, 1999 234). The initiative process can enable politicians to raise visibility on an issue in which their association with the issue can embolden them politically (appealing to outside constituencies and attracting

financial support from issue activists²⁷) (Magelby, 1999 234). Initiatives also make for good copy and thus tend to attract media attention (Magelby, 1999 236), which is helpful for destabilizing policy conceptualizations (Jones and Baumgartner, 1993; 2002)— a quality beneficial to outside actors looking to increase their influence and political profile.

Additionally as a result of the emergence of plebiscitary politics, more direct forms of democracy were legitimated for the purpose of reorienting policy goals so that they were more in line with the will of the people. The marked increase nationally, cited by Magelby (1999), in the titling and petition-circulation of popular initiatives since the 1970s is indicative of the emergence of plebiscitarian politics and the agenda setting power of direct democratic mechanisms. Gerber (1996) found that the introduction or even threat of an initiative can change legislative behavior by placing formerly ignored issues (or particular dimensions of issues) on the policy agenda (Gerber, 1996 as cited in Lupia and Matsusaka, 2004 472).

Successful initiatives in one state can also influence similar initiative campaigns by similar groups and legislative behavior in other states — increasing issue salience in other localities (Magelby, 1999 239). The various incarnations of the English for the Children voter initiatives — the Ron Unz led voter initiative campaigns to outlaw bilingual education — are indicative of this dynamic. Beginning in California in the late 1990s, the campaign was successful in putting anti-bilingual education voting initiatives on election ballots in Arizona, Colorado, and Massachusetts in the early 2000s. However, the issue salience brought about by the Unz initiative failed to change the legislative behavior in

²⁷ These are two are benefits political officials once depended on the Party to provide but now have to secure on their own (Cooper, 2009). Thus, the employment of plebiscitarian politics can also be traced to the weakening of political parties (Cooper, 2009).

Texas as it lacked a voter initiative policymaking mechanism. This study thus will show how the lack or presence of the voter initiative as a policymaking mechanism altered the prospects of policy rollback in bilingual education in Texas and California.

Also, as mentioned previously, since voter initiatives also have the effect of influencing attention to particular issues in other states or nationally, early activity in the initiative process can encourage increased activity in the form of counter mobilization from those whose interests are targeted by the initiatives (Magelby, 1999 239; Calavita, 1996). This also has potential to alter the political context of an issue area. With respect to the latter, Magelby (1999) contends that this agenda setting power of direct legislation and its use of majoritarian politics presents a threat to minority interests if courts are not willing to protect the infringement on minority rights by democratically sanctioned majorities (Magelby, 1999 241).

In their study on the outcomes of direct democracy legislation for issues of interest to and those targeting minorities, Gerber, Hanjal, and Louch (2002) find that minority voters are not significantly more likely to be on the losing side of initiative or referendum votes than non-Hispanic whites. Gerber, Hanjan, and Louch (2002) use a more comprehensive definition for policies that affect minorities, expanding the definition beyond simply those policies that target ethnic and racial minorities. They expand the analytical focus to direct democratic legislation in which minorities vote as a cohesive block, and those in which polls reveal that these issues were the most important to these groups (Gerber, Hanjal, and Louch, 2002 172). In finding that non-whites were not significantly less likely to be on the winning side of direct democracy legislation, they theorized that tyranny of the white majority had been overstated in the literature (Gerber,

Hanjal, and Louch, 2002). Specifically, the existence of tyranny of the white majority requires voting cohesiveness from white voters and/ or that the voting preferences for whites and non-whites had to be in direct opposition (Gerber, Hanjal, and Louch, 2002 172). These conditions only seemed to be present in legislation targeted at ethnic and racial minorities (Gerber, Hanjal, and Louch, 2002 172). Subsequently, with respect to direct legislation that targeted ethnic and racial minorities, Gerber, Hanjal, and Louch (2002 171) did find that minorities were more likely than whites to be on the losing side of initiative and referendum votes. This was especially true for Latinos who were found to most consistently lose out on initiatives and referendums targeted at them (Gerber, Hanjal, and Louch, 2002 171). They conclude that Latinos should be concerned with the potential for direct democratic legislation targeted at their rights or important issues (Gerber, Hanjal, and Louch, 2002 171). The authors hypothesize that the prime target of anti-minority policy is the rapidly increasing Latino population in California with the goal of quelling their increasing political, economic and social influence (Gerber, Hanjal, and Louch, 2002 171-172). This finding is relevant for the present study. The study's findings concerning the effect of plebiscitary politics on policy arrangements in this issue area will contribute insights into the plebiscitary effect on integration issue areas related to Latinos.

Calavita (1996) found that fiscal restraint especially towards retrenchment in redistributive policies that target marginalized minorities had significant and growing public support in the 1990s. This sentiment was manifested in policy through voter initiative legislation in California that pursued reducing spending on social services and affirmative action for marginalized groups. The author illustrates how public sentiment (created by economic insecurity) and voter initiatives can produce substantial policy

change without the backing of elites (Calavita, 1996).

Lastly, HoSang (2010) maintains that initiative campaigns provide a new forum to problematize issues, removing them from the institutional dynamics that had sustained policy regimes. Initiative forums presented policy outsiders with an open forum where the issue areas could be debated anew [without the institutional advantages afforded to policy regimes because of the dynamics of retrenchment politics]. With respect to this study, the presence of the voter initiative provided a forum where alternative issue definitions could receive a more equal public hearing. As restrictionism in immigration, and retrenchment in social policy and budgetary issues had gained popular support among the electorate, the voter initiative forum proved more favorable to those interests in California supportive of policy rollback in bilingual education. The study will build on HoSang's (2010) finding, arguing that the initiative forum presented policy rollback entrepreneurs with a policy venue less susceptible to the obstructionism of the institutional gatekeepers of the bilingual education policy regime and one that did not require the support of legislators fearful of alienating the mobilized (in the wake of Proposition 187) Latino community.

These are important assertions with respect to this study. As restrictive immigration policies are in many cases preferred by a majority of the electorate, a well-crafted initiative with the goal of restrictive immigration policy should stand a good chance of passage. This, subsequently, would allow for voters/ political entrepreneurs to circumvent the policy subsystems/ *client politics*, which have tended to produce policy contrary to the electorate's preferences.

Theorizing Political Change

Building on this expansive notion of political incorporation, how can issues of policy direction, policy change, and policy stasis be theorized?

Focusing on explanations for policy direction and policy change, Givens and Luedtke (2005) employ an empirical study to investigate the impact of issue salience and partisan politics on immigration control policy and immigrant integration policies. They found that issue saliency led to more restrictive policies in immigration control and immigrant integration, but that partisan politics was only relevant in immigrant integration policy (Givens and Luedtke, 2005). Concerning immigrant integration, right parties were more restrictive (Givens and Luedtke, 2005).

Joppke (2003) argues that the presence of left or right governments is a predictor of policy direction in citizenship law. He holds that left governments pursue policies that lower the barriers of citizenship to foreigners. He terms this ‘de-ethnicization’ (Joppke, 2003). Right governments pursue ‘re-ethnicization’ — citizenship policies with high barriers for foreigners but lower barriers for the co-ethnic diaspora. Joppke argues that identification of the party in power is a good indication for policy direction (as cited in Money, 2009).

Likewise, Howard (2007) discusses the role of political parties in restrictive policy change. Howard (2007) agrees with Joppke (2003) that elites are inclined to pursue liberalizing policies but only in states with restrictive laws (as there is pressure for them to meet the standards of more liberal states) (as cited in Money, 2009). More importantly, Howard (2007) finds that the capacity of elites to pursue liberalizing immigration policies depends on the presence of right-wing, anti-immigrant parties (as cited in Money, 2009).

The presence of anti-immigrant parties and the concurrent issue salience of immigration is a better predictor of liberal policy change than the partisanship of government.

These works, however, cannot explain the policy trajectories identified in the localities of focus in this study. Bavaria has a conservative immigration regime (Koopmans, 2004), yet it has been inventive in its attempts to provide Islamic religious instruction. Bilingual education regimes have fared better in Texas — a conservative state — over the period of study than in California — an overall liberal state. Hence partisanship of the government is not the explanatory variable in this study. Concerning the presence of right wing parties, it is true that Germany lack a strong right wing party and that policy trends towards liberalization in integration issues can be explained as elites pursuing movement towards more immigrant inclusion amid international pressures to do so. However, Howard (2007) cannot explain the varying policy trajectories in Berlin versus the western *Bundeslaender*. Specifically, why were policy debates in Berlin concerning Islamic religious instruction more contested? This study employs an alternative argument based on Baumgartner and Jones' (1991, 1993) theory of endogenous policy change.

Baumgartner and Jones (1993) is the standard bearer for and the work referenced most by scholars studying endogenous institutional change. They argue that issue salience and policy image are the main variables in policy change. Their theory is based around the agenda-setting model (Baumgartner and Jones, 1993 4). This model is used to theorize how policy arrangements experience long periods of stability and rapid periods of change before new policy arrangements settle at new points of consensus where a new period of stability begins. These periods of stability for policymaking arrangements take the form of policy monopolies. Policy monopolies are particular understandings of an issue (policy

definitions, policy image) supported by institutional arrangements that reinforce this understanding via policy outcomes (Baumgartner and Jones, 1993: 6). Policy monopolies form when particular understandings resonate with the public and/or among a subset of elites who support these particular understandings leading to institutional arrangements to reinforce such understandings in policy outcomes. Such arrangements then persist either through public acceptance of these understandings or because such understandings are only important to a subset of elites/ the population, allowing these institutional arrangements to persist with minimal challenge. These policy monopolies both secure a particular understanding of an issue via policy outcomes and insulate the regime from outside actors who aim to challenge the governing policy image. Based on an assumption of the multidimensionality of political issues, they argue that issue salience leads to the increased likelihood of issue redefinition efforts and/or venue shifting of policymaking responsibility. In their theory issue salience allows for the entry of new actors into the policy making process which increases the likelihood of policy redefinition and venue shifting (Baumgartner and Jones, 1993; 2002). This results in positive feedback where new issue definitions resonate in other policy venues leading to changes across policy venues.

However, issue saliency and partisan politics do not adequately explain the variance of the aforementioned policy trends in bilingual education and Islamic religious instruction. In both Germany and the US, the partisan composition of local governments has sometimes yielded policy results contrary to the findings of those (Joppke, 2003; Howard, 2007; Luedtke and Givens, 2005) that claim that partisanship of government has the most explanatory power. For the localities of focus, there are examples of government partisanship and the policies they produce (in Germany, Bavaria making accommodations

to establish quasi-Islamic instruction and in the US, Texas' long history of bipartisan support for bilingual education) that do not conform to this theory. With respect to issue saliency, immigration (specifically restrictionist sentiments) has been increasing in saliency since the early 1990s in Germany and the early 1980s in the US (Nordbruch, 2012; Givens and Luedtke, 2005 5). However, in Germany changes to policy arrangements in religious instruction in which new policy arrangements were developed to allow for religious instruction in Islam either preceded emergence of immigrant integration as an issue high on the political agenda or were counterintuitive to the issue salience of immigration restrictionism that was prominent in the 1980s when many of these policy arrangements first took hold. In the US, trends have been consistent with the saliency of restrictionism since 1980 but local trajectories in California and Texas have varied enough that issue saliency provides an incomplete explanation.

Additionally, bilingual education in the US and religious instruction in Germany have trended in opposite directions (trending which is counterintuitive to their duration and degree of political incorporation as well as irrespective of increasing issue salience). German trends can be partially explained by international norms and the plight of German elites to erase their Nazi past (Joppke, 1999; Nordbruch, 2012; Thielmann, 2010). Yet, these do not specify the causal mechanism that explain how international norms manifest in domestic policy outcomes contrary to public opinion. Specifically, how can elites eschew the effects of public opinion during periods of high issue saliency? In response to those that argue *client politics* can provide an explanation (Joppke, 1999), why was *client politics* ineffective in the cases where restrictive policy change occurred?

Nordbruch (2012) argues that there is a growing discontent in German public

opinion with the pace and character of immigration. Public preferences differ from elite policy preferences. Joppke (2012), Calavita (1996), and Johnson, Farrell, and Guinn (1997) also discuss the nativist sentiment brewing that presents challenges to more liberal immigration related policy outcomes. Baumgartner and Jones (1993) theorized that issue saliency can transform dormant issues to those primed for policy reform. As both countries have experienced policy change in the issue areas of focus, it has been asserted that issue salience played a role in these trends in both countries (Nordbruch, 2012; Thielmann, 2010; Joppke, 1999; Calavita, 1996). However, why have policy trends in the US and Germany taken on their particular trajectories? Why has public opinion followed in one case, but eschewed in another?

This is not to say that partisan politics and issue salience have not played a role in these different developments. However, as these cross-national policy trends do not conform to previous theoretical accounts of the effects of issue salience and partisan politics (Givens and Luedtke, 2005; Money, 1999), other factors must be at play.

Punctuated Equilibrium Theory

This study will look at the policy areas of focus over a 45-year time span. This period has included periods of policy stasis and periods of policy change. Subsequently, this study will build on Baumgartner and Jones' (1993) *Punctuated Equilibrium Theory* as this theory aims to theoretically account for periods of policy stasis marked by periods of substantial policy change. To do so this study will trace national and subnational policy trajectories in bilingual education and religious instruction over a 45-year time span. During this time, policy trajectories in both countries experienced periods of policy stasis

and periods of change (*dramatic* change in the US case). Religious instruction throughout most of its history in Germany until the late 20th century equated with instruction in Christianity. The historically contingent combination of German reunification and violent attacks directed towards non-German refugees in the early 1990s led to the liberalization of citizenship policy later in the decade (Nordbruch, 2012). Nordbruch (2012) maintains that despite legal interpretations further institutionalizing policy restrictionism, several German localities in response to appeals from Muslim groups embraced moderated versions of Islamic religious instruction. However, initiatives in North Rhine Westphalia and Bavaria began in the 1970s and 1980s respectively, prior to the supposed rise in issue salience of immigrant integration brought on by anti-foreigner violence and reunification. In Berlin, elites chose not to pursue pilot programs in Islamic religious instruction despite its supposedly liberal immigrant integration regime (Koopmans, 2004). Islamic religious instruction was legalized through successful court action by the Islamic Federation of Berlin in 2000. In the American example, bilingual education experienced dramatic policy change in California and Texas in the 1960s and early 1970s, policy stasis from the late 1970s through the 1980s with incremental restrictionism beginning in the mid-1980s. The 1990s, however, brought dramatic policy change to California but continued policy stasis with incremental restrictionism in Texas. What led to the variation of policy change in the localities in both nations? Are there regional commonalities/ differences internationally/ intra-nationally? Specifically what causal mechanisms were responsible for the transition from periods of policy stasis and incrementalism to periods of dramatic policy change? And with respect to the central question of this study, what influenced the direction of policy change? As the political and institutional contexts that govern policy periods differs

(Baumgartner and Jones, 1993), understanding this period of change is critical to theories incorporating a comprehensive understanding of the policy system and factors involved in particular change (Baumgartner and Jones, 2002).

Contrary to much political science of the 1970s and 1980s, which focused on processes of policy and institutional stability or (separately) on causes of institutional change, Baumgartner and Jones (1993) argued that theories of institutional and policy stasis are not comprehensive reflections of political reality. They concede that the political world is marked by periods of stability but that policy and institutional change do occur. They conclude that theories on political stability were at best only part of the story or at worst incomplete accounts of political reality (Baumgartner and Jones, 1993). Those that did account for political change attributed it to changes in macro political forces (such as exogenous shocks or party realignment). According to Baumgartner and Jones (1993), American politics, specifically political change, was not governed solely by macro political forces. They saw the policymaking process operating in national, state, and local settings with periods of policy stasis, but also episodic periods where the entrance of new political interests expanded the scope of conflict. This led to major episodic shifts in policy that were independent of the macro political forces of partisan politics and policy subsystems (Baumgartner and Jones, 1993). For Baumgartner and Jones (1993), issue saliency is the catalyst — facilitated by historical factors — behind punctuated policy change that occurs outside of macro trends (Baumgartner and Jones, 1993 xxi; 6-7). Issue saliency creates attention for new policy conceptions of the problems and solutions underlying policy. Subsequently, this brings new interests into the policy network (Baumgartner and Jones, 1993 8). This upsets the tenuous “structure-induced equilibrium,” setting the stage for

dramatic policy change (Baumgartner and Jones, 1993 8).

Baumgartner and Jones (2002) argue that a complete view of the policy process must include a theory for long-lasting policy stability and rapid, substantial policy change (2). Central to their argument are the concepts of multidimensional problems, negative and positive feedback, and institutional design (Baumgartner and Jones, 2002). Problems are often complex and multidimensional. However, because of limited attention capacity of political actors, policy outcomes are unidimensional — dealing with only one dimension of the issue area. Institutional design ensures agenda, coalition and subsequently policy outcome consistency. Specifically, institutional design fixes the participation of a consistent set of pro-policy actors/institutions, restricts the participation of actors/institutions opposed to the consensus policy, and institutionalizes particular issue conceptualizations and policy processes (Baumgartner and Jones, 2002 12; 24). This leads to negative feedback where the costs of policy change outweigh its benefits (Baumgartner and Jones, 2002 12; 24). Policy stasis is the result. Any policy change is incremental (Baumgartner and Jones, 2002). Much of the study of policy arrangements focused on this latter dynamic (Pierson, 1994).

Baumgartner and Jones (1993) contested this, arguing that such arrangements are vulnerable to an activated public — issue saliency. Specifically, issue saliency can affect the legitimacy of the governing issue conceptualization of the underlying problem (Baumgartner and Jones, 2002). A reverse process occurs during periods of issue saliency: policy conceptualizations are reassessed, legitimizing outside challenges to the policy authority of actors and institutions of the policymaking process; this increases the likelihood of policy/ institutional change, which legitimizes further challenges to

jurisdictional authority and current policy conceptualizations making additional policy change more likely (Baumgartner and Jones, 2002). Baumgartner and Jones (2002) refer to this process as positive feedback. During these times, the likelihood of policy change encourages new actors/ new institutions, and new conceptualizations of the problem which further increases the likelihood of policy change. The reformist process can result in dramatic policy change over short periods of time (Baumgartner and Jones, 2002 22). Subsequently, institutions should be viewed as both endogenous and exogenous to the policy process — subject to the effects of issue saliency on a multidimensional problem which has only received a unidimensional policy treatment. The symbiotic relationship between issues, policies and the institutions that regulate the policymaking process leads to interactive effects that in periods of low issue saliency result in negative feedback and positive feedback in periods of high issue saliency. Baumgartner and Jones (2002 7-8; 25) hold that a complete theory of the policy process must account for institutional stability— policy stasis and incrementalism — and institutional change — dramatic, substantial policy change — as institutions and the relevant actors respond to the changing political context (political mobilization, altered understandings of the issue, etc.).

At the core of their theory is the notion that policy monopolies are difficult to maintain in the open American political system (Baumgartner and Jones, 1993 8). The openness of the American political system provides a plethora of venues for political entrepreneurs to offer competing policy definitions, thus challenging those who benefit from the governing policy image. This study's focus on the US and Germany aims to depict how the openness/closeness of the system affects the prospects of minority interests for favorable policy outcomes. The policy image of religious instruction as an institution of

integration is maintained throughout German history while the issue dimension of bilingual education transitions from education opportunity to accountability issues, subsequently affecting the politics of the issue. Additionally, however, this study will show how elite views towards an issue interact with the institutional structure to influence policy trajectories. Baumgartner and Jones (1991; 1993) argue that changing the issue salience of particular dimensions of an issue can alter political consensus without changing elite preferences. This implies that elite preferences have a minimal role in policy stasis or change. In tracing elite preferences concerning the issues of focus, this study aims to modify this claim. In the German setting, elite preferences concerning religious instruction are determinative of policy trajectories in the cases of focus. In the American setting, the historic trajectory of elite views concerning bilingual education compliments explanations that rely on solely issue dimension, providing a more complete account of the politics involved in support for bilingual education between 1965 and 1975, and the disintegration of this support in the decades following. As this study will trace the evolution of religious instruction and bilingual education policy over 40 years — a period of time in which policy stasis and change occurred — this study will build on Baumgartner and Jones' (2002) assertion that understanding the policy process requires longitudinal studies which assesses the reasons for policy stasis and policy change within the same issue over time.

Policy Feedback

Baumgartner and Jones (1993) incorporate notions of policy feedback into the endogenous processes of policy stasis and change. They argue that both positive and negative feedback should be incorporated into theories of the policy process (Baumgartner

and Jones, 1993 18). Negative feedback results in path dependent policy trajectories and incremental change. Positive feedback occurs when small changes “catch on” leading to greater changes across policy venues (Baumgartner and Jones, 1993 17).

Pierson (1993) reviews what he considers important literature in policy feedback up through 1993, discussing the important contributions the reviewed scholars made to the subfield while also discussing the methodological shortcomings of these works and the field in general. Pierson (1993 626) categorizes policy feedback along two axes: types of feedback mechanisms and actors affected by feedback mechanisms. Types of feedback mechanisms include resources and incentive effects and interpretive effects. Actors affected by feedback mechanisms include government elites, interest groups, and mass publics. He discusses the literature which make convincing cases showing the various policy feedback produced when various types of feedback mechanisms interact with the different actors affected by feedback mechanisms (Pierson, 1993). However, Pierson (1993) argues that these studies are mostly illustrative as they do not show how these particular case studies can be transportable. Specifically, these studies do not specify under what conditions policy feedback takes place and which influences are most important for policy feedback to occur.

A policy feedback explanation could be provided for the policy trajectories of Islamic religious instruction in Germany and bilingual education in the US for the period of study. Concerning the former, German elites were presented with a growing Muslim population who they felt needed integrating. Policy learning could provide a possible explanation as to why there was broad based elite support for applying religious instruction policy initiatives as a means of integrating Muslim youth. Religious instruction had

historically played this role in Germany, and Islam was considered the stumbling block to Muslim integration. In the US, civil rights initiatives created legal and institutional opportunity structures incentivizing Mexican advocates to organize in pursuit of redistributive legislation and legal protection from the federal government. Their success galvanized counter-mobilization from *English Only* advocates. However, these explanations only provide case specific illustrations and are also merely illustrative. This study argues that elite support for religious instruction and the closed, corporatist policymaking system provided the setting enabling modest policy expansion in Islamic religious instruction. Elite support for religious instruction in the closed German setting — where issue dimension could be held constant and challengers to issue autonomy could be excluded — led policy expansion through policy learning. The American system offers a contrary political and institutional context: elite division concerning bilingual education within the open, competitive political marketplace of pressure politics pluralism. In such a system, multiple venues are available, providing ample opportunities for elite divisions to result in less stable policy consensus where issue dimensions are more fluid, resulting in punctuated periods of policy change.

Retrenchment Politics

This study will assume that the politics of policy rollback in bilingual education presents similar issues for its proponents as those pursuing retrenchment initiatives. Although bilingual education is not a social policy with a powerful constituency, it is a program that has the backing of an advocacy network that speaks for a constituency, Latinos, who although they have not voted in numbers proportionate to their growing

population, they could play kingmakers if mobilized by the right issue. This has been the view of government officials from Nixon to public officials in both parties in Texas and California throughout the period of study (Tatalovich, 1995; Davies, 2002; Navarro, 1985). And the dramatic increase in their rates of naturalization and political participation in California after the passage of Proposition 187 speaks to this potential (see California Chapter 5). Additionally, an administrative apparatus (administrators as well as teachers) developed at the federal and state level to implement bilingual education law, from which advocates for the pedagogical approach emerged (Moran, 1988; Crawford, 1999). They have been among its most staunch supporters. Specifically, Republicans in Texas have been cognizant of the potential of mobilizing the Mexican community through their support of measures to repeal bilingual education and initiatives to make English the official state language. Subsequently, they have been susceptible to the lobbying of the Latino advocacy network (San Miguel, 2011; Tatalovich, 1995). For all of these reasons, this study will assume that policy rollback initiatives in bilingual education face many of the same institutional dynamics as retrenchment issues — specifically the dynamics associated when the costs of rollback are concentrated and the benefits are diffusely spread among the population.

In the US case, policy expansion in bilingual education in the 1970s is followed by a period of restrictionist politics in linguistic politics at the national and state level that permeates into the politics of bilingual education. One of the main foci of this study concerns how the dynamics of retrenchment politics in bilingual education plays out in California and Texas. California has the voter initiative referendum as a policymaking option and venue. Texas does not. This study argues that the additional venue provides an

opportunity for redefinition efforts and venue shifting by proponents of policy rollback seeking a more favorable venue.

Pierson (1994) argues that the causal mechanisms involved in retrenchment are distinct from the factors involved in the expansion of the welfare state. His main argument hinges on his contention that the development and maturity of welfare state programs encourage policy feedback which leads to the development of administrative capacities and interests. These interests benefit from the programs' presence and thus have a stake in the continued existence of these programs. Subsequently, retrenchment politics involves taking on these entrenched interests and not necessarily the interests (such as labor unions or left of center governments) that were originally responsible for their emergence and initial expansion. Subsequently, retrenchment politics involves strategizing methods for taking on these interests without catalyzing counter-mobilization movements seeking electoral retribution. These methods involve eliminating accountability for retrenchment initiatives.

With respect to effects of national institutional contexts on such prospects, Pierson (1994) argues that national institutional contexts present varied opportunities and pitfalls to particular strategies. The decentralized political context of the US (policymaking systems that often involve a matrix of intergovernmental policy venues and interests with relatively easy access to decision makers) presents different opportunity structures for retrenchment policy than more centralized policymaking systems where interests are more vertically integrated (Pierson, 1994 31-36). Nevertheless, Pierson (1994) argues that since policymaking structures vary per social policy program, internationally (for welfare state policies in general), and even within their particular national policymaking structures,

sweeping conclusion concerning retrenchment politics are suspect (Pierson, 1994 36). This study will build on this argument. It will employ a national and sub-national comparison of policy trajectories of two specific issues in localities to render how the politics of immigration with respect to these issue areas plays out in the particular localities. The study finds — concurring with Pierson (1994) — that particular issues have particular policymaking structures; these comparable issues are set within particular national institutional configurations, which also vary intra-nationally per locality. These subnational and national differences influence the prospects of interests attaining and maintaining their policy preferences.

Coleman, Atkinson and Montpetit (1997) apply Pierson's (1994) thesis to retrenchment in agriculture via a comparison of farm policy in France and the US in the 1990s. They concur with Pierson (1994) that policy feedback led to the development of strong agricultural interests willing to defend against retrenchment initiatives. They also found strong support for the systemic and programmatic reforms that can enable retrenchment efforts through obfuscation of the causal chains of retrenchment policy — thus limiting the blame that politicians assume for retrenchment politics. In the final assessment, however, they found that the differing structures of interest intermediation were determinative of prospects for defending against retrenchment efforts (Coleman, Atkinson and Montpetit, 1997 473). In France, vertically organized interests, situated in corporatist policy arrangements were better positioned to fend off retrenchment initiatives than fragmented farm interests in the US situated in pressure pluralist policy networks (Coleman, Atkinson and Montpetit, 1997 473). French farm interests were more coordinated and viewed as “social partners” of the state, functioning within corporatist

policy networks (Coleman, Atkinson and Montpetit, 1997 473). This was especially the case once the right — aligned with farm interests — returned to power after the 1993 election. US farm interests, on the other hand, were fragmented and not integrated in formal state-interest policymaking systems. This discouraged a coordinated response from US farm interests. They were, subsequently, unable to coordinate a united defense against retrenchment (Coleman, Atkinson and Montpetit, 1997 473).

Sheingate (2000), in his study of agriculture policy retrenchment in the US and EU in the 1990s, finds that employing the concepts of venue shifting and redefinition efforts has more explanatory power in explaining why successful retrenchment efforts early in the decade were reversed by the end of the decade — with the US and EU returning to increases in farming subsidies. The author holds that policy redefinition and venue shifting are particularly important explanatory variables in retrenchment politics because of the asymmetry between costs incurred by the beneficiaries of the target policies versus diffused benefits the general public would receive (Sheingate, 2000 338). Citing Riker (1986), Baumgartner and Jones (1993) and Pierson (1994), Sheingate (2000 337) argues the policy status quo rests with the policymaking power of a particular institutional venue that secures a particular policy definition and from which entrenched interests reap most of the policy rewards. Politicians, operating according to the dynamic of blame avoidance/ fearful of electoral retribution incurred from cutting programs that benefit a mobilized constituency, will avoid pursuing retrenchment efforts as the costs outweigh the benefits (Sheingate, 2000 338). Thus, a primary obstacle to retrenchment policy are well-placed interests capable of enacting electoral retribution on retrenchment entrepreneurs (Sheingate, 2000 338). Subsequently, there is a “status quo bias” as mobilized interests are

disproportionately powerful in the policymaking process with respect to quelling retrenchment efforts and maintaining their preferred policy outcomes (Sheingate, 2000 339). Unless politicians can reduce blame for retrenchment policies, they are not worth the costs they incur (Sheingate, 2000 339).

Sheingate (2000) criticizes Coleman, Atkinson and Monpetit (1997) as being more of a descriptive account of the effects of interest intermediation regime type on retrenchment prospects than actually identifying the causal mechanism enabling or frustrating retrenchment efforts — which he cites are venue shifting and issue definition. This study aims to build on both their work by showing how German corporatist arrangements benefitted Turkish interests by maintaining a policy definition that viewed inclusion of Islamic religious instruction as an integrative tool for Turkish youth despite increasing aversion among the public to the growing Muslim populations. With respect to the US, the California case shows how the initiative forum provided a venue where retrenchment could be achieved and legislators would not be blamed. Ron Unz recognized that the voter initiative forum could be used to side-step the retrenchment dynamics of the legislature that allowed bilingual education policy regimes to persist amid ambivalent public support (Crawford, 1999).

Conclusion

Subsequently, applying the theories of immigrant incorporation, and institutionalist policy change this study aims to add to the literature by specifying how policy trajectories vary nationally but within this variation are locally determined. Theories of policy change involving issue definition and venue shifting are important to explanations concerning the

insulation and maintenance of policy definitions amid growing popular aversions to the increased presence of Islam and Spanish in German and American public life, respectively — the threats cited and theorized by Zolberg and Woon (1999). Maintaining or changing issue definitions/ policy venues is determinative of policy direction. This speaks to the importance of policy retrenchment theories in explaining when and how retrenchment efforts can be successful and why they are difficult. As the literature argues, corporatist arrangements are more immune to unexpected re-definition and venue change initiatives as the state-interest concertation involved integrates interests into the policymaking process in a manner not dependent on political context as is the case with pressure politics pluralism. As interests are more centrally coordinated, it also enables entrenched interests to better mobilize to defend cherished policy arrangements. However, elite agreement in support of particular issue definitions is also intricate in securing the status quo as this further encourages concertation. This study with its subnational and national, comparative focus aims to synthesize the aforementioned literature. The aim is that through applying these theories to the local cases, the study can contribute to efforts to show in which instances immigrant interests can expect favorable results from mobilization and in which contexts immigrant interests must continually campaign to maintain their entrenched position. This study concurs with the literature that Muslims in the German setting— because of elite support for church-state institutions for purposes of integration and the corporatist interest intermediation setting— are better situated to attain policy goals concerning religious incorporation.

CHAPTER 4

THE POLITICS OF BILINGUAL EDUCATION

Politics of Immigration – Politics of Language in the US

This chapter provides a historical account of political development in bilingual education. This historical account focuses on the influence of two factors: elite agreement/disagreement over bilingual education and how this has been facilitated by the institutional configuration of the policymaking system. In describing the historic evolution of elite agreement and disagreement over bilingual education, the chapter will use the King and Smith (2005; 2008) racial orders operationalization of the competing political forces involved in their historic account of the role of race in American political development. Linguistic politics has been tied to racial politics throughout American history involving many of the same players, political alignments and political debates (Fenner, 2012; King and Smith, 2008). This historical account of bilingual education politics, thus, will build on the contributions of King and Smith (2005; 2008). It will show how periods of elite agreement involve hegemonic periods for a particular racial order as significant defections from the opposing order tipped the balance of power. A reordering of coalitions is sparked as the politics of the day permitted successful reassessments of the governing problematizations of bilingual education.

A Summary of the Historical Evolution of Bilingual Education Policy

In the 19th century, public education was in its infancy. Localities organized and funded public education arrangements. In areas where immigrant communities emerged, community elites established bilingual arrangements. As public education consolidated at the state level, state officials allowed these arrangements to persist in exchange for the assistance of these localities in providing public education at the local level under the auspices of the state (Blanton, 2004).

In the first two decades of the 20th century, elite consensus developed concerning *English Only* pedagogy as those supporting progressive pedagogy, nativism and white supremacy shared the same goal: English should be the language of instruction in public education (Blanton, 2004). During this period as the institutional structures at the state level became more capable of enforcing state mandates on localities, state officials successfully moved to eliminate bilingual education arrangements (Blanton, 2004). *English Only* pedagogy would enjoy elite support through the middle of the 20th century.

From the 1950s, elite preferences evolved with the growing federal and judicial involvement in education over issues of educational equality and educational opportunity. This brought more elites into the policy conversation concerning bilingual education as the salience of civil rights rose on the public agenda. And accordingly the scope of conflict expanded, bringing the *English Only* problematization of instructing second language students into disrepute (Crawford, 1999; Blanton, 2004). Increasingly, members from both parties favored experimentation with second language instruction.

By the middle of the 20th century, the politics of the Cold War, civil rights and academic consensus began to move elites towards embracing bilingual education for the

growing Spanish language population (Blanton, 2004). The former two would also increase pressure on the national government to play more of a role in public education policy. These two policy trends came to fruition in the mid-1960s with the passage of the Elementary, Secondary Education Act of 1965 (ESEA) and the Bilingual Education Act of 1968 (BEA). ESEA made federal funds available for localities with under privileged students — some of these funds were directed towards experimental bilingual education programs. BEA provided federal funds to localities for efforts to address the needs of language minorities.

The 1960s transformed the policymaking process from one characterized by iron triangles and sub governments to one of issue networks (Berry, 1993). Advocacy players were legitimized and incorporated into the policy process via this transformation (Cooper, 2009). Bilingual education advocates became well-entrenched during the 1970s when bilingual policy arrangements spread nationally throughout locales with sizable Spanish speaking populations. From the mid-1960s through the mid-1970s, there was general elite support for bilingual education. Elite agreement involved support from national and state political officials from both the Democratic and the Republican party, the federal and state courts, and the executive branch. Federal and judicial policy/ mandates resulted in the passage of bilingual education law in states and localities with sizable Latino populations in the 1970s. Additionally, as the Civil Rights movement legitimated advocacy politics, Latino advocacy groups became politically entrenched in the education policymaking system. As bilingual education policy arrangements developed through their advocacy and entrenchment, these groups used their favorable institutional positions to defend these policy arrangements in the decades following the 1970s when political trends in bilingual

education reversed and favored policy rollback.

Latino advocates for bilingual education were able to stave off *English Only* movements that were part of the anti-expansionary racial order (to be defined below) and gained power throughout the 1980s and 1990s at the federal and state levels. However, in states that offered the voter initiative, *English Only* advocates were often able to venue shift policy-making to the direct initiative venue and pass ordinances making English the official language/ eliminate bilingual education arrangements (Galindo and Vigil, 2000). In areas without the initiative option, *English Only* policies were only successfully passed in those areas lacking entrenched Latino advocacy, such as the South in the 1980s and 1990s (Singer, 2004). Subsequently, during this period, in areas with entrenched Latino advocacy, local institutional structures were determinative of how elite conflict played out in policy outcomes in linguistic policy.

Federal mandates and the changing politics of the late 1970s resulted in a political backlash against bilingual education. The decades following were a period of elite/ partisan division over bilingual education. As conservative elites — sympathetic to *English Only* pedagogy — became more prevalent at all levels of government (empowering conservative advocacy groups), the interactive dynamic of American intergovernmental relations, which had formerly led to expansionism, resulted in more restrictionist policy trends in immigration politics in general. In the 1980s and 1990s, this backlash came to fruition in linguistic politics in *English Only* movements to make English the official language at the national and state levels as well as challenges to bilingual education arrangements at the national and state level. Official English ordinances passed in many states, but bilingual education arrangements resisted these movements until 2001 at the national level and the

late 1990s in states and localities with entrenched Latino advocacy.

Nevertheless, bilingual education arrangements, in prevailing through these restrictionist political trends, experienced policy rollback during this period. Specifically, pedagogical methods favoring more use of English instruction/ immersion and less of native language instruction became more prevalent at the state and national level as BEA reauthorizations increasingly shifted more fiscal support towards these English oriented pedagogical approaches. Additionally, cultural maintenance bilingual education programs were virtually eliminated by the end of the 1970s at the national level and late 1980s at the state level.

These trends culminated at the state level in the late 1990s. Voter initiatives were passed in several states, ending bilingual education arrangements. These initiative movements were reactions to challenges that had previously failed via the traditional legislative policy process. Bilingual education arrangements persisted in states with entrenched Latino advocacy but without voter initiatives as a policymaking option. However, as mentioned, policy evolution incrementally continued in which bilingual education policy arrangements experienced policy rollback via further support of English oriented/ assimilationist pedagogical approaches.

At the national level, in 2002, the Bilingual Education Act was not reauthorized. Instead it was replaced by the English Language Acquisition, Language Enhancement, and Academic Achievement Act (Title III of the No Child Left Behind Act). This act removed the language of bilingualism and stressed English acquisition as the normative pedagogical goal for public schools (although it did not forbid the usage of bilingual education).

The remainder of the chapter will detail how the interaction of elite consensus and

institutional structure of bilingual education policy arrangements facilitated policy development in bilingual education.

English as a Cultural Unifier— Transcending the Heterogeneous American population

In the United States, official recognition of religious communities is not an issue of contention as it is in Germany. Religious pluralism combined with a more sharp division between church and state characterize church-state relations. However, political contestations over language are more similar to those concerning religion in western Europe (Zolberg and Woon, 1999; Portes and Rumbaut, 2006). In the US, there is public consensus around the idea that language, specifically English, serves as cultural unifier necessitated by the religious, racial, and ethnic diversity of its population (Zolberg and Woon, 1999; Portes and Rumbaut, 2006). Most Americans view speaking English as a hallmark of being truly American (Citrin et al, 2003 3). In the 1996 General Survey, for example, 71.3 percent of respondents indicated that speaking English was extremely important to becoming “truly American” (Citrin et al, 2003 3). This places the largely Spanish-speaking immigrants of the post 1965 immigration wave as the threatening other (Zolberg and Woon, 1999) — they predominantly speak Spanish and their rapid population growth has population growth forecasts projecting them to be the majority population by the middle of the 21st century, thus, “threatening” the hegemony of English. This has been a core aspect of the ideology of the *English Only* movement since the 1980s.

Such anti-immigrant sentiment has historical antecedents as previous immigration waves such as the Irish and Germans in the 19th century and immigration from Southern and Eastern Europe between 1880 and 1930 prompted a backlash in the first decades of the

20th century against the increasing presence of foreign languages and cultures in public life (Citrin et al, 1990 535). The anxiety of Americans towards immigration was not quelled until the passage of immigration quotas in 1921 and 1924 — the latter culminating with the Immigration Act of 1924 — that essentially eliminated all non-northwestern European immigration until the mid 1960s (Citrin et al, 1990 537; Ngai, 1999). Elite agreement during this period supported the pursuit of English as the nation's common language. This agreement concerning the hegemony of English was held by a majority of members from both parties and academics (in the form of the eugenics movement and pedagogical experts who cited that bilingual education led to depressed educational outcomes for immigrants) (Blanton, 2004; Ngai, 1999).

The History of Race and its Connection to Bilingualism—Racial Institutional Orders and Their Effects on Bilingualism

This study will argue that elite agreement and disagreement over bilingual education is an explanatory factor in the historic evolution of bilingual education politics. Race has been integral to elite views concerning bilingual education. Referencing the racial component of linguistic politics, Terrence (2004) proffers that restrictive linguistic intolerance and racism have been closely linked throughout American history (as cited in Wiley and Wright, 2004 145). This characteristic is attributable to America's British roots (Terrence 2004 146). The British justified their colonial conquests (to the Americas as well as previous colonial initiatives, such as their conquest of Ireland), purporting their right as a superior culture to civilize the uncivilized (Takaki, 1993; Terrence, 2004 146). This became a dominant paradigm of American national culture in the 19th century (Terrence,

2004 146). Linguistic acculturation for its inhabitants was part and parcel of this process. Throughout the colonial period and through the turn of the 20th century, linguistic policy that stressed English acquisition was used as a form of social control towards various minority groups whose culture was seen as a potential threat to the hegemony of the white Anglo Saxon establishment (Terrence, 2004 146). In the early 19th century, the English settlers attempted to do this with the Indians — creating boarding schools with the sole purpose of Americanizing the Native American population (Flores and Murillo, 2001). Molesky (1988) asserts that such acculturation initiatives were responsible for the “severe” erosion of Native American languages, traditional family structure, and culture (as cited in Flores and Murillo, 2001). These Americanization projects were implemented on all other immigrant groups including European immigrants — German, Dutch, Polish, French, Spanish, Russian, and Swedish — during the first third of the 20th century (Flores and Murillo, 2001). The goal was to Americanize these immigrant communities through English acquisition (Flores and Murillo, 2001).

Historically, elite politics concerning race have had periods of general agreement and more open disagreement/ conflict. This chapter uses the King and Smith (2005; 2008) racial orders conceptualization in describing the periods of elite agreement and elite disagreement and the various directions linguistic politics took during the historical periods discussed.

King and Smith (2005; 2008) argue that US political development has evolved according to the contestation of competing racial orders. One racial institutional order has historically pursued policy arrangements to advantage whites — a white supremacist order; the other has pursued egalitarian policies or those aimed at reducing or eliminating policy

arrangements designed to advantage whites, an egalitarian order (King and Smith, 2005 76).

Linguistic politics has typically been incorporated within the policy agenda of these competing racial orders especially in the post slavery era (since 1896) (King and Smith, 2005 81; 2008 688). Concerning bilingual education, those interests for and against have ended up joining one of the two racial orders as elites have viewed linguistic policy areas as part of the competition to establish policy that allocated power, resources and/ or status along racial lines (King and Smith, 2008). This is due to the racial character that has always been a part of the politics of Latino immigration and the Spanish language in the American polity (Takaki, 1993; King and Smith, 2005; 2008; Terrence, 2004) — a characteristic of the interconnected political battles that were waged for racial equity and immigration rights throughout the 20th century (Tichenor, 1994 341).

The remainder of the chapter will present the historic role elite agreement/ disagreement and the intergovernmental/federalist structures played in the evolution of the politics of bilingual education. Initially a short discussion will outline the evolution of bilingual education policy in the 19th and early 20th century. This will show the similarities, specifically the racial aspect of immigration and subsequently linguistic politics. The middle of the chapter will focus on the period of elite consensus, 1965-1975. This captures how bilingual education was incorporated by King and Smith's (2005; 2008) egalitarian order (race conscious liberalism). The final part will deal with the period after approximately 1978 of elite division over bilingual education. This period saw the rise of the color-blind racial order (the white supremacist racial order remodeled for the post-civil rights, race-conscious policy era). It gained control of the executive and judicial posts and

made significant inroads in the legislative branch at the national and state level (King and Smith, 2008 688). This commenced a period of elite conflict over bilingual education that persists to the present day.

Nineteenth Century Nativism and Linguistic Politics

American patriotism in the form of white supremacy emerged in the immediate aftermath of World War I. The labor competition created by the immigration and internal migration waves of the 19th and early 20th century created anxieties within white majorities, facilitating populist reactions (Ngai, 1999). The population shifts contributing to this angst included black migration to the northeastern urban centers (encouraged by the industrial boom in the northeast), the 1880-1930 immigration wave that brought southern and eastern Europeans to the same city centers, Mexican immigration to the southwest (encouraged by the commercial boom in agriculture), and Chinese and Japanese immigration to the West (sparked by the railroad boom and gold rush) (Ngai, 1999). These all created anti-immigration, nativist, and racial backlashes that came to a peak in the early 1920s (Ngai, 1999). There was much public debate and quasi-scientific theory (the eugenicist movement) that argued that the current immigrant crop were disastrous for the future of America as (according to the eugenicists) these immigrants were biologically an inferior race to the Anglo Saxon white population that made up the political and social establishment (Ngai, 1999).

Concerning immigration, prior to this anti-immigrant backlash in the 1920s, bilingual education was commonplace in localities with large immigrant populations (Terrence, 2004 146). These English acquisition projects were implemented in response to

the established institutional arrangements that facilitated bilingualism in public life. These were political decisions made by localities where ethnic groups were in high concentration — a byproduct of the various immigration waves. These arrangements — such as schools, churches, newspapers — had allowed for the maintenance of immigrants' native languages (Flores and Murillo, 2001). For example, German-English bilingual schools were fairly common in areas with high German populations (for example in the Midwest) (Flores and Murillo, 2001; Terrence, 2004). However, anti-German politics emerged as American involvement in World War I war increased (Terrence, 2004). In California and Hawaii, it was the language of Japanese that encouraged such ordinances (Terrence, 2004 146). Anti-bilingual ordinances also occurred in the case of the Mexican immigrants in the southwestern territories of the US in the 1910s and 1920s as a response to the bilingual arrangements made in the Mexican neighborhoods. Such immigrant aversions prompted fifteen states to pass laws requiring English instruction in schools between 1900 and 1920 (Citri et al, 1990 537), and between 1917 and 1922, 34 states passed English-only instruction ordinances (Terrence, 2004 146). The anxiety of Americans towards immigration was not quelled until the passage of immigration quotas in 1921 and 1924 — the latter culminating with the Immigration Act of 1924 — that essentially eliminated all non-northwestern European immigration until the mid-1960s (Citrin et al, 1990 537).

In the 1920s, in the immediate aftermath of World War I, the American racial state was at its most comprehensive (Marable and Mulling, 2000 237). Advocates of white supremacy and racial segregation had majorities in all three branches of the federal government, virtually all southern and most western political offices, and many other local institutional offices and legislatures (Marable and Mullings, 2000 237; King and Smith,

2005 81). This resulted in a national project to institute white supremacy in race and ethnic relations, immigration law, and American foreign policy (in support of America's imperialist initiatives) (King and Smith, 2005 81). As this elite consensus underwriting the white supremacist order moved to implement its comprehensive white supremacist policy goals, mandating an English monopoly in public life was viewed as a key aspect in this governing order — to ensure the cultural hegemony of the Anglo Saxon culture. A central idea of the “Americanization” movement in the first two decades of the 20th century was that a stable polity required a common culture and language (Citrin et al, 1990 536). During this period, there was broad base elite support for English as the nation's common language (Citrin et al, 1990 536).

Concerning immigration, elites sympathetic to the white supremacist order racialized immigration and naturalization infrastructures. First, Chinese exclusion acts, passed at the local (mostly in California) and national level (Chinese Exclusion Act of 1882), barred the Chinese from citizenship (Ngai, 1999). Congress expanded this to Asian exclusion from naturalization via the creation of “barred Asiatic zones” (Ngai, 1999 80). This made immigrants spanning from Afghanistan to the Pacific (except for Japan) ineligible for citizenship by 1917 (Ngai, 1999 80). Second, the Immigration Act of 1924 institutionalized immigration policy along racial and ethnic lines by ranking white ethnic groups and banning immigration from Asian nations.

With respect to this study, this period also included, according to Ngai (1999 90), the racialization of Mexican immigrants as an illegal population. Commercial agriculture had created a demand in the southwest for labor, which was mostly supplied by Mexican migrant populations (Ngai 1999 88). This led to the emergence of segregated Mexican

communities as Mexican immigration reached an all-time high by the late 1920s (Ngai 1999 89). The increased Mexican presence in the Southwest created a “race problem” as the majority white population viewed Mexicans as their racial inferior. However, this problem of controlling the Mexican population via racial lines proved more problematic than had excluding Asians from immigration and citizenship. The Treaty of Hidalgo Guadalupe, the labor demands of southwestern commercial agriculture, and the mixed race heritage of Mexicans precluded both a formal restriction of immigration and naturalization of Mexicans and clear cut racial identification of Mexican immigrants. According to Ngai (1999), the federal government, subsequently, moved to racialize Mexicans as illegals through controlling their population growth via administrative means (Ngai 1999 90). This was accomplished through restricting the issuance of visas and establishing the infrastructure to prosecute illegal immigrants. The latter was institutionalized through the creation of Border Control in 1925, the criminalization of illegal entry in 1929, and the creation of the Mexican racial category in the 1930 Census (Ngai 1999 90f). Ngai (1999 89) argues that these institutions of immigration law enforcement mostly targeted the Mexican population (as opposed to their southern and eastern European immigrant counterparts). For example, half of deportations and over 80 percent of voluntary departures in the late 1920s were comprised of Mexican immigrants (Ngai, 1999 89).

This white supremacist order also played a central part in American linguistic politics. From the Treaty of Guadalupe Hidalgo through the period of Anglo migration into the southwestern territories of the continental US, public schooling, specifically language was used as a tool for Americanizing the Mexican inhabitants (Flores and Murillo, 2001). The late 19th century saw the increase of support for white supremacy from the Republican

Party (formerly the party of racial egalitarianism in the 19th century) (King and Smith, 2005 81). This in effect gave the white supremacist order control of the Congress, Presidency and the judiciary from the 1870s through the middle of the 20th century (Smith and King, 2005 81). Republican support was also supplemented with the emergence of local officials in the west and southwest who were sympathetic to white supremacist policies (because of western expansion) in the late 19th century (Ngai, 1999 81, 90). These officials looked to remake the political order in the western regions in a more white supremacist fashion. As English preeminence was a core aspect of this normative paradigm, these officials catalyzed the political/ ideational shift by targeting bilingual policy arrangements in the region. This was evident in the increase of anti-bilingual ordinances in the west against Chinese and Japanese, and in the southwest against the Mexicans (Ngai, 1999 90).

With respect to Mexicans, bilingual institutional arrangements were challenged and overturned amid calls for the Americanization of Mexican immigrants. As labor demand increased with the expansion of commercial agriculture, the increased Mexican presence created a “racial problem” (Ngai, 1999 90). Since treaty obligations only allowed for the deportation of illegal immigrants, the Mexican population could not be eliminated as could the Asians through immigration law reform. Thus, the Americanization of the Mexicans was the next best choice for the political establishment. In the late 19th century after locally controlled public schooling proved too inefficient at Americanizing Mexican inhabitants, Anglo-American officials began pushing for schools to practice a subtractive Americanization approach to acculturating the Mexican inhabitants of the newly acquired southwestern territories (Flores and Murillo, 2001). This involved replacing local Mexican control through the removal of Mexicans from assemblies and school boards as well as the

establishment of *English Only* policies (Flores and Murillo, 2001). This erosion of local support for Mexican cultural maintenance occurred both by concerted efforts and the demographic changes caused by the Western expansion of Anglo-Americans (Flores and Murillo, 2001). This subtractive approach initially began with the replacement of Catholic schools (which had permitted local control and the use of Spanish as a way of spreading Catholicism) with Protestant schools, which practiced a more *subtractive*²⁸ approach to the acculturation of Mexican students (Flores and Murillo, 2001). As American Western expansion increased encounters with Mexican inhabitants (as Whites and Mexican began to live together in neighborhoods), nativist movements flourished. Anglo-Protestant school officials —supporters of the white supremacist racial institutional order — sought Anglo cultural purity, the consolidation of the nation through the establishment of a common culture under a common language, and the preservation of white political power (Flores and Murillo, 2001).

Segregation of Mexican School Children

Segregation of whites from non-whites was a foundational aspect of the elite support for white supremacy. And education was an important venue in which this ideology and the eventual debate over racial segregation would play out. Throughout American history, this pursuit of white cultural dominance has manifested itself in the segregation of non-white school children from white school children. The segregation of African

²⁸ San Miguel (1999) defines subtractive Americanization as “devaluing particular minority groups and their specific cultural heritages” and then replacing these identities with an idealized American version. Subtractive Americanization also refers to the removal of “minority communities, languages, and cultures from the curriculum and educational structures” (San Miguel (1999) as cited and quoted in Flores and Murillo, 2001 192)

American children is well documented. Segregation of Latino children, however, was likewise practiced and the legal battles occurred parallel to those of African Americans for school desegregation (Flores and Murillo, 2001). School officials in areas where Latinos concentrated used language as a means for segregating Latinos from Anglo students (Blanton, 2004; Crawford, 1997). As bilingual education fell out of favor politically and pedagogically in the 1920s, non-native speakers of Latino descent were often segregated into classes where they could receive English instruction. These students were also often categorized as remedial students and pulled out of mainstream class to receive special instruction (Blanton, 2004; Crawford, 1997). In the decades between the Americanization movement and the Civil Rights movement, Latino advocacy groups fought parallel to African American civil rights organizations for equal access to segregated institutions for Latino (mostly Mexican) students (Meier and Stewart, 1991 2). As a majority of elites supported segregation of Mexican students, Mexican advocacy groups (like the African American civil rights legal advocacy) pursued venue shifting to the judiciary. As segregation laws enumerated the segregation of whites from blacks, Mexican advocacy groups fought for Mexicans to be legally declared as white to gain access to public goods and segregated institutions, such as education (Meier and Stewart, 1991 2). Subsequently, they did not join the cause for desegregation until the 1960s (Joppke, 1999).

In the 1931 case, *Alvarez vs. The Board of Trustees of the Lemon Grove School District*, the California Supreme Court ruled that the California constitution did not sanction segregation of Mexican children based on race and that such segregation negatively affected their acquisition of English (Flores and Murillo, 2001). This was the first successful legal challenge to segregation (Flores and Murillo, 2001).

By the 1940s, the political tide began to turn against the segregation of Latinos (Blanton, 2004). In 1945, Mexican-American parents brought suits against California public schools for unfairly segregating their children. In the *Mendez v. Westminster* case, the Supreme Court ruled in their favor (Latino Civil Rights Timeline, tolerance.org). In the 1946 case, the federal court ruled that the Westminster school district in California had illegally gerrymandered the school district to ensure the segregation of Mexican children. This was the first federal ruling in the area of school segregation (Flores and Murillo, 2001). In 1948, a Texas court ruled in *Delgado v. Bastrop* that segregation of Spanish speaking children was discriminatory and illegal (Flores and Murillo, 2001). Additionally, the pedagogical approach of ‘sink or swim’ English immersion increasingly came under criticism from the pedagogic academic community (Blanton, 2004).

Political tides further changed in the 1950s and 1960s. The *Brown v. Board of Education* ruling in 1954/55, which ended de jure segregation, overturning *Plessy v. Ferguson* (1896), brought political attention to the issue of education equality (TEA, 2006 11). This informed future judicial rulings and congressional politics concerning the education of LEP students. The *Brown* ruling created a legal precedent for the right to education equality for racial minority students. This provided advocacy groups a legal paradigm within which to frame their appeals for education reform (TEA, 2006 11). The successful launch of the Sputnik rocket in 1957 by the Soviet Union prompted elite calls for improvements in education, which included support for bilingual education to develop bilingualism among the youth — preparing them for what was believed to be an increasingly global society (Fenner, 2012 88).

Concurrently, in the 1950s, especially following the Castro revolution, refugees

from Cuba emigrated to the US (Fenner, 2012 88; Smith, 2012 27). These refugees intended to return to Cuba and were also viewed sympathetically, politically, as they were seen as fleeing an oppressive regime in search of the freedom and democracy of the US (Fenner, 2012 89). Concerning the latter, as the refugees were fleeing from the Communist revolution in Cuba — the new American Communist nemesis — programs for these refugees were viewed as aiding a Cold War ally (Smith, 2012 27). Additionally, they were mostly upper middle class and of European ancestry, both of which made them culturally less offensive to white Floridians (Fralick, 2007 13). This period saw the birth of Spanish-English bilingual education programs to facilitate the education of their children (Fenner, 2012 89). Two-way bilingual education programs were started in several Miami area schools (Smith, 2012 27). In 1963, Miami Dade County launched the nation's first bilingual initiative which involved the usage of bilingual education in a number of mostly primary schools. Politically, these were not controversial as it was believed by political officials and the refugees themselves that they would eventually return home (Smith, 2012 27). Bilingual education for Spanish-speaking students of Mexican descent re-emerged in the southwest during this period (Fralick, 2007 13). The success of the programs initiated in the Miami area (the Coral Way program in Miami being the most well known) prompted the development of bilingual programs in California, Texas, New Mexico, Arizona, and New Jersey (Fenner, 2012 89).

The period of the mid-1960s through the mid- to late 1970s was a period of elite consensus over bilingual education. This period coincided with a period of transition for the competing racial orders paradigm. According to King and Smith (2005; 2008), during this period, the political fault line of the racial orders contestation transitioned from *de jure*

segregation/ white supremacy to race conscious policies. The emergence of elite consensus over bilingual education coincided with the complete delegitimization of white supremacy and de jure segregation. The white supremacist order had been completely delegitimized by the legislative and political successes of the Civil Rights movement (King and Smith, 2008). Most elites (mainstream politicians, academics, media editorial pages) expressed support for ending de jure segregation and white supremacy. Concerning bilingual education, this manifested in bipartisan support for bilingual education which included the support of prominent conservatives such as Ronald Reagan (as governor of California) and President Richard Nixon in the late 1960s and early 1970s. This bipartisan elite support lasted until race conscious policies became the political fault line separating the egalitarian order and the newly repurposed white supremacist order, the non-expansionary order. This period of the 1960s through the late 1970s will be elaborated further in the following section.

Displacement of the White Supremacist Order by the Egalitarian Order and its Effects on Bilingual Education

By the 1960s, officials sympathetic to the egalitarian transformative order occupied all three branches of government (King and Smith, 2008 6887). The 1964 election marked the transition of power to officials sympathetic to the goals of the egalitarian order (King and Smith, 2008). They in turn implemented reforms that recognized the rights (economic, political, civil, and social) of minority individuals and created institutions to secure these rights. According to Levin and Landy (1995), their victories, the subsequent legislation passed — Civil Rights Act of 1965 (which effectively ended de jure segregation), Voting

Rights Act of 1964, the Elementary, Secondary Education Act of 1965, Immigration Act of 1965 — and the institutional changes rendered to the system constituted a new constitutional order. Replacing the constitutional order of 1789 — limited, fragmented national power — which was designed to protect “life, liberty, and the pursuit of happiness,” this new “rights-based constitutional order” required a sufficient expansion of governmental authority into more aspects of civil life to secure the ends of the new expanded rights based polity (Landy and Levin, 1995). This created and empowered institutions that would assume authority in policy areas deemed judicially as meriting government protection of minority rights. Civil rights equality — the goal of the egalitarian transformative order — came to include not just those pertaining to race, but also animal rights, the rights of the disabled, language minority rights, Asian Americans' and women's rights (King and Smith 2005 83). Interest groups sprang up to champion these claims, and the egalitarian transformative order incorporated them politically and institutionally. These interest groups had a new rights-based power — both politically and institutionally — which they exploited to establish policy outcomes that protected minority rights or allocated status, power, and/ or resources to minority populations in an attempt to equalize what these elites viewed as unequal outcomes. Bilingual education was an example of such a policy outcome which Mexican elites and those supportive of the egalitarian order argued would provide education equality and/or cultural empowerment for Mexicans (and other second language minorities).

Education had long been a focus of advocates for civil rights. By the 1960s, education policies for language minorities became an issue area of interest for government intervention as part of their initiatives to improve opportunity in education for racial and

ethnic minorities. This involved initiatives from all three branches of government which encouraged federal oversight of localities and their treatment of LEP student populations. First, the Elementary and Secondary Education Act (ESEA) of 1965 distributed federal assistance towards localities with high percentages of underprivileged students that established initiatives to meet the special needs of their student populations. The goal was to increase education equality nationwide. Early experimental plans in bilingual education used ESEA funding. Second, the Office of Civil Rights (OCR) was created with the passage of the Civil Rights Act of 1964 and it played a role in coercing states to adopt bilingual education policy by deeming education of language minority students a civil rights issue. Lastly, the judicial system, congress and executive branch supported and enforced OCR mandates in the early to mid-1970s.

Civil Rights activists, by the late 1960s, however, did not view the ending of de jure segregation as sufficient to bring about material equality and subsequently began pushing for race conscious policies, such as affirmative action and bilingual education (King and Smith, 2008 688). The late 1960s to the late 1970s, subsequently, was a period of transition from the era when segregation was the main focus of race relations to race conscious policies becoming the new orientation through which racial alliances formed and contested (King and Smith, 2008 688). This debate concerning the appropriateness of race conscious policies as an antidote to continued material inequality experienced by racial/immigrant minorities continues to be the central debate of the racial institutional orders (King and Smith, 2008). Debate, concurrently, moved beyond issues of de jure inequalities amongst blacks and whites and has more overtly extended to areas such as immigration, further extending the reach of the competing racial orders across party lines

(King and Smith, 2008; Crawford, 1997).

Bilingual education emerged during this period when the central issues of race relations reoriented around issues of race conscious policies. From the 1920s through the 1950s, there was little interest in bilingual education among public officials nationwide at the state level (Andersson and Boyer, 1970 20). From this point through the 1970s, however, there was a spike in interest in bilingual education both nationally and at the state level (Andersson and Boyer, 1970 20).

Passage of the Bilingual Education Act (BEA) 1968

The Bilingual Education Act of 1968 was added to ESEA as Title VII in 1968. The bill resulted from the advocacy of Chicano groups, and groups/ political officials sympathetic to the plight of Mexican students in the southwest. As poor education had been the norm for Mexican-Americans in this region, the National Education Association (NEA) conducted a survey of public school teachers known as the Tucson Survey of 1965-66 (Crawford, 1999 41). NEA surveyed a group of Tucson public school teachers on educational opportunities for Mexican-American students in the region (Fralick, 2007 13). The Association hoped that recommendations emerging from the survey could be incorporated into the reauthorization of ESEA, which was coming up for reauthorization in 1968 (Fralick, 2007 13). NEA organized a conference in October of 1966 which brought together sympathetic academics — most of whom had begun to recognize the benefits of native language instruction — with government officials (such as Texas senator Ralph Yarborough and state senator Joe Bernal — the architect of the original BEA of 1967 and one of the main state advocates in Texas for bilingual education, respectively) who

increasingly became sympathetic to Hispanic issues in education as political trends favored federal attention upon this growing demographic group (they had been largely passed over in civil rights legislation of the 1960s) (Crawford, 1999 40). The attention brought about by the survey and the conference helped to galvanize political momentum for a bilingual education bill at the federal level (Crawford, 1999 40).

The Bilingual Education Act (BEA) emerged in the 1960s from a coalition of institutions, political advocacy and government officials committed and/or loosely committed to egalitarianism and/or in pursuit of capturing the growing Latino vote (King and Smith, 2005; Crawford, 1999; Davies, 2002). Trujillo (1998) argues that Title VII in addition to its purpose as a federal redress for educational inequities experienced by Mexican Americans, was also partially the result of the federal government attempting to preclude potentially violent Latino public protests similar to that witnessed by African Americans in the 1960s.

The original bill — the Bilingual Education Act of 1967 — was sponsored by the aforementioned Texas senator Ralph Yarborough, who viewed the Miami Dade program favorably (Smith, 2012 27). In Texas, 80 percent of students of Mexican descent had to repeat the first grade (Davies, 2002 1407). Subsequently, there were 12 times as many Mexican students in first grade as in twelfth — four times the state's overall ratio (Davies, 2002 1407). Yarborough did not feel that ESEA had done enough to address the education of LEP students in his state (Davies, 2002 1407). Additionally, the senator was about to embark on a tough reelection fight in 1970 and hoped to garner the support of the state's Mexican population through his sponsorship of the bill (Davies, 2002 1407). Yarborough introduced the bill in 1967 to provide federal funding to assist Spanish-speaking students

via bilingual education (Smith, 2012 27). President Johnson (also a liberal Democrat from Texas), however, offered the most resistance towards the bill (Crawford, 1999 40; Davies, 2002 1407). The Vietnam War and the Great Society had begun to strain federal resources and the Johnson administration hoped to preclude any initiatives that would require further tax increases (Crawford, 1999 40). Initially, the Johnson administration argued against creating an additional title — funding source — under ESEA, arguing ESEA Title I or III funds were sufficient to provide federal support for local LEP-focused programs (Crawford, 1999 41; Davies, 2002 1407). This view was endorsed by the US Office of Education (USOE) (Davies, 2002 14407). The administration also criticized BEA of 1967 for only addressing the language needs of Mexican students (Crawford, 1999 41). There was a growing sentiment led by Democratic Senator, Edwin Muskie (ME) that the Act should be open to all second language English-speaking students (Davies, 2002 1407). Hispanic groups recognized the political problems with the limited focus of the original act and offered support for proposals that would extend BEA's coverage to include other linguistic minorities. Eventually, Representative James Scheuer of New York offered a compromise proposal that extended BEA to cover those children who came from households where a language other than English was the dominant language (Crawford, 1999 41). With growing bipartisan support for a federal bilingual education bill (37 bilingual education bills were introduced in the 90th Congress) and political trends favoring support for Hispanic initiatives, the Johnson administration relented in its opposition and offered its support for Title VII (Crawford, 1999 441). Subsequently, the Bilingual Education Act of 1968 — the bill that would eventually emerge from Congress — did not specify LEP demographic groups. However, it also did not specify bilingual

education as the mandated mode of instruction (Smith, 2012 27).

Federal fiscal support of BEA, however, was initially sparse due to the aforementioned budgetary concerns of the Johnson administration (Crawford, 1999 42). Congress, under pressure from the Johnson administration, offered no fiscal support for Title VII in its inaugural year (Crawford, 1999 42; Davies, 2002 1407). In 1969, Congress appropriated \$7.5 million, which was sufficient to cover 26 local programs serving 27,000 students (Crawford, 1999 42; Davies, 2002 1407). Although this was a paltry amount, it led to the doubling of bilingual education enrollment nationwide (Crawford, 1999 42).

Crawford (1999) finds that the Bilingual Education Act took a two-track approach: federal provisions supporting programs aimed at addressing the needs of LEP students and addressing the civil rights issues — pursuance of equal education opportunity — of LEP students. Federal fiscal support of local programs for LEP students was initially addressed in the Bilingual Education Act. The Civil Rights issues would not be addressed until the early 1970s. The Act was strictly compensatory in nature (as was its parent act, the Elementary, Secondary Education Act) as it aimed to address the needs of poor or disadvantaged children — and in the case of LEP students, their language deficiencies in English categorized them as disadvantaged (Crawford, 1999 41).

Concerning federal funding of local programs, as Title VII of ESEA, the Bilingual Education Act authorized the provision of federal funds to localities with substantial ELL (English Language Learners) students to develop programs to ensure quality education for this student population, train teachers, provide instructional resources and encourage parental involvement (Crawford, 1999 41). Federal grants were awarded from three to five years, after which states had to assume fiscal responsibility (TEA, 2006 11). Although the

act did not mandate bilingual education programs, it did allow for bilingual education without violating segregation laws (Smith, 2012 27). It concurrently endorsed multicultural goals, the acquisition of English, and the use of native languages other than English for instruction of LEP (Limited English Proficient) students (Smith, 2012 27). This ambiguity in program goals would later become an issue of contention among proponents and critics as the goal of cultural maintenance and transition to English were often framed as contradictory especially by its critics (Smith, 2012 27; Crawford, 1999 41). And as the issue was never fully addressed at its onset nor was there much consensus among proponents of bilingual education, the ambiguity was exploited by critics — eventually resulting in transitional bilingual education being the only viable political option (Crawford, 1999 41).

What Were the Goals of Bilingual Education?

The vagueness of the specific goals of BEA 1968 is notorious amongst educational researchers (Moran, 1988 1263-164). Moran (1988) argues this resulted from divisions among legislators concerning the program's intent (1263). This left the ideational conception of the problem subject to variation depending upon the bilingual education policy regime in power. Using Ruiz's (1984) "orientations in language planning," Crawford (1999) lays out the three ways in which bilingual education has generally been conceptualized by policy elites involved with the issue of ELL students and linguistic pedagogy in general: 1) Bilingual education as an anti-poverty initiative — to remedy the problem of limited English proficiency (LEP) amongst lower income students with English language deficiencies; 2) Bilingual education as an anti-discrimination initiative — to

guarantee equal educational opportunities to LEP students; and 3) Bilingual education as an experiment in multicultural education — to “foster bilingualism” amongst LEP and native English students. A fourth ideational conception can be added to this list: bilingualism as a tool for cultural maintenance — allowing LEP students to both transition to English language mainstream instruction while learning that their native culture had cultural import (Crawford, 1998 52). Elite disagreement concerning which of these four was the main purpose of bilingual education or if these goals were complimentary or contradictory led to contestation even among the pro-bilingual camp concerning its efficacy and pedagogical goals. This has ultimately aided critics of bilingual education.

Bilingualism as an anti-poverty initiative versus bilingualism as an experiment in multiculturalism has been a fault line between two sides of the pro-bilingual camp. Both camps have contested the *English Only* proponents who believe that any form of bilingual education takes away valuable time and resources from what they feel should be the primary goal of education for ELL students: improving English proficiency. Those professing to it as an anti-poverty initiative have debated whether instruction in one’s native language is the most efficient mechanism for getting LEP students up to speed. Opponents of bilingual education often favor various kinds of English immersion programs instead to address this issue.

With respect to the bilingual education as an experiment in multiculturalism, the original (especially Hispanic constituencies) proponents of BEA stressed the multicultural aspect (Crawford, 1999 47). In its 1971 instructions to receivers of the BEA grant, the Office of Education instructed recipients that the program’s ultimate goal was a student who functioned well in two languages on any occasion (Crawford, 1998 55). However, this

was not the consensus view among national lawmakers (Crawford, 1998 55). The ambiguity resulted in programs that varied by state and contention among lawmakers concerning the goal of bilingual education (Crawford, 1998 55). In addition, studies of bilingual education programs found that the programs were not successful in promoting bilingualism or in improving student performance (Crawford, 1998 55). The multicultural focus by education officials in combination with poor reviews helped to spark the a backlash against bilingual education as opponents began to exploit public skepticism — as bilingual education was viewed by many as a repudiation of the classic assimilationist Americanization process practiced (and revered) by immigrants of former generations (Citrin et al, 1990 538). As a result, the multicultural pedagogical aim has been used less as a defense of bilingual education since the 1980s.

There has also been contestation along the fault line of bilingual education as an anti-discrimination initiative versus bilingual education as an anti-poverty program. This has manifested itself in the debate of whether bilingual education should be a mechanism to help maintain the immigrant culture or whether bilingual education should be used as a mechanism to transition students from instruction in their native language to English instruction (to ultimately better their economic prospects). In the 1970s, when bilingual education programs were first introduced, these goals were viewed as compatible (Crawford, 1998 55). As the egalitarian transformative order controlled two of the three branches of government during the 1970s, it was thought that bilingual education programs should be used to show the value of the immigrant culture in American society as well as a mechanism to transition students to English instruction (Crawford, 1998). This was a pedagogical idea that was strongly supported by Latino immigrant groups (Citrin et al,

2003 4).

Post-Passage of the BEA 1968

After its passage, states began offering bilingual education programs (Smith, 2012 27). In the late 1960s and 1970s, national and state legislation — catalyzed by the Bilingual Education Act of 1968 and supported by judicial decisions — institutionalized bilingual programs in American public schools (Citrin et al, 1990 537). These programs combined English instruction with native language instruction as a method of both learning English and cultural maintenance (Citrin et al, 1990 537). The US Office of Education was tasked with managing this federal relationship between the national government, the state and local educational institutions responsible for assessing LEP student needs and developing appropriate programs. By the mid-1970s, many states either mandated bilingual instruction or permitted its use in the education of LEP students (Smith, 2012 27). The support of the courts in championing bilingual education as a remedy to the civil rights issues — lack of education equality — was the main factor leading to states mandating bilingual education as the pedagogical approach for its LEP student population.

Bilingual Education, Education Equality and the Role of the Office of Civil Rights

As the Civil Rights Act awarded protection to minority groups, Latino advocacy groups (mostly Mexican groups employing the identity politics en vogue in the era) fought for the declaration of Latinos as a language minority (Citrin et al, 1990 537). And as in the African American struggle for civil rights, education became a node for initiatives aimed at improving civil rights for language minorities.

Education equality concerning language issues was first addressed at the federal level (as mentioned) via Title VI of the Civil Rights Act of 1964 (Gandara and Rumberger, 2009 764). Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in federally assisted programs and activities. It also made grant-making agencies responsible for compliance. Subsequently in 1968, the Johnson Administration established the Office of Civil Rights (OCR) in the Department of Health, Education, and Welfare (HEW) to enforce Title VI of the Civil Rights Act. During this late 1960s period, the federal government broadened its civil rights focus to include Latinos. The Bilingual Education Act was the first piece of legislation in this federal initiative. But as mentioned earlier, it was quite modest in concerning its fiscal assistance and pedagogic intent. Nevertheless, it was an attempt by Latino proponents to broaden civil rights legislation as prior to 1970, federal attention concerning discrimination in education was mostly directed towards the plight of blacks in the South (Crawford, 1999 43).

In Texas in 1970, Chicano advocacy began stressing the novel idea that Mexican students suffered from education discrimination because of their lack of English proficiency — *English Only* instruction meant denial of equal education opportunity (Crawford, 1999 42). *La Raza Unida*, a militant Chicano organization, organized protests against schools in Crystal City, Texas to draw attention to the discriminatory treatment of their Spanish-speaking student body (Crawford, 1999 42). Among their demands for fair treatment of Spanish-speaking students was a call for establishing bilingual education programs (Crawford, 1999 42). *La Raza Unida* soon won a majority of seats on the local school board and implemented bilingual education programs in the school under the board's purview (Crawford, 1999 42). Concurrently, Mexican Americans, Chinese and

Puerto Rican parents in other localities began filing lawsuits claiming unequal treatment of their non-English speaking student-children (Crawford, 1999 42).

By 1970, it was well known that linguistic minority students were falling behind in education outcomes (Crawford, 1999 42). However, there was no consensus that schools districts or states were liable for their poor performance (Crawford, 1999 42). In 1970, spurred by the aforementioned Chicano advocacy, the Office of Civil Rights in the Department of Health Education and Welfare (HEW) began assessing state and district treatment of LEP students concerning their compliance with the new Civil Rights Act (TEA, 1998; Rodríguez, n.d.). Specifically, the OCR found that compliance reviews of Title VI of the Civil Rights Act of 1964 revealed that some districts were in violation in their treatment of LEP students — denying them equal educational opportunity (TEA, 1998). In May of 1970, the OCR issued a memorandum, the National Origin Memorandum, to districts with at least a 5 percent population of national-origin minority students (TEA, 2006 12). The OCR Memorandum detailed the responsibilities of states concerning educational equality and the role of language (Gandara and Rumberger, 2009 764).

The Republican Party and the Latino Vote in the Early 1970s

Polling conducted by the Committee to Re-elect the President (CREEP) [Nixon] had found great animosity among Latinos towards blacks and the special government programs they had won in the 1960s (1414). The Nixon administration subsequently set out to court Latinos — the second largest and fastest growing minority group and a group perceived to have latent Republican sensibilities (1410-1415). The fruits of this strategy had been proven by California Governor Ronald Reagan's successful courtship of the

Mexican vote in the gubernatorial election of 1966 (1410). The polling by CREEP convinced the Nixon administration that Latinos could be won over by the Republican Party. However, according to Davies (2002), the problem with courting the Latino vote was that Latinos lacked an issue that united Cubans, Mexicans and Puerto Ricans. Additionally, the lobbying presence of Latinos was lacking. Conservatives in favor of promoting Latino mobilization were in regular contact with MALDEF and other Latino advocacy groups encouraging them to step up their efforts in mobilizing their community. However, without an issue to galvanize mobilization, Republican efforts stalled. Polling found that bilingual education was an issue that had wide support among the Latino community — it was really the only issue at the time to command such broad base support among Latinos (Davies, 2002 1417-18).

According to Davies (2002 1418), the OCR Memorandum was the brainchild of Californian Leon Panetta, head of OCR, and approved by fellow Californian and HEW (OCR's parent organization) head, Secretary Robert Finch. Davies (2002) argues that Panetta, who had fallen out of favor with Nixon by 1970, looked to recast OCR away from its anti-segregationist stance — which had helped make him unpopular with Nixon — and reorient the agency towards the administration's goal of courting Latinos. Panetta's ultimate aim was carving out a new role for OCR along these lines. The memo drafted by Panetta was eventually published by his successor J. Stanley Pottinger. Assuming leadership of OCR after Panetta's forced resignation and taking over an agency at odds with the administration, policing bilingual education offered an opportunity (recognized by Panetta) to appease both the agency's egalitarian stalwarts— a substantial majority of the agency staff as they were holdovers from the Johnson Administration— and the Nixon

Administration (Davies, 2002 1417-18).

The Memorandum clarified HEW policy concerning the responsibilities districts had to the needs of their LEP student population (TEA, 2006 12). The Memorandum stated that school systems were responsible for assuring that students were not denied opportunities available to others based on their race, color or national origin— thus, requiring compliance with Title VI of the Civil Rights Act of 1964 (TEA, 2006). In the memorandum issued on May 25, 1970, OCR stated that districts where more than 5 percent of the student body belong to a “national origin minority group” with difficulties speaking and understanding English must take “affirmative” steps to resolve the situation, so that these students can actively participate in their education (TEA, 1998). OCR detailed criteria that districts receiving federal funds were required to follow and accommodations they were required to make to stay in compliance with Title VI.

OCR’s declaration established the legal foundation for addressing the issue of educational outcomes via legal rationales focused on equal opportunity (Fenner, 2012 91). The OCR memorandum prepped the legal context for judicial developments that would transform bilingual education in the states. This was an example of advocacy leading to executive actions that transformed the legal context, ultimately, coercing state action (TEA, 1998). There was little state and district response to the OCR Memorandum, however (Crawford, 1999 43). Most districts simply reclassified their existing programs to nominally reflect the language of the law. For example, historian Colin B. Stein found that in Belleville, Texas the local superintendent simply reclassified the vocational track to “career education” (as cited in Crawford, 1999 43).

The Court's Courtship of Bilingual Education in the 1970s

The courts at the state and federal level, however, were able to coerce states to reform their education policies concerning their treatment of linguistic minorities (Crawford, 1999 43). In *Serna v. Portales Municipal School*, in 1972, Mexican American parents successfully won a court order mandate of bilingual education. A federal judge issued the ruling as part of the district's desegregation plan. Two years later, the ruling was upheld by the Tenth U.S. Circuit Court of appeals, which ruled that Title VI of the Civil Rights Act gave Hispanic students the right to bilingual education. *Serna v. Portales* was the first court mandate of bilingual education (Crawford, 1999 43).

Keyes v. School District No.1, Denver, Colorado was the first case in 1972 to equate Latinos as a group that experienced systemic segregation on par with African Americans. In the ruling, Justice Brennan argued that Hispanics, historically had experienced segregation of educational opportunity in a manner similar to African Americans and thus merited similar protection from constitutional violations accrued because of segregation. This allowed Latino advocacy groups to push the equal education opportunity argument which would eventually result in the next influential federal ruling, the *Lau* ruling.

A Puerto Rican advocacy group, *Aspira*, successfully filed a suit against New York City on behalf of 150,000 Hispanic students. It won a consent decree, guaranteeing bilingual education to Spanish speaking students in 1974 (Crawford, 1999 43). In the Petchogue-Medford, New York, school district, a suit was filed against the school district, accusing the district of violating the rights of LEP students by offering an insufficient bilingual education program (Crawford, 1999). The program was deemed inadequate

because the bilingual education program mostly relied on ESL and offered no bicultural component (Crawford, 1999 44).

In 1981 in *US v. Texas*, US District Judge William Wayne Justice offered the most comprehensive ruling on the rights of language minority students (Crawford, 1999 44). Justice ruled that the state of Texas not only segregated non-English speaking students in inferior schools but also “vilified the language, culture, and heritage” of these students with disastrous consequences for their education outcomes (Crawford, 1999 44). Justice mandated a bilingual education program for grades K through 12 throughout the state. The ruling was overturned a year later, however, by a federal appellate court citing that Justice’s ruling relied on insufficient evidence of discriminatory practices and because the legislature had recently passed an adequate bilingual education bill (SB 477 of 1981; see Texas chapter) (Crawford, 1999 44).

In the 1970s, the Supreme Court ruled in various rulings that providing language accommodations for Latinos at the poll (1972) and in school (1975) was a right guaranteed by the 14th Amendment (Meier and Stewart, 1991 3). Latino organizations employed the group/ identity politics of the civil rights movement, claiming that minority linguistic groups were constitutionally entitled to linguistic rights (Fralick, 2007 13). They called for government to actively promote bilingualism in American schools (Citrin et al, 1990 537). And from this point forward, Latino advocacy pursued educational opportunity rather than equal access as a legal strategy (Meier and Stewart, 1991 3).

Lau v. Nichols

The US Supreme Court weighed in on the rights of linguistic minorities in *Lau v. Nichols*. The case originated with a poverty lawyer in San Francisco, Edward Steinman, who initiated legal action against San Francisco Unified School District upon learning that his friend's child was having problems in school, because he could not understand the language of instruction (Crawford, 1999 44). Steinman proceeded to file a class action suit on behalf of Kenny Lau along with 1789 other Chinese students who suffered the same problems from *English Only* instruction (Crawford, 1999 44). The suit claimed that these children were denied equal education opportunity (according to the governing standard established in the *Brown v. Board of Education* ruling of 1954) because they were instructed in a language that they could not comprehend (Crawford, 1999 44). San Francisco officials denied the claim, arguing that different from the *Brown* case, the Chinese students were neither segregated nor subject to different treatment (Crawford, 1999 44). According to the San Francisco officials, the students were afforded the same instruction as the other students and although their language deficiencies were unfortunate, the district was not liable for the problems it rendered (Crawford, 1999 44). Federal district and appeals courts agreed with the San Francisco ruling (Crawford, 1999 44). However, Judge Hufstedler of the Ninth Circuit Court offered a strong dissent. Hufstedler argued that although language differences were not created by state policies, state policies that ignored these differences and subsequently perpetuated them were as damaging in effect as segregationist policies — denying said students of equal education opportunity (Crawford, 1999 44-45).

Finally, in *Lau v. Nichols* (1974), the Supreme Court overruled the district and

circuit court rulings, embracing the logic of Hufstедler (Crawford, 1999 45). The Supreme court via a unanimous decision sided with the Chinese students against the San Francisco School District, ruling that the failure to provide language assistance to LEP students amounted to denying them meaningful access to education (TEA, 1998). The Court ruled that Chinese immigrants were entitled to instruction in a language that they could comprehend (De Jesus and Perez, 2009). They ruled that failure to do so was a violation of Title VI — equal protection clause — of the Civil Rights Act of 1964 (TEA, 1998). The Court ruled unanimously that providing equal facilities and access to resources without ensuring that students understand the language of instruction did not amount to the provision of equal opportunity in education (TEA, 1998). The court also found that the OCR 1970 memorandum correctly interpreted the Title VI of the Civil Rights Act of 1964 (TEA, 1998; Fenner, 2012 92; TEA, 2006 12). Subsequently, the Lau ruling gave the OCR memorandum the weight of law through its mandate that linguistic minorities had a right to instruction in a language that they could comprehend based on protections guaranteed by Title VI of the Civil Rights Act and the 14th Amendment (TEA, 1998; Fenner, 2012 92; TEA, 2006 12; Lyons, 1990 72). However, Justice William O. Douglas’ ruling “did not reach” or invoke any Constitutional guarantees (Crawford, 1999 45). Justice Douglas argued that protections spelled out in Title VI (passed by Congress in 1964) were sufficient protection— adhering to the general Supreme Court tradition of ceding to Congressional intent when viable (Crawford, 1999 45). Nevertheless, the ruling changed the issue of bilingual education from a program that localities could voluntarily participate in to receive Title VII funding to one which was constitutionally sanctioned (De Jesus and Perez, 2009).

Eventually, the Lau ruling mandated that schools should identify LEP students and

provide programs to assist them. Although the Supreme Court and OCR censured districts for not addressing the language needs of its LEP populations, it did not mandate bilingual education (Policy Research Report, 1998 5). Bilingual education remained an option among others to address the needs of LEP students and ensure district compliance with Title VI of the Civil Rights Act (Policy Research Report, 1998 5). Critics of bilingual education have since cited the Court's silence on mandating a pedagogical approach as the ruling's intent to provide localities with the flexibility to respond to the needs of its LEP population at their discretion (Crawford, 1999 45).

It would be the OCR-issued Lau Remedies (as the directives came to be called) that institutionalized bilingual education in schools districts. During this period, federal requirements became more strict (TEA, 1998). These directives also resulted from the advocacy of Latino advocacy groups, politically empowered by the Lau ruling (Moran, 1988 1280). In 1975, OCR officials made preliminary visits to 334 school districts and discovered that most of them were in violation of the OCR memorandum and subsequently the Lau ruling (Crawford, 1999 46). The OCR established a task force steered by Martin Gerry to develop guidelines for districts to establish appropriate educational approaches for district compliance (Crawford, 1999 46). The task force consisted of bilingual educators, lawyers and language minority advocates (Moran, 1988 1280). In 1975, US commissioner of Education Terrel Bell enumerated the Lau Remedies which provided districts with guidelines for implementing the Lau ruling in district policy (Fenner, 2012 92; Crawford, 1999 46). These OCR guidelines discouraged the use of ESL (arguing that ESL did not facilitate the “affective nor cognitive development of students”) and favored the use of bilingual education programs (including bicultural, multi-cultural, and

multilingual programs) to meet the prescriptions offered in the Lau ruling (Fenner, 2012 92; Fralick, 2007 16; Crawford, 1999 46; Moran, 1988 1281).

The Lau remedies were quickly drafted and thus did not provide sufficient opportunity for public comment as is required with official federal regulations (Crawford, 1999 47). This was predominately due to the controversy caused by the Lau remedies' focus on prescribing transitional bilingual education and bilingual-bicultural programs as the remedy for LEP student issues (Olsen, 2009 821; Moran, 1988 1280). They, thus, did not carry the legal status of federal regulations (a characteristic that critics would successfully exploit later in the decade) (Crawford, 1999 47). However, at the time with the full backing of the federal government and threatened with the loss of federal funding if districts resisted (Fralick, 2007 17), they had the practical effect of federal regulations through the late 1970s (Crawford, 1999 47). Executive officials, subsequently, used the Lau remedies to coerce recalcitrant states/ districts to negotiate consent agreements which resulted in districts adopting bilingual education as the chosen policy response to addressing the needs of its LEP student population (Crawford, 1999 47).

With the implementation of the Lau Remedies after the 1974 ruling, the Office of Education implemented an aggressive program of enforcing the Lau Remedies between 1974 and 1981 (Crawford, 1998 58). This involved the OCR policing school districts with high language minority populations (Crawford, 1998). Enforcement also included the provision of federal funds for the establishment of Lau centers which were set up across the country to provide districts with the necessary technical assistance in order to comply with the Lau rulings and Remedies (TEA, 2006 12).. The Lau Remedies required that districts submit voluntary Title VI compliance plans if they had 20 or more students of the

same language group— this differed from the OCR Memorandum which only pertained to districts which had at least a 5 percent linguistic minority population (TEA, 2006 13). Each school found in violation of the ruling had to submit a plan to the OCR detailing how it would eliminate inequities towards its LEP student population or risk losing federal funding under the Elementary and Secondary Education Act (ESEA) (TEA, 1998 7). And as mentioned, states faced the loss of federal funds for non-compliance (Fralick, 2007 17)

After the Lau Rulings outlawed the ‘sink or swim’ method of English acquisition and the Lau Remedies mandated aggressive enforcement of the Lau ruling, the Department of Education all but mandated bilingual education programs for school districts with high percentages of ELL students. This led to the proliferation of bilingual education programs in those localities with high percentages of ELL students (Trujillo, 1998). These institutional mechanisms — institutions that came into existence via an interpretation by all three branches of government (now secured by the egalitarian racial institutional order) that the problem of educating ELL students concerned denial of equal rights — provided proponents of bilingual education institutional mechanisms to secure the provision bilingual education in localities with high concentration of LEP students. Additionally, as interest groups developed to support and defend bilingual education, they became entrenched in the policy regimes at the national and local levels and used their favorable positions to defend bilingual education programs. These groups included civil rights activists, professional teachers organizations and unions, Latino community-based organizations, civil rights and Latino rights lawyers education scholars as well as bilingual education advocacy organizations (Olsen, 2009 831-833).

The Equal Education Opportunity Act (EEOA)

In the same year as the Lau Ruling, Congress passed the Equal Education Opportunity Act of 1974. This act permitted the Attorney General or aggrieved citizens to bring civil action when they were denied equal educational opportunity. It also held districts accountable if educational agencies failed to take affirmative steps to provide equal education opportunity for its linguistic minority students (TEA, 2006 13; Moran, 1988 1271). Non-compliance under this law also included if a district program had a negative impact on the LEP student and thus federal oversight included more than simply policing discriminatory intent (TEA, 2006 13). EEOA mandated that all school districts comply with the Title VI of the Civil Rights Act and the OCR 1970 Memorandum— and not just those receiving federal dollars (TEA, 2006 13). The law subsequently made access to equal educational opportunity a right in all schools, not just those schools receiving federal aid (TEA, 1998). Consequently, this encouraged all schools— not just those receiving federal grants — to comply with the OCR memorandum and Title VI of the Civil Rights Act (TEA, 1998), further encouraging the development of bilingual education programs in states with sizable LEP populations.

Latino groups had already begun to sue school districts on behalf of LEP students supposedly neglected by their school districts as litigation became another of the primary mechanisms to enforce the Lau ruling. The passage of the Equal Education Opportunities Act by the US Congress in 1974 further encouraged this trend (TEA, 2006 12).

These institutional developments in the executive, legislative and judiciary branches of the mid-1970s changed the behavior of states and local school districts as these localities either (to preempt government intervention or in response to legal challenges)

created and implemented bilingual education programs in localities with high LEP student populations (Crawford, 1998 58).

Reauthorization of the Bilingual Education Act in the 1970s

The Bilingual Education Act (BEA) was reauthorized in 1974 and 1978. As BEA, 1968 only extended funding through 1973 and encouraged by the political momentum created by the Lau ruling, Congress took up the reauthorization effort in 1974 (Moran, 1988 1273). By 1974, the Bilingual Education Act had substantial support on Capitol Hill (Crawford, 1999 47). Additionally, the Latino advocacy network had coalesced and effectively pressured Congress to act given their new political leverage because of the Lau ruling (Moran, 1988 1273-1275). Moreover, academic studies had revealed that district programs were not meeting the needs of LEP students. The program was only serving 6 percent of LEP students nation-wide. In additions it had done little to support training and development of professional staff, and had not enumerated a clear set of goals and policy direction for Title VII (Crawford, 1999 47). One specific study, given to the Act's sponsor, Senator Edward Kennedy, touted the effectiveness of bilingual education programs. Lastly, the Lau ruling had created an urgency among state officials concerning the fiscal costs of compliance. They thus pushed for increased federal assistance to comply with the Lau ruling (Moran, 1988 1273-1275).

Senators Kennedy and Walter Mondale spearheaded the reauthorization effort to address these inadequacies (Crawford, 1999 47; Moran, 1988 1273). Kennedy and Senators Alan Cranston and Joseph Montoya had actually begun drafting the reauthorization bills in 1972 (Moran, 1988 1272). Kennedy (a strong supporter of bilingual education) and

Cranston originally drafted separate bills that restricted federal funding to bilingual-bicultural programs with cultural maintenance and bilingualism as end goals. Although their eventual joint bill was modified when reconciled with the House bill, the final legislation that was passed retained much of their enhancements of the BEA, 1968 legislation (Moran, 1988 1273-1278).

The 1974 reauthorization led to the expansion of bilingual education. The Bilingual Education Act of 1974 expanded federal funding to districts with LEP student populations, removing the low-income requirement (TEA, 1998). It also provided the first federal definition of a bilingual education program. The Act defined a bilingual education program as one that used the native language of the LEP student to the extent necessary for the student “to progress effectively through the educational system” (TEA, 1998). It also explicitly permitted LEP students to enroll in bilingual education to encourage cultural maintenance and (as did the Equal Education Opportunity Act (EEOA)) codified the Lau ruling’s call for states and districts to take affirmative steps to meet the educational needs of its ELL population (Fenner, 2012 92). It did place English mastery as its end goal (and not bilingualism or cultural maintenance) — thus, rendering cultural maintenance as secondary while also removing the experimental nature of the original BEA legislation (Trujillo, 1998 37; Lyon, 1990 69). However, the reauthorization still left all pedagogical options on the table, offering no specification of a particular pedagogical approach (Crawford, 1999 49). The reauthorization of the Bilingual Education Act in 1974 also called for the expansion of federal funding towards increasing the program’s bureaucratic structure and specifying bilingual education as the program method of choice (Lyon, 1990 69). The increased bureaucratic structure came in the form of increased monitoring

capacity to ensure that states and districts used federal funding towards LEP student populations (Moran, 1988 1279-1280).

Beginnings of a Restrictionist Turn

These subsequent ideational movements toward transitional programs were in part a response to the politics of the late 1970s (as mentioned previously), which became increasingly reactionary towards big government programs, and specifically, programs which attempted to alter the traditional American assimilationist model that English acquisition encouraged and cultural maintenance programs rejected (Citrin et al, 1990 538). These programs were linked with other compensatory programs such as affirmative action, which aimed to address historic discrimination through ethnic/ race conscious government intervention (Crawford, 1999 49).

It was during this period that elites supportive of bilingual education began to move away from the multiculturalist/ cultural maintenance model. President Jimmy Carter favored transitional bilingual education over teaching LEP students "ethnic culture" at the time (Crawford, 1999 50). Hispanic advocates feared that bilingual education programs were becoming a means of de facto segregation (Crawford, 1999 51). Bilingual programs began to complicate civil rights efforts to rectify segregation as the courts sought to balance segregation with quality programs for LEP students (Crawford, 1999 51). Supporters of the cultural maintenance model argued that this apparent contradiction between bilingual education and desegregation was due to ill-conceived programs by school administrators and was not inherent to bilingual education (Crawford, 1999).

The 1978 reauthorization of the BEA set out to address these concerns. It continued

the trend of increasing funding (mostly towards bureaucratic structural increases), but addressed the cultural maintenance controversy by clearly enumerating that the program's goal was English acquisition (Crawford, 1999 51). In 1978, Congress voted to restrict federal funding to transitional bilingual education (TBE) programs — programs with the goal of mainstreaming students (Crawford, 1998 56). The reauthorization of BEA in 1978 stated that the purpose of bilingual education was for transitioning the ELL students to *English Only*-mainstream instruction — a middle ground between the cultural maintenance approach and the assimilationist approach (Fenner, 2012 92; Fralick, 2007 17). The 1978 reauthorization removed the ban on bilingual programs designed to teach native English speakers a second language, but qualified this new amendment by stating that such programs ultimately should contribute to the English acquisition of LEP students (and by implication, not to encourage bilingualism) (Lyon, 1990 69). The reauthorization addressed the desegregation issue by allowing up to 40 percent enrollment of native English speakers into bilingual education classes as a way of assisting the acquisition of English for LEP students (Crawford, 1999 51). The 1974 and 1978 reauthorizations also limited the duration students could receive native language instruction (Trujillo, 1998 37).

For the next decade, little money was directed towards bilingual education programs that encouraged cultural maintenance or bilingualism (Crawford, 1998 56). As these normative programmatic paradigms for bilingual education fell out of political fashion, defenders of the bilingual programs focused less on the multicultural/ bilingual rationales by the end of the 1980s (Crawford, 1998 56). As the decade of the 1980s closed, the bilingual education political debate was instead framed within the language (lack of English proficiency) as the problem paradigm. Bilingual programs were debated solely on

the merits of whether or not they contributed to mainstreaming ELL students. Victories for proponents of bilingual education, subsequently, resulted in federal funds devoted to programs aimed at mainstreaming children.

The Backlash Against Big Government and its Effects on Bilingual Education

By the end of the 1970s, the transitional period for the racial orders paradigm — after the delegitimization of white supremacy and de jure segregation — had come to an end. King and Smith (2005; 2008) argue that race conscious policies became the new fault line of the competing racial institutional orders (King and Smith, 2005 83; 2008 688). These mechanisms of government intervention helped to ferment a political backlash against the big government programs of civil rights liberalism that evolved out of the pro-civil rights legislative and judicial rulings, respectively, from the mid-1960s through early 1970s. Bilingual education was a policy aimed at addressing inequities, funneling federal funds directly for the benefit of a subpopulation. This placed the issue in the political debate among the competing racial institutional orders concerning the appropriateness of race-conscious (in this linguistic-minority focused) redistributive policies in the American polity (King and Smith, 2008). In addition, the ideational paradigm of bilingual education proponents fluctuated per locality between transitional English programs and cultural maintenance programs. The latter offended proponents of the assimilationist model of immigrant incorporation. As this deviated from the traditional immigrant assimilationist model of ‘sink or swim’ *English Only* instruction, it suggested a repudiation of the assimilationist melting pot ideal in favor of a multicultural, pluralist conception of American identity (Citrin et al, 1990 537). Many assimilationist proponents were

proponents of the non-expansionist racial institutional order. However (as previously mentioned), some coalition members of the egalitarian transformative order (including blacks, conservative Democrats, and conservative Latino groups) also opposed cultural maintenance programs. These sentiments against bilingualism also coincided with the political winds of the late 1970s that opposed big government programs. Such opposition often took on a racial undertone as many big government programs were charged with addressing the needs of minority groups and/or the poor at the expense of the American middle class. The peeling off of support for bilingual education from marginal supporters, such as African Americans and some Latinos, allowed for restrictionist sentiments (such as the move away from cultural maintenance programs towards bilingual education as a strictly transitional/ mainstreaming pedagogical tool) to gain policy traction at the national level.

Additionally, the aggressive institutional approach also encouraged this political backlash as local school boards often resented federal intrusiveness of what was thought to be a local issue (Crawford, 1998 58). Contestations over OCR's bilingual education mandates by officials in Fairfax, Virginia, Texas and Alaska began to gain political and legal resonance. These local officials found sympathizers in the growing anti-big government, Republican movement of the late 1970s (Crawford, 1998 58). Additionally, since the Lau Remedies were never formally established, they lacked the power of official regulations. Opponents claimed that the Lau Remedies were quasi-formal guidelines. A federal court agreed that the rule-making process was illegal and forced the Carter administration to develop formal Lau Regulations (Crawford, 1998 58). In 1980, the rules produced by the Carter administration were met with near unanimous opposition from the

education community. The administration's Lau Remedy proposals required bilingual education in any district with at least 25 LEP students of the same minority language group for two consecutive grades (Crawford, 1999 52). Amid the negative reaction in an election year, Congress voted to block the implementation of the Carter Lau regulations until mid-1981 (Crawford, 1999 52). Upon assuming office in 1981, Reagan (who campaigned on an anti-government red tape platform) repealed the Lau Regulations (Crawford, 1998 59). The Department of Education subsequently withdrew the Lau Remedies (Fenner, 2012 92). Thus, the process was stripped of regulations to guide executive enforcement. This, subsequently, ended the executive policing of localities with high LEP student populations.

Political Fallout from Demographic Changes Rendered From the Immigration Act of 1965

The backlash was also in response to demographic changes caused by the Immigration Reform Act of 1965, which eliminated the national origin quotas and stressed family reunification. These changes had the unforeseen result of increasing immigration from Latin America, Asia, and Africa (Citrin et al, 1990 538). In addition, to the language differences of the immigrants (a feature they held in common with European immigrants of the turn of the 20th century immigration wave), the post-1965 immigration wave led to the growing presence of populations which were also racially different than the majority population (who were mostly descendants of European immigrants). Consequently, bilingualism (and bilingual education) politically pitted mainly Spanish-speaking immigrant groups against the mainstream public (Citrin et al, 1990 538).

This political backlash manifested in *English Only* campaigns, whose members

viewed the normative goals of bilingualism as a critique of the American assimilationist cultural model, and a model which segregated the immigrant and threatened the unity of the polity (Citrin et al, 1990 538; Imhoff, 1990 57). In the late 1970s, Republicans (led by Senator Hayakawa of California) rehashed the old political adage that the promotion of a national language was necessary to prevent the cultural polarization and divisions experienced by other linguistically diverse countries, such as Canada and Belgium (Citrin, 1990 538).

Renaissance of the English Only Movement

According to Crawford (199963), the *English Only* movement of the 1980s changed the politics of bilingual education, capitalizing on the anti-big government political wave that helped elect Ronald Reagan in 1980. It helped to reframe the debate in bilingual education, discrediting not only the importance of cultural maintenance, but also transitional bilingual education by successfully portraying English as a cultural signpost of American culture (Crawford, 1999 64).

The *English Only* movement emerged in the 1980s and called for the elimination of bilingualism in public life. It first appeared on the national scene via *US English* (Crawford, 1999 64). *US English* was a sub-group of the Federation for American English Reform (FAIR), a DC-based lobbying organization advocating for stricter controls of immigration (Crawford, 1999 64). It was founded by Senator S.I. Hayakawa and John Tanton. Hayakawa served as a senator from California from 1977 to 1983 and was the first sponsor of the English Language Amendment — an amendment proposal to the US Constitution that would have made English the official language. Tanton was an

environmentalist and population control advocate (Crawford, 1999 64). Established in 1983, *US English* quickly outgrew FAIR — by 1988 it claimed to have 350,000 dues-paying members and an annual budget of \$7 million (approximately five times that of FAIR) (Crawford, 1999 64).

Crawford (1999) argues that *US English* helped bring linguistic politics to the national agenda. Formerly, linguistic politics had been a minor issue nationally, but *US English* exploited an unease among Anglo Americans (Crawford, 1999 64). They perceived the new crop of immigrants as segregating themselves in their own communities where they could use their own language in all facets of life. Crawford (1999 64) contests that Anglo-Americans were opposed to the federal government subsidizing this behavior through programs like bilingual education. *US English* advocated that English had been the ‘social glue’ that facilitated the development of a shared American culture (the famed American melting pot). Subsequently, *US English* campaigned against government support for multilingualism as they viewed it as undermining the role of English and encouraging what they viewed as ethnic balkanization. Instead, they argued that the English language needs government protection to ensure its role in the polity (Crawford, 1999 64-65).

US English initially attempted to initiate passage of a constitutional amendment declaring English as the national language. Such calls led to proposals for Constitutional amendments to declare English the official language beginning in 1981. Measures were again introduced in 1983 and 1985 (Citrin, 1990 538). However, neither of these measures made any progress through Congress (Citrin, 1990 538).

After it became apparent that a supermajority of the nation’s states were not in favor of such an amendment, *English Only* movement turned its sights to state constitutions and

initiatives (Citrin et al, 1990 538). Before 1980, only three states had declared English the official language. By 1998, only 3 states (Maine, Vermont, and Alaska) had *not* considered similar official laws (Citrin et al, 1990).

Citrin et al (1990) finds that although the restrictions on using non-English languages in public life sanctioned by these initiatives varied per state (*English Only* ordinances were often symbolic in effect), the political rhetoric surrounding the issue was similar. Proponents of “official English” believed that linguistic pluralism threatened the long-term harmony and stability of the polity. They argued that previous immigrant generations had shown that the acquisition of English promised social mobility and political, cultural, economic incorporation into American society. To deviate from this ‘tried and true’ practice was to eliminate the one institution that united the heterogeneous American population. Thus, contrary to proponents of bilingualism, the elimination of bilingualism was not exclusionary, but pursued with the goal of social cohesion, specifically to safeguard against the ghettoization of linguistic minorities (both economically and culturally) (Citrin et al, 1990 538).

Countering these arguments, proponents of bilingual education (or bilingualism in public life) argued that “official English” measures and amendments were initiatives of exclusion, asserting that sanctioning English by law equated to institutionalizing the inferiority of linguistic minorities (Citrin et al, 1990 538). Critics of *US English* (Hispanic advocacy organizations, liberals) argued that *English Only* policies were divisive, did not encourage (but discouraged) assimilation, and did not quicken the process of acquiring English (Crawford, 1999 73). Concerning its divisiveness and its discouragement of assimilation, critics argued that *English Only* policies sent a message to immigrants that

their culture was not welcome and thus encouraged segregation (Crawford, 1999 69). Thus, in addition to eliminating [bilingual] services that facilitated the process of assimilation, these initiatives also betrayed the American tradition of tolerance and equality (Citrin et al, 1990 538).

Lastly, *English Only* opponents argued that *English Only* mandates were also unnecessary as studies showed that immigrants desire and find a way to learn English regardless of available resources to assist them (Citrin et al, 1990 538). Studies in the 1980s found that the majority of immigrants used predominantly English in public and private life by the second generation, a quickening of the process of English acquisition when compared to the immigrant wave of the early 20th century (Crawford, 1999 71).

US English countered such criticism by appointing Linda Chavez as its president in 1987 (Crawford, 1999 67). Chavez, a former Reagan appointee and familiar with the workings of Washington, crafted a counter message to Hispanics' claim that *US English* was anti-immigrant (Crawford, 1999 67). She argued that requiring LEP students to learn English quickly was a civil rights issue as English was the language of assimilation, social mobility and economic prosperity (Crawford, 1999 67). Bilingual education was impeding this civil rights imperative that LEP students learn English (Crawford, 1999 67). Such rhetoric proved effective, especially from a Latina, in countering *US English's* supposed anti-Hispanic bias (Crawford, 1999 67).

Crawford (1999) cites that *US English* did lose some of its mainstream credibility with the public when allegations of racist affiliations and comments from its co-founder became public. First, a letter by co-founder John Tanton was leaked to the press. The letter argued that high birth rates from immigrants threatened white-Anglo political hegemony

and that white-Anglos would not relinquish their political power peacefully. Revelation of the letter embarrassed Chavez, who subsequently resigned. Other high profile supporters, such as Walter Cronkite, ended their public support of *US English*. Cronkite (the premier network news anchorman of his day) left his post on the supervisory board of *US English* and asked them to cease using his name in their promotional efforts (Crawford, 1999 68-69). Nevertheless, the core theory of English Only movements— that English should be the language of the US— still retained their political appeal

In assessing the state initiatives to declare English the official state language, Citrin et al (1990 540) found that states with high immigrant populations were not the states that actually passed “official English” initiatives. In most cases, states with low immigrant populations were more successful than states with large immigrant populations. They found that *English Only* ordinances were predominantly passed in Southern states with largely Anglo-Saxon populations and small immigrant percentages. They argued that immigrant associations in states with large immigrant populations successfully organized counter mobilization efforts to discourage legislators from passing official English ordinances. As immigrant interest groups were more steadfastly united in opposition to anti-bilingual education reforms than their more diffuse opposition— mostly parents and conservative intellectuals— the former were successfully able to ward off reform proposals (Citrin et al, 2003 5). Although, Southern states did have low immigrant populations in the 1980s and 1990s, these states (Georgia, North Carolina, and Arkansas, specifically) experienced the the most rapid immigration increases between 1980 and 2000 (Singer, 2004). However, as Latinos were not politically incorporated (as evidenced by their low naturalization rates and low levels of political organization) in these Southern states,

passage of *English Only* ordinances faced little resistance (Singer, 2004). The significance of the latter finding plays out in this study as well-entrenched Latino advocacy groups were able to successfully stymie movements to pass Official English amendments and *English Only* instruction legislation in Texas in the 1980s and 1990s. Their favored positions would also prove decisive in resisting calls to end bilingual education programs in the 1990s.

In addition, bilingual education was not a salient issue through the late 1990s, thus, giving immigrant associations (with a vested interest) more motivation to pressure legislatures against anti-bilingual education reforms (Citrin et al, 2003 5). Still, Citrin et al (2003) find that official English proponents in states with high immigrant populations were successful getting these initiatives passed where citizens could pass legislation through initiatives (thus bypassing the legislature). Often well-financed *English Only* movements were able to exploit the social tensions caused by increased immigration through voter initiatives — effectively bypassing legislator's hesitant to offend potential immigrant constituents and their sympathizers (Citrin et al, 1990 540). Leaders of the campaigns were able to exploit the importance of English to the American cultural identity as well as favorably exploit negative sentiments the majority population had towards immigrants — their nationality, race, and/or culture (Citrin et al, 1990 556). The best example of this is California, which passed both an Official English constitutional amendment and outlawed bilingual education by citizen initiatives in 1986 and 1998 respectively. Both Texas and California and the effect of citizens initiatives on the prospects of *English Only* legislation will be a focus of this study

Crawford (1999 63) argues that although the official English laws were mostly symbolic in nature, their political effect was real. Even as *US English* waned politically at

the national level, it subsequently moved its efforts to the state level where it had more success. There was general consensus among state leaders to have these remain mostly symbolic, Crawford (1999 71) finds. However, they did tap a sentiment with a broad swath of society across partisan, racial, and ethnic lines. And this was the continual resonance of the American melting pot ideal — one-way assimilation — and the critical role English played in that process. Subsequently, as more research established that good bilingual programs lasting upwards of 7 years were effective in improving LEP student performance, this proved anemic in countering calls for less bilingual education. Assimilation was more important for immigrants than an effective, well-meaning program that appeared to retard the assimilation process (Crawford, 1999 73).

Winning the rhetorical battle concerning the importance of English (these *English Only* proposals often enjoyed 60-90 percent approval ratings) helped to create a lack of confidence in bilingual education policies, which were already in a precarious political state because of the negative or ambivalent research that became public in the early 1980s (Crawford, 1999 63).

Within this political climate, *US English* did not directly go after repealing Title VII. Its more conservative counterpart *English First* called for the complete elimination of Title VII funding (Crawford, 1999 74). Crawford (1999 73) argues that this was consistent with the sentiments of the far-right which saw bilingual education as government encouragement of ethnic separatism, and among some, as supporting ethnic subversion. In the 1980s, however, such sentiments as well as outright opposition to Title VII were still considered extreme (Crawford, 1999 74). Yet, according to Crawford (1999 74), *US English* proved to be more politically effective. They advocated that more Title VII dollars

to be shifted to English immersion courses and for reduction in the duration of bilingual education programs. English immersion programs were categorized under "special alternative" programs, which were generally instruction programs that used English instruction or focused on English acquisition (using native language instruction for the purpose of transitioning to all-English instruction). This proved effective in the political environment created by *US English* where assimilation and English acquisition were the normative paradigms (Crawford, 1999 74). Anti-bilingual education forces successfully used such appeals, moving Title VII in a restrictionist direction as increasing funding began to be directed to English immersion or ESL programs in the 1980s. Additionally, a three year cap was placed on Title VII funding to bilingual education programs beginning in the mid 1990s (Crawford, 1999 73).

Proponents of bilingual education responded with a multicultural campaign called *English Plus*. Founded by the League of United Latin Americans and the Spanish American League Against Discrimination, *English Plus* acknowledged that LEP students needed to become proficient in English. Still, monolingualism was not in the national interest as it did not produce students who could be productive in a globalizing world. Additionally, it was contrary to the multilingual, multi-ethnic, multicultural traditions from which the US originated (Crawford, 1999). They campaigned that multilingualism needed to be encouraged for all, not discouraged as *English Only* proponents argued (Crawford, 1999 77). They urged states and municipalities to declare themselves multilingual and/or multicultural (Crawford, 1999 77).

Reversal of the Courts' Support for Bilingual Education

Additionally, the courts also began to side against enforcement of the Lau Remedies. Crawford (1999) contests that the Bakke (1978)²⁹ decision concerning affirmative action policies also brought the legality of the Lau ruling into question (58). In Bakke, the court ruled that governmental policies that resulted in racially disparate outcomes did not violate Title VI of the Civil Rights Act nor were they unconstitutional under the Fourteenth Amendment unless discriminatory intent could be proven. Extending this logic to linguistic policy in education, a school teaching all of its students in English regardless of their language might be legal. *Castaneda v. Pickens*, 1981, addressed this question and established the governing legal precedent/ criteria for legally assessing a district LEP program's compliance with Lau (Crawford, 1999 58).

In *Castaneda v. Pickens*, 1981, referencing EEOA protection, Mexican-American student plaintiffs argued that Pickens school district in Texas was in violation of EEOA because inadequate provision and training of bilingual education instructors precluded the district from offering a bilingual education program that provided Mexican-American students with an education equal to their mainstream counterparts (Fenner, 2012 93). The district court ruled in favor of the defendants and the case was sent to the Fifth Circuit Court on appeal from the plaintiffs (Fenner, 2012 93). The Fifth Circuit Court of Appeals ruled in favor of the defendants. They reasoned that the Lau Remedies were not official administrative law as they were not published in the Federal Register, and thus the courts were under no obligation to defer to them (Fenner, 2012 93). Additionally, the Appeals

²⁹ *Regents of the University of California v. Bakke* (1978) was a landmark case decided by the US Supreme Court. It upheld the use of affirmative action in university admissions — arguing that race could be used as one of several factors in assessing applicants — but declared the use of set aside quotas as unconstitutional (*Regents of University of California v. Bakke* text)

Court questioned the rationale of the Lau rulings upon which the Lau Remedies relied. Finally, conceding that Congress enacted legislation to formalize the Lau Remedies in law, the language of the legislation, specifically the legislation's language that states take "appropriate action" to remedy issues of inequity, according to the court, suggested that Congress intended for states to have discretion in addressing such issues of inequity (Fenner, 2012 93). The courts, subsequently, developed a discretionary test upon which district educational systems should be judged to determine their adequacy in meeting the needs of its students. It detailed three criteria that districts had to meet in order to receive federal aid for their LEP programs:

1. a program had to be based on sound education theory;
2. a program was required to effectively incorporate an educational theory;
3. a program that failed to produce adequate results after a sufficient period of time to provide for the English language progress of LEP students would no longer be considered an appropriate response by the school to the needs of its LEP population (de Cos, 1999 16; Fenner, 2012 93).

The Castaneda test became the discretionary test used in future court cases concerning the legal adequacy of education programs aimed to address the needs of LEP students (Fenner, 2012 93). It has since remained the means for testing whether a program is in compliance with the Lau decision as the decision had been reinterpreted by the Fifth Circuit of Appeals (Smith, 2012 30). Still, as is evident in these criteria, bilingual education was not required to meet the court's standards. Districts could meet these standards by taking "appropriate action to overcome language barriers" through "well implemented programs" that satisfied the aforementioned criteria (EEOA text).

The *Horne v. Flores* ruling, according to Fenner (2012 94), severely limited the reliance on EEOA in affecting change in bilingual education programs. The plaintiffs in the case claimed that the district's bilingual education program was inadequate and in non-compliance with EEOA in remedying the language issues that precluded their right to an equal education (Fenner, 2012 94). Initially, the Federal District Court from Arizona entered an order against the district and extended it to the entire state, requiring districts to change their funding for ELL students as the previous funding system was deemed inadequate for the required ELL instruction (Fenner, 2012 94). The Arizona legislation responded with HB 2064 which increased ELL funding amid other technical changes to the funding formula (Fenner, 2012 94). Once HB 2064 was passed, the state sought relief from the 2000 ruling citing changed circumstances (Fenner, 2012 94). The District Court declined the state request citing flaws in HB 2064. Most importantly the District Court cited that HB 2064 funding changes were not rationally connected to the education needs of the ELL instruction (Fenner, 2012 95). The Ninth Circuit Court upheld the District Court decision. The decision was appealed to the Supreme Court which reversed the Ninth Court ruling. The Supreme Court ruling stated that both the District Court ruling and the Ninth Court ruling failed to give the proper deference to the state's right of control over budgetary decisions and that EEOA limits court-ordered decisions to only those essential for remedying specific denials of equal opportunity or equal protection laws. The lower court rulings thus were not flexible enough to allow for a return of state control for this constitutionally protected state function. Referencing the *Horne* precedent, it stated that EEOA decisions had to give great deference to state discretion in formulating responses to EEOA violations especially in the area of funding. According to Fenner (2012 95), this

precedent greatly precluded judicial advocacy on the part of pro-bilingual education forces in enacting particular programmatic change via EEOA litigation. Fenner (2012 95) concludes that this has left the court with little leverage in promoting particular models of bilingual education at the state level.

Negative Research Concerning the Efficacy of Bilingual Education

In addition, the Lau Remedies demanded accountability of bilingual education's effectiveness (Crawford, 1998 59). Studies conducted between the late 1970s and mid-1980s produced mixed results, however (Imhoff, 1990 48). And these helped to transition the issue dimension away from education equality and more towards education accountability. As early studies presented mixed results concerning bilingual education's effect on educational outcomes, this proved to be a political boon for its opponents and political problem for its proponents.

The most politically damaging was the American Institute for Research (AIR) report of 1978 (this will be discussed further below). The report evaluated 16 bilingual education programs nationwide and claimed that bilingual education with the goal of teaching bilingualism interfered with improving student achievement in school (Fralick, 2007 17; Crawford, 1998 55). Although the evaluations indicated an improvement in the self-perceptions, attendance, and cultural understandings for LEP students, the report could not consistently find higher educational achievement resulting from these programs (Fralick, 2007 16). Although the reasons given for the inefficacy of the programs was more indicative of problematic implementation than the programs themselves, the final conclusions of the study had the most political resonance. They were the first program

evaluations of bilingual programs at the time and as implied in the following adage, ‘first impressions are everything’ (Fralick, 2007 16).

In 1983, the federal government commissioned Baker and de Kramer to evaluate federally-funded bilingual education programs nationwide (Fralick, 2007 17). They found that these bilingual education programs were not effective in increasing educational achievement for the target groups and recommended an English immersion approach as a remedy (Fralick, 2007 17). These researchers contested that poor educational outcomes for LEP students were due to insufficient English skills among the students (Fralick, 2007 17). These students, they concluded, needed to be more proficient in English to succeed in school and that more exposure to the language was the remedy for their academic issues (Fralick, 2007 17). Opponents of bilingual education used this to cite the program’s ineffectiveness especially if the goal was not restricted to quickly “mainstreaming” students to English instruction (Crawford, 1998 55). Further, they maintained that due to its ineffectiveness, ELL students often languished in this transitional state for years, effectively segregating them from native English students, and, thus, further interfering with the acquisition of English skills— learning through contact with native English speakers (Citrin et al, 2003 4). This final point— bilingual education’s failure to efficiently mainstream ELL students— would later become one of the rallying points for Ron Unz’s English for the Children ballot initiative movement in California, Arizona, Massachusetts, and Colorado from the late 1990s through the early 2000s (Citrin et al, 2003 4).

In sum, these studies undermined political support for bilingual education. The initial reviews of bilingual education were negative, arguing that English immersion was a better approach. At best, these studies found that bilingual instruction (and/or cultural

maintenance programs) provided negligible or no academic benefit for students, and at worst, these programs retarded students' progress. It had been academic reviews in the 1950s and 1960s that had helped foster the political environment for pro-bilingual advocates to reframe the issue. And the negative reviews of bilingual education in the late 1970s and early 1980s did the same — creating political pressures during the reauthorizations of the 1980s to reduce the funds directed towards any program whose eventual goal was not English instruction. Critics of bilingual education began to question the logic of restricting federal funding of district programs to a pedagogical approach that showed little or adverse effects on the target student group (Crawford, 1999 54).

Evolution from Equity to Accountability

Federal government involvement in educational matters has evolved from ensuring equity to enforcing quality through mandating accountability measures. These were the issue dimensions — problematization of the issue — within which elites contested education policy. The change of issue dimensions to educational quality concerns began with the publishing of *A Nation At Risk: The Imperative For Educational Reform* report by President Reagan's National Commission on Excellence in Education in 1983 (McGuinn, 2003 1). However, as mentioned, this transition began in the late 1970s in bilingual education with the publishing of the AIR report. Nevertheless, this ideational evolution continued to impact the bilingual educational debate. Since the late 1970s, opponents of bilingual education have often attacked bilingual education by critiquing its efficacy. This is a different tone than those enjoyed by proponents of bilingual education in the early and mid-1970s where the issue dimension of equity (and the threat of civil

rights suits) forced states to implement bilingual education programs. Since the 1980s, many of those programs have come under attack for their lack of efficacy. This shift to the issue dimension of accountability has helped to change the terms of the debate (Crawford, 1999 54). This led to a reordering of coalitions to match the new issue dimension. This reordering of elite coalitions changed the balance of power towards the anti-bilingual forces. This was most evident in the increasingly lukewarm support bilingual education received from prominent Democrats such as President Carter (as mentioned) and later with Bill Clinton and much of the Democratic establishment during the Proposition 227 debate.

By the 1980s, the federal focus began to shift from ensuring equal access for targeted groups to program quality and education accountability for all students (Fuhrman et al, 2007 44). President George H.W. Bush' s America 2000 proposal, Clinton's Improving America's School Act of 1994 (IASA) and his Goals 2000, and later with George W. Bush's No Child Left Behind Act of 2001, the federal government embraced standards-based reform for all students. This moved the federal bilingual education policy in the direction of English acquisition — as language proficiency was legitimated as the problem LEP students faced. However, since states still retained autonomy concerning setting specific performance standards, designing of assessments, and applying sanctions, the federal government was still dependent on the capacity and willingness of states to implement federal standards (Fuhrman et al 2007 45). Subsequently, there is vast variation in state education policy outcomes (Fuhrman et al 2007 45).

The 1984 BEA Reauthorization

In 1983, BEA was up for reauthorization amid the political climate that was a byproduct of the negative reviews bilingual education received and the small government philosophy of the Reagan administration (Crawford, 1999 54). Education Secretary Bell proposed eliminating the native-language instruction requirement for receiving Title VII funding (Crawford, 1999 54). Senator Hayakawa, sponsored Reagan's BEA reauthorization bill that aimed to reduce the role of bilingual education in Title VII programs (Crawford, 1999 54). Hayakawa also proposed a constitutional amendment to make English the official language of the nation (Crawford, 1999 54) as discussed above. Although Congress considered neither bill, this was the political context that supporters of bilingual education faced in 1983 (Crawford, 1999 54). Proponents of bilingual education recognized the anti-bilingual education political tone of the political climate and postponed debate on reauthorizing BEA until 1984 — an election year (Crawford, 1999 54). According to Crawford (1999 54), this proved to be a sage move. The 1984 election year was the first election that the Republicans actively courted the Hispanic vote, leading Reagan to change his public tone concerning bilingual education and to officially recognize successful bilingual education programs (Crawford, 1999 54-55). This positive outreach to the Hispanic community by the Republican Party set the tone of the 1984 BEA reauthorization debate (Crawford, 1999 55).

A deal was quickly struck between Republicans and Democrats— a political compromise that had benefits for supporters of bilingual education (Crawford, 1999 55). Democrats Dale Kildee (Michigan) and Baltazar Corrada (Puerto Rico) introduced and made a deal with Republican Senators John McCain (Arizona) and Steve Bartlett (Texas)

(Crawford, 1999 55). The compromise involved increasing funding to Title VII overall by allowing for up to 10 percent of those funds to be directed for LEP oriented programs that used no-native tongue instruction (Crawford, 1999 55). These programs were categorized under special alternative instruction proposals (SAIPs) (Crawford, 1999 55). In the early 1980s, Congress incorporated Structured English Immersion within BEA under the SAIP pedagogical designation (Fenner, 2012 92). This provided districts with a pedagogical option that involved minimal use of the primary language or did not encourage maintenance or development of primary language proficiencies under BEA (Fenner, 2012 92). Lastly, Congress put a three-year limit on the enrollment of ELL students in bilingual education programs (Fenner, 2012 92). Meanwhile, extra funding was directed towards making Title VII programs move beyond the compensatory model and towards the development model for LEP students. New funds would be used for several new programs and a stronger focus on teacher training and academic goals of Title VII programs (Crawford, 1999 55).

Consequences of the 1984 and 1988 BEA Reauthorizations

Overall, however, the 1984 and 1988 reauthorizations of BEA produced a funding system that increasingly directed funds towards transitional bilingual education programs and increasingly monolingual English programs as opposed to cultural maintenance and programs with the goal of bilingualism. Development bilingual programs were offered in the 1984 (as mentioned) and 1988 reauthorizations. However, the reauthorizations only allowed for the residual funding to be allocated toward these development programs (Lyons, 1990 77). Nevertheless, the inclusion of developmental bilingual education

programs was a significant advance in bilingual education. These programs had not been an official part of the BEA since similar provisions were dropped in the conference committee of the original Bilingual Education Act in 1967 (Lyons, 1990 76). Despite this change in the content of the bill, federal funding was primarily devoted to transitional bilingual education programs by the end of the 1980s.

OCR's Laissez Faire Stance under Reagan

After Bell withdrew the Lau remedies, Civil Rights enforcement was without direction according to Crawford (1999 56). OCR attempted to draft new regulations that would provide districts more discretion in addressing the needs of their LEP student populations as was the philosophy of the Reagan administration. During debates surrounding this process, the new general counsel for the Department of Education, Daniel Oliver, questioned the legality of Lau policies. Oliver argued that discriminatory intent as opposed to discriminatory effects should be the threshold for violating Title VI of the Civil Rights Act (Crawford, 1999 56). Not providing any program for LEP students should be a violation, Oliver held. Still, a district that provided a program based on a theory backed by experts should be sufficient to comply with Title VI unless discriminatory intent could be proven. Oliver's proposal was controversial within OCR and consensus could not be reached on new regulations. The OCR operated without regulatory direction until December of 1985 when OCR proclaimed that it would enforce Lau on a 'case by case basis' (Crawford, 1999 56). OCR did not offer elaboration of how it would assess Lau compliance. It stated that there was considerable debate among experts concerning the best policies for LEP students and argued that they were not pedagogical experts, but were

simply charged with enforcing the law (Crawford, 1999 57). Subsequently, OCR permitted districts discretion in choosing the program best for their student body; it only required that they make a reasonable effort towards accommodating LEP students' need. Concerning assessing the success of district programs, OCR held that a successful program is one that moves LEP students to mainstream instruction in a "reasonable amount of time" (reminiscent of Brown's "with deliberate speed") (Crawford, 1999 58).

Subsequently per Crawford (1999), OCR enforcement of Lau dropped significantly (58). Districts were less likely to be monitored, and OCR was less likely to follow up on those districts it did find in violation. The Office defended its actions claiming their job was to enforce the law and not to make pedagogical decisions concerning the best policies for LEP students. Its critics (among them the Multicultural Education and Training Advocacy — META and MALDEF), however, argued that OCR had abdicated its role in enforcing Lau (Crawford, 1999 57).

The OCR under George H.W. Bush and Bill Clinton

This lax attitude continued under the Bush and Clinton administrations (Crawford, 1999 58). Bush toned down the strident rhetoric concerning bilingual education but his OCR functioned in a fashion similar to Reagan's laissez-faire OCR: OCR essentially permitted the states to police themselves. Upon Clinton's election, he selected former Mexican-American Legal Defense and Education Fund (MALDEF) attorney as assistant secretary of education for civil rights (Crawford, 1999 58). She immediately doubled the Lau reviews. However, the Clinton administration showed little interest in readdressing questions concerning the best pedagogical approach for LEP students and establishing the

minimum requirements district programs needed to meet for Lau compliance (Crawford, 1999 58). Subsequently, according to Crawford (1999 58), Clinton continued the laissez-faire attitude of his previous two Republican predecessors.

The 1994 BEA Reauthorization

In the 1990s, the political trends continued to be influenced by the language as a problem paradigm. The mainstreaming of students was the normative goal of bilingual education programs (Crawford, 1998 56). By the middle of the decade, reauthorizations of BEA placed a 3-year limit for bilingual education programs to transition students to English instruction (Crawford, 1998 56). The 1994 reauthorization of BEA, however, reestablished bilingualism as an end goal (Gandara and Rumberger, 2009 765). The Act while focusing on the development of English proficiency, also aimed at developing proficiency in the primary language for LEP students (Gandara and Rumberger, 2009 765). The 1994 reauthorization also reflected the goals of two other federal initiatives, 'Goals 2000' and Improving America's School Act of 1994 (Gandara and Rumberger, 2009 765). The latter called for the use of Title VI programs to help language minority students meet the same educational standards expected of mainstream students (Gandara and Rumberger, 2009 765).

No Child Left Behind

In 2002, the No Child Left Behind Act effectively ended the Bilingual Education Act, replacing it with the English Language Acquisition, Language Enhancement, and Academic Achievement Act (Title III of the NCLB Act) (Gandara and Rumberger, 2009

765; TEA, 2006 15). This act removed the language of bilingualism and stressed English acquisition as the normative pedagogical goal for public schools (Gandara and Rumberger, 2009 765). Title III, like Title VII, did not endorse any specific pedagogical program and thus, most states elected to use Title III funds to support ESL or bilingual education programs (Smith, 2012 31). Part A of the law encouraged English fluency and academic achievement while Part B of the law stressed multilingual fluency, understanding of multicultural issues, academic achievement in English and other languages (Fralick, 2007 19). Part B also included calls for data gathering and research on the issues affecting ELL students (LEP— Learning English Proficient— was renamed ELL— English Language Learner— to reflect the new English focus of Title III) (Fralick, 2007 19). The NCLB Act aimed at creating accountability structures and goals for student performance. Schools were required to meet Annual Yearly Progress (AYP) targets. Those schools which failed to meet such targets for three straight years risked losing federal funding or closure (Wright, 2006 22).

Concerning LEP students, The Act's goals included:

- to help insure that LEP students attain English proficiency and are able to meet the same standards that all students are expected to make;
- to assist all LEP students to achieve at high levels in core academic subjects;
- to develop high quality language instruction educational programs designed to assist state educational agencies in teaching LEP students;
- to assist state and local educational agencies in developing and enhancing their capacities to prepare LEP students for the transition to mainstream all English instruction;
- to streamline language instruction educational programs into a program carried out

through formula grants and state and local educational agencies (TEA, 2006 16; Smith, 2012 31; Fralick, 2007 19).

To track the performance of various student subgroups, schools were permitted to divide their student population into observable subgroups. Educational funding was then allocated according to the needs of predefined population subgroups. One goal that NCLB requires is that all ELL students pass their state's accountability test by 2014 (regardless of their length of stay in the United States (Wright, 2006 22). Meeting this goal required that ELL students meet the same academic standards as mainstream students (Gandara and Rumberger, 2009 766). This goal was to be achieved despite the greater challenge for ELL students and with little increase in funding to overcome these challenges (Gandara and Rumberger, 2009 766). The Lau Rulings have precluded schools from abandoning bilingual education programs completely without offering an adequate pedagogical replacement (as these districts could be susceptible to legal suits from the parents of aggrieved ELL students). Yet, the AYP targets and the 2014 deadline have created extra pressures for schools to improve the performance of ELL students and in some cases has encouraged localities to seek other methods of instruction for ELL students (Wright, 2006 22). The penalties for not meeting AYP targets for schools are great including potential school closing and personnel changes, as mentioned above (Smith, 2012 35). Hence, normatively NCLB stressed English acquisition through mainstreaming LEP students as quickly as possible so that they too could be subjected to the testing assessment paradigm sanctioned by NCLB.

Title III was (and still is) a formula grant that provides funding based on the number of LEP students reported by the state (20 percent of the funding is based from the state

report) and the 2000 US Census (80 percent of the funding based on the most up to date US Census) (TEA, 2006 16; Smith, 2012 31). This differed from Title VII which provided funding on a competitive basis via grants of one or more years (TEA, 2006 16). In 2003, \$477 million was distributed through the Title III State Formula Grant Program, reaching 80 percent of the 5.1 million LEP students (Smith, 2012 31). Prior to NCLB, only 15 percent of students were reached through federal programs (Smith, 2012 32). This, thus was an improvement over Title VII (although Title III incentivized abandoning bilingual education for methods that stressed quick English acquisition). Additionally, NCLB coerced all states into developing and implementing English language proficiency standards and annually assessing ELLs (Smith, 2012 32). This was a first (Smith, 2012 32). NCLB required more accountability from states in assessing the progress of ELL students as well as coercing states to verify the accuracy of student classifications (which in the past was responsible for the classification of ELL students as remedial). Thus, federal enforcement in these areas became stronger than those in place in most states (Gandara and Rumberger, 2009 766). Additionally, NCLB legitimated the idea that assisting LEP students and providing the pedagogy necessary to do so should be integrated to all subjects of the curriculum and not separated or reserved for only ESL, bilingual education or other LEP assistant pedagogies (Smith, 2012 31). Research had found that successful LEP pedagogies focused on developing content area knowledge and mastery of academic language (Smith, 2012). And this was most effective when this was made a focus in all subject areas of the curriculum (Smith, 2012 30).

Critics of NCLB charge that the assessments used for AYP in the schools were meant for native English speakers and thus not appropriate for ELLs (Smith, 2012 32).

Others worried that teachers would only teach to the tests because of the intense pressure to meet AYPs (Smith, 2012 32). The potential mislabeling of schools if their students were making progress but failing to meet AYP standards was another concern (Smith, 2012 32). Lastly, critics opined that too much was expected of states to reach AYP (such as achieving sufficient improvement to reach AYP benchmarks with students who had challenging backgrounds) with out sufficient funding (Smith, 2012 33).

Gandara and Rumberger (2009) hold that although federal policy has changed over the years, often resulting in contestation between the Department of Education and immigrant advocacy groups, little direction has been given to states concerning addressing the needs of its LEP population despite a growing body of research (767). Ideological debate has mainly manifested in the funding of comparative assessments of *English Only* and bilingual education — indicative of how the debate has overshadowed the real issues that students face. A growing body of research views this as the wrong question and also one that is unanswerable (Gandara and Rumberger, 2009 767). Researchers that hold that opinion cite the need for an investigation of teacher training that focuses on the varied needs of the diverse ELL population (Gandara and Rumberger, 2009). Gandara and Rumberger (2009 767) conclude that perhaps the greatest benefit of federal policy has been that Title VII funding helped to recruit and train personnel to deliver instruction to ELL students.

Conclusion

As depicted in this historical account, bilingual education has been a highly contested issue. Only during the heyday of civil rights liberalism, 1965-1975, was there elite agreement in support of bilingual education. Beginning in the late 1970s, however, the conservative backlash against race-conscious liberalism ended this period of support for bilingual education. The multiple forums in the American system provided ample venues for proponents and opponents to find favorable venues for alternative policy dimensions.

However, as was made evident in the historical account, the politics of race and immigration as well as education were highly determinative of the issue salience of particular issue dimensions. During the peak years of the Civil Rights movement and the 5 to 10 years following, educational opportunity was the governing issue dimension. During those years, policy venues at the federal level and the courts were highly sympathetic to arguments appealing to the need to ensure equal opportunity in education for linguistic minorities. From 1978 forward, venues at the federal level and the courts cooled to the equal opportunity policy dimension. Academic findings questioned the efficacy of bilingual education simultaneously as the policy dimensions in education policy overall transitioned to educational outcomes and holding schools responsible for education outcomes. This policy dimension favored opponents of bilingual education as research was ambivalent concerning the efficacy of bilingual education.

By the 1990s, surging immigration rates as well as macroeconomic insecurity further encouraged policy rollback in bilingual education policy arrangements. Bilingual education was viewed as a pedagogical approach that was questionable in its effects on

education outcomes targeted at a population whose growing numbers but poor academic outcomes presented a threat to the American polity.

Nevertheless, by the 1980s, bilingual education interests were well-entrenched in the policymaking system. Subsequently, the dynamics of retrenchment politics made ending bilingual policy arrangements difficult politically. Policy arrangements at the national and state levels experienced policy rollback but the federal BEA persisted until the enactment of NCLB in 2001. And even then, bilingual policy arrangements at the state level were permitted and received funding from NCLB.

However, restrictionist forces did manage to change most bilingual education policy arrangements at the national and state level to transitional bilingual education programs— ending (for the most part) cultural maintenance and bilingualism as policy goals. And in those states where policy changes can be enacted via voter initiative, most have ended their bilingual education arrangements (Colorado and Oregon being the exceptions).

Subsequently, elite politics and the open policymaking system have permitted great swings in the politics of bilingual education. As the Latino population continues to grow and their political influence increases, the open political system provides opportunities for the latest restrictionist turn to swing in a more expansionary direction.

CHAPTER 5

THE CALIFORNIA CASE STUDY

THE EFFECT OF THE VOTER INITIATIVE ON POLICY TRAJECTORIES IN BILINGUAL EDUCATION IN CALIFORNIA

Introduction

Since the late 1970s, bilingual education has increasingly been a polarizing issue nationwide. Conservative elites (for the exception of Cuban elites) have mostly opposed bilingual education — instead favoring English-oriented pedagogies — while liberal elites have favored the use of the pedagogical approach. Bilingual education policy trajectories in California and Texas, however, have defied this political logic. Despite being a more liberal state overall, policy trends in bilingual education reveal policy rollback in California beginning in the 1980s and continuing through the late 1990s. This chapter argues that the openness of the policymaking system and the dissolution of elite agreement concerning bilingual education provide a better explanation for policy trajectories in California and Texas than the state's partisan history.

This argument will be made over the course of the this and the following chapter, which analyzes the factors behind Texas' bilingual education policy trajectory from the mid 1960s through the end of the 2000s. Over the period of study, the historic trajectories of elite views concerning bilingual education in the two states are identical: elite agreement from approximately 1965-1975; elite disagreement from the late 1970s forward. And as will be discussed below, policy trajectories in bilingual education in Texas and California

were practically identical until the 1980s when the effects of the voter initiative on linguistic politics began to take effect in California. By presenting these chapters together and showing the historic similarities of elite views concerning bilingual education and policy trajectories through the mid 1980s, these two chapters aim to depict how structural differences in the policymaking process in Texas and California — the presence of the voter initiative and lack thereof — affected linguistic politics in general and led to varying policy trajectories in bilingual education in the two states from the mid 1980s forward.

As mentioned, from the mid-1960s through the mid-1980s, California's bilingual education policy trajectory was similar to that of Texas. After the mid-1980s, however, the policy trajectory in California took a decidedly more restrictionist turn, beginning with the sunseting of the Chacon-Moscone Bilingual-Bicultural Education Act, and culminating with Proposition 227 which statutorily ended bilingual education in the state. The variation in policy trajectories is attributable to the presence of the voter initiative in California — a policymaking mechanism absent in Texas — which legitimated and permitted policy rollback in bilingual education policymaking in California (Crawford, 1999; Czegledi, 2004). The existence of policymaking via voter initiative makes California a more open policymaking system than Texas. And it is this openness (and the particular institutional dynamics of the voter initiative) that allows for policy rollback — the voter initiative provided an institutional mechanism for legitimating and passing policy that rolled back policy arrangements in bilingual education while also allowing political officials to escape blame for such policy.

This chapter lays out how elite views concerning bilingual education and the openness of California's policymaking system contributed to the policy trajectory in

California's bilingual education policy. Specifically, it will present how after a period of elite agreement which resulted in the establishment of a bilingual education policy regime in the 1970s and early 1980s, the passage of *English Only* initiatives via the voter initiative led to a restrictive turn in linguistic politics in general and bilingual education policy in particular from the mid 1980s forward. The voter initiative in California permitted the passage of *English Only* legislation which legitimated and allowed for policy rollback in bilingual education policy in California. In Texas, which lacks this policymaking feature, *English Only* politics led to more incremental policy rollback in bilingual education beginning in the 1980s. Before addressing the historical evolution of bilingual education policy, the next section will provide a more detailed explanation of the aforementioned factors involved in bilingual education policy evolution in California.

From the mid-1960s through the mid-1970s, there was general elite support for bilingual education. This existed among local and state government officials as well as among pedagogical and education scholars. From the late 1970s forward, bilingual education has been a polarizing issue among political elites and academics. Generally since the late 1970s, liberal political/ government officials at the state level have supported bilingual education and conservatives have opposed the instructional approach. Academics from the late 1970s have also been more ambivalent concerning the efficacy of bilingual education.

Concerning the comparative openness of the California policymaking system, it is the direct democracy policymaking option, the voter referendum, which allowed the electorate a more direct influence on policy outcomes. Additionally, the referendum forum mitigated the institutional dynamics of concentrated costs/ diffuse benefits—

policymakers' tendency to avoid politics that will alienate a mobilized, entrenched constituency, fearing political retribution from affected, entrenched interests (Sheingate, 2000; Pierson, 1994) — that drives retrenchment politics in the more closed legislative policymaking forum. Instead policy outcomes were determined by the electorate: voter initiatives provided a policy forum where retrenchment policies could be (re) framed and offered directly to the electorate while also freeing [sympathetic] government officials from direct association with said policies (a necessity of successful retrenchment politics per Pierson, 1994).

Summary of Policy Development in Bilingual Education in California and the role of elite consensus and intergovernmental interaction in policy evolution

The two factors mentioned above play out in the evolution of bilingual education policy over the period of study. In the late 1960s, local bilingual policy initiatives garnered the attention of national policymakers as elites from both political parties and Latino (mostly Chicano) advocates concurred that bilingual education was an appropriate tool to address the endemic inequalities in education, segregation, and cultural impoverishment that Mexican-Americans had experienced historically through the late 1960s (Crawford, 1999; Petrzela, 2010). Additionally, pedagogical scholars increasingly became critical of the efficacy of *English Only* instruction, calling for the use of native language instruction to assist in the education of LEP students. Chicano advocacy, specifically, benefitted from the political opportunity structure created by emerging academic and bipartisan support for bilingual education— pushing for the implementation of bilingual education as a remedy for the civil rights and educational problems of LEP students but also for its symbolic

importance as a representation of cultural pride and empowerment (Trujillo, 1998).

In this early phase of policy evolution in the late 1960s, the interaction of policy venues at the local, state and national level led to *issue expansion* in bilingual education policy as major pieces of legislation were passed at the local, state and federal level. This legislation had bipartisan support from both state and national officials and pedagogical support from the academic establishment. Bilingual education was viewed as an appropriate civil rights remedy for past discrimination, pedagogically sound for addressing the needs of LEP students, and politically expedient to court the growing Latino population. This gave bilingual education wide appeal across the political spectrum from the late 1960s through the early 1970s. These factors also legitimated pro-bilingual education actors at the federal, state, and local level, and resulted in venue shifting to federal and judicial venues via the lobbying of sympathetic interest groups and advocates for bilingual education (such as Chicano activists and the Mexican American Legal Defense and Education Fund- MALDEF).

Local initiatives in bilingual education led to the passage of SB 53 in 1967. This state legislation overturned *English Only* ordinances, allowing for localities to develop instructional programs that used native-languages in instruction. These local initiatives additionally influenced the prospects of bilingual education legislation at the national level by providing examples of its successful implementation (Petrzela, 2010). At the national level, elite agreement consolidated the political momentum created by localities such as those in California and Texas, resulting in the Bilingual Education Act of 1968, which provided minimal federal funding for district programs designed to address the needs of LEP students (Crawford, 1998; 1999).

Through the mid-1970s, federal and judicial mandates increased the legal commitment of districts to bilingual education policy arrangements and led to the passage of further state legislation. In the early and mid-1970s, these mandates included federal legislative actions (the reauthorization of the Bilingual Education Act in 1974, the Equal Education Opportunity Act, 1974), executive actions (1970 OCR Memorandum concerning state responsibilities to its LEP students; the Lau Remedies in 1975), and judicial rulings (most notably the Lau Rulings, 1974, 1975). Collectively, these deepened the legal responsibilities districts had to their non-English speaking population concerning their instructional needs while also prescribing bilingual education programs as the appropriate remedy. State policy consolidated these mandates in the form of state law. The California legislature passed Chacon-Moscone Bilingual-Bicultural Education Act (1976)— a response to the Lau ruling and the 1970 OCR memorandum concerning state responsibility to its LEP student population.

Beginning in the late 1970s, elite agreement began to dissolve— part of the political backlash against government interventionism (King and Smith, 2005; Crawford, 1999; HoSang, 2010). Officials sympathetic to those opposing bilingual education began to assume positions in the various policy venues of influence — providing forums for challenges to existing bilingual education policy arrangements — at the federal and then eventually at the state level in the 1980s. Additionally, support from education and pedagogy scholars for bilingual education began to dissolve. High profile national studies questioned the efficacy of bilingual education beginning in the late 1970s. Both the judiciary and federal government began to relax their mandates on bilingual education policy. Specifically, English immersion methods were legitimized via judicial rulings and

policy developments at the national and state level that permitted and funded their use as a curricular option to addressing the needs of LEP students. Nevertheless in 1980, California officials passed the Bilingual Education Improvement and Reform Act, continuing Californian districts' legal commitments to bilingual education policy arrangements.

By the mid-1980s, the political climate had changed, as the aforementioned opposition towards bilingualism began to influence Californian politics. The *English Only* movement, which among other goals called for the official recognition of English as the national/ state language and for the elimination of bilingualism in public life, gained political legitimacy at the national and state level. After failing at the national level to pass a constitutional amendment making English the official language of the US, *English Only* movements began to sweep the nation (with the passage of voter initiatives making English the official language in Arizona, Colorado, and Florida among other states in the mid-1980s).

In 1986, California's electorate passed the voter initiative, Proposition 63, which made English the official language of state business. Proposition 63 played a decisive role in changing linguistic politics and policy in the state. This affected the politics of bilingual education and, specifically, the Bilingual Education Improvement and Reform Act, which had a sunset clause set to take effect in 1987 (Czegledi, 2004; Crawford, 1999). The Bilingual Education Improvement and Reform Act was allowed to expire— most notably Governor Deukmejian vetoed two reauthorization bills in 1986 and 1987. For the next eleven years, the legislature was unable to pass another bilingual education bill. However, sunset statutes were passed that allowed districts to continue to provide bilingual education programs and receive state and federal funding in support of these programs. Proposition

63 legitimized the politics of policy rollback in bilingual education (Czegledi, 2004; Crawford, 1999) by allowing for *English Only* policy outcomes that exploited anti-immigrant sentiments in the electorate, but without requiring a legislative majority associated with its passage. This differed from Texas—which lacked a voter initiative option for policymaking. Repeated attempts to put *English Only* constitutional amendments on the state ballot, subsequently, died in the legislature amid Republican fears of evoking the electoral ire of their Latino constituents (Tatalovich, 1995).

Additionally, the bilingual education policy dimension of focus among policy makers shifted from equal educational opportunity to education efficacy (or policy accountability). The publication, “A Nation At Risk,” found that American students were regressing. This helped kick off school reform movements nationwide (as well as in California) that stressed accountability as opposed to pedagogical methods (McGuinn, 2003). As high profile studies began to cast doubt on the the efficacy of native tongue instruction (dating back to the late 1970s) on educational outcomes while also calling for the use of *English Only* instructional methods, this change in policy dimension proved politically problematic for bilingual education proponents. Proponents of bilingual education were increasingly on the defensive from the early 1980s forward.

In 1998, the voter initiative allowed for policy rollback in bilingual education that the legislature had impeded in the period after the expiration of the previous bilingual education act. In 1998, Ron Unz's³⁰ English for the Children voter initiative campaign successfully put Proposition 227 on the June 1998 ballot. It passed with a significant majority (winning 61 percent of the vote). Proposition 227 outlawed bilingual education

³⁰ Ron Unz was the sponsor of the English for the Children voter initiative. He is a multi-millionaire software developer and was also a former gubernatorial candidate (Crawford, 1999).

except for those qualifying for waivers.

Unz specifically used the voter initiative to bypass the legislature, taking his argument concerning bilingual education straight to the electorate. He believed the legislature was captured by Latino interests. Subsequently, he believed ending bilingual education would not be possible through traditional legislative means (Crawford, 1998; 1999; Olsen, 2009).

Since the passage of Proposition 227, educational officials throughout the state have continued their practice of playing fast and loose with state mandates. When bilingual education was mandated by the state, many pedagogical approaches were called bilingual education (including methods that mostly used English instruction). Since the passage of 227, districts have continued to employ this same philosophy. They have mostly continued using the same approaches they used before, only in the post-227 era, claiming their practices to be in compliance with the new anti-bilingual policy ordinances.

However, consistent with this disconnect between the politics of Proposition 227 and the pedagogical practices of district officials, bilingual education politics has typically been detached from the reality at the district level.³¹ The politics of Bilingual education has been driven more by the dynamics of symbolic politics— what bilingual education means to the targeted groups, supporters, opponents and to society as a whole (Olsen, 2009 820; Moran, 1987). Subsequently, this study focuses on how this politics plays out in policy outcomes as opposed to how it actually affects instructional practices for LEP students. As issue definitions drive political consensus (Baumgartner and Jones, 1993), how the politics

³¹ To give one example, at peak enrollment, only 15 percent of the state's LEP students were enrolled in bilingual education programs. Yet opponents of bilingual education claimed the pedagogical approach was the reason for low academic performance of LEP students.

plays out will ultimately determine how issues within districts are treated, and thus it merits an independent focus.

The rest of the chapter will expisit in further detail this history of bilingual education policy evolution and how the two factors — the open policymaking system (specifically, the voter initiative) and elite divisions — contributed to shaping the policy evolution of bilingual education from 1965 - 2010.

Bilingual Education Policy Evolution in California- The interaction of local, state, and national policymaking

In the 1960s, during the initial period of the bilingual education policy renaissance in California, policy evolved via the interaction of local, state, and national policy venues, resulting in *issue expansion* across these three levels of government. Additionally, these efforts were bipartisan in nature — thus depicting the elite agreement in support of bilingual education characteristic of this period.

Local Bilingual Education Initiatives Before the Bilingual Education Act of 1968

Petrzela (2010) provides a historical account of pre BEA policy developments in California bilingual education that set the stage for the national and state initiatives in bilingual education that would follow in the late 1960s. This section will rely heavily on Petrzela's account as it provides one of the few glimpses of the experimentation in second language pedagogies that were used in the 1960s before the Bilingual Education Act.

In 1959, the California state legislature had passed legislation prohibiting instruction in a language other than English. This presented a problem for state officials

after the passage of the Immigration Act of 1965. The Act greatly altered the population demographics of California. Petrzela (2010 407) cites accounts claiming that nearly 1200 immigrants entered the state on a daily basis after passage of the Act.³² The 1959 law strained the ability of local education officials to respond to the changing demographics brought about by the 1965 Immigration Act as local officials viewed that these students required language assistance to receive a quality education. Some localities ignored the *English Only* instruction ordinances and implemented experimental programs which used the native language in instruction. The 1959 law, however, made such efforts legally tenuous (at best).

In 1967, before the Bilingual Education Act mandated localities to create programs to address the needs of LEP students, several California localities began experimental programs featuring ESL pedagogy. Elite agreement was a factor in the development of these programs as they were spearheaded by both progressive and conservative local officials and would eventually serve as model programs once federal legislation became politically feasible — at the time of the drafting of the Bilingual Education Act, education professionals studied California programs in second language pedagogy to acquire an understanding of how to develop and implement successful programs for LEP students (Petrzela, 2010 418).

In the pre-BEA era, ESEA funding was made available for districts experimenting in programs to assist LEP students. Local officials in San Diego, San Ysidro, Carlsbad, and

³² Rates continue to increase dramatically throughout the 1970s, 80s, and 90s. The percentage of immigrant children increased three-fold in the following two decades after the passage of the Immigration Act of 1965. Significant influxes of immigrants children from Mexico and Central America, refugees from Southeast Asia, and depressed birthrates among native-born population were the factors behind the growing proportion of immigrant children during this period (Olsen, 2009 822).

San Dieguito — areas with large concentrations of Mexican students — used ESEA Title III funds to develop experimental ESL programs.³³ Although ESL would lose favor with progressives within a few years for being the most conservative approach to addressing LEP student needs, in early 1967, this model was considered experimental as its use involved local officials' acknowledgment of the cultural adjustment — the relevance of the Mexican culture — issues faced by Mexican students and the effects this could potentially have on educational outcomes (Petrzela, 2010 417).

Additionally, Superintendent Rafferty (an archconservative) led state and local efforts to address the educational needs of LEP students. In 1965, he led a textbook exchange pilot program with the Mexican Ministry of Education to Mexicali schools which also introduced the possibility of a teacher exchange. These programs resulted in the use of Spanish textbooks for Mexican-Americans as well as Anglo students in localities with high percentages of Spanish speaking students. Similar to the ESL programs of the 1960s, these programs were also revolutionary as they did not segregate LEP students, allowing them to remain in classes with students whose mother tongue was English. Additionally, they focused on cultural education as well as language acquisition for both its Anglo and Mexican students. This program, in essence, was a type of dual language-dual culture program, making it a program that would be considered progressive by contemporary standards (Petrzela, 2010 417).

Another example of experimentation occurred in the boarder town of Calexico. Anglo officials also established a bilingual, bicultural program in the early 1960s. The program was bolstered by Rafferty's exchange program. Calexico's population was a true

³³ The ESL Center for California headed these programs, which were funded through earmarks for Projects to Accelerate Creativity in Education (Petrzela, 2010 417).

multicultural town in which Anglos, Mexican immigrants, and Mexican-Americans were able to establish political consensus via Anglo leadership concerning their schools' pedagogical approach. Calexico's Anglo superintendent, Carl Varner, went on to become a prominent national pioneer in bilingual education (Petrzela, 2010 418).

Subsequently, during the early years of the Bilingual Education Act's implementation, California's relative success with educating Latinos prior to the implementation of the Bilingual Education Act attracted attention from other states and national officials. The following example of an early Title VII program shows the influence of local California initiatives of the 1960s. California's Project Frontier was a fusion of local and national funding and a model for pedagogical innovation in bilingual education — pioneering in its use of bilingual education in middle and secondary schools. Its combination of federal, state and local funding served as a template for Title VII projects. The program also had a revolutionary pedagogical approach that was neither assimilationist nor adhered to the cultural maintenance model. The course was designed for Spanish speaking and white non-Hispanic students. Its end goal was for students to be able to interact fluently in both American and Mexican cultures. The program's focus on developing students' knowledge and understanding of Mexican culture made the course progressive for this period. It was one of the most generously funded bilingual-bicultural Title VII programs in the country in 1969 (\$442,216 Title VII funds in its first year) (Petrzela, 2010 417- 422).

The Passage of SB 53

According to Petrzela (2010), the political imminence of the federal Bilingual Education Act spurred Californian political officials of both parties to address the issue of bilingual education as Mexican Americans were a growing constituency in the Californian electorate (407). Subsequently, BEA encouraged the elite consensus which spawned Senate Bill 53 (SB 53).

The 1967 legislation overturned the 1872 and 1959 ordinances that mandated *English Only* instruction (Petrzela, 2010 415; Farr et al, 2005 17). It permitted the use of bilingual education in those situations when students benefitted from its use without interfering with the regular (English) instruction for the majority student population. SB 53 provided a transitional program that valued bilingualism as an “asset” as it pursued English fluency for Mexican American students (Petrzela, 2010 415). Its long term goals (according to Gonzalez (1968)) were bilingualism for all students, a progressive development from pre-existing ESL programs in California whose end goal was mostly English proficiency (as cited by Petrzela, 2010 415). Thus, SB 53 did not adhere to the language as deficient paradigm of the federal Bilingual Education Act (as is discussed later in the chapter and more thoroughly in the Politics of Bilingual Education, Chapter 4) through its treatment of Spanish proficiency as an asset (Petrzela, 2010 415).

SB 53 was also passed with the federal bilingual bill in mind (Navarro, 1985 303). By removing *English Only* statutes, California would be eligible to receive federal funds provided by the federal act that would be passed a year later. California along with Texas officials were central to the emergence of the federal bilingual education bill (to be discussed below).

Signed into law by Republican Governor Ronald Reagan, it formally acknowledged the significance of the Spanish language and culture via bilingual pedagogy (Petrzela, 2010 407). It recognized the link between Spanish fluency and Spanish culture — an aspect that the Bilingual Education Act would abandon in its evolution from bill to law (Petrzela, 2010). However, its main goal, according to Petrzela (2010), was to use bilingual education to more effectively integrate the growing Mexican population. Hence, SB 53 was both conservative and liberal in nature — focusing on cultural maintenance and assimilation (Petrzela, 2010 413). Petrzela (2010) proffers that this resulted from the wide range of political responses to LEP students at the time from local and state officials and the attempts of SB 53's architects to make Californian legislation more precise in its pedagogical intent than the federal Bilingual Education Act. By 1967, localities had already begun enacting programs to address the special needs of their LEP populations. These ranged from bicultural- bilingual programs for LEP students to those localities that continued to classify LEP students for remedial (Educable Mentally Retarded- EMR) tracks (a practice dating back to the 19th century). Petrzela (2010) argues that such varied responses potentially made BEA both a catalyst for legislation but also possibly an impediment to local policy responses because of its lack of pedagogical specificity (see Chapter 4 - Politics of Bilingual Education). Concerning the latter, as some local experimentation was more progressive than BEA, BEA's lack of specificity did not provide the political support these progressive policies needed during their infancy. Nevertheless, SB 53 sanctioned local district experimentation and served as a guide in developing programs to address the growing LEP student population (Petrzela, 2010 413).

Issue Expansion in bilingual education leads to federal mandates which ultimately result in more substantial bilingual education legislation at the state level

In the 1970s, linguistic politics in education was driven by a civil rights problematization of the issue (King and Smith, 2005; Olsen, 2009 822). The problem of educating Spanish speaking Latinos was viewed through the paradigm of providing Latinos (and other second language students) with equal education opportunity to education achievement (Olsen, 2009 822). Advocacy from Latino interests as well as elite agreement concerning bilingual education were oriented by this problematization.

Federal mandates, aiming to provide second language students with equal education opportunity, drove the next phase in state bilingual education policy. These mandates came in the form of federal legislation, directives from the executive branch, and judicial rulings that interpreted the constitutional rights of LEP students and district responsibilities with respect to these rights.

The period of the late 1960s through the mid-1970s exhibited successful venue shifting from state interests. They had hoped to elicit federal intervention to coerce/underwrite state responses to its growing LEP student population. These efforts consisted of Chicano and Latino advocacy at the state and federal level as well as advocacy from state officials. Federal advocacy and directives in turn legitimated and empowered local interests in support of reforms. In sum, the resulting interaction of policy venues led to *issue expansion* in bilingual education. *Issue expansion* across these three federal policy venues (this includes the courts) resulted in a deepening of California's legal commitment to bilingual education. This bequeathed statutory changes in state law to institutionalize

these commitments — the latter coming in the form of the Chacon-Moscone Act, 1976. Lastly, this was a bipartisan phenomenon as officials from both parties played prominent roles in the actions emerging from these policy venues.

Bipartisanship involved in the emerging support for bilingual education in California

Bipartisan efforts during this period depict elite agreement at the federal and state level in support of bilingual education. Support for both the federal Bilingual Education Act of 1968 and SB 53 stemmed from conservative as well as progressive officials (Petrzela, 2010 415; Davies, 2002). Concerning federal legislation, California state officials from both parties were involved in the push for the federal Bilingual Education Act (BEA) and the federal directives to ensure state compliance that followed in the wake of BEA, 1968 (Petrzela, 2010; Davies, 2002).

Thomas Kuchel, an Orange County Republican, was an early proponent of the 1967 Bilingual Education bill. He served as one of the original seven members of the Senate Subcommittee that recommended the federal Bilingual Education Act and mentored Leon Panetta, who (as mentioned in the previous chapter) would later play an important role in OCR endeavors to enforce federal and court mandates. Republican senator George Murphy was an early proponent of bilingual education, arguing that something needed to be done to reverse the high Latino dropout rate.³⁴ Republican school superintendent Max Rafferty (as detailed in the previous section) organized and sponsored a conference to discuss the pending federal bilingual bill in 1967 (Petrzela, 2010 415).

SB 53 was supported and signed into law by Governor Ronald Reagan, an arch

³⁴ Studies from the 1960s found that 50 percent of Latino students dropped out of school by 8th grade.

conservative. He did so in an attempt to capture the Mexican constituency which he felt Democrats had taken for granted (Petrzela, 2010 416; Davies, 2002). Later, Republican President Richard Nixon (also a Californian) supported the federal act and used his support for BEA to court Latinos as the Nixon administration had also come to believe Latinos had latent Republican sensibilities and could be successfully courted (Petrzela, 2010 416; Davies, 2002).

Republican support was politically motivated,³⁵ but was also driven by true adopters who believed that the increased second language population required experimentation in pedagogy (Petrzela, 2010 416). The latter is most evident in Kuchel's statement concerning his support for bilingual education:

We must treat the ability to speak Spanish and other languages as an asset. The US can no longer pretend that it can communicate with other people with but one tongue—no matter how widely the English language is spread over the Earth (Sanchez, 1973 quoted in Petrzela, 2010 415).

On the Democratic side, in addition to the support of state Democratic legislators for SB 53, California's Congressional representatives played a major role in the development of the federal act. Democratic congressional representatives Edward Roybal and George Brown of California expanded the scope of Senator Yarbourough's (R-Texas) Bilingual Education Act of 1967 and pushed a House bill that addressed language minorities other than Mexican-Americans (Petrzela, 2010 415). Leon Panetta and J. Stanley Pottinger, liberal lawyers from California, served in the federal Department of

³⁵ Petrzela (2010) cites Sanchez (1973), who argues that Raftery's conference initiative was driven by the politics of his 1968 Senate campaign.

Health, Education and Welfare (HEW), and would later play prominent roles in OCR enforcement of the Title VII act (Petrzela, 2010 414). Panetta crafted and Pottinger implemented OCR directives mandating California state compliance with federal Title VII mandates. HEW was also headed by California liberal Robert Finch (Davies, 2002). Finch authorized the OCR directives developed by Panetta.

The question of how to best educate Latinos had also been on the political agenda of progressives and Latino advocates before the passage of the Bilingual Education Act of 1968 (Petrzela, 2010 416). Campaigns by parents, activists and advocates of Latino and Asian students lobbied for bilingual education programs in California's localities and for legislation at the state level to support and coerce such programs. They argued that Latino and Asian students had been left behind by an educational system that had historically discriminated through mandating English-only instruction³⁶ (HoSang, 2010 232).

The Passage of the Bilingual Act of 1968

Concerning federal mandates, the Bilingual Education Act of 1968 (BEA, 1968) was the first shot fired. The Act mandated districts to address the educational needs of their LEP student population but provided minimal federal assistance. BEA, 1968 also did not

³⁶ Petrzela (2010) found that the number of Latinos in the teaching profession had become associated with the poor performance of Latino students. Teaching had emerged as a profession in which Latinos could gain access to professional employment. The Association for Mexican Americans Educators quoted an influential study that found that only 2.3 percent of teachers employed statewide had Spanish surnames despite making up 8 percent of the civilian labor force. A circular argument emerged connecting the disproportionately small number of Latinos in the teaching force to the lack of qualified Latino teachers; this led to ineffective bilingual programs which resulted in poor Latino performance in school, leaving Latinos ill prepared for professional work. Thus, improved performance of Latino students was connected with the employment of Latino teachers. Subsequently, the hiring of Latino teachers became a polarizing political issue connected with bilingual education. Teachers Unions stigmatized bilingual education instruction hires, complaining that the politics of bilingual education led to the hiring of unqualified Latino teachers.

legislate a particular pedagogical approach (Petrzela, 2010 414). This tasked states and ultimately localities with creating and funding the programs to satisfy the federal directive. Petrzela (2010) argues that such mandates led to resentment among fiscally strapped localities. This was especially the case in the 1970s as federal bilingual education directives became more demanding and its expanding federal bureaucratic reach provided more efficacy to enforce federal mandates. Petrzela (2010) concludes that district resentment of federal mandates played out in the districts' view of bilingual education in the late 1970s as elite agreement began to dissolve (415). Nevertheless, its passage legitimated experimental efforts already underway in California and forced other localities to reassess their treatment of LEP students.

The OCR Memorandum and the Role of California Officials and Interest in its Genesis

Along with Chicano advocacy in Texas, lobbying from Latino advocates in California as well as the bureaucratic initiatives of California liberals in HEW led to the OCR Memorandum of 1970. As cited in the previous section, the OCR Memorandum resulted from the efforts of California liberals, successive OCR heads Panetta and Pottinger, and HEW Secretary Finch (Davies, 2002 1418). Panetta had been made aware of the linguistic problems faced by Latinos in the California school system in a 1969 meeting he had with Latino leaders in San Francisco (Davies, 2002 1414). As Panetta was looking to regain the favor of President Nixon and reorient OCR in a more Nixon-friendly direction, Latino advocacy — venue shifting to the executive branch — found a favorable ear in Panetta (Davies, 2002 1410-1415). This combination of Latino advocacy, the previously discussed OCR bureaucratic autonomy, and Republican courtship of the Latino

vote led to the drafting of the 1970 Memorandum (Davies, 2002 1410-1417).

OCR's Memorandum to California

The 1970 OCR Memorandum led the OCR to issue an additional memorandum specifically to California school districts to mandate “meaningful compliance” with the Bilingual Education Act (Petrzela, 2010 414). Petrzela (2010 414) proffers that since the language of the Bilingual Education Act did not mandate a particular pedagogical method for addressing the needs of LEP students and because of its minimal fiscal support, this encouraged states such as California to drag their feet in implementing policies to address LEP student needs. SB 53 also did not mandate bilingual education but permitted the use of native language in the instruction of LEP students whenever beneficial and not obtrusive to mainstream students. Subsequently, without a federal or state mandate, Californian districts (outside of the experimental efforts mentioned) were often slow to address the needs of LEP students. Such feet dragging had been the target of Latino advocacy (specifically Chicano³⁷ advocacy) in the 1960s. In lieu of the 1970 OCR Memorandum, this prompted additional OCR action — the second memorandum mandating that school districts take more concrete steps towards addressing LEP student needs (Petrzela, 2010 414).

³⁷ The Chicano advocacy movement was a Mexican-American student movement birthed in Texas in the mid-1960s. The movement was inspired by the farmworkers protest of 1966 in which protest associated with a farmworker strike in the summer of 1966 culminated with a dramatic march from south Texas to Austin that garnered national media coverage. The movement was also inspired by the Black Panthers and Anglo student protests of the era (Limon, 2010).

Influential Court Rulings of the early 1970s

Political momentum for addressing the needs of Latinos in the state also gained traction with the favorable legal ruling in *Diana v. California State Board of Education* (Davies, 2002 1417). In this case, venue shifting from California activists for Latino second-language students helped bring the linguistic issue of Mexican-American second-language speakers to the national education agenda (Davies, 2002 1417). In the 1970 class action suit, the plaintiffs — nine Spanish speaking Mexican-American students from Monterey County, California — contested their placement in a remedial class per the result of assessment examinations given in English (McClellan, 1995 8). The plaintiffs successfully argued that the rights of the Mexican-American students (ages 8-13) protected by the Equal Protection Clause of the 14th Amendment had been violated by the state's tracking system (Serpa, 2005). The ruling ordered the state's school districts to re-evaluate Latino students who had been assigned to remedial education via assessments in their native language (Davies, 2002 1417; Serpa, 2005).

Additionally as mentioned in the previous chapter, the Supreme Court played a decisive role in increasing federal mandates on states. The most important of these rulings was the *Lau* rulings. As the *Lau* ruling provided legal backing to the 1970 OCR memorandum, OCR then proceeded to establish field offices to assist districts in complying with the federal mandates (Lucas, Henze, Donato, 1990 316). Their recommendations (the *Lau* remedies) strongly encouraged districts to establish bilingual education programs as OCR viewed them as the best pedagogical response to ensure district compliance. Policy makers at the state level, subsequently, were coerced to formulate policy to address the needs of its LEP student population (Lucas, Henze, Donato 1990 316). The *Lau* ruling

would factor prominently in California's statutory development in bilingual education in the mid-1970s.

Congressional Action Concerning Bilingual Education

In the same year, Congress passed the Equal Education Opportunity Act of 1974 as well as reauthorized BEA, 1968 (the Bilingual Education Act of 1974). The two acts put additional pressure on California to develop more substantial responses to the problem of LEP student education. The former elevated the legal standing of the issue, encouraging legal suits to coerce district compliance with federal law. This further encouraged all schools — not just those receiving federal grants — to develop approaches to comply with the OCR memorandum and Title VI of the Civil Rights Act (TEA, 2006).

Moreover in 1974, the US Commission on Civil Rights (a bipartisan agency established by Congress in 1957) issued a report that was critical of several bilingual programs in southwestern states including California. The Commission had engaged in a study between 1971 and 1974 of segregationist and exclusionary practices used by the state of California to segregate and exclude Mexican-American students from its Anglo student population (Rodriguez, 2010). The Commission found that traditional monolingual schools had fostered poor academic performance, demeaning influences, and alienation among the Mexican-American population (Rodriguez, 2010). The Commission also found that bilingual programs were severely underfunded, only reached a small percentage of the LEP student population and did not sufficiently address Mexican culture and history (TEA, 2006).

*The Culmination of 1970s Venue Shifting, Federal Directives, and Issue advocacy—
The Passage of the Chacon-Moscone Bilingual-Bicultural Education Act*

Sparked by the passage of the Bilingual Education Act of 1968 and the incorporation of the problem of second language instruction into the civil rights debate, a Latino advocacy coalition emerged in California. It consisted of civil rights lawyers, the California Association of Bilingual Educators, sympathetic education scholars, state political officials, Latino rights advocates, teachers and education administrators, bilingual parent committees, bilingual education administrators in the field, activist staff from agencies responsible for the implementation of LEP programs, Latino and farmworker communities, and teacher's unions. Although this coalition faced strong opposition, taking advantage of the resonance of the equal education opportunity problematization, they were increasingly successful in lobbying efforts to push through bilingual education legislation in the early to mid-1970s (Olsen, 2009 822 - 826).

The gradual incorporation of this advocacy was important to Latino interest as Latino political representation in the state legislature was sporadic through the early 1970s. By 1970, California had only two Latino legislators in the state assembly (Schmal, 2011). The dearth of Latino political representation was the product of gerrymandering which had diluted the political efficacy of the Latino vote (Schmal, 2011). Subsequently, Latino collective action and advocacy were the main methods of political influence for Latinos in the early to mid-1970s.

In 1972, California passed its first bilingual education bill, Chacon-Moscone (AB 2284) (Standards of Quality and Effectiveness for Programs Leading to Bilingual Authorization, 2009 5). Signed by Governor Reagan, the purpose of the bill was to

“develop competencies in two languages” (bill quoted in Navarro, 1985 304). Other goals included developing cultural enrichment, multiculturalism and cross-cultural understanding (Navarro, 1985 304). The bill encouraged native language instruction for LEP students, established a census and home language survey to identify potential LEP students for native language instruction, and appropriated state funds for a new state program in bilingual education (Olsen, 2009 824). There were no state mandates as AB 2284 was a voluntary program. Ultimately these programs were implemented at the discretion of local authorities (Navarro, 1985 304).

According to Navarro (1985 304), the bill legitimized bilingual education interests and the expectation that the state’s linguistic minorities were entitled to equal education opportunity. Specifically, the passage of bilingual legislation helped legitimize among policymakers and practitioners that accommodations would need to be made to provide equal education opportunity for their LEP student populations. This was important as many in the minority community complained of discriminatory treatment of LEP students (Navarro, 1985 304).

Although the bill had the votes to pass, there was substantial opposition. Opponents were critical of the program’s goals, arguing that neither state institutions nor state provisions should be allocated towards instruction in a language other than English. Additionally, they opposed the legislation’s prescriptive program designs on districts (Olsen, 2009 824). Teachers unions also opposed the bills requirement that teachers acquire extra training to better prepare them to instruct LEP students (Olsen, 2009 824).

Due to the voluntary nature of the bill, programs varied locally. Additionally, the State Board of Education was lax in its enforcement of those districts receiving state

provisions. This was the main finding of investigations of California's school system conducted by the US Commission on Civil Rights. In the late 1960s and early 1970s, the US Commission on Civil Rights produced a series of studies on disenfranchised groups nationwide (Navarro, 1985 305). The plight of linguistic minorities in the southwest was a focus of several of these studies. Additionally, the California Advisory Committee to the Committee produced reports on the experiences of linguistic minorities in various districts throughout the state. Mostly, the Commission and the Advisory Committee studies found that the State Board of Education failed to properly implement and monitor programs receiving state provisions; that LEP students suffered from chronic civil rights violations; that the SBOE did little to oversee the identification and assessment of LEP students; provided districts with inadequate instruments to identify LEP students; and provided inadequate programs to meet the needs of LEP students. The studies ultimately recommended more federal and state involvement in monitoring the practices of localities. In light of these findings,³⁸ Latino advocates pressed for a new bilingual education bill (Navarro, 1985 305-306).

In 1976, California passed the Chacon-Moscone Bilingual-Bicultural Act (AB 1329), which mandated bilingual education in its schools (Lucas, Henze, Donato, 1990 316; de Cos, 1999 16). It was the state's first major legislation mandating districts to provide equal education opportunities for their LEP student population as AB 2284 merely encouraged localities to implement native language programs (Bilingual Education: A Sunset Review, 1986 10; Olsen, 2009 824). The state Act was in response to the Lau ruling and the lobbying efforts of state advocates in light of the problems suffered by LEP

³⁸ The US Commissions on Civil Rights reports were highly influential in legislative forums both nationally and at the state level during these years (Schneider, 1976 cited in Navarro, 1985 305)

students, highlighted in the previous paragraph (Bilingual Education: A Sunset Review, 1986 10; Navarro, 1985 305-306). The bill was signed in to law by Governor Jerry Brown who had close ties to the Latino community via his involvement with Latino farm workers. The Act also enjoyed favorable public opinion and support from mainstream educational organizations (Navarro, 1985 307). It was the culmination of issue expansion in bilingual education (mentioned in the previous section) from the late 1960s through the mid-1970s.

The 1976 law mandated primary and secondary district schools to offer bilingual education programs to its LEP student population and supplemental state provisions to help fund these programs (California Education Code, n.d.). The bill, however, struck a compromise with opponents who felt the previous bilingual education legislation was too prescriptive and those who opposed AB 2284's primary goal of bilingualism (Olsen, 2009 824). AB 1329 provided several program options for districts and stated English acquisition along with bilingualism among others as the program's goal. The Act established transitional bilingual education programs, bi-cultural-bilingual programs³⁹ and a classification system for second language speaking students (Farr et al, 2005 17; Bilingual Education: A Sunset Review, 1986 10). The latter mandated identifying students whose home language was not English and classifying them (they were classified as either non-English, limited or fluent English speaking or NES, LES, FES, respectively) (Bilingual Education: A Sunset Review, 1986 10). Districts were then required to offer these students a program that utilizes the native language in a manner benefitting effective instruction (Bilingual Education: A Sunset Review, 1986). The program's requirements complied with

³⁹ These are courses where native English speakers and LEP students share a class and are taught both in English and the primary language of the LEP students. The end goal is bilingualism (California Education Code, n.d.).

federal mandates concerning identifying LEP students, program placement and reclassification (Farr et al, 2005 17). The Act also stressed the importance of developing positive self-image, cultural enrichment, cross-cultural understanding, bilingualism, multiculturalism and providing equal education opportunity along with English proficiency (Farr et al, 2005 17; Gandara and Rumberg, 2009 763; California Education Code, n.d.).

The passage of AB 1329 also marked the end of the period of bipartisanship in support of bilingual education. AB 1329 was the most extensive bilingual education bill in the nation as it guaranteed district accommodation to the needs of every LEP student from grades K-12 (Navarro, 1985 306). Even during this period of bipartisanship, there continued to exist a vocal opposition to bilingual education legislation (Olsen, 2009 822-825). As AB 1329 was a statutory response to increased federal mandates on California, the implementation of AB 1329 was less than ideal for advocates of bilingual education. Specifically, teacher training, teacher shortages and effective program designs negatively affected the practical effect of bilingual education programs once established (Olsen, 2009 825). Subsequently, programs had substantial variation in quality across localities (Olsen, 2009 825). According to Olsen (2009 825), this set the stage for the political fallout that would emerge in the late 1970s.

The Legacy of AB 2284 and AB 1329

In addition to providing legislation, mandating district responses to the needs of their LEP student populations, AB 2284 and AB 1329 (as mentioned) legitimized bilingual education. This sparked the development of an advocacy network that would help develop and lobby for policy as well as defend policy arrangements from the late 1970s forward.

The California Association of Bilingual Education formed in 1975 and has become the preeminent interest group in bilingual education. In addition the following organizations also became active participants in bilingual education policy affairs during this period: the Association of Mexican American Educators, the California Association of Teachers English to Speakers of Other Languages (an association for ESL teachers), and advocates within the two major teacher's unions, the California Teachers Association and California Federation of Teachers (Navarro, 1985 306).

The Dissolution of Elite Agreement Concerning Bilingual Education

By the late 1970s, however, Bilingual education began to be identified as affirmative action for bilingual education administrators and teachers (Navarro, 1985 310). It was subsumed within the emerging national debate over the federal government's role in addressing inequalities (King and Smith, 2005 83). Beginning in the late 1970s, a conservative movement began to emerge at the federal level (in Congress and the courts) set on stymying and/or reversing the gains made by liberal interventionism in the late 1960s and early to mid-1970s (King and Smith, 2005 83). This would change the effects venue shifting to the federal level would have on state policy in the decades to follow. Its politics would eventually trickle down to the state level in the 1980s in the form of *English Only* and school accountability movements. California was one of the first states to show the effects of this conservative movement (Olsen, 2009; Joppke, 1999; HoSang, 2010).

An example of the influence of this conservative movement on state politics is the passage of Proposition 13. Navarro (1985) argues that the passage of Proposition 13 greatly affected the politics of bilingual education. Proposition 13 was passed in June of 1978 and

reflected the conservative fiscal politics of the late 1970s. Proposition 13 outlawed property tax and with it eliminated a major source of local revenue. The voter initiative resulted in an increased local reliance on state assistance for school funding. After Proposition 13, the state coffers assumed 80 percent of local school costs, an increase from 30 percent before the passage of Proposition 13 (Navarro, 1985 309). Districts handled the increased pressure on their budgets by cutting back. The mandates of AB 1329, however, contradicted this culture of austerity — with its demands for hiring and training qualified teachers and providing special programs for LEP students. Subsequently, efforts to comply with AB 1329 elicited frustration from districts.

Lastly with respect to the central argument of this study, Proposition 13 is also an example of how California's more open political system permitted conservative populism to affect linguistic politics. Fiscal concerns also became an issue in bilingual education politics in Texas in the late 1970s. However, lacking a voter initiative policymaking option, austerity proponents were left to fight their battle within the legislative institution. This advantaged the status quo (as will be discussed in Chapter 6). At this juncture, however, as Proposition 13 was only tangentially related to bilingual education, the Latino advocacy coalition was still able to prevail in the succeeding legislative battle to reauthorize bilingual education law (to be discussed in the next section). However, the Proposition 13 example does depict how opponents of civil rights liberalism were afforded more venues in the California system to affect policy outcomes and specifically issue areas bequeathed from civil right liberalism.

The 1980s and the Increased Salience of Policy Rollback in Bilingual Education

By the 1980s, demand for programs to address the needs of its LEP population increased (HoSang, 2010 233). Between 1982 and 1997, the number of LEP students increased by 220 percent in California (HoSang, 2010 233). However, the political climate had changed. Bilingual education had come under criticism and a culture of fiscal austerity had developed which put fiscally demanding programs such as AB 1329 on the defensive politically (Navarro, 1985 310).

Navarro (1985) details the political bargaining that took place between opponents of AB 1329 and bilingual education advocates and sympathetic government officials. In the wake of Proposition 13, several public hearings and legislative committee meetings took place to assess the state of AB 1329. As mentioned, Proposition 13 had helped focus attention on the issues of implementing AB 1329. In addition to district complaints, advocates of bilingual education discovered that implementation had been problematic. Program quality varied locally, teacher shortages were endemic throughout the state, and segregation and remedial tracking were still commonplace (Olsen, 2009 825).

According to Navarro (1985), the debate was preoccupied with comparing the effectiveness of English oriented approaches versus the use of the primary language of instruction. Equity, although considered because of the governing federal civil rights mandates, was a secondary concern (Navarro, 1985 311). The public hearings and committee meetings led to recommendation of AB 690 sponsored by Richard Alatorre. The bill called for the repeal of AB 1329. AB 690 would replace bilingual instruction with a program focused on intensive English instruction. During the public hearings, the State Department of Education hired two consultants, Heide Dulay and Marina Burt to develop

policy alternatives for bilingual education. In assessing the state's LEP population, they found that the majority (65-85 percent) showed limited English proficiency but with worse command of their mother tongue. Dulay and Burt concluded that since the primary goal of AB 1329 was to use the primary language to build English proficiency, such a goal was rendered moot with students whose command of their primary language was worse than their command of English. Thus, they recommended English immersion methods as the best means to attain the primary goal of AB 1329— English proficiency. The State Department of Education backed the Dulay-Burt proposal and packaged it as AB 690 (Navarro, 1985 311-313). Backed by the State Board of Education, AB 690 also had the support of a majority of mainstream education organizations such as California Federation of Teachers, the California School Boards Association, and school administrators.

Reaction to AB 690 from proponents of bilingual education was intense. The conflict over AB 690 split the Department of Education into factions. Navarro (1985), however, argues that it was the catalyst for uniting the bilingual education advocacy for the first time. Advocates put aside their difference and united in opposition to AB 690, offering moderations to AB 1329 as a compromise. Bilingual education — and maintaining statutory legislation — became a symbol of Latino political incorporation for this group (Navarro, 1985 313).

Resolving the impasse between supporters and opponents of AB 690 would take two years to resolve. The official backing of AB 690 by the State Board of Education also highlighted the opposition that bilingual education faced in the state and the importance that advocates for bilingual education unite and take a participatory role in the policy making process. This encouraged twenty advocate organizations to form the Bilingual

Community Coalition to lobby for changes to AB 690. The group was led by the California Association for Bilingual Educators and the Association of Mexican American Educators. Their efforts spawned an alternative bill, AB 507, sponsored by AB 2284 and 1329 sponsor, Peter Chacon, late in 1979 (Navarro, 1985 313-314).

After a contentious year in which both sides were polarized over pending legislation, in 1980, advocates for bilingual education gained the support of key political allies. In the previous year of polarizing debate, the bilingual education coalition had built support for bilingual education in the community. Sympathetic government official took note of the importance of this issue to the growing Latino population. Governor Brown, who (as mentioned) had ties to the Latino community, hired a special aid to assist the emerging bilingual coalition with lobbying efforts. In publicly supporting AB 507, he cited the growing Latino population as a reason for incorporating their policy preferences. Throughout 1980, the bilingual advocacy coalition gained support for AB 507 as legislators and interests recognized that this mobilized interest had to be a part of the solution (Navarro, 1985 316).

Despite their increased influence, the bilingual advocacy coalition realized they operated from a position of weakness, however. They did not have enough representation in the State Board of Education or in the legislature to determine policy. Subsequently, AB 507 was a compromise bill in which the bilingual advocacy attempted to strike a middle ground between AB 607 and AB 1329 (the governing bilingual legislation at the time) (Navarro, 1985 317).

In 1980, the Chacon-Moscone Bilingual Bicultural Act was reauthorized as the Bilingual Education Improvement and Reform Act (AB 507). AB 507 intended to improve

and update the requirements of AB 1329 by further detailing district responsibilities to their LEP student populations (Bilingual Education: A Sunset Review, 1986 11). However, as stated in the previous paragraph, it offered concessions to opponents of bilingual education. State bilingual education programs had to employ seven strategies (three primary and four secondary strategies) in pursuit of a primary goal in order to comply with two federal mandates. The following are the two federal mandates:

- a. Equal educational opportunity in access to core curriculum irrespective of English language proficiency;
- b. Equal education participation within public schools irrespective of English language proficiency (Bilingual Education: A Sunset Review, 1986 13).

The primary goal of the Bilingual Education Improvement and Reform Act (AB 507) remained the same as AB 1329: The overall goal was to develop English fluency in LEP students as quickly and effectively as possible; Additionally, the program aimed to encourage bilingualism, multiculturalism, cross-cultural understanding, cultural empowerment and equal opportunity for educational achievement (Bilingual Education: A Sunset Review, 1986 13). These in essence were transitional bilingual education programs which also focused on multiculturalism, bilingualism and cultural enrichment.

To provide LEP students with the aforementioned, the act included provisions for identification and assessment of LEP students' needs that met the federal demands established by the Lau ruling and the OCR memorandum concerning these matters. This involved a multi-method assessment that used Home Language Surveys, state English language proficiency examinations, and primary language diagnostic assessments performed by the district (Bilingual Education: A Sunset Review, 1986 13). Additionally,

bilingual education programs were to include at a minimum, a daily English language development, and a primary language instruction in various subjects until the transition to English instruction could be made, and program evaluation that included an evaluation of the student's English language proficiency and an assessment of their academic progress (Bilingual Education: A Sunset Review, 1986 14).

The four secondary strategies included staff development for personnel working with LEP students, parental involvement, development of written plans by the school and the district, and appropriate use of available funding sources to deliver effective instruction for LEP students (Bilingual Education: A Sunset Review, 1986 14).

Those elementary (grades K-6) students identified as LEP students were required to be placed in one of the following bilingual education programs. Districts were required to offer one of the following programs if they had 10 or more LEP students with the same primary language in the same grade:

- a. basic bilingual education program: in this program, the primary language is used for purposes of instruction as necessary until the student has acquired the requisite English proficiency to receive all-English instruction. In most cases, the primary language is used for instruction in core subjects such as mathematics, reading, and language arts. Other subjects are taught in English. Daily English development lessons are also part of the curriculum (Bilingual Education: A Sunset Review, 1986 16);
- b. bilingual-bicultural program: in this program, students receive instruction in English and their primary language. The aim is to achieve proficiency in both languages (Bilingual Education: A Sunset Review, 1986 16). Additionally instructional goals include acquiring knowledge of the culture and history of the United States as well as

that of the primary language (Bilingual Education: A Sunset Review, 1986 17);

- c. innovative bilingual programs: these programs are variations of basic bilingual education programs or bilingual-bicultural programs in which the goal is to improve upon these programs to increase the learning opportunities for LEP students (Bilingual Education: A Sunset Review, 1986 17);
- d. planned variation programs: with the approval from the State Department of Education, districts were permitted to provide alternative programs such as English immersion, sheltered English and intensive English as a Second Language programs. These programs were to use English as the primary language of instruction. Schools that offered planned variation programs were required to also offer one of the other three program options. Additionally, districts were required to conduct locally designed assessments of the planned variation programs. The general goal was to use these variation programs for comparative purposes to assess their effectiveness when compared with the previously described programs (Bilingual Education: A Sunset Review, 1986 17).
- e. Impacted Language programs: these programs were used for students from language groups where insufficient staff/ resources were available, precluding the possibility of offering the standard bilingual education programs described above. Typically, under this program sheltered English, ESL, or compensatory remedial approaches would be used (Bilingual Education: A Sunset Review, 1986 18).
- f. Individual Language Program: any LEP student not enrolled in any of the previous programs, except those exempted by parental choice, must be enrolled in an individual language program. Students are generally “pulled out” of general instruction to receive

individual instruction. Generally, students receive a daily lesson in ESL plus an equal amount of remedial or compensatory tutoring (Bilingual Education: A Sunset Review, 1986 18).

At the secondary (grades 7-12) level, schools have the discretion to establish one of three types of bilingual education, and unlike at the elementary level, there is not a threshold concentration of LEP students that triggers the requirement. The required programs offered are as follows:

- a. language development program: students receive at least one period per day of English language development. In non-elective subjects required for graduation, the primary language is used for instruction to the extent needed for academic achievement (Bilingual Education: A Sunset Review, 1986 19).
- b. impacted language program: the program is similar to the one provided for elementary students.
- c. Individual learning program: participating students receive one or two periods of English language development. In all non-elective subjects required for graduation, bilingual instructional assistants provide bilingual tutoring when necessary (Bilingual Education: A Sunset Review, 1986 19).

Analysis of the Bilingual-Bicultural Improvement Act— Can This Really Be Called an Improvement for Bilingual Forces

This act in many ways reflects the politics or the state of elite views concerning bilingual education in the early 1980s in the US. Elite disagreement concerning bilingual education had emerged in the late 1970s. Due to the conservative backlash against civil

rights liberalism nationally and fiscal austerity locally (because of Proposition 13), there was a push to repeal the use of bilingual education in California.

Additionally, in the late 1970s a number of high profile reports had been published which cast doubt on the efficacy of bilingual education to improve educational outcomes (improve English proficiency) for LEP students and advocated pedagogies that predominantly focused on English acquisition. The reports led congress, in its 1978 reauthorization of BEA, to restrict federal funding to only transitional bilingual education (TBE) programs — programs with the goal of mainstreaming students (Crawford, 1998 56). In 1978, developmental bilingual education⁴⁰ was removed from a list of federally supported programs (Czegledy, 2005 13-14). By 1980, President Reagan began permitting BEA funding for monolingual programs such as Sheltered English Immersion (Czegledy, 2005 15). The Reagan administration had also put an end to the executive (OCR) enforcement of the Lau remedies. Thus, the support that bilingual education had enjoyed in the federal legislative and executive branches — the same support that had been a major factor in the enactment of AB 1329 — began to dissipate as elite agreement concerning the pedagogy began to splinter. Finally, the federal courts also abandoned the stance that bilingual education was the best method to ensure equal educational opportunities for LEP students. In 1981, the Castaneda ruling established a standard to assess pedagogies and their appropriateness for ensuring equal educational opportunity for LEP students. The ruling signaled that bilingual education was not the only pedagogy that could achieve this goal.

⁴⁰ This is also called two-way bilingual education where classes are 50-50 LEP students and native English speakers. The goal is for bilingual proficiency and cultural exchange for both groups of students (Renine, 2014).

These state and national factors legitimized the critics of bilingual education in the 1980 policy debate. Because of the resonance of these claims, opponents of bilingual education originally held the upper hand, proposing a new bill to end bilingual education that had the early support of the State Board of Education and the state's mainstream educational organizations. The lobbying efforts of the increasingly entrenched bilingual education advocacy network were able to convince lawmakers to abandon their support for AB 690. However, the 1980 debate — and the new resonance of policy rollback in bilingual education — was able to net opponents concessions in the new bilingual bill. The inclusion of English immersion pedagogies in the Act is indicative of these trends as these pedagogies were absent in the Chacon-Moscone bill in 1976 — the political zenith of elite support for bilingual education.

Yet the pro-bilingual forces were still able to pass a bill that included program options stressing cultural maintenance, multiculturalism and bilingualism. Although the period of expansion had ended, bilingual forces were now more entrenched in the California education policymaking system and thus were able to salvage some of their main objectives (Olsen, 2009 824-825; Navarro, 1985 315-316). Both the federal act and state legislation had empowered, legitimated, and encouraged the mobilization of a loose coalition of pro-bilingual advocates that were increasingly becoming influential in bilingual education policymaking in California (Olsen, 2009 824-826). This advocacy coalition consisted of education scholars, teachers and administrators, bilingual education administrators in the field, activist parent advisory committees (these were very influential at the local level), activist administrators staffed in agencies responsible for the implementation of programs for LEP students, immigrant rights advocates, civil rights

lawyers, and Latino and farmworker communities (Olsen, 2009 826).

The Castaneda Ruling

As mentioned in the analysis of the Bilingual-Bicultural Reform and Improvement Act, the political effect of the Castaneda ruling can be seen in the inclusion of English immersion programs as part of the Planned Variation option pending approval from the State Board of Education. By the time of the Castaneda ruling, English immersion pedagogical approaches enjoyed support from some pedagogic experts, thus legitimizing it as an alternative pedagogy to bilingual education. Implementation of the Planned Variation option also required that districts that implemented this plan also offer some form of bilingual education. The stated purpose was to allow districts to compare the effectiveness of the methods — as districts that opted for the Planned Variation program were also required to implement local assessment programs to evaluate the efficacy of the programs. This thus went towards satisfying Castaneda's third requirement — that programs had to produce adequate results to comply with the ruling.

This is indicative of a trend that became prevalent with elite disagreement concerning bilingual education: policy debate preoccupied with assessing whether English immersion or bilingual education was the better pedagogical approach for the problem of low educational attainment among Latinos. Education scholars believed that this focus was misplaced and precluded developing programs that could truly improve Latino educational outcomes (Crawford, 1999). However, as elites were split between the two pedagogical approaches — mostly for political and symbolic reasons — and as efficacy and accountability were the dominant policy paradigms of the day, this debate took center

stage.

The Sunset of the Chacon-Moscone Bilingual-Bicultural/ Bilingual Education Improvement and Reform Act and the Years Without a Clear Mandate on Bilingual Education

The Chacon-Moscone Bilingual-Bicultural Act/ Bilingual Education Improvement and Reform Act had a sunset clause, which was set to take effect on June 30, 1987 (de Cos, 1999 16). During this time, the political tide in California continued to trend conservative, and as the immigrant population continued to increase, anti-immigrant sentiment also began to emerge (Czegledy 2004 14; Olsen, 2009 826). In 1984, amid growing anti-immigrant sentiment, the California electorate passed Proposition 38 (Olsen, 2009 826). Proposition 38, sponsored by US English, put California on record as opposing bilingual ballots sanctioned by the Voting Rights Act (Olsen, 2009 826). In 1986, the California electorate overwhelmingly passed Proposition 63, making English the official language of the state (Czegledy, 2004 14). Both laws were mostly symbolic in effect (Crawford, 1999 70). However, according to Czegledy (2004), Crawford (1999) and Olsen (2009), the voter initiatives — especially Proposition 63 — legitimized voting against bilingual education (Czegledy, 2004 14; Crawford, 1999 62; Olsen, 2009 826). *US English* (an organization promoting *English Only* policies and sponsor of Proposition 63) had purposely timed the amendment proposal with the sunset of Chacon-Moscone (Crawford, 1999 62).

During this period, the legislature passed AB 2813 to extend Chacon-Moscone. AB 2813 as well as the Chacon-Moscone Act enjoyed substantial support in the legislature

and with parents and most educators.⁴¹ In 1986, most school boards and education associations endorsed AB 2813 (Crawford, 1999 63). Nevertheless, in 1986 Republican Governor Deukmeijan vetoed the legislation, citing budgetary constraints (Crawford, 1999 63). Most observers at the time, according to Crawford (1999 63), cited the political climate created by Amendment 63 as enabling Deukmeijan's veto. Olsen (2009 827) offers that the Deukmeijan veto was in response to the lobbying of the *English Only* movement. In 1987, Willie Brown, the Assembly Speaker and sponsor of AB 2813, submitted another reauthorization bill with significant concessions to state Assembly representative Frank Hill, a leader in the Amendment 63 campaign and critic of bilingual education law (Crawford, 1999 63). Governor Deukmeijan again vetoed the legislation (Farr et al, 2005 17).

This episode differs with comparable legislative scenarios in Texas concerning *English Only* legislation. In Texas, which lacks a voter initiative policymaking mechanism, proponents of official English were unable to put an official English constitutional amendment on the ballot (Tatalovich, 1995 160-168). The various proposals all died in legislative committee due to the reluctance of a majority of legislators (most significantly a significant percentage of Republican legislators including the Governor) to take on a mobilized Latino community, which opposed official English, despite polling that indicated a majority of Texans supported the amendment (Tatalovich, 1995 160-168). *English Only* challenges to bilingual education policy regimes died similar deaths in legislative committees due to the reluctance of legislators to take on mobilized Latino

⁴¹ AB 2813 was, however also criticized by some educators as it required teachers to learn a second language — a longstanding complaint of educators concerning teacher responsibilities to serving the growing LEP population (Crawford, 1999 63).

interests and push through *English Only* reforms (see Tatalovich, 1995; San Miguel, 2011). However, in California, this was not the case with Official English —making English the official state language — nor would it be the case with anti-bilingual education measures that followed in the 1990s. The voter initiative would make it possible to pass *English Only* legislation without the need of a legislative majority.

For the next eleven years, the California legislature was unable to pass legislation extending/ reauthorizing the bilingual education law (de Cos, 1999 16; Olsen, 2009 826). However, the Legislature sanctioned the state to continue funding bilingual programs effectuated by the expired Act (de Cos, 1999). Subsequently, districts continued to enforce the provisions of the Chacon-Moscone Act without a clear mandate (Farr et al, 2005 17). However, Superintendent of Public Instruction Bill Honig did issue a program advisory that stated that if districts wanted to continue to receive funding under the “sunset statutes,” they were required to provide services that were consistent with those established under the Bilingual Education Improvement and Reform Act (Johnson, 1999). Such moves by the the State Board of Education and the Superintendent of Public Instruction would become more numerous during these eleven years as they repeatedly filled the policy vacuum created by the political impasse between the legislature and the Governor in the post sunset years.

Additionally, a federal court decision clarified state responsibilities to its LEP students. The ruling in *Gomez v. Illinois State Board of Education* (1987) reaffirmed particular compliance criteria required of state and local education agencies in order meet the needs of its LEP student population (de Cos, 1999 16). This required the state to set minimum standards for language remediation programs and criteria for reclassifying LEP

(or LES- limited English speaking) students to FES (Fluent English speaking- mainstream all-English instruction) (Mora Modules, 2012). Thus, through the 1980s, although the courts had taken a more restrictionist stance towards bilingual education, federal courts consistently maintained that states still had a responsibility to LEP students. That responsibility, however, no longer required bilingual education.

The 1990s - Criticism Increases Concerning California's Bilingual Education Approach

As the 1990s proceeded, policy events signaled an increasing opposition towards bilingual education from elites in the institutions designed to maintain it. California had been mostly out of compliance with federal and state laws by the mid 1990s (Czegledy, 2004 14). The K-12 LEP population had almost tripled between 1987 and 1997 (growing from 233,000 to 613,000). Yet shortages in trained personnel prevented districts from appropriately meeting the educational needs of this growing student population (Czegledy, 2004 14). By 1994, the population had grown to 1,262,982 (24 percent of the state's total enrollment). Concurrently, teacher shortages had increased from 12,021 in 1986 (when Chacon- Moscone sunset) to 20,692 (Crawford, 1997 30). In 1993, the Little Hoover Commission issued a report, "A Chance to Succeed: Providing English Learners with Supportive Education" (Czegledy, 2004 14). The Commission (formally known as the Milton Marks "Little Hoover" Commission) is an independent, bipartisan state-oversight agency (Little Hoover Commission). In its report, it criticized the California State Department of Education for its "single-minded" pursuit of a policy that was ineffective, divisive, and wasteful (Czegledy, 2004 14). Almost a quarter of LEP students were not receiving any special assistance, which violated both California and federal law (Czegledy,

2004 14). Reclassification rates from LES to FES were deemed to be inadequately slow (Czegledy, 2004 14). The Commission recommended financial incentives for schools to achieve quicker English proficiency for its students, increasing local control to better provide programs for their particular populations of LEP students, establishing program assessment measures that evaluate results as opposed to methods, and emboldening teacher training (Czegledy, 2004 15).

The Commission's recommendations are indicative of the changed politics of the era. Similar to the reports published by US Commission on Civil Rights on California's treatment of its LEP student population, the Hoover Commission censured California's approach. Unlike the US Commission on Civil Rights recommendations in 1970 which called for increased federal and state monitoring of local practices, the Hoover Commission's recommendations stressed increased local discretion and emboldening local incentives to improve their responses. Additionally, criticism of the inefficacy in encouraging English proficiency and the need to stress results over methods were buzzwords of the school accountability movement, which had been critical of bilingual education. This was a direct criticism of the state's bilingual education programs as opposed to the 1960s and 1970s when the US Commission on Civil Rights denounced the state's reliance on English immersion "sink or swim" methods. In addition to using the lexicon of the school accountability movement, the Hoover Commissions recommendations were in line with the politics of the post Reagan era which stressed local discretion, incentive based reforms and more focus on English proficiency. These recommendations were explicitly and implicitly calls for incremental policy rollback of state mandated bilingual education.

The Influence of the mid-1990s Referendum Campaigns, the role of the California State Board of Education, and Venue Shifting to the Federal Courts and the Direct-Initiative Venues After the Sunset of Bilingual Education Legislations

This period provides further evidence of how the open policy structure and especially the presence of the direct initiative facilitated the manner in which elite disagreement concerning bilingual education played out in bilingual education policy outcomes. Instead of merely legitimizing policy rollback in bilingual education as was the case in the 1980s, voter initiatives would legitimate and enable statutory elimination of bilingual education by the end of the 1990s.

From 1983 through 1999, California had two Republican governors who both served two terms: Governor George Deukmejian and Governor Pete Wilson. Both opposed bilingual education. And during their two terms, both vetoed legislation that would have reauthorized the Chacon-Moscone Bilingual Education Act. During this period, the legislature was predominantly in Democratic hands except for the 1995-96 session where Republicans had a two seat majority in the Assembly. Thus, Democrats in the legislature could either push their agenda or easily veto a Republican agenda. The combination of Republican governors opposed to bilingual education and a Democratic legislature favoring it created a political impasse concerning bilingual education policy. The legislature made several attempts to pass bilingual education legislation/ initiatives to reform bilingual education that either died in committee — reform efforts were killed by the lobbying of the Latino advocacy network led by CABE (California Association for Bilingual Education) — or [initiatives to reauthorize Chacon-Moscone] were vetoed by the Governor. This created a policy vacuum that was initially filled by the State Board of

Education and the Superintendent of Public Instruction — using their power of implementation to reorient program goals and district responsibilities. Later, the federal courts filled this void via rulings which spurred further actions from the State Board of Education and the Superintendent of Public Instruction to use their aforementioned implementation power for policy reform. Contrary to the 1970s, however, venue shifting to the courts meant appealing to venues which no longer favored policy expansion but more often policy rollback. Elite agreement had dissolved and increasingly, policy rollback was favored in bilingual education in the venues that had formerly supported policy expansion.

Nevertheless, it would be the initiative movements in the mid-1990s that would have the more profound and lasting effect on the politics of bilingual education (see HoSang, 2010). Dating back to the 1986 Official English referendum that California voters passed and even further back to California's Proposition 14 (No on Fair Housing Act), the California electorate had a history of opposition towards bilingualism and Civil Rights liberalism, respectively.⁴² During the 1983-1999 period of Republican gubernatorial rule, California passed four direct-initiatives that had great influence on bilingual education policy. The Official English initiative has already been discussed. The three initiatives passed in the mid 1990s (Proposition 187, Proposition 209 and Propositions 227) sought to restrict Civil Rights liberalism and the access illegal and legal immigrants had to public benefits (HoSang, 2010). Proposition 187, being the first (followed by Proposition 209, which ended affirmative action in public institutions, and Proposition 227, which ended bilingual education in elementary and secondary public schools), built on a political

⁴² Kruse (2005) uses this term to describe proactive government policies of intervention in public and private spheres to ensure racial integration and/or equality or for the purposes of compensating for past discrimination.

momentum within the electorate that had been brewing in California dating back to the 1960s. This made the political climate more favorable for the politics of policy rollback, restrictionism and retrenchment (HoSang, 2010). The passage of Proposition 209 would build on this momentum, providing a campaign template for 227 sponsor, Ron Unz (HoSang, 2010).

As public legislation in California could be enacted through direct initiative, this provided a policy forum less encumbered by entrenched institutional gatekeepers who could frustrate reform efforts, and mitigated the institutional dynamics of concentrated costs and diffuse benefits that drives retrenchment and restrictionist politics in the traditional policymaking forum of the state legislature (Sheingate, 2000, Pierson, 1994; Ellermann, 2009). Concerning the former, the direct initiative, thus, provided a more equal playing field for challengers to reframe issues (HoSang, 2010): Challengers were afforded a venue where their initiatives to reframe issues could be judged on their political merits as opposed to being subjected to the institutional mechanisms that entrenched interest can impose to mute reframing efforts (Baumgartner and Jones, 1993). With respect to the latter, the institutional dynamics of concentrated costs and diffuse benefits privileges organized interests as legislators are fearful of enacting reform for which they may have to face future electoral retribution from mobilized interests. This had proved decisive in the enactment of AB 507 when bilingual advocates were initially faced with a bill, AB 607, which would have repealed bilingual education legislation. However, the bilingual education advocacy coalition organized and coordinated a lobbying effort that salvaged the majority of their bilingual education preferences (or at least retained important aspects of the 1976 Act). The openness of the direct-initiative forum, on the other hand, allowed

initiative sponsors, who were not legislators in California's case, to propose and campaign for reform proposals. This institutional mechanism not only opened the policymaking process to outside interests but also relieved sympathetic legislators from assuming the political responsibility for proposals to rollback policy arrangements (a necessary ingredient in retrenchment politics - see Pierson, 1994).

These examples of venue shifting (to the federal courts; to the direct initiative) resulted in the restrictionist turn that bilingual education policy took in California as these venues were more receptive to proposals for policy rollback in bilingual education policy than was the Californian legislature.

This section will first detail the actions by the State Board of the Education and the federal courts that resulted in the initial turn towards restrictionism in bilingual education policy. Then a detailed analysis of the Proposition 227 campaign and passage will show how the bilingual education policy regime was replaced by the policy regime created by Proposition 227. The last section will examine the policy arrangements that emerged in the wake of 227.

The Role Played by the State Board of Education and Venue Shifting to the Federal Courts After The Sunset of Chacon-Moscone

During the period after Chacon-Moscone had sunset when the legislature was unable to pass Chacon-Moscone reauthorization legislation into law — legislation that could secure a Republican Governor's signature — the California State Board of Education and the federal courts filled the policymaking vacuum created by the political impasse between the Governor's office and the legislature. Regarding the Board, the California

State Board took several actions — under its power of implementation — in the 1990s to relax district requirements concerning the use of bilingual education and the goals of programs designed for LEP students. These actions suggest that as the Board members were appointees of the Governor, politically, they concurred with the politics of the Governor concerning bilingual education (see Haberman, 1999). In the 1990s, Republicans, both nationally and at the state level (especially California Republicans) began to take more public stances against immigration and multiculturalism (Tatalovich, 1995). The education governance structure in California provided the availability of multiple, overlapping policy forums (Habermann, 1999; Brewer and Smith, 2007). This facilitated the partisan nature of bilingual education policy outcomes to play out according to the dynamics of the governing structure and partisan leanings of particular policy venues within the system. Subsequently, policy actions by the California State Board of Education engendered incremental policy rollback for bilingual education policy arrangements as the members of the State Board — appointed by the Governor for 4 year terms — were beholden to the Governor (Haberman, 1999).

With respect to the courts, the federal circuit court's ruling in Sacramento likewise shows how the changing politics of bilingual education was also reflected in the courts as justices ruled in a more restrictive manner concerning the state's responsibility to its LEP student population.

The Roles of the California State Board of Education

The next section will discuss how three voter initiatives (Propositions 187, 209, and 227) of the mid-1990s that addressed immigration and civil rights liberalism legitimated

the politics/ enacted policy outcomes in immigration restrictionism and social policy retrenchment. This section will detail how these political trends were evident in the actions of the California State Board of Education.

The immigration restrictionism legitimated by Proposition 187 (to be discussed below) also affected the politics of the State Board of Education (following the Governor's lead as Governor Wilson had supported Proposition 187). By the mid-1990s, directives from the California State Board of Education also began trending towards the policy rollback in bilingual education. In July of 1995, the California State Board of Education revised its policy statement, indicating a minor break from the goals enumerated in the Bilingual Education Improvement and Reform Act (the 1980 reauthorization of the Chacon-Moscone Bilingual-Bicultural Act). The revised policy statement instructed the California Department of Education to administer funds for eight general purposes from the expired Chacon-Moscone Bilingual-Bicultural Act and for the continuation of parental advisory committees. The revised policy statement offered two goals for all districts providing educational programs for LEP students: rapid development of English language proficiency in reading, writing, and speaking; and the opportunity to learn which involved access to "challenging" core curriculum and primary language development (de Cos, 1999 16-17).

This is a clear break from Chacon-Moscone which focused not only on developing English proficiency and primary language development, but also on cultural maintenance and multiculturalism (both enumerated in the Chacon-Moscone and its 1980 reauthorization). This also depicts how the California State Board of Education used its policymaking power to change the policy goals of bilingual education— a form of

restrictionist fine tuning where the State Board of Education filled the policy vacuum created by the aforementioned political impasse of the legislature and the Governor's office, reorienting the programmatic goals of bilingual education policy to be more in line with the Governor's policy stance.

In 1996, the California State Board of Education granted four Californian school districts waivers from following the provisions of existing bilingual law. The waivers permitted these districts to replace bilingual education programs with sheltered English immersion programs (Farr et al, 2005 17).

In March of 1997, The California State Board of Education issued a Program Advisory for English Learners. The Advisory enumerated the legal responsibilities districts had in the provision of services to LEP students and their legal obligations when applying for and implementing bilingual education waivers (de Cos, 1999 17).

Later in 1997, the Orange Unified School District was sued in Quiroz et al v. State Board of Education. Plaintiffs charged that LEP students' rights had been violated by school district waivers for *English Only* instruction (Farr et al, 2005 17).

In February of 1998, in the Sacramento Circuit Court ruling, Judge Robie ended the legal requirement that districts use bilingual education as mandated in the Chacon-Moscone Act and its 1980 reauthorization. In the political impasse left after the sunset of the Chacon-Moscone Act, the Robie ruling is another example of the court's changing stance that resulted in the rollback of bilingual education policy arrangements. In this ruling, the Sacramento Circuit Court decided that the sunset of the Chacon-Moscone Bilingual-Bicultural Act repealed the substantive portion of the law. The Justice Robie ruling stated that funding supporting the general purposes of the bill could continue, but

the legal mandate to provide bilingual education for LEP students ended with the provision's sunset as instruction in a student's primary language was no longer considered under the general purposes of the sunset law. The ruling did not prohibit bilingual education, but it also did not mandate it in districts with LEP populations. The implication of the ruling was that using instruction in the student's primary language should only be employed "when deemed necessary" (de Cos, 1999 17).

Justice Robie also ruled that the State Board of Education was not authorized to provide waivers. Waivers involved funding and this was beyond the authority of the State Board (de Cos, 1999 65). Concurrently, Justice Robie ruled that Orange Unified School District did not have to comply with California bilingual education law as the governing law had sunset (Farr et al, 2005 17). It was only required to comply with federal mandates concerning its dealings with LEP students (Farr et al, 2005 17; de Cos, 1999 17).

In response to this ruling, in March of 1998, the State Board of Education rescinded its policies and program advisories concerning bilingual education. In April 1998, the State Board of Education issued a new policy statement which aimed to communicate the Board's intent to grant more discretion to districts to develop and implement programs to best encourage English proficiency and academic achievement for LEP students. The new policy statement called for districts to encourage and monitor the language proficiency and academic achievement of English language learners. Districts were no longer required to offer native language instruction to LEP students. This granted districts greater flexibility in addressing the needs of its LEP population (de Cos, 1999 17).

These last two moves by the Sacramento Circuit Court and the State Board of Education further rescinded district obligations to offer bilingual education— another clear

break from the sunset of the Chacon-Moscone Act. The former is an example of failed venue shifting by the plaintiffs of Quiroz et al. Contrary to the 1970s, the federal courts were less sympathetic to bilingual education, instead resulting in state action that formally relieved districts of their obligation to provide native language instruction to LEP students.

These were clear signs of the incremental policy rollback occurring in California bilingual education policy arrangements. However, because of the political impasse between the legislature and the Governor's office, these were the only options available at the time to opponents of bilingual education for policy rollback.

Mass Immigration, Economic Contraction and California's Backlash Against Illegal Immigration

The initial shot of the 1990s anti-immigration movement was fired with the passage of Proposition 187. As this bill dealt with immigration law, it was legally controversial as immigration law is normally the province of the national government. However, the initiative, which the voters enacted by a substantial majority revealed the continued resonance anti-immigrant politics had with the California electorate in the mid-1990s. As the state was feeling the acute effects of economic contraction and mass immigration simultaneously, restricting illegal immigration and immigrants' rights to public benefits struck a chord with the electorate (HoSang, 2010; Olsen, 2009 827).

Proposition 187

Proposition 187 aimed to outlaw public provisions in education and health care to illegal immigrants, and required all federal employees to report any individuals suspected

of being illegal immigrants. It passed in 1994 by a margin of 59 percent to 41 percent (HoSang, 2010 161). Most of its implementation was ruled unconstitutional by the courts in the same year (HoSang, 2010 161; Olsen, 2009 827). However, its passage reordered the political landscape in California and nationwide. Eventually its contents were incorporated into federal immigration and welfare reform over the following two years (HoSang, 2010 161).

The Proposition framed the state as under siege by illegal immigrants who cost the state billions of dollars, paid by innocent, hardworking taxpayers (HoSang, 2010 167; Olsen, 2009 826-827). HoSang (2010 167) argues that the innocent and guilty were racialized — the white innocent taxpayer victimized by the non-white illegal immigrant. This narrative was part of a long history of the subjugation of Mexican immigrants that began with the US war against Mexico and continued with immigration law that perennially contained the dual goals of importation and deportation (the balance determined by the economic business cycle) to satisfy political and business (labor) needs, respectively (HoSang, 2010 167). It was also within the tradition of immigrant exclusion originating with the Asian exclusion laws of the late 19th and early 20th century and the racialization of Mexicans that began with the creation Boarder Control in 1930⁴³ (Ngai, 1999).

Proposition 187 was also passed during a period of concurrent macroeconomic change and mass immigration (HoSang, 2010; Olsen, 2009 826-828). Jobs and the tax base had dramatically contracted (HoSang, 2010; Calavita, 1997). Poverty rates and wealth inequality had increased substantially while housing values and job security had decreased

⁴³ According to Ngai (1999), it concluded with the establishment of the Mexican demographic by US Census in 1930 for the purpose of accounting for this foreign presence (Ngai, 1999).

(HoSang, 2010 162; Calavita, 1997). Immigration (legal and illegal) had increased sharply in the 1980s and 1990s — an estimated 42 percent increase in illegal immigration alone occurred between 1988 and 1992 (HoSang, 2010 165). However, despite these changes, in six polls conducted between May 1991 and August 1993, immigration ranked low on the most pressing problems in polling done during those two years (HoSang, 2010 163). The problems associated with the changes mentioned (such as crime, education, and the economy) ranked higher (HoSang, 2010 165). HoSang (2010) argues that when immigrants fit comfortably within the established racial hierarchy of the electorate — serving as low wage manufactures, landscapers, and domestic help — suburban Californians welcomed immigrants, legal and illegal. When focus was placed on immigrants demanding public goods, political power, or cultural equality, immigrants garnered restrictionist responses (HoSang, 2010 168).

Also in early 1992, immigration restrictionism in California received little support from the Republican Party (HoSang, 2010 169). Only Pat Buchanan championed increasing border control. An assorted group of immigration restrictionists came together in the fall of 1993, some of whom were connected to the state and county GOP (HoSang, 2010 163). A subset of the restrictionists were interested in eliminating welfare benefits to illegal immigrants; another faction in restricting access to public education for undocumented immigrants; and others pushed for criminal penalties for fraudulent use of government documents. Ultimately they decided that a ballot initiative would be the best way to incorporate their broad agenda and escape the legislative coalitions that had frustrated previous efforts at immigration restriction (HoSang, 2010 163). Its eventual passage — venue shifting to the voter initiative forum— would confirm their beliefs.

Although the ‘state under siege-’ framing of immigration resonated with the white non-Hispanic electorate, Proposition 187 was viewed as anti-Latino in the Latino community (Pantoja, Ramirez, Segura, 2001 729-731). In turn, Proposition 187 had the effect of mobilizing the California's Latino community (Pantoja, Ramirez, Segura, 2001). Despite the growing Latino population in California, Latino political incorporation was an elite affair as naturalization rates and political participation lagged behind their growing numbers. Proposition 187 began to change this, however. In the aftermath of Proposition 187, Latinos in California naturalized and began to mobilize politically in larger numbers. Concerning voter turnout numbers, in 1990, Latinos consisted of 26 percent of the population but only 8 percent of the electorate in 1988 (Pantoja, Ramirez and Segura, 2001 730). After Proposition 187, voter turnout increased Latino's share of the electorate to 12 percent in 1996 and 13 percent in 1998 (Pantoja, Ramirez and Segura, 2001 731). Pantoja, Ramirez and Segura (2001 731) cite studies that show that voter turnout rate in Los Angeles County in 1998 was 46 percent which exceeded all other demographic groups. Naturalization rates were also affected positively by Proposition 187. Pantoja, Ramirez and Segura (2001) also present figures from the Immigration and Naturalization Services records which showed an 80 percent increase in naturalization applications between October 1994 and January 1995. Additionally, they cite claims from Senator Richard Polanco of Los Angeles (chairman of the Democratic caucus) and Hadly (1995) that Los Angeles County was receiving naturalization applications at rates of between 1,500 and 2,500 per day during this period — increases of over 650 percent over previous rates (Pantoja, Ramirez and Segura, 2001 731). The California Field Poll reported that 87 percent of California's 1.15 million new voters were Latino (as cited in Pantoja, Ramirez

and Segura, 2001 731). These numbers would eventually turn the political tide in California, making it a solidly Democratic state. Nevertheless, in the late 1990s non-Hispanic whites still made up approximately 70 percent of the electorate statewide in 1998 (HoSang, 2010).

Proposition 227

By 1997, 2 in 5 children were Latino (Olsen, 2009 827). According to Olsen, as demographic projections made clear that Latinos would soon be the state's majority, bilingual education became a symbol of the public services and tax dollars that were increasingly being 'wasted' on a population which was reluctant to assimilate. Such sentiments were exacerbated by a worsening economy which had led to fiscal austerity in school budgets. This emboldened opposition claims that bilingual education was a wasteful endeavor (Olsen, 2009 827).

Additionally, research conducted on the effectiveness of bilingual education since the 1970s had produced mixed results. According to Olsen (2009 827), one of the more referenced national studies was conducted by Ramirez et al in 1991. The study tracked and compared students in English immersion programs with those in early exit transitional bilingual education programs. The findings indicated no difference in English proficiency between the two groups. Another often cited investigation, a longitudinal study in Texas, that compared students in transitional bilingual education programs with those in bilingual immersion programs, also found little difference in English proficiency between the two groups.

Proponents of bilingual education had long argued that the studies conducted since

the 1970s were methodologically flawed. Two meta-analyses of the body of research available attempted to clarify the studies that had been made to that point. They, however, also produced mixed results. Rossell and Baker's 1996 review concluded that structured English immersion was the more effective pedagogical approach. Greene (1998) reviewed the same material as Rossell and Baker and came to the conclusion that approaches that used native language instruction were moderately more effective. Additionally, there had not been any research done on the most frequently used structured English immersion model, Specifically Designed Academic Instruction In English (SADIE). However, what resonated with the public was that bilingual education did not provide any added benefit. And as its use was counter intuitive to the classic American assimilation model of English acquisition, bilingual education proponents were left on the defensive (Olsen, 2009 827-828).

Proposition 227 - Its Substance

Proposition 227 was sponsored by Ron Unz, a multimillionaire software developer and former gubernatorial candidate, and called for the mandatory replacement of bilingual education programs with “sheltered English immersion” programs. These were not to exceed one year at which time students were mainstreamed to all English instruction (It should be noted that this one year mainstreaming pedagogy had no academic support at the time (Olsen, 2009 828)). Parents could still request waivers for bilingual education. However, for students under the age of 10, bilingual education would only be permitted for those students with “special physical, emotional, psychological, or educational needs” (as stated in Proposition 227). Educators who “willfully and repeatedly” violated the law of

mandatory English instruction could be sued and held personally liable for financial damages (as stated in Proposition 227). These provisions could only be repealed by two-thirds vote of the legislature and the governor's signature, or through a new ballot initiative (Crawford, 1997 8).

Proposition 227- The Different Political Dynamics of the Voter Initiative

Proposition 227 was the last of the three referenda in the mid-1990s to address civil rights liberalism and anti-immigration. The political divide among elites concerning these two issues was a factor involved in how Unz pursued attacking bilingual education. Unz revealed in interviews during the Proposition 227 campaign that he venue shopped for states with a referendum policymaking option that had California's immigration demographic changes and political stalemate on the issue (HoSang, 2010 236).

Proponents of bilingual education understood the imminence of an anti-bilingual education referendum campaign in light of the successes of Propositions 187 and 209 (HoSang, 2010 236). Yet, bilingual education proponents were ill-prepared to contest Proposition 227 in the more open forum of the direct initiative (Olsen, 2009 833). Olsen (2009) argued that the entrenched Latino advocacy coalition was adept at influencing the legislature to attain their policy goals or frustrate reform efforts, however they were less prepared for the open politics of the voter initiative.

The campaign and passage of Proposition 227 depicted the different political and institutional dynamics at play in the direct initiative campaign as opposed to policy rollback efforts within the traditional legislative process. The presence of mobilized interests could not strike political fear in initiative sponsors since initiative sponsors did not have to take

into account future electoral prospects. Initiative sponsors only had to worry about the 227 campaign— how to successfully frame their problematization of educating LEP students.

The passage of Proposition 227, thus, shows how elite disagreement concerning bilingual education and the openness of the California system contributed to policy rollback in bilingual education policy arrangements. The political impasse created by elite divisions in a political context where the electorate — in the wake of the Propositions 187 and 209 — seemed primed to move in a restrictionist direction if empowered to make that decision made California an ideal setting to (re)frame the debate on immigration in a more restrictionist light. Unz recognized this, seeing the policy potential the referendum option provided for his policy goals in bilingual education in the mid-1990s.

Proposition 227 and the influence of Propositions 187 and Proposition 209

After the passage of Proposition 187, advocates for bilingual education recognized that an assault on bilingual education was imminent (HoSang, 2010 236). California had experienced a dramatic rise in its immigrant population as outlined above. Towards the end of the 1990s, the white non-Hispanic population approached the 50 percent mark, drawing it closer to falling out of the majority for the first time since the Gold Rush (Crawford, 1997 2). With respect to the student population, LEP students increased by 220 percent from 1982 through 1997 (HoSang, 2010 233). Not coincidentally, this was also a period of anti-immigrant politics (Ngai, 1999; Olsen, 2009 826-827). Since the 1965 Immigration Reform Act, California had replaced New York as the main destination for immigrants. This new generation of immigrants, however, originated from Latin America and Asia as opposed to the immigrants from the turn of the 20th century who were of European origins

(Citrin et al, 2003 7; Campbell et al, 2006 132). By 2000, 32.4 percent of the population were of Hispanic origin and an additional 10.9 percent were Asian (Citrin et al, 2003 7). Moreover, 39.5 percent of the population over 5 years of age lived in homes where a language other than English was spoken (Citrin et al, 2003 7). Latinos made up 42.2 percent of the K-12 population in California schools, and 25.4 percent of California's students were classified as LEP students, which was the nation's largest LEP population (Citrin et al, 2003 7; Campbell et al, 2006 131). This helped spark the anti-immigrant political movement that passed Proposition 187 in 1994 (Crawford, 1998 61).

This sentiment clearly affected the politics of bilingual education. Since the 1980s and the passage of Official English in 1986, bilingual education had come under perennial attacks from opponents questioning its pedagogical efficacy and its long-run benefit for Latino children and society as a whole as discussed above. Studies since the passage of the Bilingual Education Act had produced mixed results concerning the efficacy of bilingual education (Olsen, 2009 827-828). This put increasing pressure on bilingual education advocates to defend the continuation of policy arrangements (Olsen, 2009 828).

Despite all the political controversy surrounding bilingual education, however, prior to the passage of Proposition 227, California never had more than 30 percent of its LEP students enrolled in bilingual education programs (Gandara and Rumberger, 2009 770; Olsen, 2009 828). Legislation mandated that districts and schools offer bilingual education programs, but parents could opt out of enrolling their students (Gandara and Rumberger, 2009 770). Programs also suffered from varied quality, problematic implementation, and chronic teacher shortages (Olsen, 2009 825). These all contributed to the low identification and enrollment of LEP students in bilingual education programs.

And this depicts the symbolic nature of the bilingual education debate—as it was a debate detached from reality.

Nevertheless, public opposition to immigration and civil rights liberalism continued with the passage of Proposition 209, which ended all affirmative action programs in publicly funded institutions. According to HoSang (2010 233), it was Proposition 209 which may have most influenced Proposition 227 sponsor Ron Unz. Proposition 227 followed in its political wake and involved many of the same political interests. The Unz-led campaign, English for the Children, passed with 61 percent of the electorate voting to end bilingual education in California (Crawford, 1997 1). The Unz campaign tried to create a more broad based coalition that did not just court nativist and anti-immigrant groups as had Proposition 187 (Crawford, 1997 3). Unz rejected support from Governor Pete Wilson—one of the prime sponsors of Proposition 187 — Pat Buchanan and *English Only* groups (HoSang, 2010 233; Crawford, 1999 12). He believed the future of the Republican Party involved courting — not alienating — Latinos and Asians as demographic changes demanded it. Subsequently, he placed minorities in leadership positions to neutralize claims by his opponents that his proposition was anti-Latino (HoSang, 2010 233; Crawford, 1997 3). This was similar to the approach used by the Proposition 209 campaign (Ho Sang, 2010 233). The Proposition 209 campaign appointed Ward Connerly’s (“black, self-made businessman”) to chair the Proposition 209 committee, helping to neutralize claims that the proposition was anti-civil rights. In similar fashion, Unz brought on Gloria Matta Tuchman to co-chair the campaign (HoSang, 2010 234). Tuchman was an elementary school teacher and a long-time critic of the efficacy of bilingual educational programs. He enlisted Alice Callaghan, an Episcopal priest and community leader who led

a much-talked-about Latino protest against bilingual education at Ninth Street Elementary School in 1996. Jaime Escalante, a well-reputed math teacher from East Los Angeles, agreed to be the campaign's honorary chair. Henry Gradillas, a former principal at Garfield High School in East Los Angeles signed on as a campaign spokesperson (HoSang, 2010 233-234). Unz also campaigned in Latino communities arguing that bilingual education distracted their children from learning English— the skill most needed for social and economic advancement (Unz, 1997 3). Sixty-three percent of Latinos still voted against the bill, but his efforts were rewarded by the media which focused more on his Latino converts than the actual number of Latino supporters that Proposition 227 had (Unz, 1997 5). The campaign was also helped by media polls in the months leading up to the election that showed overwhelming majorities of Latino support for Proposition 227 (Unz, 1997 4; Rossel, 2002 10; Olsen, 2009 830-835).

English for the Children- Reframing Opposition to Bilingual Education

Ideationally, English for the Children attempted to change the rationale for rejecting bilingual education. Instead of stressing the cultural importance of English to the American polity, Unz's organization focused on learning English as a right reserved to all immigrant children including Latino children (Crawford, 1997 3). Embracing and flipping on its head the rights-based politics of the post-civil rights era, Unz stressed Latino children's right to learn English, a right he claimed was denied by bilingual education programs. Proposition 227 forces incorporated the language of the civil rights movement — whose legacy had been re-imagined as championing color-blind individual liberty as opposed to a campaign to end systemic racism (HoSang, 2010 241). They argued that bilingual

education prevented children from learning English which best prepared them to compete in American society. By incorporating pro-immigrant, civil rights rhetoric, they left the opposition to campaign against the civil rights-based narrative — a narrative they had used to sustain bilingual education (HoSang, 2010 241). This argument was ensconced within the paradigm that systemic racial prejudice had been effectively eliminated except for some extremist individuals and thus claims of historic racial injustice were unfounded (HoSang, 2010 242).

The embodiment of this rhetoric was captured in the Latino boycott of the Ninth Street Elementary School, led by Callaghan (Crawford, 1997 3). According to Crawford (1999), accounts vary concerning the authenticity of the Callahan/Unz narrative that this was a Latino parent protest against bilingual education⁴⁴. Nevertheless, the Unz narrative, which the media reported, framed Latino parents as boycotting a bilingual program that was denying their children the right to learn English (Crawford, 1997 3).

In addition, according to Crawford (1997 6), Unz exploited the iron triangle relationships that characterized the policy making process (a theme that resonated in 1990s party politics) to his advantage. He painted bilingual education as a well-intentioned but failing program — failing to incorporate immigrants — that was entrenched to benefit profiteering special interests—the same advocacy coalition that had successfully lobbied for and defended bilingual education policy arrangements (Crawford, 1997 6; Olsen, 2009 830-831). Media accounts (such as the Wall Street Journal) likewise described bilingual education as a well-meaning program but one that had become a costly, inefficient bureaucratic burden on the state (HoSang, 2010 235). With respect to the efficacy of

⁴⁴ Details suggest Callaghan manipulated the relationship between the daycare center and the parents' dependence on its services to stage a protest to garner media attention (Crawford, 1997).

bilingual education, Unz used the simple argument that bilingual education had a “95% failure rate”⁴⁵ (HoSang, 2010 234; Olsen, 2009 836-837). Although the veracity of the claim had been widely criticized by education scholars, the claim was never challenged by opponents of Proposition 227 (HoSang, 2010 234; Olsen, 2009 837).

Bilingual education was originally championed as a mechanism to provide a quality education to linguistic minorities who had been historically denied such education because of *English Only* instruction. Proponents of Proposition 227 flipped this claim, arguing that bilingual education denied quality education to linguistic minorities by not focusing on the acquisition of English (HoSang, 2010 234; Olsen, 2009 837-838). Unz's message was that bilingual education was another example of an ineffective captured bureaucracy that provided benefits for a few bureaucrats at the expense of public schools through coddling those it should be encouraging to work harder (HoSang, 2010 234; Olsen, 2009 831). In this narrative Latino students (and taxpayers) were the victims of this ineffective program — neutralizing claims that anti-bilingual education was anti-immigrant (HoSang, 2010 235).

Unz ultimately aimed to remake the Republican Party by fostering a multi-ethnic coalition of Latinos, Asians and White conservatives opposed to a welfare state seen as primarily serving African Americans — the embodiment of “social pathology and state failure” (HoSang, 2010 235; Crawford, 1999). He believed the Republican Party’s courtship of nativist only served short term goals, but endangered long term prospects because of the demographic changes occurring in California (Crawford, 1999 12). Likewise, Unz felt that Asians and Latinos shared many Republican values and could be

⁴⁵ This claim actually originated from a Democrat, Kathleen Brown, the party’s gubernatorial candidate (HoSang, 2010).

sold on the party platform of free markets and limited government in service of the ideals of personal responsibility, individual liberty, and community spirit (Crawford, 1999 12). Unz, thus, framed the bilingual debate and chose minority spokespersons to present bilingual education as antithetical to minority interests (Crawford, 1999). This was an effective argument in the 1990s as the political winds shifted to the smaller government approach in response to the iron triangle Big Government that had developed in the post-1960s era.

Moreover, the Unz campaign benefited from media coverage that focused more on the personalities involved than in distinguishing the academic findings from the political discourse (Crawford, 1997 7). Academic findings were given the same merit and legitimacy as political soundbites (Crawford, 1997 7). In addition, since the academic failings of Latino students had been widely reported, the task of proving bilingual education's efficacy was counterintuitive to the widely accepted narrative that Latino students' lack of academic success was because of the limited English proficiency among the students. According to Crawford (1997 7), Unz's campaign effectively framed the debate concerning bilingual education solely on the language of instruction issue, ignoring all other factors (availability of qualified bilingual teachers, poverty, etc.) that might also affect Latino performance in school. Additionally, the campaign focused mainly on pedagogical issues, eschewing anti-immigrant rhetoric (Crawford, 1997 7). As the bilingual education proponents had limited research to explain Latino academic outcomes and failed to challenge the assertions on pedagogy, the issue was painted as a pedagogical reform proposal (Crawford, 1997 7). This made it acceptable even for those sympathetic to bilingual education.

Transforming the problematization of bilingual education— An opportunity Provided by the 227 Campaign

Transforming the framing of an issue / changing its issue definition— how the issue is problematized — and finding a favorable venue where such a problematization can help bring about or result in policy change is the process of policy change theorized by Baumgartner and Jones (1991; 1993). And this is how Unz pursued reforming bilingual education in California. Unz sought out California for his English for the Children campaign because it had an initiative process and a growing immigrant population. He recognized the direct initiative provided a policy venue where his reframing of the bilingual education issue could be sold directly to the public without the institutional impediments of the legislature — the retrenchment institutional dynamics of concentrated costs and diffuse benefits that benefitted the status quo — that precluded policy rollback efforts. The policy venue afforded by the ballot initiative was relatively free of the institutional gatekeepers that would typically preclude such attempts at transforming the issue definition within the traditional legislative policymaking process. Absent issue salience (as bilingual education and immigration, for that matter, were low on the issue agenda in the early 1990s), issue definition changes to issues governed by entrenched policy regimes are difficult to achieve for challengers because of the institutional advantages afforded to the policy regime (Baumgartner and Jones, 1993; Pierson, 1994). However, the policy venue afforded by the ballot initiative presented a relatively open venue where Unz's reframing of the issue could be more favorably received— and the pro-Proposition 227 forces did just that. It also provided a forum for policy rollback in which sympathetic legislators were spared accountability for the rollback of policy arrangements.

The opposition gave *English for the Children* a four-month head start before commencing an opposition to the Proposition 227 campaign (HoSang, 2010 236). This allowed Unz to frame the debate uncontested, as mentioned above. During this time, the campaign built a 4 to 1 lead in the polls (HoSang, 2010 236). This neglect was typical of bilingual proponents who failed to articulate a positive image of bilingual education. Negative narratives concerning the program's efficacy went unchallenged for years prior to the Proposition 227 campaign (Crawford, 1999 14). The California Association for Bilingual Education (CABE) was the chief and most entrenched advocate and defender of bilingual education regimes. It had used its close relations with Latino lawmakers to orchestrate agreements that blunted perennial reform efforts by critics of bilingual education (Crawford, 1997 4). However, these successes were exploited by Unz and English for the Children, which successfully painted the bilingual education regime as captured by special interests and, thus, resistant to reform efforts favored by the public. Unz, subsequently, painted the aforementioned political stalemate — between the Governor and the legislature — created by elite divisions and the institutional inertia created in the (more) closed aspect of the policymaking system by entrenched Latino advocates as the reason why the voters (including the affected minorities) needed to act. By refocusing attention on the issue dimension of bilingual education's [questionable] efficacy, he turned retrenchment politics (as theorized by Pierson, 1994) on its head by blaming the entrenched for frustrating "sound" retrenchment policy ideas.

Initial polling showed overwhelming support within minority communities for Proposition 227 (Crawford, 1999). These polls galvanized the opposition. Four-months after the 227 campaign began, a summit was held to organize the opposition, called

California Tomorrow (Olsen, 2009 833). Summit attendees included educators, immigrant rights advocates, civil rights lawyers, representatives of community organizations, unions, and professional associations in education (Olsen, 2009 833). This led to the formation of the official No on Proposition 227 organization, Citizens for an Educated America (CEA) (Olsen, 2009 833; Crawford, 1999 14). CEA consisted of the California Association of Bilingual Educators (CABE), the California Teachers Association, the two state teachers unions (California Teachers Association and California Federation of Teachers), California Tomorrow, Californians for Justice (a state-wide youth mobilization organization), the Latino Civil Rights Network, and other sympathizers (civil rights activists, immigrant advocacy groups and California education representatives) who opposed English for the Children (HoSang, 2010 236; Crawford, 1999 14; Olsen, 2009 833). They hired veteran Democratic consultant, Richie Ross, who advised them not to attempt to defend bilingual education because of the negative views his preliminary focus group polling had found the issue had with voters (HoSang, 2010 236; Crawford, 1999 15). Additionally, Ross believed the anti-Proposition 227 campaign had the time necessary to change voters minds (which they did not have because of their late start) (HoSang, 2010 236; Crawford, 1999 15). They pursued this strategy by having the campaign focus on Proposition 227 as an extremist policy that would cause more problems in implementation than its promised benefits would deliver (HoSang, 2010). They avoided mentioning bilingual education in campaign rhetoric, featuring Latino student success stories, and highlighting programs that were effective. Additionally Crawford (1999 17) cites that No on 227 failed to focus on the restrictions of parental choice and local discretion which may have been effective in winning over the favor of the public concerning the consequences of 227. Late in the

campaign, California for Justice (CFJ) embarked on a modest voter mobilization campaign and youth volunteer training in 350 precincts in Northern and Southern California to marshal opposition to Proposition 227. This seemed to narrow the gap as Election Day drew closer (HoSang, 2010 238).

Less than 6 months before the election, *English for the Children* had been outspent 5 to 1 and had not received public support from Republican state or national party leaders. It did receive support from well-funded donors who had also helped to fund other conservative and right-wing initiatives (HoSang, 2010 239).

Other Latino advocates did not agree with the official No on 227 strategy. They saw that the anti-bilingual campaign could not be divorced from a long history of official Californian opposition to the Latino immigrant student population (which included forced residential and school segregation of Mexican immigrants, literacy tests for immigrant entry, and Spanish prohibitions in schools through the 1960s) — or its fight for equal educational opportunity (the former governing policy dimension of bilingual education's heydays in the 1960s and 1970s) (HoSang, 2010 236). Additionally, they felt that bilingual education should be defended because of its efficacy in academics and personal growth for Latino students (HoSang, 2010 236).

Among political elites, gubernatorial candidates in the 1998 primaries all opposed Proposition 227 (Citrin et al, 2003 9). State and national Democratic leaders, although they did not support Proposition 227, did not offer support for the opposition until very late in the Proposition 227 campaign. Incumbent governor Pete Wilson did express support for the initiative, but did so late in his campaign (Citrin et al, 2003 9). This drew immediate public repudiation from *English for the Children* as they tried to formally distance the

campaign from Governor Wilson who was unpopular in the Latino community because of his support of Proposition 187 (Citrin et al, 2003 9). Media elites were also opposed to Proposition 227 expressing their opposition in op-ed pieces (most notably, The Los Angeles Times editorialized their opposition to Proposition 227) (Rossel, 2002 11).

As can be seen, elites were hesitant to embrace or involve themselves in the politics of Proposition 227. Democrats feared that in expressing public opposition to Proposition 227 they would be attaching themselves to the sinking ship of civil rights/ pro immigrant liberalism (HoSang, 2010). Republicans, on the other hand, feared that in expressing support for 227, they may elicit political retribution from aggrieved Latinos — as supporting the proposition could be interpreted as anti-immigrant (Citrin et al, 2003 9).

Elite aversion to the proposition suited Unz's political goals as it helped his framing of the issue — an issue where the elites were out of touch, thus requiring the electorate's direct vote. Their aversions allowed him to feature pro-Proposition 227 immigrants. This furthered his framing that Proposition 227 was pro-immigrant as it pursued English acquisition (Citrin et al, 2003 9).

And, according to Unz's plan, despite elite ambivalence, from early in 1998, Proposition 227 enjoyed substantial support from a majority of the electorate according to polls (Citrin et al, 2003 12). A Field Institute survey in March 1998 found that 79 percent of likely voters supported the initiative. Support was bipartisan (69 percent of Democrats; 92 percent of Republicans) and across all ethnic groups (87 percent of whites, 87 percent of Asians, 69 percent of blacks, and 66 percent of Hispanics). Support slipped to 66 percent in May according to a May poll conducted by the Field Institute and the issue would become more partisan as the June election date approached (partisan differences grew from

22 percent in March to 47.2 percent in the May poll) (Citrin et al, 2003 12).

Legislative Attempts to Reform Bilingual Education in Response to Proposition 227

In response to the Proposition 227 campaign, the California state legislature proposed a less harsh bill, Senate Bill 6, aimed at reforming, not ending, bilingual education (Citrin et al, 2003 9). The 1998 Legislature, in fact passed two bills that were ultimately vetoed by Governor Wilson, the aforementioned Senate Bill 6 chaired by Senator Alpert and Assembly Bill 2620 spearheaded by representative Davis (de Cos, 1999 23). The Democratic Party establishment, after the successive losses in the Proposition 187 and 209 campaigns, judged the electorate to be unalterably hostile to the merits of bilingual education (HoSang, 2010). They, thus, thought it best to concede the problems with bilingual education and offer a reform proposal that better addressed the “problem” (HoSang, 2010). This proposal offered to decrease the number of years that LEP students spent in the transitional bilingual program (HoSang, 2010). SB 6 would have afforded districts full discretion in developing responses to address the needs of LEP students within a three-year period in exchange for a promise to regularly evaluate student progress (de Cos, 1999 23). The bill had been working its way through the legislature for more than two years when it passed just weeks before Proposition 227 was ratified by the voters. Governor Wilson received the bill after the passage of 227. Wilson, subsequently, vetoed the bill, claiming that the will of the electorate expressed in Proposition 227 trumped the will of the legislature, and that the bill also had substantial flaws (de Cos, 1999 23).

The Legislature also passed AB 2620 after the voters had ratified Proposition 227. AB 2620 would have authorized the State Department of Education to survey state

preschool and child care programs and recommend the best method of instruction to prepare its ELL students to master the English language (de Cos, 1999 23). The State Board of Education proposed providing local school districts with more autonomy in developing bilingual programs as another attempt to assuage the anti-bilingual forces (Citrin et al, 2003 9). However, Governor Wilson vetoed the legislation (Citrin et al, 2003 9; de Cos, 1999 23).

The Passage of Proposition 227

Proposition 227 passed winning by a margin of 62 to 39 percent (HoSang, 2010). Whites and Asians voted in favor of the bill by 67 and 57 percent, respectively (Rossell, 2010 10); Latinos and African Americans opposed the proposition by 63 and 48 percent, respectively (Rossell, 2010 10). As Whites made up 69 percent of the electorate, their overwhelming support secured the bill's passage (HoSang, 2010 240). Unz's claims of bilingual education's ineffectiveness and its portrayal as a product of a captured bureaucracy were widely accepted, showing the transformational powers of the plebiscitary venue as forces in support of reform found a venue favorable to their issue framing (HoSang, 2010 240). The plebiscitary venue provided the pro-Proposition 227 forces with a venue where they could take their issue directly to the voters (overwhelmingly White, a majority of whom were in support of ending bilingual education) without political intermediaries — legislators — who would have feared political retribution from a mobilized minority in backing this effort at policy rollback. These factors allowed the Unz initiative to eliminate a politically entrenched program with modest financial support and tepid elite support (HoSang, 2010 240).

Despite not garnering support from political and media elites, it should not be assumed that Proposition 227 lacked elite support. It did in fact enjoy wide support among conservative advocacy groups and conservative big donors (HoSang, 2010). The plebiscitary venue just allowed these forces a forum where the stalemate among the political establishment was rendered moot.

The opposition (as it had in the Propositions 209 campaign), conceded that the racial attitudes of the electorate made bilingual education indefensible (HoSang, 2010 240). Unz interpreted the No on Proposition 227's strategy not to defend bilingual education as a concession that the program was indeed failing (Crawford, 1999 17). Subsequently, the narrative that bilingual education was ineffective in educating Latino students was accepted without challenge despite empirical evidence to the contrary. In the aftermath, the No on Proposition 227 approach has been criticized (see Crawford, 1997) for allowing English for the Children to frame bilingual education as an ineffective, wasteful approach (HoSang, 2010 240). This stripped the pro-bilingual forces of the argument that it was bilingual education that was best for LEP students, a claim they had won after decades of campaigning, culminating in the 1960s and 70s (HoSang, 2010). This combined with silence from much of the Democratic establishment, both nationally and within the state, in opposing Proposition 227 meant that the No on Proposition 227 advocates fought an uphill battle from the time they entered the campaign (HoSang, 2010; Crawford, 1999). The elite divisions concerning bilingual education that led to political stalemate and the legitimation of retrenchment politics via referendum voting in California, culminated with the Proposition 227 passage which legally ended bilingual education throughout the state. By 1998, California had come full circle from the *English Only* instruction ordinance of

1959. The elite consensus in the 1960s and early 1970s that had led to expansionary politics at the state level had dissipated by the 1990s. And, thus, the restrictionism of the pre-1960s in bilingual education had returned via the institutional effects of the voter initiative on retrenchment politics concerning civil rights liberalism.

Post-Proposition 227

For the next several years, pro-bilingual forces attempted to delay the implementation or overturn Proposition 227 through the courts. Venue shifting to the courts was their last remaining option as the voters and legislature (at the state and federal level—the Newt Gingrich-led US Congress was anti-immigrant and the Democrats were generally silent on such matters) had become unfavorable venues for policy expansion in bilingual education. Proposition 227, however, withstood judicial suits within its first ten years (HoSang, 2010 241). A majority of elites in the judiciary supported policy rollback in bilingual education.

Analysis of Early Post-Proposition 227 Period

The early phase in the post-Proposition 227 era show the problems created by the lack of guidance provided for the implementation of Proposition 227. The referendum mostly ended bilingual education and called for a one-year transition period before mainstreaming LEP students. It also established a waiver process that only parents could use. However, this left more questions unanswered than answered concerning its implementation. The state assessment testing was the first issue that had to be reconciled with the new 227 mandate. The courts mostly deferred to districts that claimed it would be

legally tenuous to test LEP students in English. Thus, although the courts no longer viewed bilingual education as the go-to pedagogy for LEP students, the courts still upheld the notion that language deficiencies had to be reconciled with LEP students' right to equal education opportunity — a juridical legacy of the heyday of bilingual education.

Additionally, concerning the State Board of Education, they proceeded to issue new guidelines that generally adhered to the 227 mandates despite the questionable legality of these ordinances concerning their compliance with state and federal mandates for district responsibilities to its LEP population. This shows that the State Board of Education, different than the courts, answered to the governor as governor appointees. They, thus, used their power to implement Proposition 227 according to the politics of the Governor, who was pro-Proposition 227.

And so here again, elite divisions are permitted to manifest in policy outcomes which had different effects depending on the politics of the elites controlling the policy venue where certain aspects of the 227 mandate were implemented.

The Implementation of Proposition 227

In the years after the passage of Proposition 227, the number of K-12 students receiving bilingual education dropped from 30 percent in 1998 to 6 percent in 1998 (Standards of Quality and Effectiveness Leading Bilingual Authorization, 2009). Nevertheless, the passage of Proposition 227 did not completely end the usage of bilingual education in California (Rossell, 2002 10). From the implementation of bilingual education in the 1960s, districts had relied on loose interpretations of bilingual education pedagogy in categorizing which programs were bilingual education. Those programs using structured

English immersion, ESL, and bilingual education (use of the primary language to first establish literacy in the primary language before moving to establish literacy in the second language) were categorized under bilingual education (Rossell, 2002 5). This is contrary to other states, such as Texas, which treated ESL as an alternative to bilingual education (TEA, 2006). Additionally, Proposition 227 called for the replacement of bilingual education with a transition period (not to exceed one year) of English immersion or Structured English Immersion. However English Immersion/ Structured English Immersion was a new pedagogical label created by the Act's authors (de Cos, 1999 3). And although the Act provided a definition for English Immersion/ Structured English Immersion, it did not provide a direction concerning how to actualize this new pedagogical program (de Cos, 1999 3). This encouraged local discretion in the implementation of 227 (de Cos, 1999 3). As such, districts have interpreted 227 as only requiring that English is the main language of instruction. Bilingual education, ESL, structured immersion have continued to be used by districts as long as English is the primary language of instruction for most of the school day (Rossell, 2002 15-21).

What this shows is that the 227 regime replaced the bilingual education regime in statute, but in practice there had never been a clear distinction between bilingual education and pedagogical approaches that stressed English instruction and 227 did not rectify this issue. What 227 did was change how bilingual education was debated.

Conclusion

In some sense then the Proposition 227-era was anti-climatic. However, the politics of Proposition 227 was quite dramatic. Elite views concerning bilingual education and the open policy system resulted in a policy trajectory that went from expansive in the 1960s and 1970s to policy rollback in the 1980s, 1990s and 2000s. This dynamic policy trajectory depicts both the strength and impotency of Latino entrenchment in the California education policymaking system. In the 1960s and 1970s, Mexican (Chicano) political entrenchment allowed Mexican advocacy groups to play a substantial role in the content and direction of bilingual education policy. Elite agreement in support of bilingual education in the multiple policy venues involved (at the federal, state, local and judiciary) catalyzed and legitimated a Latino advocacy coalition. Together, their efforts in support of bilingual education led to issue expansion across federal, state, local, and judiciary venues from the late 1960s through the mid 1970s. Mexican advocacy (as well as Asian advocacy) were the lead players in all policy venues involved during this period of issue expansion. However, once elite agreement dissipated and elite disagreement intensified over bilingual education, their entrenched position worked against Latino advocacy as it increasingly came to be seen as a self-serving special interest detached from the reality of problems in Latino school performance. Although the favored position of Latino advocacy mitigated the policy effects of the growing *English Only* movement, it only lessened and delayed restrictionist policy trajectories. Once Proposition 63 was successfully passed, making English the Official language of the state in 1986, bilingual education's days were numbered. However, this was not the case in the Texas policymaking system, which lacks a plebiscitary policy venue. The presence of the plebiscitary mechanism diluted the advantages that Latino

entrenchment afforded Latino advocacy in legislative politics. As the Texas example makes clear, restrictionism may have been inevitable, but it was the plebiscitary mechanism that made statutory elimination of bilingual education possible amid the presence of an entrenched and historically active Latino advocacy.

CHAPTER 6

THE EFFECTS OF MEXICAN POLITICAL ENTRENCHMENT ON POLICY TRAJECTORIES IN BILINGUAL EDUCATION IN TEXAS

Introduction

As mentioned in the California chapter, the policy trajectories of Texas and California were similar through the mid-1980s. Thereafter, California's voter initiative legitimated the politics of retrenchment in bilingual education, affording *English Only* forces a policy venue favorable to their reframing of the bilingual education issue. This chapter will outline how after a period (similar to California) of elite agreement in the 1960s and 1970s followed by elite disagreement brought about by the conservative backlash to civil rights liberalism, the open policymaking system of Texas facilitated both rapid policy expansion in the 1970s through the early 1980s and incremental policy rollback from the mid-1980s forward. It is the latter period where the differences in the Texas policymaking system with California becomes apparent. Lacking the voter initiative policy option of California, from the mid-1980s forward, *English Only* forces could only yield incremental policy rollback reforms to bilingual education policy regimes. Having only the legislative and judicial forums to pitch the *English Only* reframing of the bilingual issue, pro-bilingual forces were able to defend their policy regimes despite the growing political resonance of *English Only* policy framings.

As in California, two factors have influenced policy evolution in bilingual education in Texas: the comparative closeness (due to the lack of a direct democracy

policymaking mechanism) of the policymaking system and the evolution of elite agreement over bilingual education in the 1960s and 1970s to elite disagreement from the late 1970s forward. Compared to the German cases, the Texas policymaking system can be characterized as an open policymaking system. This openness of the system resulted in policy change via venue shifting, coercion of state and local policymakers via federal intervention, and the emergence of actors and interests catalyzed by the interaction of policy venues at the local, state, and national level. These interactions resulted in *issue expansion* across these venues; one of the results being the passage of increasingly expansionary bilingual education law at the state level through the mid-1970s. The lack of a direct democracy policymaking option in Texas, however, makes it a comparatively closed policymaking system when compared to California. The absence of the voter initiative option muted the influence of the electorate on the policymaking process and strengthened the position of entrenched Latino advocacy groups. The lack of a direct democracy policymaking mechanism is a characteristic of Texas' open policymaking system. But this difference from the California system specifically led to the varying policy trajectories of Texas and California in the 1980s and 1990s. This feature of Texas' open policymaking system was crucial in its less restrictionist policy trajectory after the mid-1980s as most polls found majority support among the electorate for *English Only* policies in the 1980s and 1990s. Instead the dynamics of concentrated costs and diffuse benefits — typically associated with the politics of retrenchment (Sheingate, 2000; Pierson, 1994) — has advantaged the political influence of entrenched Latino (mostly Mexican) interests (the target of bilingual education/ *English Only* policies), allowing them to use their entrenched positions to veto or at least mitigate restrictive bilingual education policy reforms.

The remainder of the chapter will be devoted to detailing how the comparative closeness of the policymaking process and the dissolution of elite agreement concerning bilingual education have manifested in the evolution of bilingual education policy in Texas. The next section will provide a summary of policy developments. The rest of the chapter will provide a detailed analysis of policy Texas's bilingual education policy trajectory.

A Summary of Policy Developments in Bilingual Education

In the late 1960s local bilingual education policy initiatives contributed to the national conversation concerning bilingual education. During this time a consensus emerged between liberal and conservative elites as well as Chicano advocates that bilingual education was the proper policy response to address the segregation, inequality in educational opportunity and cultural impoverishment that Mexican-Americans had experienced in Texas through the late 1960s. The local initiatives resulted in HB 103, which allowed for the use of native language instruction that benefited the education of LEP students. The bill repealed the 1918 *English Only* instruction statute, allowing districts to experiment with programs that used the native language of students in instruction, a trend that had spread to nearly 30 districts by the end of the 1960s. At the national level, this elite agreement led to the bilingual Education Act of 1968 which provided minimal federal funding for district programs designed to address the needs of LEP students. During this period of policy evolution in the late 1960s, venue shifting and the legitimization of pro-bilingual education advocates from the local to state to national policy venues resulted in *issue expansion* in bilingual education policy as major pieces of legislation were passed at the state and federal level.

Through the mid-1970s, elite agreement in Texas and at the national level concerning bilingual education manifested in majorities in the state and federal legislatures which supported bilingual education. Elite agreement also resulted in sympathizers of bilingual education in key political and judicial offices at the state and federal level as well. This allowed for an expansion of bilingual education through *issue expansion* across the federal, state and local levels via venue shifting and the legitimation of pro-bilingual interests and policy framings. *Issue expansion* during this period led to an increased commitment towards bilingual education in Texas as policy venues (federal and judicial venues) enacted mandates to deepen Texas' commitment to bilingual education. The primary goals of bilingual education during these years were cultural maintenance, biculturalism as well as its use as a pedagogical tool to assist in English acquisition and transitioning LEP students to mainstream all-English instruction. However after the mid-1970s, elite agreement waned resulting in opponents of this multicultural paradigm increasingly gaining influence and eventual majorities in the same policy venues which had spawned expansionist policies. These opponents of expansionist bilingual education policy used their positions to thwart and sometimes reverse legislative and judicial gains in bilingual education. These changes also occurred within the electorate as support declined for liberal interventionist policies in pursuit of social equity issues in general during the 1980s and 1990s. However, because Texas lacks a plebiscitary policymaking mechanism, entrenched Latino interests have been able to mitigate English Only pedagogical political trends during the decades following the 1970s when such trends peaked in political influence as elite divisions deepened concerning bilingual education. Since the 1960s in Texas, this has played out in the resilience of bilingual education policy

arrangements even as *English Only* pedagogy gained political legitimacy in the 1990s and 2000s. This was first evident in the defeat of a movement to put an official English constitutional amendment proposal on the ballot in the mid-1980s — an act that a majority of the electorate supported according to polls conducted at the time — and again in the 1990s when *English Only* movements attempted to reform bilingual education policy arrangements. Reform efforts to bilingual education (because of the aforementioned political trends) did succeed in eliminating bilingual education as a pedagogical tool that encouraged cultural maintenance and bilingualism (although dual-language programs do exist at the local level). Bilingual education became primarily a pedagogical tool used to transition LEP students to mainstream all-English instruction. However, contrary to California, bilingual education policy regimes have been able to fend off challenges from advocates of *English Only* pedagogy. Although the aforementioned restrictionists moderations were made to bilingual education policy arrangements, elimination of bilingual education (as was the case in California) was avoided in Texas. Thus, the lack of a plebiscitary policymaking mechanism was pivotal, allowing bilingual education policy regimes to take advantage of the political dynamics of retrenchment politics — fear of encouraging political retribution from the aggrieved targets of policy rollback. This allowed advocates to fend off *English Only* challenges (Gandara and Rumberger, 2009). Policymaking in Texas, thus, has been less susceptible to the radical shifts experienced in California (Gandara and Rumberger, 2009).

The rest of the chapter will offer in further detail the history of bilingual education policy evolution and how the three factors — the open policymaking system, elite divisions, and the lack of a plebiscitary policymaking option — contributed to shaping the

policy evolution of bilingual education from 1965-2010.

Policy Evolution in Texas Bilingual Education Policy - Introduction

During the late 1960s, elite agreement and the open policymaking structure led to *issue expansion* across local, state and federal policy venues. This then resulted in policy expansion in bilingual education in Texas and the drafting of federal bilingual education legislation, the Bilingual Education Act of 1968. The federal Act was authored by Texas Senator Ralf Yarborough in 1967 and was partially the result of Texas' lead role in local experimental efforts to address the needs of its rapidly growing LEP student population. The Bilingual Education Act of 1968 spurred an increase in local initiatives. These would eventually spawn Texas' first bilingual education bill, HB 103. The *issue expansion* during this period resulted from elite agreement among political officials of both parties and Chicano advocacy which embraced bilingual education as a policy pursuit, merging their politics of cultural recognition with the support among bilingual education enjoyed at the time. Before discussing the legislation of the 1960s, the following section will provide a brief historical summation of the development Mexican advocacy in Texas and how bilingual education fit within their demands.

Historical Background of Mexican-American Education Politics

Texas has a history of experimenting with bilingual education at the local level that dates back to the initial years of Anglo settlement in the region (Blanton, 2004; Perez, 2007 44-47). Locally, bilingual education arrangements existed as a method for centralizing public education in areas controlled by German or Mexican political establishments

(Blanton, 2004). Such local arrangements continued from the 19th century through the first two decades of the 20th century (Perez, 2007 44-47). With the goals of the Americanization and progressive education movements dovetailing — suspicion of local control and instruction in languages other than English — state officials disbanded local bilingual education arrangements (Blanton, 2004). The legislature passed an English Only instruction law in 1918 which officially ended the 19th century bilingual education arrangements at the local level (Perez, 2007 51). Bilingual education (for the most part) ceased to be practiced in localities and remained in disrepute until the late 1950s when Cold War politics, academic findings concerning best practices for the instruction of LEP students, and Civil Rights era politics began to move linguistic politics in a more multicultural direction (Blanton, 2004). These separate elite movements collectively created a political environment that favored bilingual education as an appropriate mechanism for integrating and best educating LEP students while also remedying the Civil Rights abuses suffered historically by Mexican-Americans (Blanton, 2004).

The Development of Mexican-American Advocacy Coalition

Mexican advocacy emerged and matured during this period when *English Only* politics reigned. Mexican American political organization in Texas dates back to the 19th century. Tejano communities established mutual-aid societies (*sociedades mutualistas*) to aid Mexican immigrants in the transition to life in the US (Pycior, 2010). In the early 20th century, advocacy was catalyzed by the Americanization movement. Specifically, the *English Only* law of 1918 sparked advocacy in education (Blanton, 2004). Anglo leadership, backed by elite agreement — implemented English-only instructional mandates

in areas of Mexican concentration that had formerly established bilingual policy arrangements (Blanton, 2004; Perez, 2009 50). The pedagogical establishment favored English-only instruction; politically, the backlash from the turn of the century immigration boom was peaking during this period. English acquisition was a central aspect of the assimilation process that an increasing number of political elites felt needed to be required of immigrants (Blanton, 2004; Ngai, 1999). Among the Mexican- American community, however, the statute was seen as an attempt to repress Mexicans and their culture. This notion was solidified by the use of English proficiency by school administrators as a means for segregating Mexican students in remedial education programs (as many were categorized as learning impaired due to their language deficiencies) (Blanton, 2004; Perez, 2009 50). This inspired Mexican elites and organization create Spanish newspapers to encourage literacy in Spanish and private schools (*escuelitas*) which taught using bilingual/ bicultural curriculum (Perez, 2009 49).

In 1929, the League of United Latin American Citizens (LULAC) formed. It has continued to be one of the main Latino advocates for education, business, and law (Perez, 2009 51). Most relevant to this study, LULAC has been a long time vocal opponent of English-only laws and the segregation of Mexican-American students (Perez, 2009 51). In 1930, LULAC filed the first class-action suit against Mexican-American student segregation, *Salvatierra v. Del Rio Independent School District* (Perez, 2009 51). It has been one of the lead organization in legal initiatives to address Latino rights.

The *La Liga Defensa Escolar* (The School Improvement League) or *La Liga* was founded in San Antonio in 1934 and became a staunch defender of Mexican-American students in San Antonio (Founding of *La Liga Defensa Escolar*; Orozco, 2010). *La Liga*

was successful in documenting the unequal conditions suffered by Mexican-American students and securing redress from the San Antonio school board. For example, in 1934, *La Liga* initiated a bill to reduce board member terms from 6 to 2 years. They hoped to attract the attention of the board to address issues of inequity. In Senate hearings, *La Liga* presented evidence of the poor situation for Mexican students. The School board conceded and agreed to the construction of two new schools (Founding of *La Liga Defense Escolar*). *La Liga* disbanded in 1935 but re-emerged in 1947, but in this iteration it went by its English name, *The School Improvement League* (Orozco, 2010). Its mission, however, remained the same.

According to Perez (2009), in the post war years, these separate groups began to form a Latino advocacy coalition. Earlier in the century, the various Mexican organizations in Texas competed over jurisdiction and for members. However as Mexicans continued to suffer from unequal treatment in residence, education and employment, the groups slowly came to the conclusion that they needed to act in concert to affect change. Segregation in residence and schools and poor conditions for students and labor had continued through the war years. In the post-war years, a coalition of organizations began to lobby the Texas legislature to take an active role in addressing these issues. The coalition consisting of LULAC, social, civic, religious, mutual aid societies (*mutistias*) and labor groups were successful in convincing Governor James Ferguson to establish the Office of Inter-American Affairs. This led to the creation of the Good Neighbor Commission and the Good Neighbor Policy Committee. Mexican political inclusion dovetailed with Cold War policy goals to secure Mexico as an American ally (Blanton, 2004). Among other issues pertaining to Mexican-Americans, these committees held conferences to discuss education issues and

led teaching training seminars. Prominent Mexican education professions participated or gained their start in these commissions (Perez, 2009 53).

In 1948, George I. Sanchez and Virgil E. Strickland published “The Study of the Educational Opportunities Provided Spanish Name Children in Texas School Systems.” The study revealed the stark inequities Mexican-American students in the state faced when compared to the Anglo counterparts. The attention garnered in the Mexican advocacy community as well as the recent desegregation ruling in California, *Westminster v. Mendez* (1947), encouraged LULAC to file suit in the *Delgado v. Bastrop Independent School District*. In addition to declaring the segregation of Mexican-American children unconstitutional, the ruling prompted assessment of the English assessment testing used to evaluate Mexican-American students (Perez, 2009 54).

The American GI Forum formed during this period. Originally, forming to protest the unequal treatment of Mexican soldiers in the war, the American GI Forum would become a major advocate for Latino rights in general (Pycior, 2010). They became active in investigations of federal violations committed by school officials in the treatment of Mexican students. They teamed with LULAC to bring successful desegregation suits in 1948 and 1957, *Delgado v. Bastrop Independent School District* (1948) and *Hernández v. Driscoll Consolidated School District*, respectively (Pycior, 2010; Perez, 2009 54-55).

In 1950, Governor Allen Shivers commissioned the Texas Council for the Study of Human Relations. The organization was an advisory group designed to improve relations between Anglos and Mexicans-Americans in Texas (Orozco, 2010). It was a gesture to the Mexican-American advocacy community which had complained that the Good Neighbor Commission did not focus sufficiently on domestic issues (Orozco, 2010). This facilitated

discussions between Mexican-American organizations and the Texas Education Agency (TEA) and the State Board of Education (SBOE) (Perez, 2009 55). A paper produced from these discussions, the “Statement of Policy Pertaining to Segregation of Latin American Children,” precipitated the hearing of nine cases before the Commission of Education for alleged discrimination and segregation of Mexican-American students (Perez, 2009 55).

In 1959, two LULAC members, Felix Tijerina and Isabel Verver, founded the Little Schools of 400. It was a preschool program that aimed to teach pre-kindergarten-aged Spanish speaking students 400 English words so that they could effectively participate in school from first grade (Kreneck, 2010). The success of the school and its curriculum led to HB 51, which initiated the first Head Start program in Texas (nine years before President Johnson Head Start program) (Perez, 2009 55).

In the 1960s, the influence of Mexican-Americans in Texas expanded to the national level. Texas was responsible for President John F. Kennedy’s narrow victory in the 1960 election. The Viva Kennedy/Viva Johnson Clubs were instrumental in mobilizing Mexican support (Pycior, 2010). Club leaders eager to take advantage of their new access formed the Political Association of Spanish Speaking Organizations to lobby for federal attention to issues faced by Texas’ Mexican Americans (Pycior, 2010). PASSO played a role in Kennedy’s appointment of Reynaldo de la Garza, the first Mexican federal judge (Perez, 2009 56).

Recognizing the need for research in education in order to champion instructional approaches appropriate for Mexican-American students, Americo Paredes founded the Center for Mexican American Studies (CMAS) at the University of Texas at Austin. This created a space for the development of progressive curricula to address the needs of

LEP student populations (Perez, 2009 56).

By the mid-1960s, farmworker protests and youth militancy began to emerge amid frustration among Mexican advocates that the resources of the Great Society were not reaching them (Pycior, 2010). The Southwest Council of *La Raza* and Chicano identification emerged during this period. The former promoted cultural pride and bilingualism while the latter served as the embodiment of this new ethnic pride and identity (Pycior, 2010).

By the late 1960s, Mexican advocacy in Texas had increasingly gaining influence at the state and national levels and was galvanized by the identity politics and protest of the era. Bilingual education became a policy area that was mutually beneficial for the Mexican advocacy coalition and political elites from the late 1960s through mid-1970s. Both the Elementary, Secondary Education Act of 1965 and the Bilingual Education Act of 1968 set aside federal funds for programs aimed at disadvantaged, Mexican American students. Mexican-American advocacy finally had an issue that garnered federal attention. And as the next section depicts, support for bilingual education also emerged with the state political and education elites.

Policy Evolution Through the Early 1970s

Through the early 1970s, bilingual education policy evolved from a combination of local initiatives, Texas Education Agency (TEA) initiatives, state legislation and federal funding available through the passage of the two previously mentioned, landmark federal Civil Rights Acts, the Elementary Secondary Education Act of 1965 and the Bilingual Education Act of 1968.

Bilingual education arrangements in this renaissance period initially started with local bilingual education arrangements in Laredo United school district in 1964 (Rodriguez, 2010). The arrangement was the brainchild of Superintendent Harold Bentley who based the Laredo United bilingual education program on the one started at the Coral Way school in Dade County Florida in 1959 (Rodriguez, 2010). Bentley's idea then spread to other Texan counties. District funds initially financed these programs, which were later replaced with federal funds made available through Title I and Title III of the Elementary Secondary Education Act (ESEA) of 1965 (Rodriguez, 2010). ESEA allocated federal aid to localities with underprivileged, minority student populations. ESEA funding led to a flurry of activity to address the needs of disadvantaged students (Rodriguez, 2010). These programs incorporated those students lacking in English proficiency (Rodriguez, 2010). By 1969, this encouraged the development of bilingual education arrangements in 16 school districts (Rodriguez, 2010). These arrangements, however, created a conflict for the Texas Education Agency (TEA) which was charged with ensuring district compliance with the *English Only* law of 1918, which was still on the books (Rodriguez, 2010). In 1967, TEA developed an accreditation criteria allowing for districts to offer non-English speaking students a voluntary instructional program using two languages of instruction (Rodriguez, 2010). In 1969, state senators Carlos Truan and Joe Bernal spearheaded and helped pass legislation in the 61st legislature that allowed for the aforementioned TEA standard and for bilingual instruction when it was "beneficial to the students" (Rodriguez, 2010; Perez, 2010 58).

During the same period Chicano advocacy contributed to the political pressure to address the needs of Mexican students in Texas (Trujillo, 1998). In Texas, Chicano

advocacy had been a major political force in galvanizing grassroots pressure for addressing the educational needs of the Mexican community in Texas and the Southwest as a whole (Trujillo, 1998). Specifically, MAYO (Mexican American Youth Organization) was organized in 1967 as a civil rights political advocate organization for Mexican concerns in education, discrimination, police brutality, labor organization, and Chicano cultural empowerment in South Texas (Trujillo, 1998 29-30). Educational concerns became their main focus supporting several school-walkouts in South Texas between 1967 and 1970 (Trujillo, 1998 29-30). Rhetorically, Chicano advocacy aimed at cultural and territorial empowerment for the Chicano community (Trujillo, 1998). With respect to education, this manifested in demands for improving educational outcomes of Chicano students (Trujillo, 1998 29).

The emergence of Chicano advocacy as a real political force in the region coincided with the political emergence of bilingual education as the bipartisan policy response of choice for addressing the educational needs of Mexican-American students (Trujillo, 1998 32). Chicano advocacy played a major role in influencing the content of the Bilingual Education Act of 1967, authored by Texas-Democrat Senator Ralph Yarborough (Trujillo, 1998 32). The 1967 Act was the original bilingual education bill proposed to the Johnson administration in 1968. This, thus, was a form of venue shifting on the part of Chicanos — taking advantage of the favorable national policymaking forum to obtain policy concessions in line with their framing of the educational needs of Chicano students in Texas and other Southwestern states (Trujillo, 1998 29-33). The original BEA of 1967, sponsored by Senator Yarborough, aimed at addressing the educational and cultural demands of Chicano advocates for Chicano students (Trujillo, 1998 32). It would

eventually expand in scope to address the language needs of language minorities in general as the bill made its way through the federal legislative process (Trujillo, 1998 32; Crawford, 1999).

The passage of the Bilingual Education Act in 1968 (Title VII of ESEA) aided the cause of pro-bilingual forces and was precipitated by the venue shifting by Chicano activists (Rodriguez, 2010; Trujillo, 1998 32). It made available competitive grants for school districts and obligated districts to fund their bilingual programs within five years (Rodriguez, 2010). By 1970, Title VII funds supported 27 bilingual education programs in Texas school districts, totaling almost \$2 million (Policy Research Report, 1998). By the spring of 1973, 19 districts required state fiscal support for their bilingual education programs as state funds were not appropriated for these policy endeavors of the late 1960s (Rodriguez, 2010). Title VII funding had helped to fund these programs after 1969, but the funding was insufficient to accommodate the 243,185 LEP students in need of program support (Rodriguez, 2010). Nevertheless, federal funding during the late 1960s and early 1970s provided the fiscal and political means for allowing these local initiatives to spread to almost 30 districts in Texas prior to the enactment of state bilingual education legislation (Policy Research Report, 1998). An example of how the BEA, 1968 sparked local bilingual programs occurred in Crystal City, Texas. *La Raza Unida*, a militant Chicano organization, organized protests against schools in Crystal City, Texas to draw attention to the discriminatory treatment of their Spanish-speaking student body (Crawford, 1999 42). Among their demands for more fair treatment of Spanish-speaking students was a call for establishing bilingual education programs (Crawford, 1999 42). Spawned by Chicano activism and venue shifting of the time, Chicano mobilization gained control of the schools

and city government (Crawford, 1999 42; Trujillo, 1998 37). Once in control, they used BEA funding to establish a K-12 bilingual-bicultural education program that stressed cultural maintenance (Crawford, 1999 42; Trujillo, 1998 37). This depicts the interactive effects of the local, state, and federal policy venues through *issue expansion*, venue shifting and the legitimation effects passage of bilingual policy initiatives had in other policy venues.

HB 103 was Texas' first bilingual education bill (Policy Research Report, 1998). Its author, House Representative Carlos Truan (a Democrat from Corpus Christ and who has been Texas' most staunch proponent of bilingual education in the Texas legislature) and co-author Senator Joe Bernal (D-San Antonio) were two of the main political actors legitimated and empowered by the Bilingual Education Act of 1968 (Policy Research Report, 1998). HB 103 passed in Truan's first year in office (Policy Research Report, 1998; Perez, 2007 58). The bill granted that English was the primary language of instruction but permitted the use of "instruction in the earlier years which includes the use of language that the child understands to make learning easier" (Policy Research Report, 1998; Bilingual and Dual Language Education). The 1968 bill allowed for (when "advantageous" to the student) the use of the native language instruction but did not mandate bilingual education as an approach to address the needs of LEP students (Policy Research Report, 1998; Truan and Murray, 1969 sec. 2). Bilingual education was not offered or provided beyond grade 6 without the expressed consent of the Texas Education Agency (Truan and Murray, 1969 sec. 2). It also did not appropriate state funds for the bill's provision (Policy Research Report, 1998). Subsequently, its implementation was severely hampered (Perez, 2007 19). Nevertheless, the bill repealed the Texas *English Only* instruction law of 1918

and encouraged and legitimated local initiatives (Truan and Murray, 1969 sec. 4; Perez, 2007). By 1970, 27 programs initiated under the auspices of this bill qualified for federal funding totaling \$2 million (Policy Research Report, 1998).

In 1968, *Cisneros v. Corpus Christi Independent School District* became the first post-Brown desegregation ruling (Allsup, 2010). The suit was filed by Texas civil rights attorney James DeAnda on behalf of twenty-five Mexican-American parents (Perez, 2009 59). The ruling declared Mexican-Americans were a minority group that faced unconstitutional segregation. The legal recognition of Mexican-Americans as a racial group replaced the “other white” — constitutional rights-based on class — that previous Mexican desegregation rulings had relied upon (Perez, 2009 59). It also reoriented Mexican advocacy officially to lobby for their share of the redistributive redress that Civil Rights legislation afforded African Americans. Mexican advocacy and political elites debated bilingual education pursued within this paradigm from the 1960s forward.

The venue shifting of Mexican advocacy and sympathetic state officials as well as *issue expansion* had bequeathed state policy expansion in the form of HB 103 and further policy developments in bilingual education at the local levels. This pattern would continue into the early 1970s.

Policy Evolution in the 1970s

In the 1970s, continued venue shifting and *issue expansion* across state and federal venues brought about further policy expansion in Texas bilingual education policy. During this period the courts and federal executive in addition to the US Congress were catalysts for policy expansion at the state level. As elite agreement favoring the expansion of

bilingual education was in its peak period of political influence, venue shifting and *issue expansion* across these policymaking venues engendered expansionary bilingual education policy trends in Texas through the late 1970s. Advocates for bilingual education recognized this and lobbied the multiple alternative policymaking venues at the federal level when state policymaking venues were slow to enact their policymaking goals.

Venue Shifting from Chicano Advocacy

Chicano advocacy — originating mostly from Texas and California — was also directed at the executive branch. They campaigned for federal intervention to address issues of high dropout rates and poor educational outcomes for Mexican-American students (Crawford, 1999 42). Their efforts contributed to the enactment of the 1970 OCR memorandum (explained in detail in the Politics of Bilingual Education chapter). The OCR memorandum prepped the legal context for judicial developments that would transform bilingual education in the states (including Texas). Furthermore, it is an example of advocacy — venue shifting — leading to executive actions that transformed the legal context, ultimately, coercing state action (Policy Research Report, 1998).

Actions by the State Board of Education to Strengthen Existing Bilingual Education Arrangements

During this period of executive action at the federal level, the State Board of Education fortified the implementation of current bilingual education initiatives at the state level (Policy Research Report, 1998). Legislative proposals to strengthen existing bilingual education, despite dying in the legislative process, encouraged action from the State Board

of Education. These actions solidified the implementation of existing bilingual education policy arrangements (Policy Research Report, 1998). This involved ensuring that the pedagogical goals of bilingual education programs would include the use of the student's native language in instruction to acclimate the student to the school environment and encourage the development of bilingual academic skills (Policy Research Report, 1998).

In 1971, Texas Representative Carlos Truan introduced two bills (HB 495 and HB 1024) to strengthen and expand bilingual education (Policy Research Report, 1998 4). Neither bill would pass. HB 495 was proposed but held up and died in committee, and HB 1024 was passed but did not become law (Latino Education Policy in Texas: Bilingual and Dual Language Education). However, these initiatives did encourage the State Board of Education to develop a more extensive policy statement on the state's existing bilingual education laws (Policy Research Report, 1998 4; Perez, 2009 59). The 1971 Bilingual Education State-wide Plan mandated bilingual education programs to 1) introduce LEP students to the school environment through use of the student's first language; 2) develop the student's language skills in their first and second languages; 3) instruct in both languages; and 4) assist the student in developing a positive self-image and appreciation for their cultural heritage through the use of instruction in the child's native language (Policy Research Report, 1998 4). TEA then published and distributed a guide to districts to assist in the implementation of this new mission statement. The guide indicated that the initial language was of value and a pedagogical end unto itself. The use of native languages was not to simply transition the LEP student to mainstream/ all-English instruction, resulting in the discard of the native tongue. The goal of bilingual education should be the development of students that can function bilingually (Policy Research Report, 1998 4).

This new policy mission, thus, established cultural maintenance, biculturalism and bilingualism as the main goals of bilingual education policy. This would be extremely progressive by modern standards and certainly was in the early 1970s.

Policy Developments in the Judicial Branch

In Texas, according to Fenner (2012), bilingual education policy has been influenced not only by legislation at the national and state level, but also by judicial actions at the various judicial levels of the American federalist system. Beginning from the early 20th century, Mexican-American advocacy pursued a three-prong legal strategy to influence the educational outcomes of Mexican-American students. These three legal strategies were desegregation, educational funding, and equal opportunity in education (Fenner, 2012 91). Through the mid-1970s this was a promising approach as the federal and state judiciary were sympathetic to equity and desegregation claims by minority litigants (Fenner, 2012 91). However, by the late 1970s, the court became less so, establishing judicial precedents later in the decade which precluded this as a viable strategy in the decades to follow for those Latino interests favoring the expansion of bilingual education (Fenner, 2012).

During the early 1970s, advocates for Latino education reform and bilingual education pursued desegregation and equal opportunity legal strategies. The US Eastern District court considered issues of desegregation and equal opportunity in two Texas school districts, San Felipe and Del Rio (Policy Research Report, 1998 5; Perez, 2009 61). The court's ruling would greatly affect state legislation concerning bilingual education in Texas. And it is an example of venue shifting to the federal courts leading to policy expansion.

An issue of contention in the judicial suit was whether the two districts were providing equal educational opportunities to Mexican students (Policy Research Report, 1998 5; Perez, 2009 61). In *United States v. State of Texas* (1971/1972), Judge William Wayne Justice ordered the consolidation of the two districts (Policy Research Report, 1998 5; Perez, 2009 61). Four months later, Justice ordered the implementation of a comprehensive bilingual/bicultural education program. This program concurred with the guidelines laid out by the OCR in 1970 concerning the educational responsibilities of states and districts to their LEP student population. The program sought to reinforce the OCR goal of the “cultural and linguistic pluralism of the student body” (OCR quoted in Policy Research Report, 1998 5). Thus, in this example the court ruling (via judicial activism) provided legal foundation for the legal context created by the OCR memorandum.

Venue shifting to federal courts in this case was favorable for advocates of bilingual education. As this was the period when the federal courts embraced bilingual education as the best pedagogical approach to address the needs of LEP student, Justice’s ruling was in line with the political trends of the federal judiciary during the early 1970s. His ruling practically mandated policy expansion in bilingual education for Texas.

SB 121- The Passage of the Bilingual Education and Training Act

Bilingual education has been the law the of the state since 1973 when Governor Dolph Briscoe and the state legislature signed the Bilingual Education and Training Act (S.B. 121) into law (Blakeslee, 2009 146; Rodriguez, 2010). The law was passed right after Judge Justice’s ruling in the *United States v. State of Texas* (1971/1972) and with the support of the Texas Association of continuing Adult Education and the League of United

Latin American Citizens (LULAC) (Policy Research Report, 1998 5; Perez, 2009 60). It was the legislative outcome of venue shifting to the federal courts, in which Judge Justice virtually legislated policy expansion for bilingual education in Texas.

The law, sponsored by House Representative Truan, mandated that districts with at least 20 English language learners in the same [elementary school] grade which shared the same language classification the previous year offer bilingual education classes (Blakeslee, 2009 146; Policy Research Report, 1998 5; Perez, 2009 60). It ended the ‘no-Spanish rules,’ which had forbade the speaking of Spanish by Spanish-speaking students on school grounds (Rodriguez, 2010). SB 121 required that districts use native-tongue instruction to facilitate the learning and the eventual transfer of the LEP students to mainstream English-only instruction. English literacy was to be developed through ESL training. The program was to be a full-time program employed in all subject areas and students were not to be segregated from English-speaking students (Policy Research Report, 1998 5). The initial program applied to only grade 1 but the law required that an additional grade would be added each year through grade 6 (Policy Research Report, 1998 5; Perez, 2009 60). The law did not require bilingual education for grades 7-12 (Policy Research Report, 1998 5; Perez, 2009 60). For the two year budget, the state appropriated \$2.7 million (Policy Research Report, 1998 5; Perez, 2009 60). The state allocated \$15 per student for instructional resources (Policy Research Report, 1998 5; Perez, 2009 60). The law also authorized the use of bilingual textbooks (Policy Research Report, 1998 5; Perez, 2009 61). The SBOE began the process of developing rules concerning certification for bilingual education instructors (Policy Research Report, 1998 5). And TEA initiated the establishment of bilingual education training institutes to train public school instructors

(Policy Research Report, 1998 5; Perez, 2009 60). Bilingual education programs under the act went into effect with the 1974-75 academic year (Policy Research Report, 1998 5).

Thus, the Justice ruling encouraged the passage of SB 121. Although the Act required the provision of bilingual education in districts with at least 20 LEP students of the same language and in the same grade level, the bilingual education programs offered were transitional bilingual education. No mention was made of cultural maintenance nor bilingualism. SBOE rules, however, had already stated these as the program's end goals for existing bilingual education programs. Additionally, SB 121 did mandate that districts with sizable LEP student populations at least offer bilingual education through 6th grade. This made SB 121 expansionary when compared with HB 53 which only permitted (and did not require) the use bilingual education. Lastly, as SB 121 was passed before the Lau ruling, it was quite progressive for its day.

Issue Expansion in the Mid- and Late 1970s

In the mid-1970s, equal education opportunity was the issue paradigm that governed the responses of the federal courts, the US Congress, and agencies of the legislative and executive branches to address the issues of LEP students (Policy Research Report, 1998 5). As a collective, these moves by the US Congress and the courts coerced districts to reevaluate their policies and obligations towards its LEP student population (Policy Research Report, 1998 5). As will be detailed below, these serve as further examples of *issue expansion* creating legal impetuses for state policy change.

In 1974, directives from the Supreme Court and Congress put additional pressure on states to meet the legal needs of LEP students protected by the Civil Rights Act and the

OCR memorandum of 1970. The Lau ruling by the Supreme Court made it the law that the failure to provide language assistance to LEP students amounted to denying them meaningful access to education— a violation of Title VI of the Civil Rights Act (Policy Research Report, 1998 5). Although the Supreme Court and OCR censured districts for not addressing the language needs of its LEP populations, their directives did not mandate bilingual education (Policy Research Report, 1998 5). Bilingual education, thus, remained an option among others to ensure district compliance with federal civil rights law (Policy Research Report, 1998). Nevertheless, pro-bilingual education forces in Texas and other localities were emboldened by the ruling.

In the same year Congress passed the Equal Education Opportunity Act of 1974. This act permitted citizens to bring civil action when they were denied equal educational opportunity. Additional lawsuits by Latino parents ensued (Crawford, 2007 150). This, further encouraged all schools — not just those receiving federal grants — to comply with the OCR memorandum and Title VI of the Civil Rights Act (Policy Research Report, 1998 5).

Lastly, the 1974 reauthorization of the Bilingual Education Act of 1968 led to the expansion of bilingual education. It provided increased funding for districts with LEP populations and offered the first federal definition of a bilingual education program. This helped further legitimize bilingual practitioners locally (Navarro, 1990 304).

Moreover in 1974, TEA received a report from US Commission on Civil Rights (a bipartisan agency established by Congress in 1957) that was critical of several bilingual programs in southwestern states including Texas. The Commission had engaged in a study between 1971 and 1974 of segregationist and exclusionary practices used by the state of

Texas to segregate and exclude Mexican-American students from its Anglo student population (Rodriguez, 2010). The Commission found that traditional monolingual schools had fostered poor academic performance, demeaning influences, and alienation among the Mexican-American population (Rodriguez, 2010). The Commission also found that bilingual programs were severely underfunded, only reached a small percentage of the LEP student population and did not do enough to address Mexican culture and history (Policy Research Report, 1998 5-6).

The SBOE, before submitting its legislative recommendations for addressing LEP student needs, requested that TEA conduct a study to research the accusations made by the US Commission on Civil Rights. In a TEA report, delivered by the SBOE to the 64th Legislature, the study concurred with the US Commission on Civil Rights and recommended that the lawmakers reform bilingual educational law by giving it “increased and continued financial support” and expanding it to include kindergarten (Policy Research Report, 1998 7).

In August of 1975, U.S. Education Commissioner Terell Bell announced guidelines for identifying and evaluating LEP students and for planning bilingual education and ESL programs to address their needs (Rodriguez, 2010).

In 1975, several bills were introduced to amend bilingual education laws in Texas. House Bill 1126 — public school finance bill — passed in 1975 (Policy Report, 1998 7). It included an amendment to bilingual education laws (Policy Report, 1998 7; Perez, 2009 61). The amendment added kindergarten to the mandatory program but opponents of bilingual education successfully won the removal of grades 4-6 as mandatory (Perez, 2009 61; Policy Research Report, 1998 7; TEA et al, 2006 14). State funds were provided for

bilingual education in grades 4 and 5, however, those programs were optional (Policy Report, 1998 7; Perez, 2009 61). Districts could choose to offer bilingual education beyond the 5th but they would have to assume fiscal responsibility for its provision Perez, 2009 61; Policy Research Report, 1998 7).

In 1975, LULAC, the American GI forum, and the Mexican American Legal Defense and Education Fund brought a suit against the state of Texas, alleging that the state of Texas failed to provide equal educational opportunities for English language learners (ELL) despite the 1973 law (Blakeslee, 2009 147). This was in response to the exclusion of mandatory bilingual education in grades 4 and 5 and the state funding support implemented with the aforementioned 1975 amendments (Policy Report, 1998 7; Perez, 2009 61). Their efforts were aimed at reactivating the *United States v. The State of Texas* desegregation case of 1970 in which Judge William Justice had issued an extensive desegregation order to Texas public school districts that resulted in the expansion of bilingual education (Policy Report, 1998 7; Kemerer, 2010). This was another example of Mexican-American advocacy groups venue shifting to the favorable venue headed by Judge Justice as policy outcomes via the legislature had been unsatisfactory.

The plaintiffs alleged that Texas had engaged in discriminatory practices against Mexican Americans — denying them equal education opportunity (Perez, 2009 62). They asked that the court mandate TEA to implement a bilingual education program for all LEP students in the state (Policy Report, 1998 7; Kemerer, 2010; Perez, 2009 62). It would be six years before a ruling was issued (Policy Research Report, 1998 7; Perez, 2009 62).

During the period while the case was pending, federal requirements became stricter (Policy Research Report, 1998 7). Following the *Lau* Rulings, the OCR developed

guidelines (the Lau Remedies) for districts to adhere to the Court's Lau ruling (Policy Research Report, 1998 7). Each school found in violation of the ruling had to submit a plan to the OCR detailing how it would eliminate inequities towards its LEP student population or risk losing federal funding under the Elementary and Secondary Education Act (ESEA) (Policy Research Report, 1998 7).

Texas school districts experienced increased federal scrutiny between 1976 and 1978 (Policy Research Report, 1998 7). State officials met periodically with OCR officials concerning how to ensure district compliance with OCR regulations. Despite these efforts, by 1978, 40 Texas schools were found to be in violation of Title VI. The OCR subsequently moved to withhold \$14 million in federal funds made available under the Emergency Education Act of 1972 — legislation aimed at assisting districts with high minority student populations and those undergoing desegregation. TEA also used its implementation power to expand the reach of bilingual education in response to the resulting OCR induced federal scrutiny (Policy Research Report, 1998 7).

As the TEA and state officials contested federal moves to withhold federal funding, the SBOE moved to develop administrative rules to implement its Texas State Plan for Bilingual Education (Policy Research Report, 1998 7). The SBOE implemented the rules in June of 1978 on an emergency basis, voting to expand the mandatory bilingual education plan to grade 4 and 5 and mandating English language development services for grades 6-12 (Policy Research Report, 1998 7). These rules applied to any district where LEP students were present and was not restricted to the bilingual education statutory requirement, which only applied to those districts with 20 or more LEP students of the same language classification in any one grade (Policy Research Report, 1998 7). TEA et

al (2006 14) states that these measures were taken in response to the increased federal scrutiny and mandates issued by HEW and OCR. Thus, TEA used its implementation power to expand policy (the reach of SB 121) in response to the criteria set by OCR. This shows the influence of venue shifting to the executive and judicial branch (since the Lau ruling gave the OCR memorandum the effect of law) and the effects of issues expansion in general. Venue shifting to the executive (OCR) and the courts and *issue expansion* of the period not only precipitated policy response from the legislature but also policy action from state agencies.

The Conflict Over the Number of Years for Mandatory Bilingual Education and Reclassification Score Thresholds

The *issue expansion* that resulted in favorable legislation, executive directives and judicial rulings at the federal level was facilitated by elite agreement concerning bilingual education in the early 1970s. Elites for various political and pedagogical reasons concurred that bilingual education best addressed issues of equal education opportunity. By the late 1970s, however, elite disagreement concerning further expansion of bilingual education began to emerge both at the state level and at the federal level (in congressional legislation and judicial rulings). With respect to elite division in Texas, this played out over the grade levels for which bilingual education would be mandatory and also concerning threshold scores which students needed to reach on standardized tests to merit reclassification from LEP to mainstream instruction.

By November when SBOE adopted the rules on a permanent basis, the Plan had been significantly weakened amid concerns over program costs and lack of qualified

teachers — a reorientation of issue problematization from that of equal educational opportunity (Policy Research Report, 1998 7). Mandatory bilingual education was again restricted to grades K-3 with grades 4 and 5 being optional. The plan was also restricted to those districts with 20 or more LEP students of the same language classification in any one grade — a change from the emergency plan which made bilingual education mandatory in districts simply where LEP students were present (Policy Report, 1998 7). Although English language development services were made mandatory for grades K-12, state funds were not provided for this program. Additionally, the plan allowed for the reclassification of LEP students to non-LEP when the student scored at least at the 23rd percentile on the reading and language arts section of the TEA-approved achievement tests. The provision was controversial as it lowered the threshold from the 40th percentile, a bar TEA had mandated to all school districts arguing that students should be reclassified out of LEP assistance when their integration and participation in the mainstream classroom setting was not jeopardized by their proficiency in English (Policy Research Report, 1998 7).

It was clear there were divisions within the SBOE concerning the extent of bilingual education. Although there had been support for expanding bilingual education according to the emergency plan issued by the TEA, the introduction of the fiscal impact dimension, altered the consensus, bringing a majority back to a more restrained level of mandatory bilingual education provisions. As the SBOE board members represented different regions, which had varying support for bilingual education (with the border regions having a stronger affection for bilingual education arrangements) and the emerging issue dimension of fiscal restraint, division led to a more restrained provision of bilingual education.

United States v. the State of Texas Part 2

Hearings began for the suit brought by the Mexican American Legal Defense and Education Fund (MALDEF) and other Mexican advocacy groups (*United States v. Texas*) in December of 1979 (Policy Research Report, 1998 8). Testimony surrounded the historical treatment of Mexican students and whether the state had done enough to provide equal educational opportunity (Policy Research Report, 1998 8). In 1981, federal district judge William Wayne Justice ordered the state to reform the bilingual education program to satisfy the 1975 suit (Blakeslee, 2009 147). Justice ruled that the state had engaged in historic discrimination against Mexican American students, which violated the equal protection clause of the 14th amendment, and that the state response to the needs of LEP students was severely inadequate, constituting a violation of the Equal Educational Opportunity Act of 1974 (Policy Research Report, 1998 8; TEA et al, 2006 14). The Justice ruling designated Mexican Americans as a protected class (TEA et al, 2006 14). Justice cited various inadequacies including failure of program coverage (half of the students identified as LEP students were not in bilingual education programs), inadequate procedures for identifying LEP students, inadequate establishment of entrance and exit requirements, inadequate training of administrators and instructors, problematic monitoring and enforcements procedures, and failure to utilize all available certified teachers with bilingual education certification (Policy Research Report, 1998 8; TEA et al, 2006 14). Judge Justice mandated a comprehensive plan of relief to eliminate the effects of past discrimination and to ensure future compliance with “the laws of the land” (Policy Research Report, 1998 8). This plan had to be made available to all LEP students in the state for as long as was necessary for them to “fulfill their educational potential” (Policy

Research Report, 1998 8). Specifically, Justice ordered bilingual education for K-5 to begin with the 1981-82 school year and for it to be extended through grade 12 by the 1985-86 academic year (TEA et al, 2006 14). To address staffing needs, TEA was mandated to implement an aggressive recruiting and training plan (Policy Research Report, 1998 8). English proficiency would be determined through a combination of teacher observations and standardized testing, and a home language assessment survey would be distributed to all students (not just those with Spanish surnames). To evaluate their progress, students enrolled in bilingual education programs were to be evaluated at the end of each academic year. Reforms were made to the exit criteria to include mixed assessments (teacher evaluations, standardized test scores, oral proficiency assessments, parental opinions, and mastery of specific English language skills). TEA was required to visit each school at least once every three years to ensure compliance. Those schools found in violation would face severe penalties (Policy Research Report, 1998 8). The parties to the suit were required to issue a joint plan to address the requirements in Justice's ruling within 60 days of the January 9, 1981 ruling (or by March 9, 1981) (TEA et al, 2006 14). If they could not agree on a joint plan, they were to submit separate plans (Policy Research Report, 1998 8).

After the two parties could not agree on a joint plan, separate plans were submitted to Judge Justice. After reviewing the separate plans, Justice ruled that the Texas plan was nothing more than an advocacy for the status quo (Policy Research Report, 1998 8). He issued a remedial order similar to the plan issued in his opinion, but added several new requirements: School districts were to establish language proficiency assessment committees to assess LEP student placement; parental advisory committees to monitor district compliance with the court order; and TEA was to request that districts offer six-

week summer school sessions for LEP students (Policy Research Report, 1998 8). The state program has since been under Judge Justice's jurisdiction (Blakeslee, 2009).

Concurrently, the Texas legislature received a report from the Task Force on Bilingual Education, 1981. The report, the culmination of a month-long study by a 15-member panel, cited inadequacies with the current bilingual education legislation and agreed on a number of recommended changes to the law. The panel disagreed, however, on the best way to teach LEP students at the secondary level. Seven of the members felt bilingual education should be taught in grades K-12; seven of the members believed it should only be mandatory through grade 6. The chair of the department broke the tie and the Task Force publicly recommended bilingual education for grades K-6 (Policy Research Report, 1998 8).

When the Texas legislature convened in January of 1981, proponents of bilingual education were skeptical that they could garner enough support to expand the current law (Policy Research Report, 1998 8). Two previous bills to expand the program (in 1977 and 1979 sessions) had both been rejected (Policy Research Report, 1998 8). Moreover, several recently published national reports including an assessment of Title VII projects by the US Office of Education had raised doubts about the efficacy of bilingual education to raise student achievement (Policy Research Report, 1998 8; for other reports see the Politics of Bilingual Education Chapter). However, the Justice ruling greatly changed the politics of bilingual education in 1981 by reorienting the policy definition to equal education opportunity (as issue definitions of program efficacy and fiscal impacts were gaining political salience) (Policy Research Report, 1998 8). Encouraged by the aforementioned, Senator Carlos Truan introduced SB 477 in February of 1981, which closely followed the

guidelines set out in the Justice ruling (Policy Research Report, 1998 8; Perez, 2009 62). Truan introduced the bill in the period between Justice's 1981 ruling and an appeal of that ruling made by the Attorney General on behalf of the state to the 5th US Circuit court in July (TEA et al, 2006 14). At hearings held by the Senate Education Committee, committee members contested the bill, objecting to its scope and the associated costs of its provision (Policy Research Report, 1998 8). Senators voted to send SB 477 to subcommittee for further review. The subcommittee task force issued its report a month later. Senator Truan modified SB 477 to include some of the task force recommendations including limitations on mandatory bilingual instruction. Despite continued opposition that forced last minute changes, SB 477 was passed June 1, 1981 (Policy Research Report, 1998 8). The text of the bill maintained that English was the main language of instruction. However, it acknowledged that for students whose native language was not English, English-only instruction was not an effective pedagogical approach (Hobby, Clayton, Snelson, 1981 38). It viewed bilingual education as an effective tool in integrating students into the mainstream by providing assistance in mastering core concepts in early grades (Hobby, Clayton, Snelson, 1981 38). Its use was restricted to this transitional paradigm, facilitating the eventual mainstreaming of LEP students into all-English instruction (and not for cultural maintenance) (Hobby, Clayton, Snelson, 1981 38). It was to be a dual-language instructional program in which the student's native tongue was used to facilitate the acquisition of core educational concepts and English proficiency (Hobby, Clayton, Snelson, 1981 42). The bill required schools to offer bilingual education for grades K-5 (and grade 6 if deemed as an elementary grade in the district), but retained the provision from the earlier law that it only pertained to districts with at least 20 LEP students of the

same language classification in the same grade (Policy Research Report, 1998 8; Hobby, Clayton, Snelson, 1981 41). The bill also modified requirements laid out in Justice's ruling pertaining to the post-elementary grades, only requiring that schools had to offer bilingual education, ESL, or other transitional language instruction approved by TEA in grades 7 and 8 (Policy Research Report, 1998 8; Hobby, Clayton, Snelson, 1981 39). Students in grades 9-12 were to be offered ESL services. School districts were also encouraged to offer pre-school, summer school, extended day or week programs for LEP students (Policy Research Report, 1998 8). School districts that did were not mandated to offer bilingual education. However those with LEP student populations, had to offer ESL programs for grades K-12 (Hobby, Clayton, Snelson, 1981 41). Instruction in all special language classes was to consider the students' cultural background and learning experiences (Policy Research Report, 1998 8) and thus did acknowledge the importance of developing a positive cultural identity along with language proficiency (Gandara and Rumberg, 2009 763). The commissioner of education was also authorized to mandate that districts provide bilingual education programs even if they were not mandated by their LEP student population (Hobby, Clayton, Snelson, 1981 41). This bill also authorized the Commissioner of Education to grant exceptions to the mandatory bilingual education programs in those situations where there was a lack of trained bilingual education staff (Policy Research Report, 1998 8). Exemptions could be approved in one-year increments. Districts requesting such an exemption had to provide evidence of the teacher shortage and present a plan to increase the recruiting of trained staff. During the exemption period, districts were permitted to employ approved alternative methods for addressing LEP student needs. The SBOE was concurrently required to draft a plan to meet the teacher

supply needs and submit it to the legislature by January of 1983. Borrowing from the Justice ruling, this bill also required the establishment of language proficiency assessment committees (LPAC) to implement SBOE-established standards for identifying LEP students (Policy Research Report, 1998 9; Perez, 2009 62). The bill also included exit criteria similar to that included in Judge Justice's order— relying on multiple assessment measures and that LEP students score at least in the 40th percentile before being reclassified as non-LEP (Policy Research Report, 1998 9; TEA et al, 2006 14). TEA was also required to monitor compliance by visiting each school at least once every three years (Policy Research Report, 1998 9; Perez, 2009 63). This requirement has since been lifted via the passage of an amendment (TEA, 2006 14).

Bilingual education was appropriated \$18 million from the legislature for the two-year budget (Policy Research Report, 1998 9; Perez, 2009 63). Bilingual education pupils were allocated \$50 per pupil and \$12.50 was allocated for ESL or special language classes (Policy Research Report, 1998 9; Hobby, Clayton, Snelson, 1981; Perez, 2009 63). These provisions could be spent on student evaluation, instruction materials, staff development, or supplemental staff expenses (Policy Research Report, 1998 9).

As the SBOE prepared to change its rules to implement SB 477, legal activities continued concerning the Eastern U.S. District Court (Policy Research Report, 1998 9). Judge Justice, unsatisfied with the contents of of SB 477 (specifically, that it only mandated bilingual education through grade 5), ordered that the state ignore SB 477 and comply with his ruling (TEA et al, 2006 14).

Judge Justice's order, mandating TEA to implement bilingual education in grades K-12, was still in effect and set to begin with the 1981-82 school year when the state

appealed the decision to the Fifth US Circuit Court of Appeals (Policy Research Report, 1998 9; TEA et al, 2006 14). The three-judge panel ruled in favor of the state, staying Judge Justice's ruling on July 12, 1982 and returning the ruling to Justice for him to take it under review (TEA et al, 2006 14). The three-judge panel cited that he relied on flawed evidence to render such a sweeping order on the state (Policy Research Report, 1998 9). With this ruling, the state, thus, was not under legal obligation to carry out the exact provisions of Justice's ruling (TEA et al, 2006 14). And beginning with the 1981-82 academic year, the provisions of SB 477 became the law of the state governing bilingual education (TEA, 2006 14).

Analysis of Events Surrounding the Passage of SB 477

This period ending with the implementation of SB 477 was indicative of elite divide and how it played out in the multiple venues involved in policy outcomes in bilingual education for the state of Texas. At the federal level, bilingual education was losing its support in congress, the executive and the judiciary. In the late 1970s (in addition to the mentioned report by the US Office of Education), a number of high profile reports had been published which questioned the efficacy of bilingual education to improve educational opportunities for LEP students. Thus, the issue definition of bilingual education transitioned from equal opportunity to program efficacy (or accountability—how to make programs more accountable for student outcomes). These reports championed pedagogies that predominantly focused on improving English proficiency. In Congress, the 1978 reauthorization of the Bilingual Education Act restricted federal funding to transitional bilingual education (TBE) programs— programs with the goal of

mainstreaming students (Crawford, 1998 56). In 1978, developmental bilingual education was removed from a list of federally supported supported programs (Czegledy, 2005 13-14). By 1980, President Reagan began permitting BEA funding for monolingual programs such as Sheltered English Immersion (Czegledy, 2005 15). The Reagan administration also terminated the executive (OCR) enforcement of the Lau remedies. Thus, the support that bilingual education had enjoyed in the federal legislative and executive branches in the early 1970s— and which had resulted in policy expansion at the state level— had begun to dissolve as elite agreement concerning the bilingual education began to splinter. The consensus that backed bilingual education for education equity issues had been dissolved by the change in issue dimension to education efficacy and accountability (Crawford, 1999 56)

At the state level, there was conflict concerning the expanse of mandatory bilingual education because of the funding implication and lack of trained professionals. The fiscal dimension of the issue splintered the consensus that had backed the education equity dimension of bilingual education. This played out in the legislature in the passage of SB 477 and in the SBOE and TEA implementation of curriculum standards for bilingual education.

And in the judicial branch, Judge Justice continued to be an avid supporter of expansive bilingual education. His ruling continued to focus on the education equity dimension of the issue. However, the Fifth US Circuit Court of Appeals ruled that his 1981 ruling rested on faulty argumentation and invalidated his expansive order concerning bilingual education provisions for the 1981-82 academic year.

In the end a moderated SB 477 emerged from this political context. However, it

was still expansionary compared to its predecessor, the Bilingual Education and Training Act (S.B. 121). English remained the stated language of the school and bilingual education was for the purpose of acclimating students to the academic environment, assisting them in the mastery of core academic subjects and eventually transitioning them to mainstream course work. The text did, however, mention that the students' culture should be considered in instruction and, thus, it did consider cultural empowerment as a pedagogical goal — and this was policy expansion compared to the Bilingual Education and Training Act (S.B. 121), which made no such mention. Additionally, exit criteria were increased to the those scoring at least in the 40th percentile and the multi-criteria assessment formula used for the eligibility criteria (although the former two would be short lived victories — see next section). Thus, despite the elite disagreement and the changing politics in the federal and state venues towards more restrictionism — via the increased salience of other issue dimensions — SB 477 still represented an expansionary moment (if only a minor one). This speaks to the influence of Judge Justice (the result of venue shifting by Mexican-American advocacy), whose ruling — although overturned — influenced the reach and eventual content of SB 477.

Continued Conflict over Reclassification in the Implementation of SB 477

The elite conflict that had been evident in SBOE implementation prior to the passage of SB 477 continued, affecting its implementation. The SBOE adopted the new rules concerning bilingual education on an emergency basis in July of 1981. Two provisions caused Senator Truan to claim that they intended to undermine the intent of SB 477: first, the rules continued to allow (under certain circumstances) the reclassification of

LEP students who scored as low as the 23rd percentile in the reading and language arts sections of the achievement test (Policy Research Report, 1998 9). This was contrary to the SB 477 requirement of scoring at least in the 40th percentile, which had changed the 23rd percentile bar that originated with the SBOE Texas State Plan for Bilingual Education issued in 1978 (Policy Research Report, 1998 9). Second, the LEP eligibility criteria for assessing students in kindergarten and first grade was based solely on an oral English proficiency test; reading and writing proficiency were not included as part of the assessment criteria. Despite more than 300 letters and telegrams protesting the inclusion of these controversial rules, the rules were left unchanged and the SBOE officially implemented the rules in November of 1981 (Policy Research Report, 1998 12).

Thus two of the main points of policy expansion won in SB 477 were eliminated in its implementation. The politics of policy rollback that was evident in the events leading up to the passage of SB 477 came to fruition in its implementation. Elite division concerning bilingual education played out in the politics of the SBOE, as its policy implementation moved rollback provisions of SB 477.

Continued Expansion Despite Reduced Federal Enforcement of Bilingual Education

The meetings between TEA and OCR in 1982 would depict the changed politics in the executive that took place after Reagan's election in 1980. The OCR in the 1970s was at the vanguard of aggressive federal enforcement of the Lau remedies, which called for bilingual education. In the late 1970s, the OCR had also been quite critical of Texas' response to OCR directives and, in 1978, had threatened to withhold \$14 million in federal funds made available under the Emergency Education Act of 1972. The Reagan-led OCR

was a different institution, ideologically, by 1982. In March of 1982, TEA met with the OCR to renew its collaboration in the “voluntary enforcement of civil rights” (Policy Research Report, 1998 12). After a two day session, TEA and OCR agreed that school districts found in compliance by TEA of SBOE rules would also be in compliance with Title VI of the Civil Rights Act of 1964 (Policy Research Report, 1998 12). Thus, OCR had delegated its enforcement power to the state — indicative of the devolutionary approach to social policy favored by Reagan and the Republicans of the 1980s.

Nevertheless, incremental policy expansion in bilingual education continued despite the reduced role of federal enforcement. During a special session in the summer of 1984, the legislature passed sweeping education reforms in the HB 72 bill, including two amendments for young children with language difficulties (Policy Research Report, 1998 12). A prekindergarten program was started for four-year olds with limited English proficiency or from low income families. The bill also directed districts to offer summer programs for LEP students aged 4 through 6 who were scheduled to enter kindergarten or first grade the following fall. HB 72 also dramatically increased funding for bilingual education. State funds were to increase in the district on a weighted scale that increased funding by 0.1 for every LEP student in the district. This subsequently led to the increase of state funding from \$7 million in the 83-84 school year to \$37 million in the 86-87 school year (Policy Research Report, 1998 12).

This amounted to incremental expansion of the state’s commitment to bilingual education. Concurrently, however, a growing counter movement was growing in political influence in Texas: *English Only*.

English Only Movement in the 1980s

During this time, anti-bilingual forces began organizing around efforts to make English the official language of the state via constitutional amendment. If passed, this constitutional amendment would affect bilingual education policy as the proposals put forward called for English to be the language used by the government, and this would include schools. Although Crawford (1999) argues that *English Only* movements took pains to avoid direct public confrontation concerning the fate of bilingual education, this was not the case in Texas (see Tatalovich, 1995). It was never specified exactly how an Official English constitutional amendment would manifest in bilingual education policy but its consequences for bilingual education was part of the debate (Tatalovich, 1995).

It would be this episode where the lack of direct democracy policy making mechanism would begin to influence the politics of *English Only* politics in Texas going forward. *English Only* was politically popular with the electorate according to polls. However, it was not with the state's Republicans, who feared supporting Official English and taking on an entrenched, mobilized Latino advocacy network. This would influence how *English Only* pedagogical campaigns would play out in the 1990s.

The first proposal, House Concurrent Resolution 13 was put forward by its lone sponsor, state representative Kae T. Patrick (R-San Antonio). It died in the Committee on State Affairs (Tatalovich, 1995 161). In 1987, House Resolution 55 called for English to be the official language of the state. It would require the Legislature and government officials to take actions to bring this into effect and that the Legislature would not be permitted to enact rulings that contradicted English as the official language (Tatalovich, 1995 161). It would also authorize residents of the state of Texas the power to bring legal

action against those seen to violate the resolution (Tatalovich, 1995 161). It was sponsored by L.P. “Pete” Patterson (D-Brookston) and co-sponsored by Billy Clemons (D-Pollock), Jim Horn (R-Denton), Jerry Yost (R-Longview), Foster Whaley (D-Pampa), M.A. Taylor (R-Waco), Tom Waldrop (D-Corscicana), Talmage Helfin (R-Houston).⁴⁶ This bipartisan bill would have added an amendment to Section 70 of the state constitution. Its sponsors argued that minorities in Texas could not reach their full potential without having full command of the English language. This amendment proposal was to appear on the ballot on Election Day, November 8, 1988. The bill was eventually referred to the House Committee on State Affairs where it died. The opposition was led by the Mexican American Legislative Caucus (chaired by Representative Al Luna, D-Houston) which upon announcement of the bill held a press conference to announce that they had gathered signatures from 61 representatives on a petition in opposition to the bill. This effectively killed the legislation before it was even sent to committee— the requirement for proposals to amend the state constitution required a two-thirds vote in support in both chambers of the legislature. House Resolution 55 did not even have a sponsor in the state senate. Opponents such as the Democratic House Speaker pro tem, Hugo Berlanga called the bill “divisive” (Tatalovich, 1995 161-162).

In the hearing on April 20, 1987, called by the House Committee on State Legislative Caucus, the issue of bilingual education was broached by Representative Lena Guerrero (D-Austin). While testifying about how she learned English without the presence of an official English amendment, Guerrero asked Patterson if he was opposed to bilingual education and was this part of his rationale in proposing the amendment. Patterson replied

⁴⁶ Ben Campbell (R-Flower Mound) and Jim McWilliams (D-Hallsville) also initially co-sponsored the bill but later withdrew their support.

that bilingual education was “useful” but needed to be improved so that English fluency among Mexican students could be better achieved (Tatalovich, 1995 163).

Others supporters who spoke at the hearing included members of the American Ethnic Coalition, English First, Pro America, the Parents Union of Texas, and the National Association of Retired Federal Employees. Opposition speakers included members of Bilingual Classroom Teachers at Allen Elementary School, the Texas Association for Bilingual Education, the Texas Baptist Christian Life Commission, the Hispanic Chamber of Commerce, the Texas Association of Mexican-American Chambers of Commerce, the Austin Area Association of Bilingual Education and the Texas Civil Liberties Union (Tatalovich, 1995 163).

Ahead of the 1988 Republican presidential primary season, Vice President George Bush was forced to comment on the pending proposal. Bush did not offer his support for the bill, stating that he believed every child needed to learn English but that he did not believe that an amendment was necessary to accomplish this goal (Tatalovich, 1995 163).

Despite bipartisan resistance to the *English Only* amendment, there was evidence of strong support among the Texas electorate. A 1987 poll conducted by researchers at the University of Texas A&M found that nearly three-fourths (74 percent) of Texans supported the Patterson bill; twenty percent opposed the bill and six percent did not have an opinion (Tatalovich, 1995 164). Eighty percent of whites supported the bill; 69 percent of blacks but only 40 percent of Hispanics — 56 percent opposed the bill. Eighty percent of self-identified Republicans supported the bill as well as 70 percent of Democrats (Tatalovich, 1995 164). Support was stronger in the north (where there were larger white populations) than in the south (where larger Hispanic populations resided) (Tatalovich, 1995 164). This

made evident that although the bill was polarizing among party leaders in both the Democratic and Republican Party, the bill enjoyed overwhelming support among the electorate (Tatalovich, 1995 164).

Republican Governor Bill Clemens received pressure to put the bill on the agenda of the special session of the legislature. Clemens, however, refused, citing the importance of other bills. Clemens refused to take a stand on the bill (even before the state Republican Executive Committee). Some Republicans feared that the bill would divide the GOP. Republican leaders were sensitive to the appearance of the bill as anti-Hispanic (Tatalovich, 1995 164-165).

Democrats, however, unanimously opposed the bill (Tatalovich, 1995 164). The Chairman of Mexican American Democrats, for example, publicly opposed the bill and called for Democrats who were serious about statewide office to publicly come out in opposition to the bill. By early 1988, all Democratic state leaders were publicly against the bill. Opponents, such as Democrat Ruben Bonilla (chair of the Mexican American Democrats), Representative Luna (Chair of the Mexican American Legislative Caucus), and Governor Clemens called the bill divisive and racist (Tatalovich, 1995 164-165).

The State Republican Executive Committee was fully supportive of the bill, agreeing (with little debate) to put it on the Republican primary ballot as a non-binding referendum. The non-binding referendum stated “English should be established as the official language of the state of Texas and the United States of America” (Tatalovich, 1995 165). They argued that segregation caused by lack of English proficiency was just as undesirable as segregation because of race, religion or sex (Tatalovich, 1995 165). The ballot question was crafted by the American Ethnic Coalition, chaired by Lou Zaeske of

Bryan, Texas. Zaeske countered that the racist label was because the bill was mislabeled as *English Only* legislation. According to the Zaeske, it was an Official English legislation — implying that the use and existence of other languages would still be respected. GOP state chairman George Starke concurred arguing that Official English was not a racist initiative but one in pursuit of societal and cultural unity under one language. The purpose that Zaeske had in mind for the non-binding referendum question was to put pressure on the legislature to take up an Official English initiative since legislatures had been reluctant to do so and since Texas lacked an initiative process whereby such a policy initiative could be enacted directly by the electorate via the ballot (Tatalovich, 1995 165-166). This was a form of venue shifting with the hope of creating issue salience for the Official English ballot initiative in a venue where it was expected to be more favorably received than it had been in the legislature.

Some informal surveys supported the notion that the electorate favored an official English policy. In February of 1988, the Dallas Times Herald conducted a ‘Sound Off Survey’ which found that 83 percent of those surveyed answered ‘yes’ to the survey question, “Should Texas pass a law making English the official language of the state” (Tatalovich, 1995 166). And in the GOP primary, 92 percent of Republicans supported the official English ballot proposition (Tatalovich, 1995 166). However, neither the ballot proposition nor the evidence that Official English resonated with the public coerced lawmakers into pursuing an official English amendment or legislation. Subsequently, neither were pursued in the 71st session of the legislature (Tatalovich, 1995 166).

Attempting to capitalize on the political momentum created by official English referenda in Colorado, Arizona, Florida, and California, Zaeske announced that he had

twenty-three additional signatures from newly elected representatives pledging their support for official English legislation. Additionally, Zaeske threatened to run for state senate against Democrat Kent Caperton from Bryan, Texas (Zaeske's hometown). Zaeske claimed that 70 percent of the electorate from Caperton's district favored Official English legislation, putting Caperton at odds with his constituency since he did not support Official English (Tatalovich, 1995 166).

Countering Zaeske, Senators Carlos Truan and Chet Edwards (D-Duncanville) announced that they and eleven other senators had signed a letter sent to Lieutenant Governor Bill Hobby expressing their opposition to official English legislation. Edwards and Truan publicly argued that Official English legislation was not necessary because English was already the official language of the state — the language used in public and private use (Tatalovich, 1995 167).

At the start of the 71st session, two official English initiatives were introduced, House Joint Resolution 48 and House Bill 2467 (Tatalovich, 1995 167). House Joint Resolution 48 was again sponsored by Rep. Patterson and most of his Republican allies from the 1987 bill. These included Rep. Heflin and Rep. Horn, Rep. Jeff Wentworth (R-San Antonio), Bill Hollowell (D-Grand Saline), Bill Thomas (R-Greenville), Glenn Repp (R-Duncanville), John Wily (R-Angleton), Randy Pennington (R-Houston). As seven of the nine were Republicans, the bipartisanship of the 1987 Bill had mostly evaporated in the time between. House Joint Resolution was identical to the 1987 constitution amendment proposal (Tatalovich, 1995 167).

House Bill 2467 was only sponsored by Randy Pennington. HB 2467 attempted to gather the two-thirds vote requirement needed to place a constitutional amendment

proposal on the ballot. It was a non-binding referendum which simply allowed voters to indicate their support or opposition for the following question: “English shall be the official language in which the business and affairs of the government are conducted in Texas” (Tatalovich, 1995 167). Again, the idea was to pressure the legislature to take action on Official English legislation through showing the support for such legislation.

Both proposals were sent to the Committee on State Affairs and public hearings were again held to debate the proposals. Those in support of the bill included the American Ethnic Coalition and English First. Local organizations opposing the initiatives were joined by national organizations (Tatalovich, 1995 168). The opposition included Texas Baptist Christian Life Commission, Texas Civil Liberties Union, Texas State Teachers Association, the National Association of Latino Elected Officials, the Mexican American Legal Defense and Education Fund, the Texas Catholic Conference, the Hispanic Women’s Network of Texas, the League of United Latin American Citizens of Texas, and People for the American Way (Tatalovich, 1995 167).

During the hearing Zaeske testified that official English enjoyed wide support in Texas and that Texans deserved the chance to vote on Official English (Tatalovich, 1995). An undecided member of the committee testified that he had not received a single letter concerning the issue. When asked about bilingual education, Zaeske responded that bilingual education is often “monolingual education” in Spanish and that this was doing a disservice to the Mexican-American school children and “diminished the status of English” (Zaeske quoted and paraphrased in Tatalovich, 1995 168). The committee adjourned with both measures still open. No Official English legislation was pursued in the 72nd legislature (Tatalovich, 1995 167-168).

Analysis of the Failure of Official English in Texas

The failure of proponents of Official English initiatives to convince the legislature to take on an Official English constitutional amendment is indicative of the politics of retrenchment and the lack of the plebiscitary referendum option in Texas. The passage of Official English would inflict costs on the non-English speaking population. In Texas, Mexicans are the largest non-English speaking population and are well entrenched in Texas politics (even more so than in California due to the larger presence of Mexican-American political officials).⁴⁷ Policy that inflicts costs on this group is sure to guarantee electoral retribution. Politicians generally avoid policies that elicit electoral retribution from a well-organized constituency (Pierson, 1994). Thus, despite polls that showed overwhelming support for official English among Texans, Republican lawmakers were divided concerning support for Official English. The divisions were enough to guarantee that such bills would not even come to the floor of the state legislature for a vote. And since Texas does not have a referendum option for policymaking, the amendment proposals dead on arrival.

This episode depicts the difference with California. California had the referendum option and passed Official English via Proposition 63. The passage of Proposition 63 in 1986 legitimated policy rollback in the issue area of bilingualism in California. A year later, Republican Governor Deukmejian vetoed legislation that would have reauthorized the Chacon-Moscone Act. The act would sunset in 1987, setting the stage for the passage of Proposition 227 eleven years later after the legislature could not pass a bilingual education bill that a Republican governor would sign into law. In Texas, however, the

⁴⁷ Texas led the US in the number of Latino officeholders, by the beginning of the 21st century, according to Marquez (2014 172).

political of retrenchment politics would dictate the politics of bilingualism in the more closed Texas policymaking setting.

English Only Movement in the Houston Independent School District

In the 1990s, bilingual education came under attack nationwide by *English Only* initiatives aiming to replace bilingual education with *English Only* instructional policy arrangements. One such movement occurred in the Houston Independent School District (HISD) (San Miguel, 2011 48). Relations between the Latino community and HISD had been strained since the late 1960s. Latinos had expressed their concerns about inferior education opportunities for Mexican-American students, but HISD ignored their complaints. In the 1970s, district officials classified Mexican students as white to have them attend segregated schools with blacks, thus skirting desegregation orders.⁴⁸ Also, in the 1970s, HISD established its magnet schools in all-white areas despite opposition from all Latino members of the HISD advisory committee. In the 1980s, the school board ignored the concerns expressed by the Latino community concerning the changing demographics brought about by white flight and increasing immigration. Changing demographics led to increased segregation of Latinos and growing educational inequalities for Latino students residing in the East End. In the latter half of the decade, the board promised to use bond funds to build a new school in the East End, but the reneged on this promise (San Miguel, 2011 48). The school could have relieved overcrowding created by the increase of Latinos to the East End brought on by immigration and white flight (San

⁴⁸ The logic here is that if Mexican were classified as Latino, Texas officials could be charged with segregating Latinos and blacks [from whites]—a violation of federal segregation orders. If they are classified as white, however, this would be legally be an ‘integrated’ school.

Miguel, 2011 48).

In the 1990s, mistrust was deepened by the HISD's selection of Rod Paige, an African American, as the district's new superintendent (San Miguel, 2011 48). The search for a superintendent was conducted without a national search. Latino community leaders felt that if a national search had been conducted, a Latino candidate would have emerged from the search. Later in the decade, the school board appointed Latino/a members to the board without consulting Latino community leaders (San Miguel, 2011 48).

These incidents created the context for the board's 1999 attempt to pass Multilingual Education Policy without significant input from the Latino community (San Miguel, 2011 48). The bill would have enhanced *English Only* policy arrangements and reduced those of bilingual education. In January of 1999, HISD formed the Subcommittee on Bilingual Education to review the district's current practices in bilingual education and their effects on student performance (San Miguel, 2011 48). The Subcommittee concluded its study in May of 1999. It found that bilingual education had improved the educational outcomes of Latino students but more needed to be done in order to make students proficient in English, allowing them to reach their full academic potential. The subcommittee recommended ending the bilingual education program and replacing it with a pedagogical approach focused on Spanish speaking students learning English as quickly as possible. However, the Subcommittee did not publicly refer to the new pedagogical approach as *English Only*. They referred to it as reformed bilingual education. Gabriel Vasquez, a moderate Democrat, and Jeff Shadwick, a conservative Republican, wrote an editorial in which they laid out their new "blueprint for bilingual education" (San Miguel, 2011 48). They argued that the elimination of social promotion, the TAAS exemptions and

the public support for *English Only* called for reforms to bilingual education in which English acquisition became more of a focus. This would better prepare them to be productive citizens while also improving educational outcomes further (San Miguel, 2011 48).

Peter Roos from Multicultural Education Training and Advocacy, an organization involved with anti-bilingual legislation in California, issued a review of the proposal that argued that the proposal was identical in language to California's anti-bilingual Proposition 227. Roos argued that the proposal was an *English Only* proposal in disguise. Additionally, Cynthia Cano, a staff attorney for Mexican American Defense Legal Education Fund, concurred with this assessment of HISD bilingual education reform proposal. Their analysis of the proposal became the talking points for the opposition. Eleven legislators from the Houston area including Senator Mario Gallegos, Reps. Jessica Ferrar, Rick Noriega, and Joe Moreno publicly denounced the bill as an *English Only* legislation veiled as bilingual education reform. They sent a joint letter to the HISD superintendent Paige expressing their opposition. Gallegos also sent a letter to the board requesting that they remove the proposal from the agenda, arguing that the proposal was not a reform of bilingual education, but an attempt to replace it with an *English Only* policy (San Miguel, 2011). LULAC and the National Association of Latino Elected and Appointed Officials (NALEO) also expressed their opposition to the bill and requested its removal from the board's agenda (San Miguel, 2011 49).

In the face of the opposition, Vasquez and Shadwick introduced the proposal at the board's next meeting (San Miguel, 2011 49). According to San Miguel (2011 50), their proposal limited bilingual education to only language learning, stressed *English Only*

pedagogy for LEP students and bilingual education for English speaking students, and ignored the role that a child's native language played in the learning of a second language.

In an unusual move, Vasquez and Shadwick requested that voting on the proposal occur after the first reading. Normally proposals are introduced without any comments after the first reading. Proposals are then presented twice more to the board members before they vote on the proposal. This affords the opportunity for community groups to comment on the proposal. According to San Miguel (2011), the move by Vasquez and Shadwick to have members vote on the proposal after the first reading was to avoid community input on the bill (49). Community protests of this move, however, resulted in Vasquez and Shadwick having to postpone the vote until the following month (San Miguel, 2011 49).

According to San Miguel (2011 49), the manner in which the Subcommittee crafted and placed the reform proposal on the HISD school board agenda offended and united the Latino community as it had not in many years. Their reaction to the manner in which the proposal was submitted to the committee would shape the opposition reaction to the proposal. First the bill was developed without any input from Latino community leaders and without informing the two Latina members on the board. The Subcommittee also failed to seek input from any Latino elected officials. The latter was especially offensive as it was the responsibility of the state legislature to be abreast of reforms to bilingual education. The legislature was kept in the dark until after the legislative session ended (San Miguel, 2011 49). San Miguel (2011) argues that had the Latino members been abreast of the development of the reform proposal, they would surely have not given their support for HISD's legislative agenda. He continues that the move was made by proponents of the bill to circumvent the advise and consent power of the legislature over educational policy

changes (San Miguel, 2011 49).

Second, the rushed nature of voting on the bill did not provide sufficient time for community input on the bill. In addition to requesting a vote after the first reading, the school board also decided not to have any district-wide meetings concerning the bill as was customary (San Miguel, 2011 49). The decision to have district meetings was left up to the individual board members and community groups. This also precluded community input on the bill. San Miguel (2011 49) also questions the motivation of board proponents for taking this route as it appeared designed to mitigate community involvement in the passage of the bill.

Lastly, the Latino community found the *English Only* themes of the proposal offensive, harkening back to the 1950s when Mexican-American students were segregated, provided inferior education resources, subject to punitive punishment for speaking Spanish, culturally degraded, and were force-fed an assimilationist curriculum (San Miguel, 2011 50).

During the next several weeks, the school board expressed its desire to work with community leaders. However, Latino community leaders refused unless the school board agreed to remove bilingual education from the agenda of the next meeting in July. Despite opposition from the Latino community, the school board negotiated in secret with the Latino Education Policy Council (LEPC) which consisted of Latino educators and academics. Initially, the Latino community opposed LEPC involvement. Eventually, however, LEPC gained the support of the Latino community and in their negotiation with the school board happened to secure moderations in the school board proposal. It secured the removal of the most stark *English Only* tones and the addition of language that

enriching bilingual education was encouraged for all students (San Miguel, 2011 50).

However, the Latino community still disagreed with some of the remaining provisions in the proposal (San Miguel, 2011 50). First, the criteria for reclassifying a student from bilingual education to mainstream instruction was solely based on English reading comprehension. This violated an agreement between OCR and HISD concerning best practices for bilingual education programs. The agreement called for a multi-criteria assessment of LEP students to reclassify them to mainstream, all-English instruction. Assessments were to include reading, oral and writing assessment examinations in English and the native language, and parental consultation among other assessment tools. Additionally, the goal of the proposal to accelerate the acquisition of English flew in the face of research at the time which found that accelerating English was not feasible nor desirable as students learned at an individual pace (San Miguel, 2011 50).

While negotiations continued, LEPC hosted a community-wide forum to discuss the proposed policy (San Miguel, 2011 50). It was the only public forum offered before the proposal was voted on. Speakers from both sides of the issue presented their case for and against the bill. Proponents (HISD and sympathizers of *English Only* pedagogy) reiterated the need for a program that would accelerate the learning of English for non-English speaking students. Speakers for LEPC acknowledged the progress that had been made in negotiations but argued that there were still troublesome aspects still included in the policy proposal (San Miguel, 2011 50).

The next school board meeting was on July 22nd when a vote was scheduled to be held on the proposal. The proposal passed by a vote of 7-2 — the two Latina representatives provided the two votes opposing the proposal. Up until the vote, an LEPC representative

had continued to negotiate with Vasquez behind closed doors. Vasquez pressed for more *English Only* provisions while the LEPC representative pressed for less (San Miguel, 2011 50).

However, when the final bill approved by the board was finally revealed to the public, it was far less *English Only* focused than the original Vasquez-Shadwick proposal (San Miguel, 2011 50). According to San Miguel (2011 50), some of the *more English Only* themes were mitigated and the final bill expanded the goals and objectives of bilingual education, specifically recognizing the importance of bilingual education to all students and the important role it plays in second language acquisition. Pursuit of English fluency was also part of the core goals of the approved proposal. It also recognized the importance of compliance with state and federal laws, the need to promote gifted and talented programs for LEP students and increasing English language acquisition within bilingual education programs as an aspect of parental choice. The bill also stressed the importance of standardized assessments for all multilingual programs, the need to encourage bilingual proficiency for all HISD students, the importance of parental involvement for LEP students, and the need to address the shortage of bilingual teachers (San Miguel, 2011 50-51).

According to San Miguel (2011 51), the bill, emerging from political compromise, still contained aspects (contained in the bill's fourth and fifth provisions) that rankled the Latino community. Those included its focus on using English reading proficiency as the sole criteria for reclassification of LEP students to mainstream instruction and the continued focus on English acquisition (especially accelerated English acquisition) which ignored research that stressed the importance of a student's native language in second

language learning and the longer period required for proficiency in academic English (as opposed to the less difficult acquisition of spoken English). The single assessment criteria led MALDEF to file a grievance (on behalf of Gallegos and other proponents of bilingual education in Houston) in August of 1999 with the Office of Civil Rights concerning what the plaintiffs felt was a violation of the HISD-OCR agreement on reclassification of LEP students. HISD responded by saying it would comply with federal mandates concerning reclassification and use a multi-criteria-based assessment for reclassification. This essentially voided the single assessment criteria of the approved bill (San Miguel, 1999 51).

Analysis of the Actions Involved in the Salvaging of Bilingual Education in HISD

The events surrounding the passage of the bilingual education reform bill in HISD show the value of the legislative process in shaping the eventual legislation that the system produced. According to Roos and Cano's analyses of the original proposal by Vasquez and Shadwick, the proposal was identical to Proposition 227 in terms of its policy goals. However, because the proposal was subjected to the legislative process where proposals are publicly debated and negotiation is institutionalized into the process, the end product was a compromise bill in which pro-bilingual forces won major concessions *from English Only* forces. By the 1980s and 1990s, the *English Only* movement had gained the political upper hand with the public. However, because of the dynamics of concentrated costs and diffuse benefits (Pierson, 1994; Sheingate, 2000), affected minorities mobilized and subsequently could affect the legislative process where public officials operated via the dynamics of blame avoidance. If the proposal were simply put to the voters, the outcome

would certainly have been different (also see Santoro, 1999). The result was still a move in a more restrictive direction as the single assessment criteria for reclassifying LEP students and the focus on English acquisition were core aspects of the final bill. But the MALDEF threat to file suit caused the bill's sponsors to relent on the single assessment criteria, further depicting the institutional influence that mobilized minority advocacy can have in the more close legislative policymaking institution.

Further Policy Developments in Bilingual Education

Over the next decade the SBOE and the legislature supplemented bilingual education policy with initiatives in the areas of curriculum development and student assessment (Policy Research Report, 1998 12). Following a pilot study, the SBOE began developing a Spanish version of the state-wide assessment test, Texas Education Assessment of Minimum Skills (TEAMS), to assess the progress of LEP students. Concurrently, the SBOE adopted rules that permitted school districts, under certain conditions, to exempt some LEP students from assessment via TEAMS (Policy Research Report, 1998 12).

In 1989, SB 246 sanctioned the eligibility of children aged 3 and above who lacked proficiency in English or came from a low income family for enrollment in a pre-kindergarten program to prepare them for mainstream instruction (SB 246 text). The bill was authored by Senator Barrientos and co-authored by Senators Edwards and Truan (SB 246 text). SB 246 authorized TEA to establish and evaluate pilot prekindergarten programs for three-year olds with an official program going into effect in the 1993-94 academic year upon funding appropriation by the legislature (Policy Research Report, 1998 12; SB 246

text). By 1990, SBOE adopted new curriculum essential elements for bilingual education, and ESL in 1991, and continued to develop alternative teacher certification programs to address the shortage of trained bilingual teachers (Policy Research Report, 1998 12). Also in 1991, the legislature passed a HB 2144 establishing summer bilingual education (Perez, 2009 66). The course had to be offered for one-half day for 8 weeks during the summer break. Enrollment was optional with parental consent (HB 2144 text). In 1994, the SBOE approved a plan to develop Spanish-language versions of the Texas Assessment of Academic Skills (TAAS), which had replaced TEAMS in the 1990-91 academic year (Policy Research Report, 1998 13). Spanish versions of the TAAS reading, writing and mathematics were developed for grades 3 through 6, and results were reported on the Academic Excellence Indicators System (AEIS) reports beginning with the 1996-97 academic year (Policy Research Report, 1998 13). The implementation of TAAS shifted the focus of assessment from minimum skills to academic skills to comply with changes in state law in 1990 that required a criterion-referenced testing program (Smith, 2012 33). SB 477 was amended in the 74th Legislature in May of 1995 (TEA et al, 2006 17). TAAS testing involved a more comprehensive assessment of the state-mandated curriculum (Smith, 2012 33).

The state had also initiated development of a standardized reading proficiency test in English (RPTE) which would be given to all LEP students who did not take the English TAAS reading proficiency examination to assess progress towards English reading proficiency (Policy Research Report, 1998 13). As of 1999, with the passage of SB 103, LEP students in grades 3-12 were required to take the RPTE until their reading proficiency in English was sufficient to take the TAAS in English. With 2000-2001 academic year,

LEP students in grades 3-8 were required to take the TAAS in English or Spanish. As the Spanish version of the TAAS is only available for grades 3-6, LEP students in grades 7 and 8 are required to take the TAAS in English (Combs, 2001)

In July 1997, the SBOE adopted new Texas Essential Knowledge and Skills (TEKS) for Spanish Language Arts (Policy Research Report, 1998 12). TEKS are used in Spanish bilingual instruction and ESL, which replaces essential elements of the state-mandated curriculum which had been in effect since 1986 (Policy Research Report, 1998 12). In 1998, Texas adopted ESL Standards as part of the TEKS for Spanish language arts and English language arts (Smith, 2012 31). Few teachers outside of Spanish language arts and English language arts made use of TEKS when planning instruction (Smith, 2012 31). In 1999, legislation was passed, implementing TAKS testing, a new expanded criterion-referenced testing (Smith, 2012 33). Beginning with the 2002-2003 academic year, TAKS replaced TEKS which was developed to fully integrate state-wide testing with TEKS (Smith, 2012 33). The goal of TAKS was to assess student progress towards achieving academic excellence, specifically in the subject areas of reading, writing, mathematics, social studies and science (Smith, 2012 34). The test results were also used for institutional accountability of the state and for assessing AYP measures (Smith, 2012 34). Also, in 1999, SB 103 mandated moving exit level testing from grade 10 to 11 (Smith, 2012 33). Texas law required that students pass exit level tests in language arts, mathematics, science and social studies to be eligible for graduation (Smith, 2012 34). HB 103 legislated that students would be assessed in mathematics from grades 3-10; in reading from grades 3-9; in writing in grades 4 and 7; in English language arts in grade 10; in social studies in grades 8 and 10; and in science in grades 5 and 10 (Smith, 2012 34). Furthermore in 1999, Senate

Bill 4, the Student Successive Initiative, required that satisfactory performance in Grade 3 reading assessment, Grade 5 reading and mathematics assessment, and Grade 8 reading and mathematics assessments were mandatory requirements for promotion to the next grades (Smith, 2012 34). The law went into effect with the 2002-2003 academic year. In 2010, the mandates for Grade 3 were dropped (Smith, 2012 34).

Exceptions were built into the law for LEP students recognizing the difficulty in reaching these standards for LEP students (Smith, 2012 34). Foreign-born immigrant students were exempted from the TAKS test if they had resided in the US for less than three years unless their English progression was sufficient enough to deem them prepared for the testing. Immigrants in grades 7 and 10 that were in the country less than three years were also permitted linguistic accommodations on the required TAKS testing in order to meet the AYP requirements (Smith, 2012 34).

In 2001, Senator Judith Zaffarini introduced HB 2144 (Perez, 2009 67). The bill would have established dual language immersion programs in some schools and requested a review of existing SBOE rules. The bill was defeated, but Perez (2009) claims that it led to the adoption of dual language programs in districts (67). Senator Zaffarini also introduced SB 1510. This bill was passed and it extended the monitoring period of bilingual education and special education programs from 3 to 5 years (Perez, 2009 67).

Additionally, in the 77th session in 2001, State Representative Rick Noriega sponsored HB 1403. The bill passed and made undocumented students eligible to attend state institutions of higher education and pay the in-state tuition rate paid by Texas residents. Many of the students, according to Perez (2009 67) were former students of Texas' bilingual education programs and the bill made higher education in the state

accessible and affordable for this undocumented population.

In the 78th session, Representative Roberto Alonzo sponsored HR 104. This bill authorized the Texas Higher Education Coordinating Board to allocate funds for the promotion and increase of the number of certified bilingual education teachers. Alonzo also sponsored HB 1 which authorized funding for tuition and loan assistance to juniors and seniors pursuing teacher certifications in bilingual education and ESL (Perez, 2009 68).

In 2006, the TEA revised the ESL standards and these became the official new English Language Proficiency Standards (ELPS) in December of 2007. ELPS were meant to detail the instruction required to provide LEP students with pedagogy to assist their acquisition of content area knowledge and academic language. ELPS were to be integrated to all subjects of the curricula, ultimately making all teachers responsible for assisting LEP students and not just bilingual and ESL instructors (Smith, 2012 31-32).

In 2006 MALDEF petitioned Judge Justice to intervene arguing that poor test scores among Latinos in Texas was evidence of educational inequity in Texas schools—that Texas was not enforcing the 1973 law (Blakeslee, 2009 147). In July of 2008, Justice, citing marginally improving tests scores among the state’s Latinos in elementary school, ruled that the elementary bilingual program was adequate but the state needed to do more to reverse the high drop out rate and the poor performance of Latinos in secondary schools (Blakeslee, 2009 147).

Legislation in 2007 and 2009 established the State of Texas Assessment of Academic Readiness Testing System (Smith, 2012 35). In 2007, SB 1-31 mandated assessment testing for twelve end-of-course assessments. Commissioner of Education,

Robert Scott, stated that these new tests would be more rigorous, measuring student's performance as well as academic growth. In 2009, SB 3 mandated these assessment tests for grades 3 through 8. Commissioner Scott reported that these STAAR tests would replace TAKS. The new tests began with the 2011-2012 academic year. The class of 2015 will be the first class to have to successfully pass both the end-of-course tests and as well as their classes to earn a high school diploma. It has not yet been determined how STAAR will effect LEP students (Smith, 2012 35).

Analysis of Policy Developments in the 1990s and 2000s

The bulk of legislation concerning student testing and the adoption of modified testing requirements to account for the special needs of LEP students speaks to the role of the student accountability movement, the No Child Left Behind Act and the 1973 bilingual education act. The former two stressed testing students as a way of improving and accounting for quality education as education accountability became the salient issue dimension from the 1990s forward. Additionally, after the No Child Left Behind Act was passed, the issue of how LEP students could be both accommodated and encouraged to meet the AYP benchmarks that the Act called for became a primary issue in the bilingual education debate. Most of the laws passed in the 1990s attempted to accommodate LEP students in meeting these goals. Subsequently, these depict how the entrenched proponents of bilingual education have continued to influence legislative outcomes in a conservative state (and thus one with a strong *English Only* advocacy movement), adopting their policy goals for continued political relevance in the new issue dimension of education accountability.

The entrenchment of Mexican advocacy is evident in the legislation passed in the 2000s. Despite the passage of No Child Left Behind which eliminated the Bilingual Education Act, Texas' Latino representatives were able to sponsor and pass legislation that increased monitoring of bilingual education programs, extend eligibility to higher education to undocumented students, and increase state funding for supporting the training of bilingual education instructors. In the post-Proposition 227 climate, this speaks to efficacy of Texas' Mexican-American advocacy coalition.

Conclusion

The politics of bilingual education is just one part of the debate over immigration and what kind of state Texas will be in the future (Blakeslee, 2009 149). Conservatives opposed to bilingual education in Texas are in part fearful that bilingual education is just part of a progression towards the state having two official languages; proponents are fearful that a lack of proper attention to the educational needs of English language learners is the main cause of the performance gap between English-language learners and their Anglo peers (Blakeslee, 2009).

These elite divisions are indicative of Texas in the early 21st century and manifested in the content of policy outcomes from the 1970s forward. However, because Texas lacks a referendum policy option, the presence of entrenched Latino advocacy and the presence of Latino representatives in the state legislature have made the Latino political network a formidable force in Texan politics. Despite the political resonance of *English Only* pedagogies since the 1980s, bilingual education policy arrangements in Texas still persist even if they have become moderately more restrictive in their pedagogical goals

since the 1980s. The expansionary years for bilingual education may have ended with the dissolution of elite agreement in the late 1970s, however, the entrenchment of Latino advocacy — in the absence of plebiscitary policymaking — has mitigated the politics of policy rollback in bilingual education in Texas that have led to distinctly restrictionist trajectories at the federal level, in court rulings and in other state policy trajectories such as in California.

CHAPTER 7

THE POLITICS OF RELIGIOUS INSTRUCTION

The politics of religious education viewed historically reveals two characteristics concerning the issue: elite consensus eventually settling in support of religious instruction as a positive form of civil education and the corporatist nature of incorporation politics (with the exception of the Third Reich years).

Elite consensus concerning the church-state relationship in general and religious instruction in particular has long historic roots in German political history. The German state was born during a period of church dominance in politics where society was divided along ideological and religious lines (Zimmer, 2000 84). Early in the 20th century, reconciling the church-state relationship was an important aspect of the state building process. This resulted in the structure of Article 7 III which institutionalizes a corporatist relationship between the state and recognized religious communities and the process through which other religions could be incorporated.

The following chapter discusses the politics of religious instruction in Germany. The chapter aims to lay out the history of elite agreement concerning the integrative roles of religion and education as well as the tradition of corporatism that structures these institutions in the polity. The chapter begins with a discussion concerning the historic relationship between religion, the state and education. Here, the special historic roles of religion and education in the German state is established as well as how their purposes are redirected in post-Third Reich Germany as a means of reclaiming Germany's moral

compass after the atrocities of Nazism. The second half of the chapter deals with the guest worker program and the immigration of the Turkish population. The discussion in this section deals with how incorporating Islam into the German polity presents challenges to the normative conception of German culture. The guest worker program ushers the German democracy into modernity as elites are forced to confront the state's ethnocultural paradigms as it attempts to remake itself as a tolerant, democratic society. The chapter ends with the role that religious instruction plays in efforts to incorporate Turkish immigrants. Religious instruction is viewed as a German way of reconciling the challenges that integration presents.

The Historic Relationship between Religion, Education and the State in German History

The relationship between the church and state dates back at least until the Protestant Reformation of 1517 after which the provision of education to the common man became a priority and responsibility of the state and increasingly became obligatory via church statute (Dromgold and Schneider, 2010 9). This fostered cooperation between the church and state in the provision of education and religion to the masses. At this time, the focus was on educating the elite students in reading, writing and arithmetic. However, this was then expanded to provide compulsory education for the commoner (Dromgold and Schneider, 2010 10). The state assumed marginal responsibilities in the provision of education while the churches offered more worldly subjects to assist in the expansion of education (Dromgold and Schneider, 2010 9). Later during the reign of Frederick the Great, the education statute, General School Regulations for the Entire Monarch (*Generalschulreglement fuer die gesamte Monarchie*) of Prussia transitioned education

from a church to a state responsibility (Dromgold and Schneider, 2010 9).

Since the dawn of compulsory schooling in the 18th century, education had been seen as the primary institution for the socialization of the youth (Avenarius, 2006 143). Subsequently, many interests had competed to control this institution. By the 19th century, the churches (Protestant and Catholic) had retained control of the school system despite losing complete authority to the state over its provision (Avenarius, 2006 144). The modern German school system evolved out of the struggle between Protestants and Catholics for control of the school system (Ewing, 2000 40). In Germany, Catholicism was associated with traditionalism and Protestantism with rationality, modernism and the “true” German character. Under Otto von Bismarck’s reign, efforts were made to contain the Catholic Church. The Catholic Church responded by spawning a network of Catholic organizations with an organizational structure designed to maintain its strength. Protestants subsequently responded with their own organizational structure, the Protestant League. National intellectuals believed mixed confessional, compulsory schooling was the best way to resolve tensions between Catholics and Protestants while also reshaping an “ignorant and apathetic population” into a “respectable and responsible citizenry” (Ewing, 2000 40). Compulsory schooling would eventually emerge but denominational segregation persisted as well as the organizational structures which would become the requisite structural features for state recognition of religious communities.

Since the beginning of the 19th century, the *Volksschule* (the most attended type of school especially in rural areas) had been segregated according to denomination (*Bekennnisschule*) (Avenarius, 2006 144). This remained the case in West Germany — for the exception of the Third Reich period — until the 1970s. West German state

constitutions eventually made the *Bekennnisschule* system binding in some states. Education in West Germany was thus denominational education, where education and socialization were delivered according to a particular confessional orientation of the world. At the same, depending on the region, interdenominational common schools (*Gemeinschaftsschulen*; also referred to as *Simultanschulen*) existed (Avenarius, 2006 144).

In East Germany, the GDR abandoned this system at its inception as the GDR depoliticized the churches and strongly encouraged allegiance to the state and not the churches (Avenarius, 2006 144). Subsequently, the population in the Eastern parts of Germany is still decidedly less church affiliated than in the West.

Post-war migration began to alter the regional demographics, making monolithic regions more diverse (Avenarius, 2006 144). This as well as the politics of the 1960s began to make the *Bekennnisschule* system seem to be a misfit for modern West Germany. By the 1970s, states began amending their constitutions and replacing the *Bekennnisschule* system with Christian common schools (*christliche Gemeinschaftsschule*). Although these schools were not committed to a particular religious creed, they were rooted in Christian cultural traditions. The Federal Constitutional Court (*Bundesverfassungsgericht*) deemed these schools constitutional as they did not oppress non-believers despite their religious orientation (Avenarius, 2006 144).

Religion and the State in the Post-Third Reich Era

The German democracy was built on the grave of one of history's most violent political systems (Knauth, 2007 284). In the post-Third Reich era, overwhelming elite

consensus supported the idea that, most importantly, this history shall not be repeated and that Germany should strive to live harmoniously with its neighbors and other ethnic groups. Subsequently, the Constitutional Committee on the Basic Law and other elites searched for ways to reduce state power and shape the dominant morals that constituted post-War German society (Knauth, 2007 284). Many elites believed that religion could provide a counter to the temptations of political and social persecution by providing an alternative narrative of the good life (Knauth, 2007 284). Many also believed that a strong religious community could counterbalance a potentially strong, oppressive state. This elite support stemmed from the large role played by the Christian churches in the polity throughout Germany's history— a role so substantial, it was believed to be too prominent and subsequently weakened by the Nazi state (Knauth, 2007 284).

Religion and education were two institutions seen as capable of contributing to this goal. Education was seen as an institution that could inculcate particular values in the youth; Religion was viewed as an institution that could instill a Christian ethical/moral foundation — preventive measures aimed at precluding the societal moral lapses that were viewed as a foundational aspect of the Third Reich's destructive regime. Religious education, subsequently, was seen to play an important role—socializing the youth through confessional education— in achieving these goals (Knauth, 2007 284).

Separation of Church and State in Germany - An Incomplete Separation

Germany has a unique separation between the church and state — an *incomplete* separation (Hofhansel, 2010 194). Religious communities can be granted the status of public corporation under the public law (*Koerperschaften des oeffentlichen Rechts*). This

permits the national government to earmark taxes on behalf of the recognized communities and grants religious communities official participation in politics (mostly in the provision of social programs), and the right to offer (with state supervision) religious instruction in public schools (Dromgold and Schneider, 2010 18; Hofhansel, 2010 194).

The status of religious corporation under the public law developed during the debates over the Weimar Constitution (Hofhansel, 2010 194). The Weimar Constitution marked the end of the period of church dominance in the polity and instituted a separation between church and state. Still, the separation instituted was not a complete separation. The Social Democrats (SPD) advocated for a more complete separation between church and state. The conservative parties — the German's People's Party (DVP), the German National Party (DNVP), and the Catholic Center Party, however, advocated for maintaining some form of official status for the churches. The conservative parties won the political battle but conceded to the SPD, to provide a process where outside religious communities could apply and attain this status (Hofhansel, 2010 194).

In 1919, the aim of Article 137 was to check the power of the churches. Yet, in 1948, the Constitutional Committee on the Basic Law sought to empower the church to check the power of the state (Dromgold and Schneider, 2010 12). As the power of the National Socialist Party increased in the Third Reich after 1933, the Party weakened the political influence of the church and, as a result, religious instruction was not as present in the regular curriculum in public schools during that period. Hence, the post-war officials in charge of the new constitution contemplated that one method of increasing church influence was through reviving the church influence in the formal education setting. Religious instruction (provided by the religious community), thus, was reestablished as a

mandatory subject in schools. The neutrality clause opened the door for religious communities outside of Christian religious communities to make claims on the state for the provision of religious instruction (Dromgold and Schneider, 2010 12). And this would become relevant in the decades to come as Germany's post-World War II economic miracle fostered an increase in immigration from Muslim populations.

The inclusion of religious instruction in school curricula evolved with the state's assumption of responsibility over compulsory education (Dromgold and Schneider, 2010 12). Article 137 of the 1919 Weimar Constitution formally established the church-state relationship upon which Article 7 of the Basic Law was based. Article 137 established a church-state partnership for recognized religious/ philosophical communities but called for neutrality from the state towards all religious communities and philosophical world views (Dromgold and Schneider, 2010 10; Robbers, 2001 645). The Weimar Constitution defines this privilege of religious corporations under public law and the process for attaining this status in the following:

Religious societies shall remain corporations under public law insofar as they have been in the past. Other religious societies shall be granted like rights upon application, if their constitution and the number of their members offer assurance of their permanence (Hofhansel, 2010 191).

The Basic Law adopted this language verbatim in carrying over this privilege for recognized religious communities into the Federal Republic of Germany in 1949. Although the Basic Law sanctions state neutrality in religious affairs, it does allow for this official recognition of religious communities. While there is no official state church, the Basic Law

reserves a place for religion so it can inject the state with a moral guide in the provision of its duties (Hofhansel, 2010 191). This differs from other secular western democracies such as France where the church-state separation is more sharp (Dromgold and Schneider, 2010 9).

Institutionalization of Religion in Education

Article 7 III sanctions that religious instruction is a mandatory part of the curriculum of all public schools. Similar to the public corporation status, responsible members of the Constitutional Committee on the Basic Law drafted the Article using much of the same language from Article 137 of the Weimar Constitution (Dromgold and Schneider, 2010 12). Article 7 III guarantees the provision of religious instruction in all public schools (except in non-denominational/secular schools, which are few) (Hofhansel, 2010 194). The provision reads as follows:

Religion classes shall form part of the ordinary curriculum in public schools except in secular (bekenntnisfreie) schools. Without prejudice to the state's right to supervision, religious instruction shall be given in accordance with the tenets of the religious communities

(Hofhansel, 2010, 194).

Although the course is a mandatory part of the curriculum, parents and eventually students (once they reach the age of 14) have the right to opt out (Avenarius, 2006 145).⁴⁹

⁴⁹ Upon turning 14 years old, children have the so-called *uneingeschränkte Religionsmündigkeit*. This means that they can decide for themselves whether they want to be part of the religious community they are members of or not and whether they want to join another religious community. This also entails that it is the child's

Generally, the individual *Bundeslaender* are solely responsible for educational matters per Article 7 of the Basic Law (Jozsa, 2007 102). As the article declares that religious education is an “ordinary school subject” and mandatory (in that it must be offered), religious education also falls under the jurisdiction of the individual *Bundeslaender* (Jozsa, 2007 102).

Religious groups seeking such status must submit an application to the relevant *Bundesland*. Religious communities must meet the following criteria for official recognition:

1. The religious community has existed in Germany for at least 30 years
2. Its members comprise at least 1/1000 of the state’s total population
3. The religious group respects the German law

(Fetzer and Soper, 2005 107-108).

Hence, normally, religious instruction is provided by religious communities nationally recognized as public law corporations or those communities recognized by the individual *Bundeslaender*. However, Germany has yet to recognize an Islamic religious community according to Article 7 III⁵⁰ (Jozsa, 2007 102) — something that will be discussed in detail below.

The religious community is guaranteed the right of cooperation in determining the

decision whether s/he wants to participate in religious education in school. Only in Bavaria and Saarland, do children need their parents’ consent if they want to opt out of religious education in school. Before the age of 18, the only way for Bavarian and Saarlandian children to gainsay their parents’ is by exiting the church altogether. All this is regulated by the *Gesetz über die religiöse Kindererziehung* of 1921.

⁵⁰ Berlin’s recognition of the Islamic Federation of Berlin falls outside of an Article 7 recognition of an Islamic religious community. Berlin is not bound by Article 7 and so its recognition of the IFB is voluntary (Jozsa, 2007). Berlin’s religious instruction situation will be discussed further later in this chapter and in the Berlin case study part of the German Cases chapter.

curriculum and the qualifications of the teachers (Avenarius, 2006 145). The individual *Bundesland* still retains its right of supervision over curriculum, but since Article 7 III guarantees that religious instruction shall conform with the tenets of the relevant, representative religious community, the religious community and not the state determines the curricula content (Avenarius, 2006 146). Generally, the religious community is responsible for the content of the course, the choice of textbooks and the training and certification of teachers (Jozsa, 2007 102). The state handles the costs associated — providing the facilities and funding the provision of textbooks and personnel (Jozsa, 2007 102; Avenarius, 2006 145).

The open definitions of religious instruction and religious community in Article 7 III have allowed for states to implement the law differently (Dromgold and Schneider, 2010 12), which will be illustrated by the case studies presented in the chapters to follow. Religious instruction in those *Bundesländer* governed by Article 7 III has either taken on the form of religious studies (*Religionskunde*) or confessional religious instruction (*Religionsunterricht*) (Dromgold and Schneider, 2010 13). These are differentiated by the pedagogical goals of informing (*informieren*) versus persuading (*ueberzeugen*) (Dromgold and Schneider, 2010 13-14). The confessional religious instruction model is further differentiated between Christian and non-Christian religious instruction (Dromgold and Schneider, 2010 14). In the confessional model, religious instruction is not an objective course about religion; this is a course where religious instructors educate believing youths in a particular denominational existential paradigm — a model favored by the religious communities (including Muslim religious organizations) and social conservatives (Avenarius, 2006 145). In the religious studies model, the course is about the religion and

focuses on applying the tenets of the religion to life as a European citizen in a pluralistic society (Dromgold and Schneider, 2010 14).

As students can opt out of religious instruction most *Bundesländer* have set up ethics class as a mandatory alternative to religious instruction (Avenarius, 2006 147). This, however, has been controversial as well. Critics argue that making an ethics course mandatory is discriminatory against the non-believing. Additionally, they argue that making ethics mandatory for those opting out of religious instruction precludes the voluntary nature of these courses. The Federal Constitutional Court (*Bundesverfassungsgericht*) ruled that under the state's responsibility for education, it could make ethics class mandatory as long as they maintained state neutrality and adhered to the same basic ethical standards — provision of the encouragement of basic human rights and tolerance — as religious instruction. Additionally, the court ruled that these ethics courses could reflect Christian cultural values as long as they did not advocate or even proselytize Christianity (Avenarius, 2006 147- 149).

As discussed above, religious instruction and its incorporation within public schools is reflective of the German tradition that sees education as a means of integrating and encouraging understanding in a pluralistic society (Dromgold and Schneider, 2010 20). Although the religious community provides religious instruction, it is to be supervised (or in collaboration) with the respective *Bundesland*, thus, giving the *Bundesland* a role in shaping how religion is taught to its students. Additionally, it is argued, religious instruction provides a means for Muslim students to assist in formulating an identity as European inhabitants — Muslims, living in Europe often feel disconnected from the homeland of their ancestors and from European society. Specifically, many Muslims in

Germany identify with Euro-Islam — an Islamic identity distinct from traditional Islam which acknowledges partial European heritage or residential location. Islamic religious instruction, thus, is often sold as a state initiative to create a European Islam — as the curriculum is (ideally) created by a Muslim religious community but ultimately sanctioned by German state officials. Additionally, this public recognition and provision of a public space is at the heart of Muslim support for Islamic religious education (Dromgold and Schneider, 2010 20, 22). Hence, there is a potential win-win situation with Islamic religious instruction for Muslims and the German state: recognition/ incorporation of Islam and immigrant integration.

Post-War Economic Miracle and the Guest Worker Program

In the 1950s, the German economy was booming. A labor shortage followed and Germany responded by implementing a bilateral guest worker (*Gastarbeiter*) program with several neighboring states including Turkey in 1961 to fill employment needs in particular industries. The immigration cycles were originally circular and temporary as migrant workers were given finite contracts and visas to immigrate to Germany for periods of 1-3 years after which they would return to their homeland.

Hence, since the 1960s, Turkish immigrants have been migrating to Germany (Dromgold and Schneider, 2010 2). Through the 1960s, labor demand remained high and guest workers extended their stays through visa extension and subsequently deepened their ties to their adopted home with some men marrying German women and forming families.

Secularization and the Evolving Role of Religion

In the late 1960s, political protest swept Germany as it did the European continent as a whole. These protests focused on the institutions of society, materialism, inequality or lack of justice. Protesters called for democratization of political institutions and appeals for social brotherhood and harmony, domestically and abroad. Education was a focus for protestors with claims that the system was classist and outdated. Reforms followed that encouraged more egalitarian access to higher levels of education (Knauth, 2007 285-287).

During that period, Germans were also moving away from church affiliation, which was discussed by academics. Their emerging theory came to be known as the secularization thesis (Knauth, 2007 288). According to this secularization thesis, the church's focus on traditional doctrines was alien to the processes of modernization, making apparent the anachronistic nature of religious doctrine in modern life (Knauth, 2007 288). The 1960s protests also ignited debate in Western Germany as to whether doctrinal religious education was still appropriate in a more secular, diversifying Germany (Knauth, 2007 286). Religious communities (specifically the Protestant Church) responded by the end of the 1960s, reorienting religion towards the development of moral character for citizens of the new pluralist German democracy (Knauth, 2007 286), something that was also then reflected in the manner in which religious education was taught in German schools (as mentioned above). Religion would focus less on doctrinaire instruction and more on interfaith dialogue⁵¹ and the application of religious doctrine to everyday life. Religious education in school was to play a role in this proper nurturing of moral character and in the interfaith dialogue. The latter was officially proclaimed as a goal by the Protestant Church.

⁵¹ Religious faith was thought to be a factor in global contestations during the 1960s (Knauth, 2007).

With the secularization of society and political protest, religious education officials hence broadened the curriculum away from purely traditional doctrine. As religion was seen as a core element in global conflicts and as the concept of religious instruction and its educational goals were broadening, different variations of religious instruction emerged — the aforementioned religious studies and confessional religious instruction. This widening interpretation of its form and the belief that religious instruction could facilitate inter-faith relations would play a role in the 1980s in shaping how state officials used religious education as a tool of integration for the growing immigrant populations (Knauth, 2007 286, 288; Dromgold and Schneider, 2010).

Proposals for reform of religious education ranged from interdenominational religious instruction to religious studies — a course about religion (Knauth, 2007 291). This included debate concerning the role of the state and religious communities in the process. The latter sparked a lively debate within the legal community — did religious instruction need to be confessional instruction delivered and created by the relevant religious community. In 1974, the *Bundesverfassungsgericht* ruled that religious instruction should be confessional instruction delivered by the relevant religious community. The legal interpretation evolved to allow for inter-religious confessional instruction that focused on inter-religious relations if sanctioned by the relevant religious communities (Knauth, 2007 291-292). This would manifest how the different *Bundeslaender* implemented religious instruction and how these *Bundeslaender* would incorporate teachings in Islam.

Muslim Mobilization for Islamic Religious Instruction

Since the 1970s, a decade into the arrival of Turkish guest workers in Germany, Muslim groups have campaigned for Islamic Religious Instruction in German public schools. In 1973, the OPEC-induced economic slowdown ended the labor shortages that had originally encouraged German officials to recruit guest workers from other nations (Joppke, 1999). Germany, subsequently, terminated the guest worker program in 1973. However, as Germany was not a formal immigration state, the German government lacked centralized plenary power in immigration law. Most critically, there was not a centralized, federal bureaucratic agency to manage the entry and exit of immigrants. Subsequently, immigration was administered at the state level. Adhering to the emerging influence of human rights norms and because of the collective guilt over its past atrocities, family reunification guided the administrative decisions concerning requests for entry by family members outside German borders to reunite with their kin who resided within Germany as guest workers. This led to rapid increases in the Turkish population in the 1970s and 1980s. These immigrant families would eventually produce offspring at rates higher than the native German population. Thus, even though the guest worker program was discontinued in 1973, the Muslim population continued to increase (Joppke, 1999).

As the German society began to diversify it became apparent that as a collective the Basic Law's Article 4 (which requires the state to make space for religious practice free of state intervention), Article 140 (which binds the state to neutrality towards all religious groups), and Article 7 III (which guarantees religious instruction to recognized religious communities) formed a legal foundation that secured the right of religious instruction to religious communities other than Christians (Knauth, 2007 283; Dromgold and Schneider,

2010 16-18).

History of Turkish Islamic Groups in Germany

In the 1970s, when it became apparent that the Turkish immigrants were in Germany for the long term, they began campaigning for access for the provision of Islamic religious instruction (Fetzer and Soper 2005 103; Rosenow-Williams, 2012 2; Sovik 2008 241). German officials assumed that such needs would be met by the Turkish state (Fetzer and Soper 2005). Religious affairs in Turkey, however, was not sufficiently organized in the 1970s to implement such services for its German diaspora. In the absence of assistance from the Turkish state, Muslim immigrants in Germany established organizations in Germany to respond to the Muslim community's religious, cultural, and political needs (Fetzer and Soper 2005 103). Since the structure of Islam is decentralized and there are many different interpretations of Islam, these groups have proliferated — Germany has over 100 Muslim organizations nationwide (Richardson, 2000). Two of the largest groups Muslims in Germany, subsequently formed in the 1970s were the *Verband Islamischer Kulturzentren* (VIKZ, Union of Islamic Culture Centers) and the *Islamische Union Deutschland*, each with approximately 20,000 members (Fetzer and Soper 2005 103). The Turkish state eventually organized religious instruction under the *Diyanet Isleri Turk-Islam Birligi* (DITIB) — Turkish-Islamic Association for Religious Affairs. It became the largest of the Muslim groups (Hofhansel, 2010 193). Still, its secular stance with respect to the separation of religion and politics was unappealing to the more ideological Islam practiced by Turkish immigrants in Germany (Fetzer and Soper 2005 103).⁵²

⁵² In 2010, the Liberal-Islamischer Bund e.V. was established as a reaction to the leading Muslim organizations which were perceived as too conservative.

Several other lead organizations have emerged since the 1970s which have campaigned for official recognition to provide Islamic religious instruction.⁵³ The second largest Muslim organization is the *Islamische Gemeinschaft Millî Görüş* (Hofhansel, 2010 193) which translates to “National Vision.”⁵⁴ It was originally connected with the Turkish politician and former prime minister, Necmettin Erbakan, and the numerous political parties with which he was affiliated (Hofhansel, 2010 193). Erbakan established Millî Görüş in 1969 as a reaction to what he perceived as the weakening of the Muslim faith as a result of Turkey’s imitation of Western norms.⁵⁵ Millî Görüş is also an important component of the peak association *Islamrat* (Islamic Council), which represents all Muslims in Germany (Hofhansel, 2010 193).

The third largest Muslim association is the aforementioned VIKZ (Union of Islamic Culture Centers) (Hofhansel, 2010 193). The Alevite Community of Germany (AABF) was established by Alevites of Turkish origin (Hofhansel, 2010 193). Lastly, there is the *Zentralrat der Muslime in Deutschland* (ZMD, Central Council of Muslims in Germany). This peak association represents Muslims of non-Turkish origins (Hofhansel, 2010 193).⁵⁶

⁵³ The emergence of various representative lead Muslim organizations in Germany originally mirrored those of domestic political factions in Turkey (Hofhansel, 2010). The ties to the homeland, however, would weaken with the succeeding generations.

⁵⁴ The Federal Office for the Protection of the Constitution stated in their *Verfassungsschutzbericht* (Annual Report on the Protection of the Constitution) of 2009 and 2011 that Millî Görüş represents antidemocratic understanding of the state.

⁵⁵ After only one year in office, Erbakan was asked to step down as prime minister as his political views clashed with the core principle of secularism in the modern Turkish state.

⁵⁶ A variety of Arabian, German and multi-ethnic organizations are members of the council. The last two chairmen were Muslims born in Germany: one of them converted to Islam and the other one was born to a German mother.

The *Koordinationsrat der Muslime in Deutschland* (Coordination Council of the Muslims in Germany) was founded in 2007 by the lead umbrella organizations in Germany: *Islamrat für die Bundesrepublik Deutschland e.V.*, *Islamische Konzil in Deutschland*, *Zentralrat der Muslime in Deutschland*, *Türkisch-Islamische Union der Anstalt für Religion e. V.*. Thus far (as mentioned), a Muslim community has yet to be designated corporate status according to Article 140, which would allow them to provide Islamic religious education in schools (Fetzer and Soper 2005 107) despite this being a major focus of the Muslim community since the 1970s (Sovik 2008 241). The primary reason given for rejecting the applications of Muslim organizations (as stated earlier) is the decentralized nature of Islam which makes it difficult to find a representative religious community that satisfies Article 7 III requirements. They have also supposedly failed to meet other criteria (lack of permanency; not representative of a religious community; and/or undemocratic) of Article 140. Other problems include creating a curriculum that is palatable to *Bundesländer* officials and the religious communities, and the availability of teaching personnel (Honfhanse, 2010; Henze, 2004). In addition, since Islam is decentralized and not organized in a hierarchical structure (such as Catholicism with a Pope and various interconnected, hierarchically organized churches), German officials have claimed that an appropriate religious organization cannot be recognized as representing the true Islam (Sovik 2008 244).

German Corporatism and the Institutionalization of Christianity

Religious instruction has been predominantly Christian throughout German history as detailed above (Dromgold and Schneider, 2010 11). Although the Jewish population,

the only non-Christian minority in Germany until the immigration of Muslims, has always been recognized as a religious community, Jewish parents typically sent their offspring to private Jewish schools (prior to the rise of the Nazi regime) with only a small number sending them to public school (Dromgold and Schneider, 2010 11). Hence, religious instruction in Germany's public schools has been mostly a Christian affair.

Currently, Germany only recognizes two Christian denominations (the Catholic Church and the Protestant *Evangelische Kirche in Deutschland*) and Judaism (Dromgold and Schneider, 2010 18). Additionally, despite the secularism of the ethnic German majority population, Catholicism and Protestantism (and to a lesser extent Judaism) have been institutionalized in the German polity — German custom and national identification have a symbiotic relationship with tenets of these Christian faiths (Alba, 1998 32). Due to the increasing Muslim populations and the formation of religious communities campaigning for recognition, the issue of how to incorporate Muslim immigrants has become a regional and national political priority (Dromgold and Schneider, 2010 15). Additionally, the demographic changes of the last 60 years, outlined above, have challenged this Christian hegemony (Dromgold and Schneider, 2010 15). The symbiotic relationship between Christianity and the German culture and polity, however, has made it problematic for the Muslim faith to achieve institutional parity or even the junior partner status of Judaism (Alba, 1998 32).

The Political Incorporation of Islam

With respect to the religious community, as of 1994, the Protestant *Evangelische Kirche in Deutschland* supports religious-ethic instruction with a focus on inter-religious

exchange and education. The Protestant Church views this approach as the best approach to satisfy Article 7 III requirements. The Catholic Church supports Islamic religious instruction, focusing on a strict adherence to Article 7 III, and subsequently supports the recognition of an Islamic religious community. Furthermore, both the Catholic and Protestant churches have collaborated with Muslim interests in localities where a representative Muslim community could not be formed. The religious community sees the benefits of collaboration — reinforcing the legitimacy of Article 7 III is good business for organized religious groups in general considering secularization among ethnic-Germans since the 1960s of the majority ethnic German population. Instead of competing for pieces of the pie, religious communities are collaborating to maintain the pie (Dromgold and Schneider, 2010 27- 28).

Today, Muslims are the third largest religious community in Germany (Henze, 2004 237). Approximately, 80 percent of the Muslims are of Turkish descent of which a majority are Sunni (Henze, 2004 237). Their elevation to social and institutional parity, however, is not favored by the majority of Germans (Alba, 1998 32). As of 1996, 60 percent of West Germans were against Islamic religious instruction in schools (Alba, 1998 32). Although Alba qualifies these findings by stating that a substantial portion of this opposition coincides with opposition to religious instruction in general, since the institutional advantages of the Christian churches are unlikely to be reversed, the opposition at the very least disproportionately affects support for Islamic religious instruction — as it is excluded from the status quo of state recognition (Alba, 1998 32-33). And such sentiments have not warmed with time. According to the latest available data on the issue (from 2012), when Germans were asked about former German President Wulff's

remark in his 2010 Reunification Day speech that Islam is by now a part of Germany, comparable to Christianity, only 22 percent agreed, while 64 percent disagreed. When questioned about tensions with the Muslim community, only 29 percent responded that that there will not be tensions with the Muslim community in Germany, while 48 percent assume there will be.⁵⁷

Since citizenship reform in 2000 and the terror attacks in Europe and New York in the first half of the 2000s, the issue of immigrant integration has moved to the front of the agenda for all the major national parties (Dromgold and Schneider, 2010). And although an Islamic religious community has not been granted public corporate status at the national level, localities have moved to informally recognize particular representative organizations with whom to collaborate on the provision of Islamic religious instruction (Rosenow-Williams, 2012 2).

Subsequently, debate centers around whether Islamic religious instruction can be offered adhering to Article 7 III or can it assume another form (Dromgold and Schneider, 2010 16). However, this failure has also called into question current religious instruction arrangements in Germany, since most existing provisions of Islamic religious instruction have operated without an officially recognized Muslim religious community (Dromgold and Schneider, 2010 18).

Another related issue is how to reconcile the institutionalization of Christianity with the diversification of German society since the 1960s. Article 4 calls for state neutrality concerning religion (Avenarius, 2006 149). This is contained in section 1 of the article

⁵⁷ Petersen, Thomas (2012): Die Furcht vor dem Morgenland im Abendland. Frankfurter Allgemeine Zeitung. November 21, 2012. http://www.ifd-allensbach.de/uploads/tx_reportsndocs/November12_Islam_01.pdf

which guarantees freedom of faith, conscience, religious creed and/ or ideology — a space where the state cannot intervene (Avenarius, 2006 149). However, as public education was a domain of the church through the 1970s and the Christian churches made up (de facto) the only recognized religious communities, the presence of Christian symbols have been omnipresent in public schools especially those in the southwestern states (Alba, 1998 33). In Bavaria, this issue of state neutrality came into question concerning the presence of a crucifix in Bavarian public school classrooms (This will be discussed in detail in the chapter on Bavaria.). Theosophist (followers of Rudolf Steiner) parents (the plaintiff for the aggrieved students) claimed that non-believers were forced to be instructed “under the cross” (Avenarius, 2006 149). The administrative court initially dismissed the case. In May of 1995, the Federal Constitutional Court ruled in a 5 to 3 margin that the Bavarian practice violated Article 4 section 1, requiring state neutrality in educational matters. The issue was highly debated among the media, the public, and jurists. Supporters of the practice argued that the cross was not a religious symbol in this context, but was only representative of the Christian influence in [German] occidental culture and thus was only a symbol that served an educational but not coercive purpose (Avenarius, 2006 149).

The state neutrality issue has come more to the fore with the growth of the Muslim population (Avenarius, 2006 150). As some interpretations of Islam assume a value orientation in which Islam governs behavior in the private and public life, this has brought into relief how the cultural aspects of the Basic Law are problematic for other value orientations. The issue of religion and education has emerged in issue areas involving students and teachers. With respect to students, Muslim parents have pulled their children from mixed physical education classes, arguing that participating with males in such a

physical activity violates their religious beliefs concerning female conduct.⁵⁸ The *Bundesverfassungsgericht* has sided with Muslim parents arguing that the state cannot force their children to attend co-ed physical education classes (Avenarius, 2006 150).

Another issue is the wearing of headscarves by Muslim teachers. The initial case involved an Afghan teacher who was denied employment by a school in Baden-Wuerttemberg as she refused to remove her headscarf (Avenarius, 2006 150). The *Bundesverwaltungsgericht* (Federal Administrative Court) ruled that the freedom of religious expression granted in Article 4 had to be balanced with Article 4's state neutrality clause (Avenarius, 2006 152). As a teacher, the employee represented the state and thus could not advocate a particular religious stance (Avenarius, 2006 151). The *Verwaltungsgericht* (Administrative Court) of Stuttgart (the capital of Baden-Wuerttemberg), the *Verwaltungsgerichtshof* (Higher Administrative Court) of Baden-Wuerttemberg and the *Bundesverwaltungsgericht* (Federal Administrative Court) upheld this ruling in March 2000, June 2001, and July 2002, respectively (Avenarius, 2006 151). The *Bundesverfassungsgericht* ruled that parliament (not the executive) needed to resolve this tension in Article 4 between the teacher's right to freedom of religion and the schools' responsibility to state neutrality (Avenarius, 2006 152). Baden Wurttemberg, subsequently, amended the *Schulgesetz für Baden-Württemberg (SchG)* (The *Bundesland's* laws that deal with education) in 2004 forbidding teachers from wearing headscarves.

⁵⁸ However, this seems to be more anecdotal. According to a survey on Muslim life in Germany, only 1.9 percent of parents polled stated that they are not allowing their daughters to participate in swimming classes (which are part of the mandatory curriculum in German schools) for religious reasons (Haug et al, 2009).

Problem of Incorporation

As of 2010, there were 700,000 Muslim students (Dromgold and Schneider, 2010 16). This increasing population with a different religion and culture than the ethnic German majority has prompted debate concerning how to incorporate Muslim immigrants into the German polity (Dromgold and Schneider, 2010; Fuess, 2007; Hofhansel, 2010). The debate is evident in issues such as the construction of Mosques, the headscarf debate concerning teachers, and the extension of religious instruction to include Islamic religious instruction (Fuess, 2007; Dromgold and Schneider, 2010).

The heterogeneous nature of Islamic groups in Germany contributes to the fear among many of granting the “wrong” group official status — as many German politicians and officials fear that Islamic instruction will help promote Islamic radicalism on German soil (Ewing, 2000). This is especially the case since German authorities are closer ideologically with the DITIB and the lack of the Turkish state’s endorsement of most of the other domestic Islamic organizations — often the associations most popular with the Turkish population — has made granting official status to these other groups politically problematic.

These fears and concerns about addressing the religious needs of Muslim immigrants have been heightened with the Islamic extremist terrorist attacks in the US and Europe, which occurred in the 2000s by Muslims with legal residence in Europe (Fetzer and Soper 2007 933). However, the growing Muslim presence and the fear of Islamic radicalism has increased the desire for state surveillance of Islamic organizations. Thus, from the national security perspective cited above, incorporating religious instruction within the public education system (regardless of the organization providing the service)

also presents an opportunity for the state to monitor such activities and, thus, potentially ensure that such instruction is benign (with respect to extremist indoctrination).

Other concerns regarding the suitability of Muslim groups for corporate recognition include the view of many German officials from the late 1970s forward that Islam is a rigid, undemocratic system that has failed to keep up with modernity (Sovik 2008 248). This makes it an unsuitable as a civil religion for a modern democratic polity. Moreover according to this view, Islam lacks the separation of the political from the theological, a crucial prerequisite for a civil religion in a Western, liberal democracy. German Muslims, however, counter that the *Bundeslaender* have treated their applications for corporate recognition in a discriminatory manner (Fetzer and Soper 2005 107). Furthermore Hofhansel (2010) argues that the extension of religious instruction to Islam has been varied in the *Bundeslaender*. This has varied with the historical political leanings and the degree to which the Article 7 III religious instruction criteria is adhered by the respective *Bundesland* government (which also correlates with the historical political leanings of the state) (Hofhansel, 2010). Regarding the former, Christian Democrat-led governments have been in favor of Article 7 III adherence but less willing to extend the right to Muslim religious communities (Hofhansel, 2010).

The plight of official recognition might also be complicated by the secular trending of the German citizenry since the 1960s, which contrasts with the public religiosity required by the various but orthodox interpretations of Islam practiced by many Turkish Muslims in Germany (Fetzer and Soper 2005 111). It is further complicated by the various *Bundeslaender* interpretation of the religious instruction mandate of Article 7 (Fetzer and Soper 2005 114). As discussed above, religious instruction in the *Bundeslaender* varies

between comparative religious ethics courses and religious instruction courses similar to that offered by officially recognized religious communities. The *Bundeslaender*, on their part, have decided these individual applications in concert, realizing the symbolic cultural and political precedent granting corporate status to the first Islamic religious community will mean (Fetzer and Soper 2005 107).

Nevertheless, the concentration of Muslim populations in urban areas creates demands for Islamic religious instruction. Here, the increased populations of Muslims of school age — where parents wish for Islamic religious instruction — present local officials with a dilemma. Their increased numbers in public schools merit the case for religious instruction. The non-hierarchical structure and multiple interpretations of Islam has spawned a multitude of religious organizations campaigning, claiming to represent a Muslim community. With the German concern for terrorism and the fear that any of these groups could use religious instruction as a guise for terrorist indoctrination, the issue of granting corporate status to any one Muslim religious community has become domestically and internationally contentious. The latter is so because the Turkish state categorizes some German Muslim religious communities — those often with the most support from the Turkish communities — as terrorist organizations. On the contrary, the groups recognized as “safe” Islamic groups do not have the support of the majority of the Turkish immigrants. As established above, the German Basic Law, however, mandates that religious communities that meet certain conditions must be recognized by the state as corporations, thus, allowing them to provide religious instruction in school. Thus, *Bundeslaender* officials are often placed in a precarious position of either potentially violating immigrant rights or stoking national security concerns by recognizing the “wrong” Islamic religious

community.

Despite the resistance concerning the recognition of various Islamic groups, many German officials recognize the benefits of granting access to Islamic instruction. Since religious instruction is important for Islamic immigrants, many private Koranic schools have developed in lieu of the religious instruction option in public schools (Barker, 2004 173). These schools, being private and beyond the auspices of the respective *Bundeslaender*, have led to consternation among German officials concerned with the purpose and pedagogy of these schools (Sovik 2008 244). For these officials, incorporating Islamic instruction into the public school system is seen as a way in which the *Bundeslaender* can play a role in the acculturation of this rapidly growing immigrant group with a culture different to the Judeo-Christian culture of most native Germans. This has led to the partial incorporation of Islamic instruction (or quasi-Islamic instruction) in some *Bundeslaender* where the *Bundesland* provides (as opposed to a recognized Islamic community) an approximation of religious instruction (Sovik 2008 244). This has not appeased Islamic religious groups and, thus, they have continued to press for the recognition of various Islamic communities.

Currently, German lawyers and jurors are contesting the definition of a religious community. For instance, they debate whether it has to concur with the exact definition as spelled out under the Corporation under Public Law language or whether a community can consist of a local Mosque organization (Fuess, 2007 226).⁵⁹

⁵⁹ The Turkish Alevis — a more homogenous community than other Muslims — has been recognized. They have local communities in Berlin, Bavaria, Baden Wuerttemberg, Hesse, and North Rhine Westphalia (Henze, 2004).

State Accommodation of Muslim Demands for Islamic Religious Instruction

Beginning in the 1980s, however, states began collaborating/ informally recognizing Muslim religious communities and designing courses that approximated Islamic religious instruction (Jozsa, 2007 102). These initiatives originally began as part of the native tongue courses available to students with non-German origins (Dromgold and Schneider, 2010; Henze, 2004 240). These supplementary language courses were standard for the guest worker children. Islamic instruction was incorporated under the ethics and moral values curriculum of these language programs (Henze, 2004 240). In some cases, the curriculum was developed by the Turkish consulate with little involvement from the respective *Bundesland* (Dromgold and Schneider, 2010). In others there was more of a collaboration between the *Bundesland* and the Turkish education ministry, which also involved the training of teachers to offer Islamic religious studies in Turkish under the mother-tongue curriculum (Dromgold and Schneider, 2010 30). This mother-tongue approach concurred with the political consensus at the time that Germany was not an immigration state and these populations would eventually return to their homeland. These classes were designed to prepare the immigrant students for their eventual return to their Turkey.

However, after it became apparent that a sizable fraction of Turkish immigrants were not returning to Turkey and with calls from Turkish organizations and legal concerns about the claims of Turkish religious communities to the provision of Article 7 III religious instruction, arrangements between the local, *Bundesland* and Muslim religious groups fostered the development of religious instruction more along the lines of Article 7 III requirements (Dromgold and Schneider, 2010). These mother-tongue programs eventually

transitioned to independent courses in religious studies outside the mother-tongue curriculum— offered with German as the language of instruction (Dromgold and Schneider, 2010 31). Since the 1990s, states have embarked on trial programs where lead Muslim organizations, academics and state officials have developed curricula and begun the process of training instructors. These initiatives have ranged from solely state-led initiatives to collaborative efforts with chosen religious communities (Jozsa, 2007 103). The state-led initiatives have usually involved steering groups/ round tables that have brought the aforementioned parties together to develop such programs in concert. Mostly, this involved the consultation with Muslim interests, but in which the state was ultimately responsible for teacher training and curriculum development (Dromgold and Schneider, 2010 31). Collaborative efforts involved quasi-formal recognition of religious communities by local state governments where religious communities played a prominent role in teacher training and curriculum development (Dromgold and Schneider, 2010 31). Although the participation from lead Muslim groups in the creation of these programs has varied from no community involvement to state-religious community partnerships, these trial programs do still represent a trend towards the provision of Islamic religious instruction as called for by Article 7 III (Fuess, 2007; Hofhansel, 2010; Henze, 2004).

Normally, these religious instruction arrangements have evolved from particular pre-existing local models for addressing the needs of Turkish students. After an initial trial period in a few schools, the arrangements eventually expand to meet more of the demands of religious communities, increasingly evolving towards arrangements resembling Article 7 III (confessional) religious instruction (Dromgold and Schneider, 2010 31). However, with the issue of a recognized religious community still unresolved, these courses still do

not adhere to the Article 7 III requirements of religious instruction— as they are not truly confessional courses provided by a recognized religious community (*Bekennnisunterricht*). It has been the ultimate goal of those in support of Islamic religious instruction, however, that religious instruction in Islam would be offered on par with the religious instruction provided by Christian communities.

The Controversy of Religious Instruction after Reunification

With the reunification of Germany in 1990, religious instruction rose on the political agenda as the question of religious instruction in the newly incorporated Eastern states had to be reconciled (Knauth, 2007 291). Debate centered around whether the new Eastern states should also legislate confessional religious instruction or if perhaps a different approach was merited (Knauth, 2007 290). Article 141 of the Basic Law exempts *Bundeslaender* that were governed by another law concerning religious instruction as of January 1, 1949 (the date the Basic Law came into effect). Before reunification in 1990, Article 141 (also known as the *Bremen Clause*) applied to West Bremen and Berlin. Instead of religious instruction, these states offered ethics instruction.

The Case of the Eastern German Bundeslaender

The cases of the former East Germany (GDR) are less clear from a legal standpoint (Avenarius, 2006 146). After reunification, 4 of the 5 Eastern German *Bundeslaender* adopted religious instruction legislation similar to the criteria stated in Article 7 III (Hofhansel, 2010 194). This established the precedent that a religious community only had to satisfy the criteria of Article 7 III — and did not have to obtain official corporate status

from the German state — to offer religious instruction in German public schools (Hofhansel, 2010). This in turn permitted the individual *Bundesländer* to recognize religious communities. However, the criteria used for official recognition of a religious community (also implied in the language of Article 7 III) at the state level has been practically identical to that of Article 140 (Hofhansel, 2010 195).

The case of Brandenburg has been particularly controversial (Avenarius, 2006 146). The *Bundesland* decided not to legally mandate religious instruction. Instead, the religious communities are responsible for religious instruction. They have the legal right to use public facilities for this purpose. The state instead mandates an ethics course titled *Lebensgestaltung— Ethik— Religionskunde*⁶⁰ (Avenarius, 2006 147). This has been controversial in Brandenburg. The situation was brought before the *Bundesverfassungsgericht* (Federal Constitutional Court) in 2000 by a parliamentary group of the CDU/CSU of the Federal Parliament. The CDU/CSU group cited constitutional complaints from parents and students. After debating the case, the *Bundesverfassungsgericht* offered a compromise proposal to all parties involved. It suggested that Brandenburg add an amendment to the Brandenburg School Act that exempted students from this particular class who desired not to participate (Avenarius, 2006). The compromise proposal, however, left the issue concerning the legal responsibility of the former Eastern German states unresolved (Avenarius, 2006 147).

A similar controversy exists in Berlin where a similar framework exists between religious instruction and a mandatory ethics course. Religious instruction is also not legally mandated but offered by religious communities with the state subsidizing the costs of its

⁶⁰ Which roughly translated means preparation for life, ethics, a course about religion.

provision. In Berlin after 1970, the state began subsidizing religious instruction offered by religious communities informally recognized by state officials. Subsequently, subsidizing the various provisions of religious instruction constituted an unofficial practice of recognizing particular religious communities (Hofhansel, 2010 203).

In the 1970s as the Turkish population expanded in Berlin, Muslim representative organizations began lobbying and applying for unofficial recognition from the Berlin state so they too could receive subsidies and permission from the state to provide religious instruction in Berlin public schools. However through the 1990s, Berlin state officials denied these applications claiming that the Muslim communities did not satisfy the criteria of a corporation under the public law. The Islamic Federation of Berlin (IFB), one of the lead Muslim organizations in Berlin, embarked on a 20-year campaign for recognition as a religious community in order to provide Islamic religious instruction in Berlin's public schools. Berlin officials rejected their applications in 1983 and 1987, citing that the community did not belong to a hierarchically organized religious community, an Article 7 prerequisite for recognition. The politics surrounding the IFB's application took on national importance as its recognition would be the first for a Muslim organization in Germany (Hofhansel, 2010 203).

In addition to the organizational issues cited in the initial application rejections, Berlin officials also worried about granting recognition to the Islamic Federation of Berlin as it is closely linked with *Millî Görüş*. This issue has been a prominent aspect to the politics of recognizing Islamic religious communities across the *Bundesländer* — the consternation among German officials over potentially sanctioning an extremist group to educate Turkish migrants in German public schools (Hofhansel, 2010 203).

In 2000, the highest court for administrative law in Germany, ruled in favor of Berlin's Islamic Federation (IFB). The court ruling overruled a Berlin *Verwaltungsgericht* (administrative court) ruling upholding the education ministry's rejection of an IFB (Islamic Federation of Berlin) application to provide Islamic religious instruction. In 1994, the Islamic Federation sued the Berlin officials citing the rejection as a violation of Article 140— that the state must be neutral towards religious communities. They won the suit, which set off an appeals process that culminated in the aforementioned 2000 ruling (Hofhansel, 204).

The ruling permitted the IFB to offer religious instruction in a number of Berlin schools. The education ministry had claimed that the IFB did not satisfy the official definition of a religious community in the Berlin school constitution. The actual definition, however, was not specific concerning what constituted a religious community (Hofhansel, 2010). The court ruled that since Berlin was not governed by Article 7 III, it could not deny recognition to the IFB based on an Article 7 III type criteria. The succeeding SPD-led government passed legislation formalizing the process of religious community recognition similar to that of Article 140 from the Basic Law (Hofhansel, 2010 203). Subsequently, despite not being governed by Article 7 III, the politics of religious instruction in Germany brought the institutional practices of religious instruction in Berlin to a close approximation of Article 7 III.

In addition to the controversy concerning recognition of religious communities, the issue of voluntary religious instruction and mandatory ethics instruction has also been controversial in Berlin. Religious communities would like to reform the law so that religious instruction is also offered as a mandatory course (as in the Lander governed by

Article 7 III). In 2008, the issue was put to a referendum vote. The *Pro Reli* referendum was narrowly defeated and religious instruction has remained on a voluntary basis in Berlin.

The Incorporation of Islam after Reunification

Hofhansel (2010) argues that since German reunification in 1991, citizenship reform of 1999 and the resolution of the asylum question, political attention has turned to integrating the Muslim population in Germany (also see Dromgold and Schneider, 2010). Dromgold and Schneider (2010 18) add that the terror attacks of September 11, 2001 in New York also urged German officials to focus on the issue of integrating its Muslim population, as mentioned above. Citizenship reform in 2000 made citizenship possible for immigrants and their offspring (Hofhansel, 2010; Dromgold and Schneider, 2010). The terror attacks prompted elite concern about terror among the ostracized of this immigrant population (Jozsa, 2006 95; Hofhansel, 2010; Dromgold and Schneider, 2010). As the terror events involved extremist interpretations of Islam, the issue of education and Islam naturally came to the forefront (Jozsa, 2006 95).

The *Bundeslaender* are not legally obliged to offer Islamic religious instruction per Article 7 III as no Muslim community/ representative organization (outside of the Ahmadiyya Muslims in Hessen) has met the Basic Law criteria according to the German courts and the various *Bundeslaender* education ministries across Germany. However, this is changing as the courts are increasingly siding with the claims of Muslim religious communities (Fuess, 2007). After decades of legal contestations, policy round tables, and trials, Fuess (2007 232) asserts that Islamic religious education will become common in

schools with sizable Muslim populations in the near future. Fuess (2007) argues that since the court system has increasingly ruled in favor of granting Muslim organizations their constitutional right to provide religious instruction, states have increasingly tried to accommodate these communities in their jurisdiction.

Positions of the Parties and Various Religious communities on Islamic Religious Instruction

Subsequently, understanding the position of the major parties is important to understanding the local variation in models of Islamic religious instruction across the *Bundeslaender*. The historic political leaning of the *Bundeslaender* governments is one factor cited in the literature as a major factor in this interstate variation (Dromgold and Schneider, 2010; Fuess, 2007; Hofhansel, 2010). This study will argue that this is an incomplete explanation for the variation and for explaining policy trajectories. Instead, this study is based on the assumption that elite consensus concerning religious instruction provides a better explanation. As the demonstration of the party positions will make clear below, the major parties are all in support of extending religious instruction to include teachings in Islam. Elite consensus and/or division concerning religious instruction along with historic institutional arrangements is a better explanation for the varying forms of religious instruction across the *Bundeslaender*.

Prior to 1998, the CDU position on Islamic religious instruction was that all classes pertaining to Muslim immigrants should be absorbed within the mother-tongue classes of the curriculum (Dromgold and Schneider, 2010 25). This logically fit within their official immigration position (prior to 1998) that Germany was not an immigration state. Islamic

instruction within the mother-tongue course fit with the logical extension of their immigration stance that immigrants should be prepared to return to their homeland, as discussed above. After 1998 with the prospect of citizenship reform imminent (with the election of the SPD/ Green coalition in 1999), the CDU and Catholic Church came out in support of Islamic religious instruction with German as the language of instruction (Dromgold and Schneider, 2010). The CDU viewed education as integral to the process of immigrant integration (Dromgold and Schneider, 2010 25) and saw the provision of Islamic religious instruction as a means of creating a suitable German Islam which could be employed for this task. The CDU favored reducing the number of immigrants as the optimal strategy for the “integration and tolerance” of immigrants and using the inclusion of Islamic religious instruction as a tool for the “ethical orientation” of students with migrant backgrounds (Dromgold and Schneider, 2010, 25). Christian Democrat-led governments, according to Hofhansel (2010), have been in favor of Article 7 III adherence but less willing to extend the right to Muslim religious communities (Hofhansel, 2010). The example of Bavaria in this study provides counter-evidence to that claim. The Bavarian education ministry (controlled by the CSU) rubber-stamped local arrangements between local governments (including the SPD-controlled Munich government) and local Muslim religious communities to provide Islamic religious instruction.

The SPD also supports Islamic religious education but it stresses the legal right of Muslim religious communities. As a consequence, it stresses a strict adherence to the Basic Law Article 7 III. Thus, Islamic religious instruction should be provided by a recognized religious community (Dromgold and Schneider, 2010 25). This concurs with what this study found in the cases of North Rhine Westphalia and Berlin. Although their policy

outcomes differed, *Bundeslaender* governments controlled predominantly by the SPD practiced a strict adherence to Article 7 III criteria in recognizing religious communities and subsequently did not recognize Muslim religious community over the period of study.

The FDP (the Liberal Democrats) sees a central role for education as a job creator (Dromgold and Schneider, 2010 26). The issue of Islamic religious instruction, however, has been divisive. Those in support of Islamic religious instruction cite its potential as a tool of immigrant integration and cultural identification. Those in opposition argue about its costs and the lack of trained personnel to adequately deliver Islamic religious instruction (Dromgold and Schneider, 2010 26).

For the Greens (*Grüne*), education is seen as the the foundation for the future of society (Dromgold and Schneider, 2010 26). With respect to religious instruction and immigrants, they see religious instruction as a central pillar for immigrant integration, intercultural understanding and multiculturalism — core philosophies of the party's ideology. The Greens' position on Islamic religious instruction is that it should be provided wherever a Muslim religious community demands it; it should be instructed in German adhering to the legal requirements of Article 7 III; it can be provided by a local Muslim religious community and [if necessary] in collaboration with a local Church in the absence of a nationally recognized Islamic religious community. Party leaders differ on the implementation of this general policy stance and thus vary in the localities in which they are in the governing coalition (Dromgold and Schneider, 2010 26).

The leftist party (*Die Linke*) holds the same view as the The Greens concerning Islamic religious instruction. The far-right parties which include the Republicans (REP), the National Democratic Party (NPD), and the German People's Union (DVU) are for

severe limits to immigration and against Islamic religious instruction (Dromgold and Schneider, 2010 27).

Thus, since the mid-1990s, the major political parties and recognized religions have supported the incorporation of Islamic religious instruction in some form. There is a general understanding that the provision of Islamic religious instruction in collaboration with Muslim religious communities is a responsibility of the state (Dromgold and Schneider, 2010 27). They also view Islamic religious instruction as an important tool in the integration process. And lastly, the established religious communities consider the incorporation of Islamic religious instruction as potentially reinforcing the legitimacy of Article 7 III and religious communities as public corporate entities especially. According to Dromgold and Schneider (2010), this support from the parties and Christian religious community has resulted in more experimentation (when representative communities cannot be formed) in finding workable arrangements between the *Bundeslaeder* and the various Muslim communities to provide religious instruction in the teaching of Islam (Dromgold and Schneider, 2010 27).

However, this only pertains to the Western parts of Germany (where the base constituents of the major parties reside). In the East, the issue of religious instruction is more disputed due to the areligious legacy of the GDR. And, thus, the issue of Islamic religious instruction has evolved differently in this part of the country. Most of the Eastern *Bundeslaeder* do not have sizable Muslim populations and so the provision of Islamic religious instruction is not an issue. Berlin and Brandenburg are the exceptions (and, hence, the former will be discussed in more detail in this study). Both opted to leave the provision of religious instruction to the religious communities — religious instruction is a voluntary

course provided by the religious community. The state heavily subsidizes the provision of this course. Subsequently, elites, contrary to the West, are split concerning compulsory religious instruction. And in Berlin the issue is polarizing as will be seen in later parts of this study.

The Literature concerning the Modest Expansion of Islamic Religious Instruction

Henze (2004) sees trends towards religious instruction as representative of political ascendancy of immigrant integration (education of Muslim children) in public discourse. Also in the post-September 11 era, the German public has concerns about teacher qualifications and curriculum content (Henze, 2004 242). Per Henze (2004), the participation of Muslim organizations are seldom supported by the public and elites, and thus the *Bundeslaender* have moved to establish university programs to train German schooled professionals (and potentially imams) (Henze, 2004 242). The Muslim community also has these concerns and thus these are contentious aspects of the debate.

Progress is being made towards Islamic religious education despite the problem of finding representative communities. Fuess (2007 229) argues that the Bavarian example may provide the best route forward in finding representative communities. The Erlangen trial project emerged from the creation of the Erlangen Islamic community (a collection of lead organizations at the local level). Finding local groups that could establish a compromise among themselves on curricula matters and were palatable to Bavarian *Bundesland* officials at the state level was a less problematic route to incorporating some form of religious instruction in Islam. Fuess (2007 229) argues that religious instruction perhaps could emerge similarly from localities in other *Bundeslaender* as opposed to

forming umbrella groups at the state level — as consensus would be easier to attain between the Muslim groups themselves and with local officials.

According to Fuess (2007 234), a clear sign that Germany is trending towards offering religious instruction is because of an increasingly sympathetic judicial system willing to grant Muslim communities their Basic Law guaranteed right to the provision of religious instruction. As this occurs, Fuess (2007) sees that religious instruction will be provided by the three largest Muslim communities, Sunnis, a Shia Muslims, and Alevis. Fuess (2007 234) argues that these trends date back to the international ramifications of the terrorist attacks in 2001. Officials at the *Bundeslaender* level believed that Islamic religious instruction could be used as a mechanism to better integrate Muslim youth and preempt the growth of terrorist cells.

In addition, Islamic religious instruction is beginning to garner attention from national political elites (Fuess, 2007 234). In September 2006, German Interior Minister Wolfgang Schaeuble organized a German Islam conference in Berlin. Schaeuble, one of the leading CDU politicians, proclaimed that the German *Staatskirchenrecht* (state-church law) will have to demonstrate its future viability by making the integration of Islam possible (Horstkotte, 2011).⁶¹ The interior minister invited 15 representatives from the Muslim communities and 15 *Bundeslaender* representatives from throughout Germany (Fuess, 2007). Religious instruction and the training of imams was a high priority item at the conference. Fuess (2007 234) holds that although religious instruction policy is handled entirely at the *Bundeslaender* level, the existence of such a national organization is a sign

⁶¹ German version: „Das deutsche Staatskirchenrecht wird seine Zukunftstauglichkeit dadurch erweisen müssen, dass es eine Integration des Islam ermöglicht.“ Schaeuble was later cited by Michael Solf, a church-loyal CDU parliamentarian in NRW, as he explained in front of the NRW parliament in 2011 why the CDU needs to start offering Islamunterricht.

of the increasing political credibility of Islamic religious instruction.

A problem still remains with the availability of trained teachers to deliver Islamic religious instruction (Fuess, 2007 228; Henze, 2004 236). The quasi religious education programs that were offered as part of the mother-tongue instruction were taught by teachers usually provided by the Turkish state via bilateral agreements between Turkey and individual *Bundeslaender* (Fuess, 2007 228). Because of the lack of trained teachers, when *Bundeslaender* have established trial Islamic religious education programs, they have normally transitioned these teachers to provide religious instruction even though they were trained for language and not religious instruction (Fuess, 2007 229). Several *Bundeslaender* have established training programs in universities within the Land (Lower Saxony, Bavaria, North Rhine Westphalia, and Baden-Wuerttemberg). These programs aim to train teachers in Islamic religious instruction. Most of these programs were developed in consultation with lead Muslim organizations. As these programs mature, the potential is there for the training of Imams. This could lead to the development of Islamic theological pedagogy in Germany, lessening the need for Muslims to rely on theological institutions in the Muslim world. The development of Muslim scholars may take some time as there has been a dearth of Muslim scholars as the newer generations have yet to mature sufficiently to provide these scholars (Fuess, 2007 232).

Currently, there are 4 million Muslims living in Germany (Dromgold, 2011 1). As of 2007, the Muslim student body was approximately 700,000. This would require 4,500 Muslim religious instruction teachers. To provide this training, Fuess (2007) calculates that this will require around 15 chairs of Islamic theological departments in universities across Germany. As there are only 4 now, the lack of trained teachers will continue for some time

(Fuess, 2007 232).

A potential problem looms, however. As several of the more conservative *Bundeslaender* have passed headscarf bans for teachers, this potentially precludes the hiring of Muslim women. As Article 7 calls for the instruction of believing people by believing teachers, this presents a problem in addressing the lack of trained, qualified professionals (Fuess, 2007 228). The other problem with these headscarf bans is that they only ban headscarves and not other religious symbols from other religious groups such as Christians and Jews. The claim often made is that the Christian and Jewish symbols are not religious symbols but expression of the German Judeo-Christian culture (Fuess, 2007 230).

Fuess (2007) believes that the two professorships in Islamic religious instruction at the University of Frankfurt will be programs focused on training Imams for the several hundreds of mosques in Germany associated with the Turkish Islamic Union of the Institution of Religion e.V. (DITIB). DITIB is the German representative of the Turkish Department of Religious Affairs (Diyanet Isleri Baskanligi). The latter sponsors the two professorships. As of 2007, 600 Imams of the 900 mosques in Germany were sent from Turkey on 4-year stints. The Diyanet sponsors their stay in Germany and they return to Turkey after completing their tenure in a DITIB-affiliated mosque.⁶² Mosques not affiliated with the DITIB have provided and support their own imams from collections from the respective Muslim communities (Fuess, 2007 233).

As of 2007, the only large scale training of Imams was provided by the Association of Islamic Cultural Centres (Verband der Islamischen Kulturzentren (VIKZ) in Cologne (Fuess, 2007 233). The program trains imams for 300 VIKZ mosques throughout Germany.

⁶² The DITIB controls about 800 of a total of 2.500 mosques in Germany, 250 of those under their control are located in NRW.

The Association stresses a more traditional sense of religious instruction and rejects the modifications made by the educational sector in Turkey — via the Kemalistic revolution (Fuess, 2007). Instruction is in Turkish or Arabic but a majority of the students were German-born and thus most have only German linguistic and cultural knowledge (Fuess, 2007 233).

There are few private schools in Germany and so there are few Muslim private schools where religious instruction could be provided outside of the Article 7 purview (Fuess, 2007 233). However, there are two private schools which operate in Berlin and Munich. The school in Munich was closed in 2005 after it had been operating since 1982. Bavarian officials claimed the sponsoring religious community, the Islamic Council, had close ties to the Islamic community in Germany (IGD- *Islamische Gemeinschaft in Deutschland*). The latter was said to be closely associated with the Muslim Brotherhood. The controversy emerged suddenly from media reports of the alleged connections (Fuess, 2007 233).

Conclusion

As can be noted in the history of incorporating Muslims, the issue has been controversial in Germany. In the 1970s and 1980s, there was public consternation concerning the growth of the Turkish community. In the 1990s, the issue of immigration transitioned to the incorporation of Muslim in the German polity. This also proved problematic as there was much public consternation concerning Islam's compatibility with the secular Christian German polity. Elites decided that religious instruction — an institution that had historic support from elites as a means of forming good citizens — was

one means for incorporating Muslims. However, the German federal and *Bundeslaender* officials were unable to find lead Muslim organizations to recognize as public corporations to provide Islamic religious instruction. Nevertheless, the *Bundeslaender* have moved to find alternative arrangements to provide quasi-Islamic religious instruction courses. And this was despite public aversion to the idea as recent as the mid-1990s. This history speaks to the importance of elite consensus in moving this project. The other ingredient is the corporatist policy arrangements that permitted elites to operate in relative isolation from the public will. This will be a focus of the case studies on North Rhine Westphalia, Bavaria, and Berlin. Nevertheless, without elite support for expanding religious instruction to include teachings in Islam, local initiatives may never have occurred as the public has never been a driving supporter of the formal incorporation of Islam into the German polity.

CHAPTER 8

THE GERMAN CASE STUDIES

Introduction- Turkish interests in favorable settings in North Rhine Westphalia, Bavaria, and in Berlin

Turkish-German interests in the German cases under investigation here are better positioned than their Mexican-American counterparts in the US cases discussed in the previous chapters to attain their policy goals in Islamic religious instruction. This is due to elite agreement concerning the integrative benefits of religious instruction and the closed, corporatist, German policymaking system in religious instruction — cooperative federalism and corporatist policymaking creates a closed policymaking setting where policymaking involves policy negotiation in a non-competitive interest context between representatives of the state and a designated interlocutor/ representative for the affected constituency primarily in a single policy venue at the *Bundeslaender* level. Thus, a small consistent set of characters is involved in policymaking, reducing the potential for expanding the scope of conflict, a main ingredient in the transformation of the issue definition and a policy regime's loss of issue autonomy (Baumgartner and Jones, 1991; 1993; King, 1997). This created a context where state officials were more open to establish relations with a representative of the Turkish community to develop policy arrangements that were mutually beneficial — arrangements that encouraged immigrant integration through taking steps towards establishing religious instruction in Islam.

The three cases presented in this chapter offer varied political and institutional

settings within the closed, corporatist policymaking model. The goal is to show the effects of elite consensus on policymaking prospects for Turkish interests in Germany (as the effect of the closed, corporatist system on the policy prospects of Turkish interests will be revealed via the comparison of the German cases with the US cases, which is a focus of the Discussion chapter).

The cases chosen vary concerning elite agreement/ disagreement regarding religious instruction and the *Bundesland* government's partisan leanings during the period of study as the latter has been cited as an influential factor in the likelihood of a *Bundesland* to embrace religious instruction (Joppke, 1999; Givens and Luedtke, 2005; Dromgold and Schneider, 2010; Fuess, 2007; Hofhansel, 2010). In two cases (NRW and Bavaria), there was elite support for religious instruction, and in the third (Berlin), there was elite division concerning religious instruction. In the two cases with elite support for religious instruction, NRW was governed by the SPD (the major center-left party in Germany) for all but two years during the period of study and Bavaria was governed by the CSU (the more conservative sister party of the CDU, the major center-right party in Germany) over the period of study. Berlin, the *Bundesland* with elite disagreement over religious instruction has historically been led by the SPD.⁶³ This study will provide evidence that elite agreement concerning religious instruction is more determinative of the *Bundesland's* response to Turkish interests than the *Bundesland* government's partisan history.

⁶³ There is no German *Bundesland* that has historic elite division concerning religious instruction in which the *Bundesland* government has historically been led by a conservative government. In the Eastern *Bundeslaender*, where elite support for religious instruction is tepid, these *Bundeslaender* have historically had left-leaning governments. In the West, although the partisanship of the governments have been more varied, elite consensus has been in support of some variation of religious instruction. Thus, this case cannot be investigated in Germany. Consequently, Berlin will serve as the sole representative of the *Bundesland* with historic elite conflict over religious instruction.

German corporatism and cooperative federalism create a closed policymaking system for religious instruction. These two factors create a non-competitive policy negotiation context for Turkish interests and limit the number of participants involved in policymaking, thus precluding an increase in the scope of conflict by the addition of new actors (Baumgartner and Jones, 1991; 1993; King 1997). This helps to maintain the the problematization of religious instruction (defined by Article 7 III), which because of the aforementioned elite consensus has been beneficial for Turkish interests. Although the problematization of Islamic religious instruction has been problematic for the provision of religious instruction according to Article 7 III — with a recognized Muslim corporate partner and the provision of confessional religious instruction — *Bundesland* officials in the two *Bundesländer* with historic elite agreement concerning religious instruction have continued to search for ways to provide some form of religious instruction in Islam. Moreover the provision of religious instruction via Article 7 III has been the ultimate goal of state and Muslim elites and thus the current problematization of Islamic religious instruction can be characterized as favorable for Turkish interests.

As religious instruction is an educational matter, cooperative federalism structures policymaking in religious instruction. Subsequently, religious instruction is solely governed by the individual states. German corporatism in religious instruction is institutionalized via Article 7 III — institutionalizing a corporatist church-state policymaking structure in the provision of religious instruction. Religious instruction in North Rhine Westphalia and Bavaria is governed by Article 7 III. The Basic Law Article legally guarantees that officially recognized religious communities are entitled to provide religious instruction via this partnership with the state.

In Germany, debates in political incorporation concern corporate recognition to secure the policy and institutional benefits of German corporatism/ welfare state. The subsequent para-public institutions (state-interest concertation) control allocation of these benefits. And this is precisely how religious instruction policymaking works. Article 7 III of the Basic Law calls for a corporatist policymaking arrangement for the provision of religious instruction. The Article, hence, demands a partnership between the state (charged to the state education ministry) and the relevant religious community where the state retains its authority in all matters related to education but the religious community provides religious instruction. This requires the *Bundesland* to assume the fiscal costs for its provision (providing the space and paying for the teachers and instructional resources) while the religious community develops the curriculum and provides the teachers. The *Bundesland* in retaining its authority in all matters concerning education authorizes the decisions made by the religious community concerning curriculum, pedagogy, and issues concerning teacher certification, and thus has the final say concerning these decisions. However, this arrangement is predicated on the federal government recognizing a religious community as a corporation under the Basic Law. The law has evolved where the individual states can also grant this status (Fuess, 2007 225-226, see the Politics of Religious Instruction Chapter for a fuller explanation). This recognition requires that the religious community demonstrate its permanency, that it is representative of a religious community of requisite size, and is hierarchical in structure. No Muslim organization nor umbrella group (for the exception of Ahmadiyya Muslims in Hessen) have satisfied these three goals and so a Muslim organization has yet to be recognized as a public corporate entity. Nevertheless, state officials in most Western *Bundeslaender* have chosen to pursue

expanding religious instruction — via alternative policy arrangements — to include a Muslim version. Bavaria and NRW are two examples of such *Bundesländer*. The two factors— the closed, corporatism of the religious instruction policy process and elite agreement concerning extending religious instruction to include Islam— have been the primary forces that have shaped expansionary policy in religious instruction in Bavaria and NRW.

The setting in Berlin differs from that of NRW and Bavaria. Berlin is not governed by Article 7 III and the majority of its population is not affiliated with a religious community. Additionally, elites are divided concerning the place of religious instruction in general. The latter two are due to Berlin's (the Eastern half) history as part of the GDR, which weakened the church so that the population's allegiance would be to the state and not the two main churches. As with NRW and Bavaria, however, German corporatism and cooperative federalism have been the governing paradigms of religious instruction policy. And thus issues of incorporation in Berlin are similarly negotiated as previously described.

In using these three cases with their varying settings, the chapter aims to show how elite agreement/ political consensus concerning religious instruction within the varied closed settings manifest in the evolution of Islamic religious instruction in the German corporatist model.

8.1 NORTH RHINE WESTPHALIA

Introduction - The Effects of the Closed Policymaking system and Elite Consensus on the Evolution of Islamic Religious Instruction Policy

North Rhine Westphalia's (NRW) political setting has been favorable to Turkish policy interests in Islamic religious education. Elite consensus concerning the integrative benefits of religious instruction and German corporatism created a political setting whereby NRW's state officials made several overtures over the period of study to create religious instruction policy that was mutually beneficial to them and Turkish [and other Muslim] interests seeking religious instruction in Islam.

Two factors have influenced policy evolution in Islamic religious instruction in North Rhine Westphalia (NRW): the closed, corporatist nature of the policymaking process in religious instruction and elite agreement concerning religious instruction in general and the expansion of religious instruction to include teachings in Islam in particular. With respect to the closed policymaking system, this refers to two aspects of policymaking in religious instruction in NRW: corporatism and cooperative federalism. The corporatist dynamic (driven by both the existence of Article 7 III and Germany's corporatist system in general) meant that the corporatist policy regime type — policy negotiation in a non-competitive interest context between representatives of the *Bundesland* and a designated interlocutor/ representative for the affected constituency — would greatly influence the contours of any new policy regime. This has resulted in NRW officials' outreach to find Muslim representatives even when official designation of a lead Muslim organization was not possible. Cooperative federalism meant that policy venues would primarily reside at the *Bundesland* level with venue shifting to a venue beyond the state venue only occurring

when the administrative courts became involved. And as policymaking in religious instruction is sanctioned by the education ministry—having monopoly power over the issue — the policy venue would be determined by or reside in the education ministry. This closed policymaking process also meant that the participants in policy making would be restricted to *Bundesland* officials, academics, Muslim interests and religious interests. Only venue shifting to the courts would bring the judiciary into this process. Thus, an expansion of the scope of conflict through the inclusion/intrusion of outside actors and other policy venues — an integral part of the processes of policy change in the American cases — is mostly absent in NRW.

Elite consensus meant that the major parties (most importantly the SPD and CDU as these were the NRW government coalition leaders over the period of study) supported the idea of religious instruction as an integrative institution for the youth. Subsequently, both favored extending religious instruction to include teachings in Islam as a means of integrating the Turkish-German student population.⁶⁴ Even though neither the federal government nor NRW recognized a lead Muslim organization as an official corporate Muslim representative — thus absolving the *Bundesland* of its legal responsibility to provide Islamic religious instruction — officials (from both parties) sought to find ways (and representatives with whom they could work) to extend religious instruction to include teachings in Islam. This consensus also included academics and leaders of the Christian religious communities — the latter viewing the incorporation of Islamic religious instruction as beneficial for the continued legitimacy of Article 7 III and for all religious

⁶⁴ This concurs with Dromgold and Schneider (2010). They argue that this consensus is a combination of elite views towards the role of religious instruction in integrating the youth in general and Muslim students in particular (in the wake of the terrorist attacks since 2001).

communities which offered state subsidized religious instruction.

Initially, NRW state officials chose to pursue expanding religious instruction to include teachings in Islam by attempting to find lead organizations with whom they could work (in the spirit of Article 7 III) to provide Islamic religious education. When a lead organization could not be found (due to disputes within the Muslim community over curriculum and/or NRW state mistrust of the available lead organizations), NRW state officials chose to develop a course — which evolved over the period of study, spawning three iterations of the course — focusing on Islam via the creation of curriculum commissions. The sundry commissions that developed the various versions of the course included state officials, education officials, scholars of Islam, and general religious scholars. They would later expand to include Muslim congregations and associations, but they never attempted including the two lead organizations in NRW. Furthermore, the various curriculum commissions remained under the aegis of the NRW education ministry. Thus, although the aim of NRW has been to establish a corporate model, the policy regime that governed religious instruction in Islam during the period of study was more state driven.⁶⁵

Another aspect of the closed policymaking system is the role of cooperative federalism in educational affairs in Germany and its effect on the evolution of Islamic religious education policy. There was no federal involvement in policy evolution of Islamic religious instruction in North Rhine Westphalia over the period of study. The Basic Law designates most decisions concerning education to the state level. Subsequently, the

⁶⁵ Kraft (2006) argues that the Muslim influence incorporated via the NRW model has garnered more broad based inclusion of the Muslim community than any of the other more traditional Article 7 III Islamic religious instruction arrangements in Germany.

implementation of Article 7 III is a state function, mostly the charge of the education ministry. The national government only involves itself in the official recognition of religious communities — recognizing a religious community as a public corporate entity. Since a Muslim religious community has not been recognized at the national nor at the state level, state governments have taken it upon themselves to work out arrangements with Muslim umbrella groups.⁶⁶ Policymaking in Islamic religious instruction in NRW subsequently involved a relatively small and stable group of players (as previously mentioned) under the aegis of the NRW education ministry. In the religious instruction policymaking process, the *Bundesland* and local policy venues (charged to the respective education ministries) are the only venues involved and the local policy venues are far more subservient to the state policy venue (directives) than in the US. No other state policy venues are involved as para-public institutions (and in the NRW, the education ministry and its curriculum commission) once given policy autonomy generally become policy monopolies. Federal and executive mandates are seldom involved in state education policymaking. Venue shifting to the federal level only occurs when suits are brought against the *Bundesland*, and courts are thus summoned to make constitutional rulings concerning the legitimacy of claims by umbrella groups regarding official recognition, and the legality of informal arrangements between the state and religious communities. This is contrary to the American system where venue shifting occurred in bilingual education in comparable instances (from actors in local/ state policy venues to the courts and federal policy venues) but also through the involvement of the national executive and legislative

⁶⁶ The state's adoption of this recognition function also evolved through legal precedents after German reunification in which the newly incorporated Eastern states adopted practices similar to Article 7 III and independently recognized religious communities (see The Controversy of Religious Instruction after Reunification section in the Politics of Religious Instruction chapter).

policy venues, the state plebiscitary venue (in California) and the *issue expansion* resulting from the overlapping structure of policy venues in the American bilingual education policymaking system and the subsequent legitimation of actors and causes at the local, state and national level. In Texas and California, intergovernmental interaction between policy venues and the openness of the policymaking system were primary drivers of policy development. In the NRW example, such a dynamic policymaking system was not the impetus for policy change. The NRW policymaking system primarily resided in the local and state policy venues with policy change generally driven by the NRW education ministry

These two factors — the closed, corporatism of the policymaking process and elite agreement concerning religious instruction — have led to a general expansion of Islamic religious instruction in North Rhine Westphalia since the late 1970s. After its initial introduction within the mother-tongue portion of the curriculum in the early 1980s, Islamic studies expanded to over 130 schools as a separate subject, Islamic Studies, given in German. Islamic Studies, however, was a course about Islam and was mostly developed by a curriculum commission under the aegis of the NRW education ministry. Thus, as its title (Islamic Studies) and the structure of the policy regime suggest, Islamic studies in North Rhine Westphalia is not Islamic religious instruction as called for by Article 7 III of the Basic Law. Nevertheless, the *Bundeslands*'s effort to make provisions for a Muslim version of religious instruction in the absence of a recognized religious community can be described as expansionary policy (Dromgold and Schneider, 2010; Hofhansel, 2010; Kraft, 2006).

The remainder of the chapter will in further detail how the two factors— the closed,

corporatist system and elite agreement influenced policy development in North Rhine Westphalia.

North Rhine-Westphalia- political context and population demographics

From 1966-2005, Social Democrats (SPD) have controlled the government and have generally supported developing programs of Islamic religious instruction (Hofhansel, 2010 193; Dromgold and Schneider, 2010 32). However as of 2006, the Christian Democrats have led the governing coalition of the NRW government (Dromgold and Schneider, 2010 32; Hofhansel, 2010 193). The *Bundesland* is confessionally mixed although Catholics outnumber Protestants (Hofhansel, 2010 193). Catholics and Protestants are the two largest religious communities and the population has a high rate of religious membership — 75 percent are affiliated with a religious community (Dromgold and Schneider, 2010 32). North Rhine Westphalia also has the highest concentration of Muslims of the German *Bundeslaender* with approximately 297,000 Muslim students of which 63 percent were of Turkish origin (Dromgold and Schneider, 2010 32; Josza, 2007 106). Since 1970, the number of Turkish Muslim students had increased from 7,500 to 100,000 by the end of the 1970s, 180,000 by 1997 and 260,000 by 2010 (Dromgold and Schneider, 2010 32). In 28 schools, more than two-thirds of the students were Muslim and in 162 schools, half of the students were Muslims (Dromgold and Schneider, 2010 32).

Dromgold and Schneider (2010 15) have also argued that this concentration of Muslims in North Rhine Westphalia has also encouraged NRW state officials to respond to the demands of the Muslim community. However, this also speaks to the corporate nature of the religious instruction policymaking process as well as to elite agreement

concerning the role of religious instruction in the integration process. Concerning the former, the increasing presence of Muslim students and the legal pressures posed by the existence of Article 7 III amid demands from lead Muslim organizations for recognition to provide religious instruction created pressure among NRW officials to make accommodations to extend religious instruction to include teachings in Islam. Subsequently, NRW officials moved towards establishing the corporate relationship between the state and a recognized religious community as called for in Article 7 III (Dromgold and Schneider, 2010). Concerning elite consensus, the increasing Muslim presence also presented the need to integrate these students. Religious instruction has been viewed historically by NRW elites as an important tool in this process. Hence, extending religious instruction to include teachings in Islam first via the mother tongue curriculum and then as an independent course taught in German depicts elite commitment to integrating this growing Muslim community (Dromgold and Schneider, 2010 19-24).

A Summary of Policy Evolution of Islamic Religious Instruction in North Rhine Westphalia

The political interests involved in North Rhine Westphalia have varied from the typical state-religious community partnership legally required in the provision of religious instruction as the process of establishing Islamic religious instruction did not follow the traditional Article 7 III process. Initially, the Duesseldorf Ministry of Education took the lead role in creating an Islamic religious instruction program (Dromgold and Schneider, 2010 32). This was under the aegis of the NRW Education Ministry. The NRW Education Ministry would eventually assume more of a lead role via a curriculum commission with

the incorporation of influence from local Muslim organizations increasing as the course matured (Dromgold and Schneider, 2010 32; Kraft, 2006 5). After discussions with lead Muslim organizations fell apart because of intergroup contestation, the state adopted religious instruction without recognizing or coordinating with lead Muslim organizations (Hofhansel, 2010 199). The structure and content of Islamic religious instruction was worked out via the curriculum commission, as briefly mentioned above (Kraft, 2006 6). The course generally focused on teaching the basics of Islam and how these precepts applied to everyday life for German students of Turkish origin (Fuess, 2007 228; Kraft, 2006 6). The language of instruction was later changed to German and the course modified to make its content more appropriate for non-Turkish Muslims. The modified curriculum was also developed by a curriculum commission authorized by the education ministry. When the CDU took control of the government in 2006, they renewed efforts to recognize a lead Muslim organization at the state level. However after their efforts failed they continued the Islamic Studies course, expanding it to more schools.

Thus, this form of policy expansion was a departure from Article 7 III requirements, which required confessional instruction delivered by a recognized religious community. The *Bundesland* Ministry of Education (via curriculum commissions) has generally maintained a lead role in curriculum development and teacher training (Dromgold and Schneider, 2010 32). Subsequently, the operative policy venue has been at the *Bundesland* level where it has remained as curriculum commissions assumed the lead role under the aegis of the NRW education ministry.

The two main lead organizations brought suit against North Rhine Westphalia and the *Bundesland's* central role in developing Islamic studies. These two groups sued for

recognition in 2005 so that they could play a more central role in shaping and providing Islamic religious instruction. The *Bundesverfassungsgericht* (federal constitutional court) ruled in their favor in 2005 but left it to the lower courts to decide whether these two groups, in particular, would be recognized. Thus, venue shifting to the federal courts may eventually determine the future direction of Islamic religious instruction and whether it structurally assumes the corporatist model called for in Article 7 III — a partnership between NRW and a recognized Muslim umbrella group. Nevertheless, the state-centric character of policy development led to incremental policy expansion driven by consensus among the small group of actors involved in the state curriculum commission under the aegis of the NRW education ministry (Dromgold, 2010 32).

The History of Policy Development in North Rhine Westphalia

North Rhine Westphalia was the first *Bundesland* to address the issue of expanding religious instruction to include teachings in Islam (Hofhansel, 2010 199). This began in 1978. Salim M. Abdullah, a representative of the Islam World Congress, supported by Turkish organizations, such as predecessors to contemporary organizations VIKZ and *Millî Görüş*, and the *Nurculuk* movement, surveyed parents to gauge support among Muslims with school-aged children for Islamic religious instruction. The group delivered the parent survey to state education ministry officials and it showed strong support for Islamic religious instruction among the Muslim community. This inspired the state to found an institute devoted to developing a religious curriculum in Islam and the formation of a working group which included the lead Turkish organizations and curricula experts of the aforementioned institute. Intra-Muslim contestation over the curricula led to the disbanding

of this group (Hofhansel, 2010 199).

The second attempt at developing a curriculum involved only the Education ministry. In December of 1979, in response to the failed attempt of the previous year, the education minister instructed the new state institute to develop a curriculum independently — thus, proceeding without Muslim representation (Hofhansel, 2010 199). The curriculum was developed via a curriculum commission (Kraft, 2006 6). The working group included school administrators (predominantly from the Duesseldorf Education Ministry), Turkish teachers, scholars of Islam, religious instruction educators, Muslim teachers, and Muslim and non-Muslim scientists in cooperation with the Universities of Istanbul, Ankara, Konya, and al-Azhar in Cairo (Jozsa, 2007 106; Kraft, 2006 6; Dromgold and Schneider, 2010 33). This course, “Islamic Teaching in the Context of Additional Native Language Education,” (ITCANLE) was delivered in Turkish for students in grades 1 through 4 by instructors from the mother-tongue portion of the curriculum (Dromgold and Schneider, 2010 33; Jozsa, 2007 106). The course operated under the then held assumption that the Turkish immigrants would eventually return to Turkey (Dromgold and Schneider, 2010 33). It was mostly focused on a Sunni interpretation of Islam (Jozsa, 2007 106). The aim of the course was to deliver religious knowledge within the framework and spirit of the Article 7 III and cultural and education goals of the state constitution without being a course in which “believers of a faith taught to the believing”— the normative pedagogical paradigm of Article 7 III religious instruction (Dromgold and Schneider, 2010 33).

The Christian churches, however, were critical of this example of *Bundesland* autonomy (Kraft, 2006 172). The Protestant church, in particular, rejected this approach from the education ministry as a solution to the problem of finding a representative

religious community to create an Islamic instruction curriculum (Hofhansel, 2010 199). The *Bundeslaender*, subsequently, decided to subsume ITCANLE within the supplementary mother tongue instruction already in place for children of Turkish migrants.

In 1986, the syllabus for the primary school, “Religious Studies for Students of Islamic Faith,” course was published (Jozsa, 2007 106). From 1986 - 1989 an additional teacher training program was set up to train approximately 600 teachers. In 1990, books covering the syllabus for the primary school were published and the syllabus was implemented in 40 schools (Dromgold and Schneider, 2010 33). In 1991, syllabi were created and courses were extended for students in grades 5 and 6, and from the 1996-1997 academic year, to grades 7-10 (Dromgold and Schneider, 2010 33; Jozsa, 2007 106). Approximately 50 percent of the Muslim primary school students participated in ITCANLE grades 1-4 through 1999 (Jozsa, 2007 106).

The course with its Turkish focus, however, excluded non-Turkish Muslims (Dromgold and Schneider, 2010 33). As a consequence, in 1999, the state began offering an additional religious studies course, Islamic Teaching (*Islamische Unterweisung*), in German (Hofhansel, 2010 1999; Dromgold and Schneider, 2010 33-34). This allowed for Muslim students (regardless of nationality and language skills) from grades 1-10 to participate (Dromgold and Schneider, 2010 33). The course also differed from Article 7 III religious instruction in that the Education Ministry was solely responsible for the course as opposed to a recognized religious community (Jozsa, 2007 107). The curriculum for this course was also developed by a curriculum commission under the direction of the education ministry (Kraft, 2006 6). The commission was made up of representatives of the school administration, Turkish teachers, scholars of Islam, and religion educators (Kraft, 2006 6).

In drafting the curriculum, the group also sought buy-in (by consulting with them on curriculum drafts) from religious congregations and Muslim associations. This circle of consultation would later expand to include the Islamic theological faculties, the Turkish state (via the Office of Religious Affairs) and German representatives from the Muslim World Congress. The course continued the pedagogical orientation of teaching the basics of Islam and how these tenets were relevant or could be applied to the students' everyday lives as European residents. ITCANLE syllabi were initially adapted for Islamic Teaching (Jozsa, 2007). Having evolved out of the ITCANLE (which had evolved from the mother tongue course) model, the pedagogy was mostly oriented towards Sunni Islam (Jozsa, 2007 107).

This version of Islamic religious instruction was initially offered in 25 primary and secondary schools (in 1999) and then expanded to 50 schools by 2002 (Dromgold and Schneider, 2010 33) and 110 schools by 2005 (Jozsa, 2007 107). Approximately 75 teachers served in these 110 schools consisting of 7,000 - 8,000 students (Jozsa, 2007 107). The teachers were either Islamic scientists who received additional pedagogical training or former/ current mother-tongue instruction teachers. As of 2010, the course was offered at 130 schools (Dromgold and Schneider, 2010 34).⁶⁷

Changing the language of instruction to German in 1999 initially attracted criticism from DITIB (Hofhansel, 2010 199). They were also critical of teacher qualifications—as instructors were chosen by *Bundesland* officials without consultation from any Islamic representative. Hofhansel (2010) argues these groups may have been fearful that *Bundesland* officials would Germanize Islam and/or compromise core Islamic precepts for

⁶⁷ As of 2002, North Rhine Westphalia also continued to offer two hours of religious instruction via the mother tongue courses.

their own didactic interests. They would later drop this opposition to German as the language of instruction (Hofhansel, 2010 199-200).

State officials defended their development of Islamic religious instruction without a representative Muslim religious community, arguing that a representative community according to the criteria of Article 7 III criteria could not be found (Kraft, 2006 6). Lead Muslim organizations contested this account. By the late 1990s Muslim organizations including the ZMD (Central Muslim Council and the *Islamrat* (Islamic Council) campaigned for Islamic instruction as defined by Article 7 III. Parents, students of Islamic faith, the Islamic Association of Germany (*Dachverbande Islamrat fuer die Bundesrepublik Deutschland*), and Central Association of Muslims in Germany (*Zentralrat der Muslime in Deutschland*) organized with the intent to form a religious community to deliver Islamic religious instruction per Article 7 III by the 2000-2001 academic year (Dromgold and Schneider, 2010 33). Their application, however, was denied. In 1998, these lead Muslim associations filed a lawsuit with the courts demanding that North Rhine Westphalia offer religious instruction according the Article 7 III (Kraft, 2006 6; Hofhansel, 2010 200)

In 2000, the *Bundesland* organized a round table consisting of the major Islamic organizations to discuss Islamic religious instruction. After the largest group, DITIB, failed to attend the meeting, the *Bundesland* abandoned the idea of a round table on religious instruction (Hofhansel, 2010 200).

In 2001, independent from Muslim attempts at offering religious instruction, the Minister of Education, Gabriele Behler, announced an initiative to reform Islamic Teaching (*Islamische Unterweisung*) so that it met the major curricula demands of the lead Muslim

organizations (Dromgold and Schneider, 2010 34). Minister Behler's initiative was launched amid strong challenges from the CDU in the previous election concerning the lack of Article 7 III Islamic religious instruction. Dromgold and Schneider (2010) argue that this was in line with Behler's party, the SPD, to increasingly involve the demands of lead Muslim organizations in an attempt to move the state towards recognizing a religious community and thus offer Islamic religious instruction according to Article 7 III (34).

In 2005, the *Bundesverwaltungsgericht* (Federal Administrative Court) ruled that peak associations were permitted to form religious communities to satisfy Article 7 III criteria for the provision of religious instruction. However, the court left it to a lower court to rule on whether the Islamrat or ZMD satisfied the Article 7 III criteria (Hofhansel, 2010 200).

Alevite Religious Instruction in North Rhine Westphalia

During this same period (2000 and 2001), the AABF, the main organization representing Alevites in Germany, also campaigned for religious instruction in North Rhine Westphalia (they also campaigned in Baden Wuerttemberg, Bavaria, Berlin and Hesse) (Hofhansel, 2010 201). North Rhine Westphalia hired two academic experts (Ursula Spuler-Stegemann and Stefan Mucke) to write academic and legal opinions on the legitimacy of their application for recognition as a religious community. Both experts expressed their support for the AABF application and by 2008, NRW began Alevite religious instruction in ten elementary schools (Hofhansel, 2010 201).

The CDU Takeover and their Attempt at developing an Article 7 III Islamic Religious Instruction

From 1966-2005, Social Democrats controlled the government. In 2005, a CDU government came to power promising to establish Islamic religious instruction along the Article 7 III criteria (Hofhansel, 2010 200). Subsequently, upon assuming power in 2005, CDU officials changed the title of Islamic Teaching to the Study of Islam (SI) (*Islamkunde*). This was to further emphasize that this was a religious studies course — a course about Islam — as opposed to confessional religious instruction — the CDUs preferred religious instruction course option— as called for in Article 7 III (Jozsa, 2007 106; Hofhansel, 2010 199; Dromgold and Schneider, 2010 33). The course continued the didactic orientation started in 1999 of providing students with the basic foundations of Islam and showing how these were relevant for the pupils' lives in Germany (Kraft, 2006 7). This was again a course that applied the teachings of Islam as opposed to religious instruction in Islam (Hofhansel, 2010 199). The course used the Koran, the Sunnah and legal texts as its main sources for the curriculum's substantive content (Kraft, 2006 7). However, only those aspects from Islam that had implications for real world application were included in the curriculum.

The CDU's ultimate plan, however was to pursue establishing Islamic religious instruction according to Article 7 III. The interim plan was to consult with mosque associations in Cologne and Duisburg to encourage the formation of local religious communities — encouraging the formation of *shuras* — to facilitate the creation and implementation of Islamic religious instruction in these two cities (Hofhansel, 2010 200). Two issues made the process of creating Islamic religious instruction difficult. First, there

were the problems of developing a curriculum and training teachers. The second involved the issue of Muslim group participation in the process. There was mistrust from both *Bundesland* officials and Muslim groups. Government officials did not trust any of the available Muslim organizations. The Muslim organizations feared *Bundesland* officials would push to compromise core precepts of Islam and if NRW officials did not attain their objectives, freeze the lead organizations out of the process through the inclusion of local Muslim groups from the Cologne and Duisburg Muslim communities (whom the new NRW had initiated contact with as part of the aforementioned interim plan). Thus, these organizations perceived the interim plan as a move by the Christian Democrats to freeze the lead *Bundesland*-level Muslim groups out of the creation of religious instruction curricula and pedagogy in North Rhine Westphalia. Because of these hurdles, in July 2009, *Bundesland* officials announced the expansion of the *Islamkunde* school trial to more schools, but delayed the introduction of Islamic religious instruction (according Article 7 III) until the aforementioned issues were resolved (Hofhansel, 2010 200). Thus, for similar reasons to the SPD — the inability to find an appropriate Muslim lead organization to recognize at the *Bundesland*-level — the CDU also chose to go it alone.

Thus far, North Rhine-Westphalia has adopted the largest implementation of religious instruction. Through 2007, a form of Islamic religious instruction was implemented at 130 schools (out of the 5,000 total for the *Bundesland*), with plans to expand the program to 200 schools by 2010 (Fuess, 2007 228; Dromgold and Schneider, 2010 34). However, these courses have not involved a representative Muslim organization in the development of curriculum (Fuess, 2007 228). Muslim religious groups have continued to campaign for involvement in Islamic religious instruction. The lead Muslim

organizations have argued that the religious instruction offered by NRW state officials — since it neither includes input from designated lead organizations nor is a confessional course — does not satisfy the requirements of Article 7 III and thus is legally suspect (Fuess, 2007 228). Court cases in which the leading Muslim groups were litigants were pending as of 2010 (Fuess, 2007 228; Dromgold and Schneider, 2010 34).

Teacher Training Provisions

Currently, instructors are trained at the NRW School Institute in Soest (Fuess, 2007 228). In 2004, the University of Muenster in North Rhine-Westphalia hired its first professor, Dr. Muhammad Kalisch, to chair the Religion of Islam department making him the first Muslim Theologian in Germany (Fuess, 2007 228; Jozsa, 2007 107). The program is an initiative to train 30 Muslim teachers per year to become instructors in Islamic religious instruction and aims to eventually train enough teachers to instruct all Muslim students in the *Bundesland* (Fuess, 2007 228). As this program was approved by the leading Muslim organizations, this might resolve the problem concerning their lack of participation — through the training and employment of teachers via a program approved by Muslim organizations — through satisfying the Article 7 III requirement that instructors are provided by the affected religious community (Fuess, 2007 228).

Assessments From the Literature Concerning the NRW Record in Islamic Religious Instruction

Dromgold and Schneider (2010) argue that this record of state initiative in incorporating Islamic religious instruction and in reaching out to lead Muslim

organizations results from the large concentrations of Muslims in the state and party goals of both the SPD and CDU (35). These parties support Islamic religious instruction with the goal of finding a recognized Muslim religious community so that Islamic religious instruction can adhere to Article 7 III. The continual struggle of lead Muslim organizations for official recognition is not because of disinterest from the *Bundesland* officials, but from the ideology (from both parties) of strict adherence to the criteria of Article 7 III. *Bundesland* officials (from both the SPD and CDU) would like to move towards an official Article 7 III religious instruction, but they want to be able to work with lead Muslim groups that share their views on curriculum. However, party officials have been more than willing to include the interests of the Muslim community as the current form of religious instruction involves a relatively broad range of Muslim interests in the NRW community (Kraft, 2006 6). NRW officials thus have used *Islamkunde* as a substitute until the legal parameters of corporate recognition can be met (Dromgold and Schneider, 2010 35).

Kraft (2006) also argues that this state-led form of religious instruction is setting a new standard (5-6). First, the curriculum was developed by a curriculum commission that included school administration representatives, Turkish teachers, scholars of Islam, and religion educators. This group worked out draft curriculum which were thoroughly discussed with Islamic congregations and associations. The curriculum commission group would later expand to include Islamic theological faculties, Office of Religious Affairs in Turkey, and German representatives from the Muslim World Congress. According to Kraft (2006), the level of consensus on curriculum achieved within the Islamic theological community surpasses any attempt made by the major Muslim umbrella groups. Still, the lack of formal inclusion of the large Muslim umbrella organizations as well as the religious

studies focus of the course (as opposed to confessional religious instruction as called for by Article 7 III) has continued to make the North Rhine Westphalia version of Islamic religious instruction controversial (Kraft, 2006 6).

Conclusion - Policy Development in a single Policy Venue that Operates within a Corporatist Paradigm

Concerning the central argument of this study, the closed, corporatist policymaking system and elite consensus around religious instruction provided Turkish interests with a favorable setting to achieve favorable policy outcomes in religious instruction. Concerning the former, policy evolution was driven mostly by policy actions in a single policy venue — the NRW ministry of education. NRW officials (under the aegis of the education ministry) were able to coordinate the actions of state, religious and Muslim elites (those invited by the state) in efforts to provide some form of Islamic religious instruction with little threat of outside actors (with the exception of the courts) influencing the politics of religious instruction. The comparative lack of venue shifting and the involvement of policy venues other than the state has meant that policy evolution has proceeded mainly from the politics of the various curriculum commissions, organized by the education ministry, the politics resulting from the campaigns of the lead Muslim organizations to gain recognition from NRW state officials, and how these played out in party politics. Yet, concerning the latter, since both the CDU and SPD pursued securing Article 7 III, partisan politics mainly added urgency to their goals rather than fundamentally changing their approaches to Islamic religious instruction.

Lastly, as court rulings concerning the legal legitimacy of these claims by Muslim

organizations are still pending, venue shifting to the courts may ultimately influence policy direction. Still, regardless if Islamic religious instruction remains the state-led version of Islamic studies or becomes one that strictly adheres to Article 7 III — a confessional religious course delivered by a recognized Muslim religious community — policy will move in an expansionary fashion with attempts to increase Muslim involvement (if a lead Muslim community cannot be found) for the foreseeable future as Islamic religious instruction enjoys the support of the NRW political establishment.

Concerning German corporatism, the state-centric approach does not negate its influence on the developments in Islamic religious instruction. German corporatism especially the corporatist aspects of Article 7 III has kept the goal of establishing religious instruction according Article 7 III as a top priority for elites in NRW. This meant that securing a lead Muslim organization at the *Bundesland* level as a corporate partner to provide Islamic (confessional) religious instruction was/is the ultimate policy goal. And this policy goal has meant that the state-centric approach has continually aimed at becoming more inclusive of Muslim congregations in lieu of finding a Muslim corporate partner at the *Bundesland* level. This has ultimately been beneficial for Muslim interests (Kraft, 2007 6).

Concerning elite agreement, German political elites from the SPD and CDU as well as Christian religious leaders have supported extending religious instruction to include teachings in Islam. However, by taking such a state-centric approach, its response has departed from strict adherence to the corporatist nature of Article 7 III. This has been controversial not only with Muslim organizations, but also with Christian religious leaders despite this being the stated the goal of both the SPD and CDU. As this led to venue

shopping by lead organizations via legal suits, policy direction may ultimately be determined by venue shifting. This will, however, not be contrary to elite consensus concerning Islamic religious instruction as elites in NRW are in pursuit of establishing religious instruction according to Article 7 III.

Ultimately, this corporatist state policy venue characterized by elite agreement around the idea that Islamic religious instruction is beneficial for the integration of students of Muslim faith (and immigrant background) results in Muslim interests being better situated in the NRW polity to obtain their policy goals in Islamic religious instruction than their Mexican counterparts in Texas and especially in California with respect to bilingual education. In California and Texas historic elite disagreement over bilingual education and the competitive nature of the American political marketplace mean that Mexican interests have had to perennially defend the policy regimes they won during the brief period of elite relative agreement in support of bilingual education in the 1960s and 1970s. In Texas, mobilized minority interests, entrenched in policy regimes, have been able to use the institutional advantages afforded policy regimes — the political dynamics of concentrated costs and diffuse benefits typical of retrenchment politics. In California because of the voter referendum policymaking mechanism, bilingual education policy regimes were not afforded such, and thus bilingual education was outlawed in 1998 as anti-bilingual forces were able to find a favorable policymaking venue for their *English Only* problematization of bilingual education. In NRW, elites from both major parties viewed the expansion of religious instruction to include instruction in Islam as beneficial. And despite their inability to find an appropriate Muslim corporate partner, chose to develop religious instruction while also increasingly incorporating more influence from the Muslim community as the

Islamic Studies course matured. The fact that NRW established a teacher training program at the University of Muenster to train Muslim teachers is indicative of this commitment. And this highlights the lack of commitment of Texas and California as even during the period of elite consensus in support of bilingual education, teacher training remained a hurdle that neither state committed significant resources to overcome.

8.2 BAVARIA

Introduction - The Effects of the Closed Policymaking System and Elite Agreement on the Evolution of Islamic Religious Instruction Policy

The Bavarian political setting is similar to that of NRW but differs in the dynamics of elite agreement as well as the political leaning of the governing coalition. Concerning the similarities, Bavaria is also governed by Article 7 III, a majority of its population is affiliated with a religious community, and there is elite consensus in support of religious instruction as an integrative force for youth in general and Islamic religious instruction for Muslim youth in particular. It differs from NRW in that it had a conservative government over the period of study and elite agreement took on more of a state-local dynamic. Nevertheless, Bavaria was also a favorable setting for Turkish interest: despite not being able to establish a corporate Muslim partner at the *Bundesland* level, Bavarian officials found ways to establish Islamic religious instruction in isolated localities.

Two factors have influenced policy evolution in Islamic religious education in Bavaria: the relatively closed, corporatist nature of the policymaking process in religious instruction and elite agreement among policy players concerning extending religious instruction to include Islam. With respect to the closed policymaking system, this refers to

two aspects of policymaking in religious instruction in Bavaria: corporatism and cooperative federalism. With respect to the former, the corporate nature of the policymaking process in Bavaria resulted in policy venues that consisted of the state education ministry delegating policy authority to chosen lead Muslim organizations through informal recognition. This first involved the education ministry working with the Turkish consulate and Turkish parents and then being open to working via collaborations between local Muslim lead organizations and local academics. Although Bavarian state officials departed from classic Article 7 III corporatism through not designating complete policy authority to a single Muslim representative at the *Bundesland* level and developing programs independent of a Muslim lead organization at times (especially early on), *Bundesland* officials continued to search for or were open to working with several local Muslim representatives and academics to provide Islamic religious instruction in localities where such collaborations were possible.

With respect to cooperative federalism, the Basic Law declares that education and specifically religious education is solely the jurisdiction of the *Bundeslaender*. In Bavaria, over the period of study, this has meant that the *Bundesland* policy venue has been the only venue involved in policymaking as neither national nor judicial policy venues played a role in policy evolution over the period of study. The local policy venue was also involved in religious instruction policymaking. However, the local policy venue in the German setting is more subservient to the policy of the education ministry. Thus, as with NRW, policymaking was restricted to a small number of policy actors, whose involvement was sanctioned by the *Bundesland* Education Ministry. As in the NRW case this allowed for a consistent problematization of extending religious instruction to teachings in Islam and

precluded the expansion of the scope of conflict through the entry of unwanted policy actors with different problematizations concerning the incorporation of Islamic religious instruction.

Elite agreement among policy players in Bavaria entailed consensus among state and local politicians along with academics around the idea of extending religious instruction to include teachings in Islam. This remained constant throughout the period of study.

Islamic Religious Instruction in Bavaria— A Summary of Developments

Bavaria chose to pursue expanding religious instruction to include teachings in Islam by first establishing a course under its mother-tongue curriculum (similar to NRW). This course was eventually paired with an Islamic course taught in German. And lastly, Islamic religious instruction was implemented via the Erlangen pilot, which originated in Erlangen (a city in the Middle Franconian region of Bavaria) via the cooperation of the State Education ministry, local academics and a Muslim umbrella group in Erlangen. The successful pilot program would later be replicated in other localities.

The first two programs were implemented by the Bavarian education ministry in response to demands by the Muslim community for religious instruction. With the mother tongue course, the Bavarian education ministry worked with the Turkish consulate in developing a curriculum, providing instructors and course materials. For the Islamic Religion Course in German (IRIG), the Bavarian education ministry crafted its own curriculum with assistance from the Turkish consulate. For the Erlangen pilot program, the Bavarian education ministry engaged in a collaborative effort in Erlangen between the

locality's lead Muslim organizations and local academics — corporatist arrangements between the state and localities. The local Muslim organizations were granted complete authority over curriculum matters. This pilot would eventually spread to Munich, Fuerth, and Bayreuth where Bavarian educational officials established similar arrangements with local Muslim organizations and academics.

Concerning the influence of German corporatism, although state education ministers did not work with state representatives but instead with local representatives, the dynamics of policy formation were still corporatist in nature. Policy evolution occurred within the parameters of these state-local corporatist relations. Early iterations were mostly state initiatives (especially IRIG) but still incorporated assistance and advice on curriculum from the Turkish consulate.

Additionally, a teacher training program/ curriculum was developed at the University of Erlangen-Nuernberg through consultation with the German Muslim community and the Turkish consulate (Fuess, 2007 232). As this is a further example of cooperation between state officials and the Muslim community, this is another step towards satisfying the corporatist dynamics of Article 7 III whereby the religious community handles the certification of teachers under the aegis of the state.

Concerning the cooperative federalist aspect of the closed nature of policymaking in religious instruction, the Basic Law designation that all education matters are the province of *Bundeslaender* governments resulted in the policy venue primarily residing at the state level. Additionally, in the Bavarian case, Muslim organizations did not file legal suits against the state to push the recognition of a Muslim corporate partner at the state level, and thus the judiciary was likewise not involved in policy development. As a result

all policy decisions were a function of the state education ministry: first partnering with the Turkish consulate, then working more or less independently, and later working with various localities to establish various forms of religious instruction and a teacher training program at the University of Erlangen-Nuernberg. Thus, the Bavarian education ministry sanctioned all policymaking in religious instruction with involvement from other policy actors only at their discretion. This precluded the entry of outside actors and thus the expansion of the scope of conflict. The maintenance of a consistent issue definition to the problem of expanding religious instruction to include Islamic religious instruction was thus enabled. The Bavarian education ministry could repeatedly pursue alternative corporatist arrangements in the provision of Islamic religious instruction in various localities despite such practices varying from Article 7 III criteria.

Elite agreement among the policy players was also an aspect that drove policy development in Islamic religious instruction in Bavaria. Consensus existed among state education ministry officials, the various local politicians (some as in Munich serving for the SPD), and academics concerning the expansion of religious instruction to include teachings of Islam. This ultimately contributed to the gradual expansion of Islamic religious instruction despite the inability to find a lead Muslim partner at the state level with whom to work. Subsequently, Bavarian elites sought or were open to finding Muslim lead organizations at the state or local level, respectively, with whom they could collaborate to develop religious instruction in Islam in localities where such partnerships were feasible.

Combined, these two factors — the closed policy process and elite agreement — allowed Bavarian officials, who were in favor of expanding Islamic religious instruction, to seek out or welcome local partnerships in order to accomplish these policy ends and to

pursue policy ends without challenge from other policy venues. This resulted in a slow but steady policy expansion that has been local in nature.

The remainder of the chapter will detail how the two factors influenced policy development in Bavaria.

Bavaria- Political Context and Population Demographics

Bavaria has offered Islamic religious instruction since the mid-1980s but only in sub-*Bundesland* localities (Dromgold and Schneider, 2010 35). By 2006, there were at least 300,000 Muslims in Bavaria (making the overall Bavarian population 2.2 percent Muslim); 70,000 of them were public school students. Most of these immigrants were from Turkey, the Balkans, North Africa, and Asia. These populations vary in concentration per locality (Dromgold and Schneider, 2010 35).

Christian Democrats, specifically the CSU, have dominated the politics of the state since 1957 (Hofhansel, 2010 193; Dromgold and Schneider, 2010 35). The CSU is largely in support of Islamic religious education and has been since the late 1990s. Schools in Bavaria are bound by Article 135 of the Bavarian Constitution to educate and nurture children according to Christian precepts — Christian themes are supposed to permeate into the general atmosphere of the schools (Simel, 1996 35). Article 136, however, mandates that Bavarian schools should exhibit tolerance for religious minorities. The conflict of these Articles has at times made the incorporation of Muslim students problematic (Simel, 1996 34-36).

Additionally, Bavaria is considered one of the more conservative integration regimes in Germany (Koopmans, 2004 458). Koopmans (2004) in his comparative study

of claims-making in German localities found that Bavarian public discourse is most in support of restrictions in migrant rights. Its ethnic minority population tend to be less involved in public discourse concerning immigrant rights and issues of integration than in other localities in Germany (Koopmans, 2004 458).

Policy Development in Islamic Religious Instruction in Bavaria- Islamic Studies in the Mother-Tongue Part of the Curriculum

Bavaria aimed to adhere to the traditional path of Article 7 III in moving towards the establishment of Islamic religious instruction. This is consistent with the CSU's stance on Islamic religious instruction (Dromgold and Schneider, 2010 25). Article 7 III requires that curriculum can be created by a religious community which satisfies the criteria for a representative religious community. Yet, the decentralization of Islam presented the problem that a true representative religious community could not be determined — a re-occurring issue (Simel, 1996 33). In lieu of this problem, school officials, the Turkish Consulate and Turkish parents tried to develop a curriculum for Islamic religious instruction. A compromise was reached in 1985 to offer a form of religious instruction implemented by Bavarian educational officials beginning with the first grade, with the addition of a grade every year up to the 4th grade (Simel, 1996 33). This program only developed in isolated areas, however (Dromgold and Schneider, 2010 35).

In this initial version of Islamic religious instruction, the Bavarian education ministry began offering Islamic religious instruction as part of the mother tongue language classes (Hofhansel, 2010; Dromgold and Schneider, 2010 35). From the 1987-1988 academic year, the next iteration of the course was offered under the title, "Islamic

Religious Instruction for Turkish Pupils of Islamic Belief” (IRITPIB) (*Islamische Religioese Unterweisung fuer Tuerkische Schueler Mulimischen Glaubens*). They settled on not using an actual curriculum (Josza, 2007 103). Instead, the program operated via guidelines which adhered to a syllabus prepared by the Turkish Ministry of Education and Cultural Affairs in Turkey. The course aimed to use the guidelines (titled, “Guidelines for Religious Instruction of Turkish Students in Islamic Faith”) to integrate Islam with real life issues encountered by students of Turkish origin living in Western Europe (Josza, 2007 103; Dromgold and Schneider, 2010 35). Thus, similar to NRW’s mother-tongue iteration, the course was less a confessional course and more a course about Islam with a practical element — contrary to the confessional course called for in Article 7 III (Dromgold and Schneider, 2010 35; Josza, 2007 104).

The course is instructed in Turkish by Turkish teachers trained in Turkey and supervised by the Bavarian education ministry using Turkish textbooks approved by the same ministry (Kraft, 2006 5; Josza, 2007 103). The course, which was initially offered only for grade 1, was expanded with course offerings on an optional basis for grades 1-3 by the 1987-1988 academic year; grades 4-5 were added the following year, and eventually it expanded to include up to grade 9 on an optional basis (Dromgold and Schneider, 2010 35). As of the 2005-2006 academic year 13,023 Muslim students of Turkish origin participated in the mother-tongue classes. Mother-tongue religious studies have continued despite the expansion of the Islamic religious instruction in the German model (see below) (Dromgold and Schneider, 2010 35).

To recap, similar to NRW early iterations, this initial offering of Islamic religious instruction operated mostly under the direction of the Bavarian ministry of education. The

course was the product of its partnership with the Turkish Ministry of Education and Cultural Affairs in Turkey, which provided the teachers, syllabus, and instructional texts. The policy arrangement was corporatist as substantive and resource responsibility concerning the course were delegated to the Turkish ministry. The policy venue consisted of the partnership between these two players.

The Introduction of Islamic religious instruction in German (IRIG)

From 2001, religious instruction in Bavaria expanded with the addition of an Islamic religious instruction class in German (Hofhansel, 2010 202; Dromgold and Schneider, 2010 35). The program, Islamic Religious Instruction in German (IRIG) (*Islamische Religioese Unterweisung in deutscher Sprache*), was developed under the direction of the Bavarian education ministry and began as a pilot project in 5 schools in the 2001-2002 academic year and would eventually expand to 35 schools (Jozsa, 2007 103; Dromgold and Schneider, 2010 35). For the purposes of comparative research, IRIG was only offered in schools which offered IRITPIB and an Ethics course as well (Jozsa, 2007 103). Initially these courses were only offered to first graders but expanded to grades 1-5 in these schools by 2004 and to secondary schools participating in the pilot in 2005 (Dromgold and Schneider, 2010 35). This course was open to Muslim students of all ethnicities and actually was well-attended by Muslims of non-Turkish origin (Dromgold and Schneider, 2010 35; Jozsa, 2007 103). This is important as non-Turkish Muslim students range from a small minority to the majority of Muslim students depending on the locality (Dromgold and Schneider, 2010 35). Courses, thus were varied in their focus depending on the demographics of the Muslim student population in the locality. The

curriculum initially followed the curricula guidelines of the IRITPIB, but once this proved inadequate for the needs of 21st century students of migrant background (who would not return to their parents' homeland), the education ministry developed a curriculum for IRIG (Josza, 2007 103). The teachers hired generally had no formal religious pedagogical training.

As with the initial iteration of Islamic religious instruction under the mother tongue portion of the school curricula, this second chapter in the expansion of Islamic religious instruction was also driven by the Bavarian education ministry. In this case, however, the ministry acted more independently with decreasing influence from the ministry of education and Cultural Affairs in Turkey. In this second iteration, the policy arrangement was subsequently less corporatist — as in addition to decreasing input from Turkish ministry of education it also lacked a recognized representative of the target constituent group which was delegated responsibility for the course's provision. Yet, the policy response was still a response to calls from the Turkish community for an Islamic version of religious instruction — although it was likewise responding to CSU officials who favored Islamic instruction in German once it became apparent that the immigrant population was permanent. And as with the initial mother tongue course, the policy venue resided solely within the Bavarian education ministry.

The Erlangen Pilot Project

In the 2003-2004 academic year, Islamic Education (IE) (Islamunterricht) was implemented in the city of Erlangen, a city with an especially large concentration of Muslims for Bavaria (Dromgold and Schneider, 2010 35). Given the large presence of

Muslims, lead groups emerged and worked in concert to address the concerns of their constituents. This program would develop the most towards adhering to Article 7 III requirements (Jozsa, 2007 103). The pilot program emerged from a petition submitted in 1999 by the Islamic Religious Community Erlangen (*Islamische Religionsgemeinschaft Erlangen*) to provide Islamic religious instruction at schools in Erlangen (Hofhansel, 2010 202). The petition received support from academics at the University Erlangen-Nurnberg, local politicians, and the local foreigner council (*Ausländerbeirat*) (Hofhansel, 2010 202).

IE in Erlangen is a confessional course as opposed to IRIG and IRITPIB which are courses *about* Islam (Jozsa, 2007 104). Subsequently, IE adheres more to the substantive requirements of Article 7 III religious instruction. The *Bundesland* implemented the pilot program in Erlangen and worked with the Unified Association of the Islamic Community in Erlangen to offer Islamic religious instruction at two local schools (Hofhansel, 2010 202; Fuess, 2007 229; Dromgold and Schneider, 2010 37). The community was specifically formed for the implementation of the trial program (Fuess, 2007 229).

The pilot was the result of a collaboration between the aforementioned religious community, academics from the University of Erlangen-Nurnberg and the Bavarian Education Ministry (Dromgold and Schneider, 2010 35). This tripartite arrangement is a slight departure from the federal/state-recognized religious community partnership called for by Article 7 III. However, as called for in Article 7 III, the Association of the Islamic Community in Erlangen was given complete autonomy over the curriculum and (as mentioned) the course was a confessional religious instruction course and not a course *about* Islam. Dromgold and Schneider (2010 37) argued that the the political opportunity structure which was more open to informal alliances between the state and NGOs (such as

the local lead Turkish organizations) allowed for the real participation of Muslim organizations, academics and Bavarian officials at the local level despite the non-existence of a Muslim lead organization at the *Bundesland* level. Dromgold and Schneider (2010) likewise maintain that the lack of a *Bundesland* initiative (a corporate partnership at the *Bundesland* level with a lead Muslim organization) retarded efforts in other localities. However, they also concluded that because of the fragmented structure of Islam and the chronic problems of Muslim in-fighting that perhaps these local initiatives are the best way forward for expanding religious instruction to include instruction in Islam in other states (Dromgold and Schneider, 2010 40). The subsequent adoption of the Erlangen trial in other localities speaks to their assertion. Once the first trial proved successful, the program expanded to more schools in Erlangen and eventually to other localities with continued expansion expected (Fuess, 2007 229; Hofhansel, 2010 202).

In this third phase of expansion in Islamic religious instruction, the Bavarian education ministry welcomed the collaboration of academics at the University of Erlangen-Nurnberg and local Muslim lead organizations. Similar to the first two iterations, the policy venue remained at the *Bundesland* level, under the aegis of the Bavarian education ministry, but with the Erlangen pilot, it involved academics and Muslim elites from the Erlangen locality. The pilot would eventually expand to include arrangements in Nueremberg, Fuerth, Bayreuth and Munich as local Muslim-lead umbrella groups were identified by local officials or successfully campaigned for local recognition. These would all assume similar *Bundesland*-local religious community arrangements. And adhering to the Article 7 III corporatist requirement, the recognized local Muslim umbrella groups were given full autonomy concerning the curriculum. Thus, the local arrangements of the

Erlangen Pilot project were more corporatist than the IRIG iteration.

Attempts to Find a Muslim Representative at the Bundesland Level

Concurrently while the Erlangen pilot program was coming to fruition, the Bavarian education ministry attempted to establish Islamic religious instruction on a *Bundesland*-wide basis by seeking to work with Muslim associations in developing a curriculum. To kickstart the development phase, the ministry invited all Muslim associations to a round table in 2001 (Hofhansel, 2010 202). Most Muslim associations participated with the exception of DITIB. In August of 2001, these associations joined forces to form the Islamic Religious Community of Bavaria (IRCB) (*Islamische Religionsgemeinschaft Bayern*). In October of the same year, the round table again convened. Months later, in February of 2002, the IRCB then submitted an application to the education ministry (then headed by Minister Ulrich Seiser) to provide religious instruction on a *Bundesland*-wide basis. But since the IRCB submitted this application without first consulting with the Bavarian education ministry the application was ultimately turned down, leaving only the Erlangen experiment as the only form of confessional religious instruction in Bavaria (Hofhansel, 2010 202).

Dromgold and Scheider (2010) (as mentioned above) and Fuess (2007) argued that the piecemeal, iterative local expansion of Islamic religious education was probably the best way forward in securing such corporatist policy arrangements because of the fragmentation of the Muslim community that has felled other efforts to establish a representative Muslim community at the state level. Their argument is based not only on the described failed attempt in Bavaria but the attempts in other German *Bundeslaender*

(including North Rhine Westphalia), citing the difficulty of overcoming the structural mismatch between Islam — a decentralized, heterogenous religious community — and Article 7 III requirements which privilege homogenous, hierarchal religious communities. The leading organizations in Erlangen and then in the other localities that adopted the Erlangen project overcame the usual rifts and conflicts with state officials that often preclude the formation of an inclusive representative organization (Fuess, 2007 229; Hofhansel, 2010 198).

The Establishment of Teacher Training for Islamic Religious Instruction

The University of Erlangen initially introduced a visiting professorship for Islamic Religious Teaching (*Islamische Religionslehre*) in 2002. In 2006, the University of Erlangen-Nuernberg appointed Dr. Harry Harun Behr to chair the newly established program of Islamic religious instruction, the Interdisciplinary Center for Islamic Religious Teaching (*Interdisziplinäres Zentrum fuer Islamische Religionslehre*) (IZIR) (Fuess, 2007 229; Josza, 2007 104). Behr became the second Muslim Theologian in Germany, second to Kalisch in Muenster (Fuess, 2007 229). Since its inception, the program has been training 30 teachers per year to eventually teach Islamic religious instruction. The training is similar to the training that Protestant and Catholic teachers receive: for general subjects (such as education, history of religions, etc) that are part of the curriculum, students can enroll in general courses which are part of the university course offerings; special subjects (such as Arabic, prophetic traditions (hadith), biography of the prophet (sira), Islamic law, etc.) are offered in cooperation with the Faculty of Law and Islamic Sciences (Josza, 2007 104). The training center for teachers was the first of its kind in Germany (Dromgold and

Schneider, 2010). Once the curriculum for *Haupt-* and *Realschule* have been created, it will also offer teacher training for secondary school instructors (Dromgold and Schneider, 2010 37).

Behr, like Kalisch, is a German who converted to Islam. Fuess (2007 232) argues that this speaks well of the German Muslim community as he is a part of the community and can represent the interests of the community until the Muslim immigrant population matures and a larger pool of educated Muslims organically emerges. The development of this teaching program also moves the future development of Islamic religious instruction closer to the Article 7 III requirement of the religious community playing a role in teacher training. This program has the support of the state and the Muslim community and is expected to continue to expand (Fuess, 2007 229; 232).

Conclusion - Bavaria

The Bavarian example is an example of the slow, iterative expansion of Islamic religious instruction via the hegemony of a single policy venue. The operable policy venues were at the local and *Bundesland*-level under the aegis of the Bavarian education ministry. Initial efforts involved partnerships between the *Bundesland* and the Turkish Ministry of Education and Cultural Affairs. The latter were designated with responsibility in curriculum development, teacher provision and instructional texts. The state generally approved these decisions and handled the fiscal responsibilities. Thus, this first effort was corporatist and the policy venue was solely within the Bavarian education ministry. This continued with the second roll out of Islamic Religious Instruction in German (IRIG), which was also only limited to isolated localities and again featured the partnership of the

Bundesland and the Turkish Ministry and Education and Cultural Affairs. As this program matured, however, the education ministry took more of a lead role. Hence, this was the least corporatist of the three iterations of religious instruction in Islam although it operated under the corporatist paradigm of addressing a policy issue because it fit a particular issue categorization as opposed to purely resulting from interest competition (as in the American cases).

The Erlangen pilot project represents the most developed form of Islamic religious instruction (of the three cases presented in this study) as it more closely adheres to the criteria called for in Article 7 III. Dromgold and Schneider (2010 38) contest that perhaps this results from the openness of *Bundesland* officials. They argue that the Bavarian case represents a more collaborative model of religious instruction. While the education ministry was not in the lead in providing religious instruction, it was open to addressing the demands of the emerging religious communities and including them and academics in formulating a policy response. In the Bavarian case, the education ministry placed less of an emphasis on the legal definition of a religious community, thus, allowing for a more collaborative environment between local officials, academics and Muslim groups (Dromgold and Schneider, 2010 38).

In a similar vein, Fuess (2007 229) argues that although the Bavarian model has expanded at a slower rate than some other examples in the German *Bundeslaender*, it might have the most staying-power. Religious instruction in Bavaria has grown organically, expanding as local Muslim communities find consensus and work with local educational officials to provide religious instruction appropriate for their communities (Fuess, 2007 229).

These arrangements are corporatist even if they do not specifically adhere to the Article 7 III calls for the recognition of a *Bundesland* or national Muslim lead organizations. Policy venues have been under the auspices of the Bavarian education ministry but in fact reside at the local levels where these policy arrangements have been formed. But again, there has been no venue shifting or state policy expansion brought about by intergovernmental policy venue interaction — *issue expansion* — as in the American case. In Bavaria, *issue expansion* was locally based and more iterative— local corporatist arrangement in Erlangen legitimated similar arrangements in other localities. State and local policy venues have been the driving force of policy development both operating via the lead or approval of the Bavarian education ministry. No other venue has made challenges to affect these state and local arrangements.

Policy expansion in Bavaria has thus been piecemeal and iterative under the aegis of the Bavarian Ministry of Education. The policy has expanded as new local collaborative efforts have developed. This can still be considered a closed policymaking system as the Bavarian Ministry of Education has sanctioned the inclusion of new actors — these local arrangements required the ministry’s blessing to proceed. As Dromgold and Schneider (2010) have argued, perhaps this has resulted in a slow, scattered policy expansion. Venue shifting — to an increasingly sympathetic judiciary (Fuess, 2007 234) — would possibly lead to more rapid policy expansion as was the case in Texas and California because of venue shifting to federal and judicial venues in the 1970s. In the Texas and California cases, prior to federal and judicial mandates in the 1970s, bilingual education policy expanded in a similarly sporadic local manner. Although there was bipartisan support in California and Texas in the late 1960s and early 1970s for bilingual education, policy expansion —

involving more than isolated localities — did not occur until venue shifting to the federal and judiciary venues (as well as *issue expansion* across state and federal venues) encouraged more state commitments to bilingual education. As Bavaria has similar levels of elite support, perhaps judicial rulings to quicken the pace of official recognition of a Muslim lead organization at the state level would lead to more rapid expansion of Islamic religious instruction throughout Bavaria (Dromgold and Schneider, 2010 37).

Nevertheless, the Bavarian example also speaks to the importance of elite agreement. Elites from both major parties (CDU/CSU, and SPD) were all in favor of expanding religious instruction to include Islam. This consensus allowed for three iterations of religious instruction in Islam and an attempt to find a Muslim corporate partner at the state level.

8.3 BERLIN

Introduction - Policy Development in Islamic Religious Instruction in Berlin

Contrary to NRW and Bavaria, Turkish interests are in a slightly different institutional and political setting in Berlin. In the former two *Bundeslaender*, elite agreement concerning the integrative potential of Islamic religious instruction and the closed policy making system — cooperative federalism and German corporatism — made a favorable context for Turkish interests to attain their policy goals in religious instruction. These two states are governed by Article 7 III and thus religious instruction is a mandatory course in these two *Bundeslaender*. The closed policy setting — determined by the legal and corporatist paradigms of Article 7 III and cooperative federalism — along with elite agreement concerning religious instruction made these states favorable towards

establishing mutually beneficial policy arrangements in religious instruction. Although lead Muslim organizations were unable to satisfy the criteria for state recognition outlined in Article 7 III, elite agreement and the closed policymaking setting encouraged and permitted state officials to make accommodations to provide some form of religious instruction in Islam.

Religious instruction in Berlin is not governed by Article 7 III but is instead offered as a voluntary course. This policy results from historic elite disagreement concerning religious instruction. Although religious instruction is voluntary, the education ministry still has relative monopoly power over granting permission for religious communities to provide religious instruction. The real difference in the Berlin setting is that elite views are ambivalent towards religious instruction. Nevertheless, the Article 7 III corporatist paradigm was still influential in the development of policy arrangements and as a result prevailing policy arrangements in religious instruction closely resemble those of *Bundesländer* governed by Article 7 III. However because of elite ambivalence concerning Islamic religious instruction, policy negotiation between the Berlin *Bundesland* officials and Turkish lead organizations was less creative/ experimental and more contentious than in NRW and Bavaria.

Two factors influenced policy development in Islamic religious instruction in Berlin over the period of study: elite ambivalence concerning religious instruction and the closed nature of the policymaking process in religious religious instruction (despite not being governed by Article 7 III). Concerning elite ambivalence, on the one hand, there has been elite division concerning the place of compulsory religious instruction (akin to Article 7 III) in general. The major parties have been split concerning the appropriateness of

Article 7 III-type compulsory religious instruction in Berlin. This manifested in religious instruction becoming a voluntary course but with with the development of policy arrangements that closely mimic the corporatism of Article 7 III. This created an institutional and legal expectation among Muslim interests of incorporation in a similar manner enjoyed by other religious communities.

On the other hand, there was elite ambivalence concerning the expansion of religious instruction to include teachings in Islam. First, there was elite agreement among the German political elite in their opposition to recognizing the Islamic Federation of Berlin (IFB) — the Muslim umbrella organization that had campaigned for this unofficial recognition — as an appropriate corporate partner for the provision of Islamic religious instruction in Berlin’s public schools. This led to the denial of IFB applications over a period that extended over twenty years. The application saga wound up in administrative court and ended with policy expansion in Islamic religious instruction as the IFB won their suit against the Berlin state to be recognized as a religious community. Second, contrary to NRW and Bavaria, which also faced campaigns for recognition from lead organizations of which they did not approve, Berlin authorities made no efforts to reach out to more favorable organizations or experiment in alternative policy arrangements to establish religious instruction in Islam on terms more palatable to the *Bundesland*.

Concurrent to these developments, elite disagreement concerning religious instruction in general came to a head in the *Pro Reli* voter initiative. The initiative gave the Berlin electorate the opportunity to make religious instruction compulsory. Muslim interests teamed up with conservatives and other religious communities in support of the *Pro Reli* voter initiative. The initiative was narrowly defeated in 2008, leaving religious

instruction as a voluntary course.

Concerning the closed nature of the policymaking system, religious instruction is not mandated by Article 7 III. Nevertheless, through the informal evolution of policy arrangements, the education ministry maintained monopoly power over the actors who could provide religious instruction. The *Bundesverwaltungsgericht* (federal administrative court) eventually found this to be based on suspect legal ground, leading to the recognition of the IFB through court order in 2000. Berlin officials would subsequently amend the education constitution, officially establishing corporatist criteria akin to Article 7 III and reestablishing the education ministry's monopoly power in recognizing religious communities that could partake in the voluntary religious instruction system.

Thus, elite ambivalence concerning religious instruction and Berlin's closed policy making system set the stage for venue shifting as the means for forcing policy change amid elite ambivalence concerning religious instruction. The Berlin case is an example of how a closed policymaking system and elite disagreement within a corporatist context resulted in more contested policy negotiations and policy expansion via venue shifting.

Policy expansion in religious instruction in Berlin brought it closest (of the three cases) to Article 7 III requirements as the federal administrative courts granted the IFB full autonomy in the provision of Islamic religious instruction — elevating it to a corporate partner at the state level. As in the Texas and California cases, successful venue shifting achieved policy goals for its supporters that were not possible in the original policy venue. And contrary to NRW and Bavaria it was a necessary ingredient in policy expansion and arguably resulted in a more profound expansion.

Summary of development of religious instruction And the Muslim campaign to provide religious instruction

The Bremen Clause of the Basic Law exempts Berlin from the provisions of Article 7 III. Despite the Bremen Clause exemption, the education ministry enjoyed similar monopoly power over religious instruction as in Western *Bundeslaender*. Berlin state officials (charged to the education ministry) allocated the space and controlled the distribution of subsidies for the provision of religious instruction. This created an unofficial process of state recognition for religious communities sanctioned by the Berlin state. And those communities recognized in this informal process enjoyed monopoly power over community membership — the individual students that could partake in religious instruction. Due to the similar institutional set up of religious instruction in Berlin, the political interests and institutions involved in religious instruction arrangements also resembled the other *Bundeslaender*. These actors included government officials from across the political spectrum — the SPD, Left Party, and CDU — the education ministry, the Federal and *Bundesland* administrative courts, and the appellate courts. Muslim groups were represented by lead organizations—the IFB and DITIB. The electorate also directly influenced policy development in religious instruction in general via the *Pro Reli* voter initiative (although their involvement played no role in the Islamic religious instruction policy debate).⁶⁸

Despite the exemption from Article 7 III, policy arrangements in religious

⁶⁸ Hence, Berlin can be characterized as a comparably closed policymaking system in religious instruction. The *Pro Reli* initiative was about the role religious instruction should play in the *Bundesland* (as a voluntary or compulsory course). However, the education ministry maintained monopoly power over actor entry throughout the study (for the exception of the brief period between the 2000 Administrative court ruling and the amending of the education constitution). This, thus, made Berlin as closed a policymaking system as the NRW and Bavaria.

instruction evolved to closely resemble those of *Bundesländer* governed by Article 7 III. This was due to Germany's corporatist tradition in policymaking and the Article 7 III church-state institutional paradigm established in the Western *Bundesländer* (see Pierson, 1994 for his discussion of policy feedback learning effects). Religious instruction was offered as a voluntary course and the Berlin state heavily subsidized these courses for recognized religious communities. The other variation from NRW and Bavaria besides the voluntary status of religious instruction courses was that the religious community was completely responsible for its provision (differing from the western *Bundesländer* where the state was more of an active partner in the provision of the course; see Politics of Religious Instruction chapter for a more complete explanation of the church-state relationship). This arrangement dated back to the 1970s and by the 1980s, the two main Christian churches, the Jewish community, the Humanist Union and other philosophical traditions had their religious instruction courses heavily subsidized by the Berlin state.

By the 1970s and 1980s, the Muslim population had grown substantially in Berlin. At this time, IFB began a 20-year campaign to provide religious instruction at public schools in Berlin — campaigning for the same recognition and state subsidies that other religious communities enjoyed. Their applications were repeatedly denied by the Berlin education ministry as the ministry ruled that the IFB did not satisfy the requirements of a religious community according to Berlin law. Additionally, the IFB is considered an extremist organization by the German federal constitutional authorities, and so their recognition was opposed across the political spectrum. After appealing this decision to the federal administrative court, the IFB ultimately won their suit and were awarded the right to provide Islamic religious instruction (see above). Beginning with the 2000-2001

academic year, the IFB began providing Islamic religious instruction in Berlin public schools.

Elite ambivalence over religious instruction is further depicted in the *Pro Reli* initiative campaign. In 2005, legislation was passed making ethics a mandatory course, but leaving religious instruction as voluntary. Church groups protested what they interpreted as a second class status for religious instruction, arguing that religious instruction also needed to be compulsory. This reignited a debate concerning religious instruction policy that had began during the period of German reunification — what was the place of religious instruction in modern Germany? As Berlin lacked both a religious population and history because of the GDR's anti-church stance, the policy was open for debate. The debate split the parties and in 2008, a referendum campaign was launched by pro-religious instruction forces, *Pro Reli*, to legally make religious instruction a compulsory course in public school curricula. The initiative was narrowly defeated in 2009.

Subsequently, the picture this paints is that Berlin's exemption from Article 7 III left the question of religious instruction unresolved even as informal policy arrangements coalesced because of German corporatism and the institutional inertia created by Article 7 III church-state relations in most other German *Bundeslaender*. Contrary to the other German cases of this study where religious instruction arrangements were governed by Article 7 III (and thus constitutionally guaranteed) and situated in a setting with elite support (and a population with a majority affiliated with a church), Berlin (mostly ruled by the SPD who were lukewarm to religious instruction in Berlin) chose not to seek alternative policy arrangements when the IFB candidacy proved untenable. The rejection of the IFB applications led the IFB to try the courts — venue shifting (as was the case in the American

setting as both Latino interests and later *English Only* interests sought out more favorable venues to advance their causes) to the courts. Ultimately, the courts granted the IFB the right to provide religious instruction and receive state subsidies.

As the issue of religious instruction reemerged because of new legislation making ethics classes mandatory, venue shifting to the plebiscitary venue by pro-compulsory religious instruction interests nearly resulted in policy change concerning the status of religious instruction.

Shortly after the court granted the IFB the right to provide Islamic religious instruction, the Alevites were recognized by the Berlin state and began offering religious instruction in 2002. The Alevites — a minority Muslim sect with ambivalent acceptance by other Muslim communities — however enjoyed elite support and were a homogenous religious community. They were thus incorporated into Berlin's informal religious instruction policy arrangements with little fanfare. Viewed comparatively to the IFB campaign for recognition, their successful candidacy depicts the importance of elite support in German corporate policy arrangements.

After a brief discussion of the political context and population dynamics, the remainder of the chapter will detail how elite ambivalence concerning religious instruction and the closed character of the policymaking system influenced policy development in Islamic religious instruction and religious instruction in general.

Berlin- Political Context and Population Demographics

Berlin has the second highest percentage of foreign-born residents in Germany (approximately 13 percent) (Pfaff and Gill, 2006 815). There are over 200,000 Muslims in

the city with 70 percent being Turkish immigrants or their German-born children. Approximately one-third of the Turkish population was born in Germany and another forty-five percent has lived in Berlin for at least 10 years. Nearly 80 percent of Turks in Berlin are Sunni. However, there is tremendous diversity in belief among the Turkish community (Shiites, Alevites, and groups linked to Islamist reform order among others) (Pfaff and Gill, 2006). The four largest religious communities are the DITIB (affiliated with the Turkish State Office of Religious Affairs and thus moderate), the Islamic Federation of Berlin (IFB, an Islamist reform group; will be discussed below), the Union of Islamic Cultural Centers, and the Turkish Federation. Berlin has 75 registered mosques and prayer rooms; 35 (45 percent) are unaffiliated with a religious denomination, the remainder are associated with the four main Turkish religious communities: DITIB (19 percent); IFB (15 percent); Union of Islamic Cultural Centers (12 percent); and the Turkish Federal (5 percent) (Pfaff and Gill, 2006 815).

Social Democrats and the Left Party have been politically dominant in Berlin although the polarizing nature of Left Party politics have periodically resulted in grand coalitions in which the CDU assume the minority party role in an SPD-led coalition (Hofhansel, 2010 193). Additionally, according to Koopmans (2004), Berlin (along with Frankfurt) are considered to have Germany's most liberal incorporation regimes (Koopmans, 2004 457). Berlin's Commissioner of Foreigners, Barbara John, is considered Germany's most influential and active Commissioner of Foreigners despite being a member of the CDU. She has been an active proponent for the extension of migrant rights. In Berlin, similar to other Eastern German *Bundeslaender*, a majority of the population, 60 percent, are not affiliated with a church (Hofhansel, 2010 199; Barker, 2004; Trempkamp,

2009). This is a legacy of the GDR which aimed to weaken the church to assure state predominance during its existence (Barker, 2004). Among the religious believers, Protestants outnumber Catholics (Hofhansel, 2010 199).

Policy Development in Berlin- The influence of Article 7 III and Corporatism

The Berlin government established agreements with the Protestant and Catholic religious communities in 1970 and began heavily subsidizing their religious instruction programs (Hofhansel, 2010 202). Thus, to use school property, the Berlin state education ministry first [informally] recognized these religious communities. In addition to providing the classroom space, the state of Berlin finances teacher salaries (Josza, 2007 104). In addition to providing religious instruction, the religious community is responsible for the curricula, the training of teachers and the books. Currently, similar religious instruction program arrangements exist for the secular Humanist Union (*Humanistischer Verband Deutschlands*), the Jewish community of Berlin, the Islamic Federation of Berlin, Greek Orthodox Community, Buddhists, Alevites, and a group associated with the tradition of Rudolph Steiner (Hofhansel, 2010 202), as briefly outlined above.

That religious instruction policy arrangements in Berlin so closely resemble the church-state relations in *Bundeslaender* governed by Article 7 III speaks to the influence of Article 7 III in German religious instruction policy (Pierson, 1994). However, the evolution of policy arrangements did not settle the elite debate concerning the status of religious instruction in the *Bundesland*. Berlin's religious communities are proponents of the adoption of similar compulsory religious instruction and policy arrangements as dictated in those Western *Bundeslaender* governed by Article 7 III (Barker, 2004 104).

Their pursuit of such arrangements is not surprising. After the reunification, there was a nationwide debate concerning the place of religious instruction in modern Germany amid the perceived secularization of the German population. In Berlin, the debate split the parties: The SPD and the Left Party were for an inter-faith ethics class; The CDU and religious groups were proponents of an Article 7 III form of compulsory religious instruction; The Greens favored voluntary religious instruction offered by the various religious communities. In the end, Berlin settled on permitting religious communities to use public schools to provide religious instruction and maintained ethics and philosophy courses on a voluntary basis (Hofhansel, 2010 202; Barker, 2004 172).

That the Berlin education ministry (mostly governed by the SPD which prefers an inter-religious, inter-ethics compulsory course option) pursued church-state relations so similar to Article 7 III is more curious. However, as 40 percent of the population is affiliated with the church, the dynamics of concentrated costs-diffuse benefits (see Sheingate, 2000) most likely influenced the various governments that continued this arrangement once the state began subsidizing the provision of religious instruction for various religious communities in the 1970s. Additionally, the preponderance of grand coalition governments between the SPD and CDU ensured that the CDU — advocates for Article 7 III religious instruction — would often have veto power over eliminating such arrangements.

The IFB Campaign to Provide Islamic Religious Instruction in Berlin

The twenty-year Islamic campaign to offer religious instruction was led by the Islamic Federation of Berlin (IFB) (Hofhansel, 2010 202). The IFB identifies itself as a

regional representative to all Muslims in Berlin (Kraft, 2006 8). As an umbrella organization it consists of 26 member associations, which are all Turkish-Islamic groups. Considered an extremist group by Germany's constitutional authorities as well as the Turkish state, the Berlin education ministry rejected three applications from the IFB to provide religious instruction (Hofhansel, 2010 202). The first time occurred in 1980 with the ministry arguing that the IFB did not constitute a religious community (*Relionsgemeinschaft*) according to section 23 of Berlin's statute on schools. The ministry argued that the IFB lacked the organizational structure, according to section 23, to serve as a representative of the Muslim community. The School Senate argued that the IFB were not a religious community (*Gemeinschaft*) but were simply an association (*Verein*) (Ewing, 2000 46). Section 23 at the time stated that the provision of religious instruction was the charge of the churches, religious communities, and ideological communities, but did not specifically detail a working definition for a religious community (Hofhansel, 2010 203). Meanwhile the IFB continually rewrote its charter and submitted unsuccessful applications in 1983 and 1987 in addition to the aforementioned application in 1980 (Ewing, 2000 46). Each time the School Senate argued that the IFB did not satisfy the criteria for a religious community and that the only common denominator between the heterogeneous groups that made up the IFB was the Koran. The School Senate claimed that the various groups under the IFB had different legal systems, different organizational structures and sociocultural forms. In 1987, the IFB appealed this decision in administrative court and again lost (Hofhansel, 2010 203). In the 1987 rejection, the School Senate also argued that the IFB was only representative of a minority of the Berlin Muslim population and was more similar to a secular interest group (as one group was identified as

a political organization, which was further evidence that the IFB was more similar to a secular interest group) (Ewing, 2000 47). The 1987 rejection kicked off IFB appeals to the administrative court in 1987, 1993, 1997 and 2000 (Ewing, 2000 46). The 1997 decision was overturned by an appellate court that ruled that the lower court had wrongly used Article 7 III criteria to assess IFB's legitimacy as an Muslim religious community (Hofhansel, 2010 203; Ewing, 2000 48). The Bremen Clause exempted Berlin from Article 7 III and so the criteria used by the education ministry (*Relionsgemeinschaft*- religious community) was legally dubious (Hofhansel, 2010 203). The federal administrative court upheld the 1998 appellate court decision, ruling that the Bremen Clause exempted Berlin from relying on Article 7 III to define religious communities (Hofhansel, 2010 203; Josza, 2007 104). Following this decision, the Berlin education ministry granted IFB the authority to provide voluntary religious education classes (Hofhansel, 2010 203). As a result, the IFB became the first Muslim organization to be formally recognized as a religious community according to Berlin law (Josza, 2007 104).

Subsequently, politicians from across the political spectrum were critical of IFB-provided Islamic religious instruction. Politicians had issue with IFB's pedagogical intent, the qualification of teachers, the teachers' German linguistic skills, and the negative effects that IFB delivered religious instruction would have on the integration of Turkish migrants (Hofhansel, 2010 203).

Another issue that affected the debate was the perception of IFB as an extremist organization. German constitutional authorities claim the IFB are associated with *Islamische Gemeinschaft- Millî Görüş e.V.* (Hofhansel, 2010 203). *Millî Görüş* has been classified by the *Bundesverfassungsschutz* (Office for the Protection of the Constitution)

as an extremist organization (Kraft, 2006 7). It is supposedly also linked to Turkey's Islamist Welfare Party (Ewing, 2000 47). The Welfare Party (renamed the Virtue Party after it was banned in Turkey in 1998) controlled the Turkish government for a brief period and aimed to replace Turkey's laicism with a church-state policy more favorable to Islam. Thus, the court ruling had legitimized recognition for a group the state defined as a terrorist organization and which was under the surveillance of the German Constitutional Police (Hofhansel, 2010 203; Fuess, 2007 232). Ewing (2000) states that media reports in the wake of the successful IFB appeal were split: some argued that in addition to being critical of the IFB, the Berlin government still had concerns about the lack of integration of the city's Muslim community, who were split into competing umbrella organizations; Others argued that the Berlin ministry focused solely on the candidacy of the IFB as a means of ignoring the issue of Islamic religious instruction (Ewing, 2000 47). The IFB's association with *Millî Görüş* is also problematic for many in Berlin's Muslim community and is part of the reason that IFB classes have experienced poor attendance from the Muslim community (Kraft, 2006 7).

The main rival Muslim umbrella organization in Berlin is DITIB. DITIB has direct ties to the Turkish government through Turkey's Directorate for Religious Affairs (*Diyante*) and practices a more moderate, progressive Islam (Ewing, 2000 47). Its leader Ali Kilinc, Director of DITIB in Berlin, believed his more moderate organization should have been the organization recognized by the Berlin authorities to provide Islamic religious instruction in Berlin's public schools (Ewing, 2000 47). Yet no efforts were made by the state to accommodate this more moderate Muslim umbrella group.

When the new Social Democratic government assumed power in 2005 (led by

Klaus Wowereit), it passed legislation, amending section 13 to Berlin's statute on schools (Hofhansel, 2010 203; Kraft, 2006 8). The amending of section 13 essentially changed the law so that the process for granting religious communities the right to offer religious instruction corresponds with Article 7 III (Hofhansel, 2010 203). Subsequently, the IFB precedent has raised the bar for corporate requirements that Berlin's religious communities must satisfy for official recognition (Hofhansel, 2010 203). This thus keeps Berlin's religious instruction policy arrangement a closed policy arrangement by formally giving the education ministry gatekeeping power on par with its Western counterparts governed by Article 7 III — a power it had informally assumed before the 2000 court ruling ended it.

IFB-provided religious instruction (on a voluntary basis) expanded to 37 schools, serving around 4,000 Muslim students by the 2004-2005 academic year (Kraft, 2006 8; Yukleyen, 2010 451). Approximately, three-fourths are Turkish and the remaining fourth are Arab (Pfaff and Gill, 2006 819). Teachers are hired and trained by the IFB without input from the Berlin authorities (Kraft, 2006 9). Per the 2000 ruling, the Berlin education ministry could only verify the fitness of teachers (their allegiance to the German constitution) and their qualifications (Kraft, 2006 9). This was consistent with the church-state arrangements enjoyed by the other religious communities in Berlin.

The course operated according to the curriculum titled, the "Temporary Framework Plan for Islamic Religious Instruction of Berlin" (Kraft, 2006 8). Typically, after a recognized religious community develops a curriculum framework plan, the established practice was that the curriculum had to be submitted to the Berlin Senate Administration for approval (Kraft, 2006 8). The Education Ministry rejected the IFB proposed curriculum

arguing that basic respect for the German constitution and equality of the sexes was not guaranteed (Barker, 2004 173). The IFB appealed this decision and the Constitutional Court ruled that curriculum content was the province of the religious community, not the state. Because of the court's 2000 ruling that the Bremen Clause exempted Berlin from Article 7 III requirements, the Senate Administration could only review whether the curriculum was in accordance with the constitution and not concerning other matters of content (Kraft, 2006 8).

The IFB proceeded with developing the curriculum (Kraft, 2006 8). In their first attempt drafting the curriculum, they did so independently until interim results were leaked to the public. Because of negative public reaction, the IFB then changed course and delegated the task to the Institute of Interreligious Pedagogy and Didactics (IPD) to develop a curriculum appropriate to the Berlin pedagogical paradigm. The issue with the curriculum was that it did not merge content with the didactic requirements of religious instruction — which aims to not only teach core concepts of the religion but instructed on how these religious tenets should be applied in everyday life in Germany. The IPD was also brought into to assist the IFB with didactical approaches. Similar to the IFB, the IPD has connections with *Millî Görüş*, and still, the two parties could not agree on their interpretations of the Koran. The curriculum was more focused on providing a survey of Islam's tenets without a didactic philosophy of how to apply the tenets (as was the typical didactic approach of modern confessional religious instruction in Berlin). In this sense, Islam was treated as a theology with immutable truths that were self evident. In the final curriculum, it was not clear how these tenets would be interpreted by instructors nor the didactic approach that would be taken. As the Berlin ministry did not have the legal

authority to influence the curriculum, the didactic approach remained unexplained, which contributed to its cool acceptance by the German political establishment (Kraft, 2006 8-9).

Policy Expansion in Islamic Religious Instruction via Venue Shifting

Policy evolution in Islamic religious instruction, which culminated with the federal administrative court ruling that the IFB had the legal right to provide religious instruction according to the Berlin law, was an example of the effects of elite ambivalence within a closed policymaking system: policy expansion via venue shifting to the courts. This was the only viable option for policy expansion (similar to the situation African Americans faced in the pre-Civil Rights years when Congress was controlled by southern segregationists). There was consensus across the political spectrum in opposition to the IFB candidacy. However, as Berlin was exempt from Article 7 III, using Article 7 III criteria to deny the IFB proved to be legally suspect. The courts ruled that the Article 7 III legal rationale could not be used to deny new interests. Additionally, the precedent set by the Berlin state in recognizing Christian and other church groups meant that denying Muslim groups was discriminatory, subsequently revoking (temporarily) the gatekeeping power the education ministry had unofficially assumed. Thus, venue shifting led to the recognition of the IFB, also providing them with full curriculum authority as was afforded the other religious communities.

The Alevite's Campaign

Shortly after the court ruled in favor of IFB-provided Islamic religious instruction, in 2000 the Culture Center of the Anatolic Alevites (CCAA) (*Kulturzentrum Anatolischer*

Aleviten) applied for recognition as a religious community which they were officially awarded in 2002 (Josza, 2007 104). As of the 2002-2003 academic year, the CCAA provided Alevite⁶⁹ religious instruction in 7 Berlin public schools (Josza, 2007 104; Barker, 2004 174). This expanded to 10 primary schools for 110 students as of the 2004-2005 academic year (Josza, 2007 105).

The curriculum resulted from a collaborative effort between the CCAA and the Alevites Community in Germany (ACG) (Josza, 2007 105). The latter had produced a curriculum that had gained wide approval from academics throughout Germany. This and the fact that the community is more homogenous and moderate in its interpretation of Islam led to its acceptance by the Berlin education ministry.

Alevitism can be seen as a branch of Islam (Josza, 2007 105). Their beliefs regarding the prophet, relations between God and man, the image of men (*Menschenbild*) lead some to argue that they are not Muslims. This had led to past persecutions by other Muslims communities. Alevites see themselves, however, as a branch of Islam and the World Muslim League (following a conservative interpretation of Islam) concurs. However, due to the IFB curriculum focus which neglects Alevites interpretations of Islam, because of significant differences in interpretation of Sunni Islam and some Shia schools by the Alevites, and the homogeneity of the Alevites community, IFB and CCAA are considered separate Muslim religious communities before the German law (Josza, 2007 105).

In some sense the CCAA were the flip side of the IFB — a religious community that enjoyed widespread elite support among the German political establishment. Thus, they were easily absorbed into the informal church-state relations established in Berlin —

⁶⁹ Alevitism and Alevism as well as Alevite and Alevi are used interchangeably in the literature and, thus, in this study.

venue shifting was not necessary.

As of 2006, there were approximately 200,000 Muslims living in Berlin (Josza, 2007 105). Most of these are of Turkish descent, 20 percent of whom are Alevi. As of 2007, the IFB offered Islamic religious instruction in 37 primary schools to approximately 4,000 students (Fuess, 2007 232). The CCAA offers Alevi religious instruction in 10 public schools to approximately 110 students. Thus, as of 2006, only a small percent of Muslims living in Berlin attend either IFB or CCAA religious instruction (Josza, 2007 105). And an even smaller percent (as compared to the total Muslim participation) of the Alevi take part in Alevi Islamic religious instruction in Berlin.

The Unresolved Question concerning Religious Instruction in Berlin—Elite Ambivalence Persists

Concurrently during this period, debate heated up concerning Berlin's lack of a religious instruction mandate (Barker, 2004 172). The IFB ruling added to an already reemerging debate over religious instruction in general (Ewing, 2000 49). The merging of East and West Berlin after reunification had brought the issue of religious instruction to the fore. The East formerly part of the a-religious GDR did not believe state sponsorship of religion was an appropriate state role. Those affiliated with a religious community in West Berlin and religious groups publicly argued that too few students were reached by the voluntary religious instruction system, thus meriting compulsory religious instruction (Barker, 2004 172). As the IFB decision was about to come to its conclusion, this debate about the place of religious instruction in Berlin was also beginning to heat up (Ewing, 2000 49). The IFB decision would help to change the terms of this debate as it added

another recognized religious community from an ethnic community that mostly supported mandatory religious instruction and was becoming increasingly vocal about its perceived discriminatory treatment in Berlin's religious instruction policy regime (Ewing, 2000 50).

In the winter of 1999-2000, Berlin's new CDU senator for education announced that he planned to campaign for compulsory religious instruction in Berlin (Ewing, 2000 49). The announcement sparked controversy and a response from a diverse range of organizations and interests in opposition to the proposal. This reignited the debate concerning whether Berlin should introduce mandatory religious instruction, adopt the Brandenburg LER (Life, Ethics, and Religion) course option — inter-faith- inter-ethics course — or whether the voluntary system should continue (Barker, 2004 172). The debate split the parties: The CDU has supported an option closer to Article 7 III compulsory religious instruction; the SPD has supported an ethics class closer to the LER Brandenburg model; the Green and Left Party oppose compulsory ethics and/or religious instruction, arguing that the current voluntary model is consistent with the Article 4 requirement of state neutrality in religious affairs (Barker, 2004 173).

Currently, the religious organizations believe that the status quo of voluntary religious instruction discourages course enrollment since the course is offered at the end of the day and opting out of the course leaves students with a free period — thus there is an incentive to opt out (Barker, 2004 172). As of 2002, 116,000 students attended religious instruction despite the unfavorable time slot (Barker, 2004 173). These religious groups favor a religious instruction option that closely resembles Article 7 III.

In 2002, the Bishop of the Protestant Church for Berlin/ Brandenburg and the Catholic Archdiocese of Berlin drafted a letter soliciting parental support for a religious

community proposal (Barker, 2004 173). The proposal offered a compulsory group of religious courses offered in Protestantism, Catholicism, Judaism, Islam, and a class in philosophy. States would retain their power of authority over education matters, but the curriculum would originate from the representative religious community. This would be a model similar to Article 7 III. The proposal was not taken up by the legislature, but the religious community continued its campaign for compulsory religious instruction (Barker, 2004 173).

In 2005, Legislation was passed making it mandatory that, from 2006 on, all students from seventh grade forward would have to enroll in an ethics class with religious instruction available on a voluntary enrollment basis (Hofhansel, 2010 202). This prompted consternation from religious groups concerned that students would forego religious classes completely if left as a voluntary course option. Since 2006, debate regarding religious instruction has continued concerning religious instruction policy and whether both ethics and religious instruction should be mandatory (having students choose between the two compulsory courses) or if religious instruction should remain voluntary (Barker, 2004 172; Trenkamp, 2009).

In 2008, the *Pro Reli* citizen initiative challenged Berlin's model of mandatory ethics class and voluntary religious instruction. The initiative aimed to reform the arrangement, elevating religious instruction to a mandatory class along with ethics — thus, students would have the option to choose between two mandatory courses (Hofhansel, 2010 203). The initiative was chaired by Berlin CDU parliament member (and lawyer) Christian Lehmann (Trenkamp, 2009). In addition to the religious communities, *Pro Reli* had the support of the CDU (the opposition party), the Free Democrats, the FDP, and

bourgeois West Berliners (Trenkamp, 2009). *Pro Reli* was opposed by the SPD, the Left Party — the governing coalition; the Green Party, SPD mayor of Berlin, Klaus Wowereit, and proletarian East Berliners (Hofhansel, 2010 204; Trenkamp, 2009). The anti-*Pro Reli* campaign called itself *Pro Ethik* as the campaign called for the rejection of the referendum, leaving only the ethics course as mandatory (Trenkamp, 2009). *Pro Ethik* was chaired by Walter Momper, president of the Berlin state parliament. The initiative was mostly supported in the Muslim community, but was opposed by the Anatolian Alevite Community (one of the core groups of the CCAA), the Turkish Association of Berlin-Brandenburg, and the Turkish Parent’s Association (Trenkamp, 2009).

During the initiative campaign, the Christian Democrats, led by Lehmann, argued that making both ethics and religious instruction mandatory and allowing students to choose afforded students free choice (Trenkamp, 2009). The *Pro Ethik* side argued that making both mandatory created a “forced choice” (Trenkamp, 2009). The campaign rhetoric took on an aggressive tone for German politics with each side caricaturing the other side with cliched stereotypes, such as the *Pro Ethik* side referring to the *Pro Reli* side as turning the campaign into a “crusade” and the *Pro Reli* side arguing that ethics classes instill a conformity in thinking reminiscent of the GDR (Trenkamp, 2009).

The initiative gathered enough citizen signatures to force a vote on the matter. Additionally, per Berlin’s rules for referendums, at least one-quarter of the electorate needed to turn out and vote in the referendum election for it to be valid (Trenkamp, 2009). This threshold was also reached: on April 26, 2009, 51.3 percent of Berlin voters rejected the initiative— a narrow defeat (Hofhansel, 2010 204).

The *Pro Reli* initiative campaign showed that religious instruction policy is still in

flux in Berlin—as nearly 50 percent voted for the compulsory religious instruction option and as the initiative campaign exposed the polarization among elites (Hofhansel, 2010). However, with the growing Muslim populations that have now (at least a portion of the Muslim population via IFB) been afforded the benefits of state subsidized religious instruction, the compulsory versus voluntary religious instruction debate is far from decided.

Conclusion - Berlin

The debate surrounding religious instruction in Berlin shows the effects of the closed policymaking system and elite dissension. Facing political opposition across the political spectrum to their candidacy within a closed policymaking system, the IFB was forced to try the courts to enact policy change—a strategy that was 20 years in the making. The courts were the only other venue available. Nevertheless, the closed nature of the policymaking process insulated the IFB candidacy from the electorate. If IFB had been within a policy context such as California, the widespread discontent for their candidacy may have also been eventually saved by the courts but not without a negative political setback akin to the Proposition 187 ruling that temporarily barred illegal and legal immigrants from much of the the American welfare state (most of the legislation was eventually ruled unconstitutional by the courts). And as was the case with Proposition 187 much of the anti-Muslim politics may have been legitimated by such an outcome, negatively affecting the politics of future Muslim campaigns.

Concerning elite ambivalence towards religious instruction, this played out in the debate over whether religious instruction should be a voluntary or compulsory course.

Conservative pro-religious forces had been dissatisfied with the direction of religious instruction policy. Existing as a permanent minority, having achieved little traction for their proposals to make religious instruction mandatory via the legislative route, they aimed to take their case to possibly a more friendly policy venue, the referendum. Referendum voting is not common in Germany, but since the 1980s, reforms at the *Bundeslaender* level have afforded referendum voting to elicit policy change directly from the electorate when the party system fails to produce. But the relevant issue here, is the sharp elite divisions concerning religious instruction policy that the debate exposed— which is not present in North Rhine Westphalia nor Bavaria. In NRW and Bavaria, compulsory religious instruction is a settled issue and incorporating Islamic religious instruction is a policy goal with elite support.

The differences between Berlin and NRW and Bavaria with respect to elite sentiment concerning religious instruction is also evident in the actions of Berlin and NRW when both were faced with unfavorable Muslim lead organizations. Other than continually rejecting the candidacy of the IFB, Berlin authorities did not seek out other lead or local organizations with whom they could work to provide Islamic religious instruction despite having the largest concentration of Muslims in a European city and a moderate organization publicly campaigning for recognition. The lukewarm sentiment to Islam is captured in an excerpt from an interview with Berlin's commissioner for immigrant affairs, Barbara John, from 1999 in which she offered the following:

Islam did not fit religiously or institutionally into our conception of a religious community. . . in particular, Islam in its European diaspora lacks a clear and binding organization as do comparable Christian churches. As a result, it lacks a

single legitimate representative (Ansprechspartner) to communicate with the state administration

(Jonker & Kapphan, 1999 21 excerpt in Pfaff and Gill, 2006 817).

This sentiment was also held by the religious communities of Berlin. Roman Catholics viewed the Muslim community as a “community of interest” with pious Muslims who shared common issues of “moral concern” (Pfaff and Gill, 2006 817). Yet Catholics were fearful of alliances because of the potential of Islamic fundamentalism and the fractious nature of the Berlin Muslim community (Pfaff and Gill, 2006 817).⁷⁰ The Protestant Church believed that without a centrally organized corporate organization under the leadership of district authorities, Muslim communities could not properly assume the responsibilities of a religious corporation (as called for in the Basic Law) nor could they serve as a reliable negotiating partner with the state over religious affairs (Pfaff and Gill, 2006 821). Although this sentiment has been shared by elites in NRW and Bavaria concerning particular Muslim lead organizations, this was not the sentiment towards the community overall.

Additionally, according to Koopmans (2004), Berlin migrants (along with those in Frankfurt) play a disproportionately larger role in public discourse concerning migrants and ethnic relations and more frequently focused on issues of immigrant integration and rights than anywhere else in Germany (457; see Koopmans, 2004 for the entire comparative study of immigrant claims making in German localities). Nevertheless, the Berlin political establishment simply denied the IFB application. This despite having supposedly the most

⁷⁰ A. Schmid, Berlin Diocese, personal communication, June 22, 2004 quoted in Pfaff and Gill, 2006 (821).

progressive immigration incorporation regime in Germany (Koopmans, 2004 457).

This speaks to the lukewarm embrace of religious instruction by Berlin's elites and notably the SPD. Concerning support from the religious community, in NRW, the religious community fully supported the state extending religious instruction to teachings in Islam with the Protestant community, in particular stepping in when it thought the state pursued establishing a variant of Islamic religious instruction with insufficient input from the Muslim community. Additionally in NRW, SPD-led governments faced with lead organizations that were not to their liking, but with the largest Muslim population of any German *Bundesland*, pursued other avenues to provide Islamic religious instruction.

Lastly, NRW's SPD was not only more favorable towards religious instruction and situated within a legal context that mandated compulsory religious instruction via Article 7 III, but a majority of the population was also church-affiliated (compared with Berlin where only a minority of the population was church affiliated). Subsequently, the elite consensus in NRW and the elite ambivalence in Berlin were based on their varying historical contexts and the subsequent demographic developments in relation to religion, resulting in state officials from the same party taking opposite routes when faced with lead Muslim organizations that were not to their liking.

Conclusion - Final Thoughts on the German Cases

Despite not being governed by Article 7 III, Berlin's policymaking system was as closed as North Rhine Westphalia and Bavaria. The policymaking system had evolved whereby policy arrangements closely resembled those of NRW and Bavaria and most importantly, the education ministry had plenary gatekeeping power on the interests

permitted to provide religious instruction and subsequently the generous subsidies of the Berlin state. This unofficial recognition also granted monopoly representation to the chosen interests. Additionally, this policy arrangement was comparably informal and no more legally suspect as those which had coalesced in NRW and Bavaria in which the latter pursued creative measures to provide a semblance of a religious instruction course with Muslim influence that was palatable to *Bundesland* authorities. The fact that Muslim interests in NRW brought suit against the state and won a modest ruling concerning their right to Article 7 III mandated religious instruction speaks to this. Recognizing this, both NRW and Bavaria continued to pursue finding a corporate partner at the *Bundesland* level despite failing to have success.

What differed in the Berlin case was the elite agreement concerning religious instruction (as discussed in the Berlin conclusion). Elites were divided concerning the role of religious instructions in the state. Although Koopmans (2004) argued that Berlin had the most liberal integration regime (along with Frankfurt) in the state, this liberal approach did not involve the use of religious instruction to integrate Muslim youth.

CHAPTER 9

CONCLUSION AND DISCUSSION

Introduction

The three case study chapters of this study treat policy trajectories in the individual local cases as well as subjecting these analyses to intra-national cross local comparisons. This is to show how variations in the local contexts with respect to the open/closeness of the policymaking systems and/or variation in elite relations affect policy prospects for Mexican and Turkish interests in the US and Germany, respectively. The first part of the discussion chapter deals primarily with rendering cross-national comparisons from these local policy trajectory case studies. The aim is to more clearly show how prospects for Turkish and Mexican interests differ in the two national institutional and political settings. Analysis will focus on particular periods. This allows for national comparisons of the effects on policy trajectories caused by the interaction of elite views and open/closed policymaking systems. The second part of the chapter discusses the practical implications of this study. The third part involves a short discussion concerning further areas of research that this study suggests. Lastly, the chapter will conclude returning back to the main argument of the dissertation for a closing discussion on why Turkish interests are better positioned in Germany than their Mexican counterparts in the US to attain their policy goals in Islamic religious instruction.

Akin to the main conclusion in Koopmans' (2004) cross-local, cross-national comparison of immigrant claims making in localities in Germany, the UK and the

Netherlands, this study finds that although there are variations in policy trajectories across localities intra-nationally, these variations are relatively small compared to the national variations. In the US, elite views concerning bilingual education combined with the open political system led to more dynamic policy trajectories over the period of study. This has been both positive and negative for Mexican interests. This was found in both California and Texas. The period from the mid-1960s through the mid-1970s was a period of dramatic policy expansion. Relative elite support for bilingual education combined with the open policymaking system led to an expansionary dynamic where the multiple venues of policy change created opportunities for venue shifting and where proponents of bilingual education found favorable venues at the local, state, and federal levels as well as the courts. Additionally, the overlapping nature of policy venues at the local, state, and national level led to *issue expansion* — expansionary policy change in one venue legitimated pro-expansionary actors and interests in others. The primary impetus of policy change at the state level were federal and court mandates. These were the byproducts of the interactive nature of the various policy venues and had the effect of coercing states to address the needs of its LEP population, primarily with the implementation of bilingual education pedagogies.

After the 1970s, elite support for bilingual education dissipated with the backlash against liberal (Big Government) interventionism and the emergence of the education accountability movement. These shifted issue salience away from the education opportunity policy dimension — which had been so beneficial to Mexican interests — to the education accountability dimension. The open policymaking system which had provided a forum for *issue expansion* amid elite agreement, provided the same institutional

opportunities for elite disagreement. From the late 1970s forward, anti-bilingual education interests were increasingly able to find policy venues at the local, state, and federal levels as well as the courts favorable for their anti-bilingual education preferences and problematizations of LEP student needs. Additionally, policy rollback in one venue legitimated the interests/ actors and politics of policy rollback in others. However, since bilingual education regimes were well-entrenched by the late 1970s, policy rollback was moderate as pro-bilingual education forces were able to mitigate reform efforts through the mid-1990s. However, given the presence of the voter referendum as a policymaking mechanism in California — making the state a more open policymaking system — proponents of policy rollback were able to legitimate restrictionism in linguistic politics and eventually end bilingual education policy arrangements by the end of the 1990s. In Texas, which does not have the voter initiative as a policymaking option, policy rollback was incremental as bilingual education regimes were mostly able to fend off rollback efforts.

In Germany, the situation for Turks differed concerning Islamic religious instruction. The two *Bundeslaender*, North Rhine Westphalia and Bavaria, with elite agreement in support of Islamic religious instruction within the closed, policy making context, experienced iterative, moderate policy expansion in Islamic religious instruction throughout the period of study. In the third German case, Berlin, there was elite division concerning Islamic religious instruction. Situated within a closed policymaking context, policy expansion occurred by a 2000 court ruling — venue shifting — that gave the IFB the right to offer religious instruction.

When the American cases and German cases are compared the differences in policy

trajectories clearly show a national variation. The US has periods of substantial policy change buffered by extended periods of policy incrementalism while in Germany incremental/ moderate policy expansionism typified policy trajectories over the period of study. With respect to Mexican and Turkish interests in the US and Germany, respectively, when times were good for Mexican interests, they were comparatively better than in Germany for Turkish interests. However, favorable political contexts were not long lasting as elite agreement (even in good times) was more precarious. In Germany, on the contrary, Turkish interests experienced consistent iterative policy expansion in Islamic religious instruction throughout the period of study as elite support for religious instruction (at least in NRW and Bavaria) was more substantial, rooted in historical elite views concerning religious instruction. However, as the system is more closed, the potential for more dynamic *issue expansion* in the American setting is absent in Germany, precluding the potential for periods of dramatic policy change.

The remainder of this section will focus in more detail on the specific periods to compare how elite agreement/ disagreement play out in the two policymaking systems. The first part of this analysis will compare the 1965-1975 period in California and Texas to the policy trajectories of North Rhine Westphalia and Bavaria over the period of study. These were periods of elite agreement over the respective issues in both nations. This national comparison aims to show how elite agreement concerning the respective policies areas played out in the two national policymaking contexts — how elite relations were facilitated by the respective policymaking contexts and the consequences this had for the respective immigrant interests. The second part of this national analysis focuses on elite divisions and how they played out in the two national settings. Here the study will look at the period after

the 1970s in Texas and California and Berlin over the period of study as these were periods of elite division concerning the policy areas. This aims to depict how the various national settings affected prospects for the respective immigrant groups when faced with elite opposition to their interests.

Elite Consensus, Open System - California and Texas (1965 - 1975)

In both California and Texas, the mid-1960s through the mid-1970s was a favorable period for Mexican interests especially within the open American system. It was a period of *issue expansion* across venues at the local, state, national as well as the courts resulting in policy expansion at the state and federal levels. This was driven by elite agreement that viewed bilingual education as a means of compensating for past discrimination and segregation and as a pedagogy for providing a more quality education than punitive *English Only* methods. In addition, political elites calculated that bilingual education would benefit efforts to court the growing Latino population in both states. Because of the emerging elite agreement, in California and Texas, local experimentations in bilingual education attracted the attention of both state and federal officials. Proponents of bilingual education pursued venue shifting to these two levels hoping to garner favorable policy that would lead to fiscal support or policy mandates to underwrite their local initiatives. These efforts were largely successful, resulting in the passage of legislation permitting bilingual education in Texas and California, HB 103 and SB 53, respectively. These Acts overturned existing *English Only* laws, made bilingual education policy arrangements legal, and allocated funding for their provision. Local and state advocacy as well as the aforementioned influence of local experimentation in Texas and California were integral in the drafting of

the Bilingual Education Act of 1967 which would eventually become the federal bilingual education bill, the Bilingual Education Act of 1968. The federal bill further legitimized and encouraged (through fiscal support) expansionary policy at the state and local level resulting in the expansion of bilingual education programs at the local level. Thus, during this initial period in the 1960s, policy expansion was the byproduct of *issue expansion* across local, state, and federal venues and venue shifting to state and federal venues.

By the early 1970s, however, policy expansion was moving only at an iterative pace in California and Texas. Bilingual education advocates continued to lobby federal policy venues (including the executive branch because of Nixon's desire to court Latinos) as well as the courts to coerce localities and state officials to focus more attention on the needs of LEP students. These efforts along with continued *issue expansion* resulted in federal and judicial mandates in the early and mid-1970s that coerced state action. These mandates included executive actions (1970 OCR Memorandum; Lau Remedies, 1975), legislative actions (the reauthorization of the Bilingual Education Act, 1974; the Equal Education Opportunity Act, 1974), and judicial rulings (the most important being the Lau rulings 1974, 1975). These federal mandates deepened the responsibility of states and districts to their LEP populations. Specifically, these spawned the Bilingual Education and Training Act of 1974 and the Chacon-Moscone Bilingual-Bicultural Act of 1976 in Texas and California, respectively. Both of these policies were expansionary in that they practically mandated bilingual education for districts with high populations of LEP students. Additionally, both bills favored cultural maintenance, multiculturalism and bilingualism as end goals for bilingual education programs, which were also expansionary additions.

In summation, this period was the heyday for Mexican proponents of bilingual

education. This period of elite support for bilingual education in the open American policy setting netted substantial policy expansion in the two states of focus. Specifically, the presence of multiple, overlapping policy venues at the local, state and federal level proved quite favorable during this period for Mexican interests in their pursuit of bilingual education policy arrangements in California and Texas.

Elite Consensus, Closed Policy Setting - North Rhine Westphalia and Bavaria (1975 - 2010)

Although Turkish successes in securing religious instruction policy arrangements in North Rhine Westphalia and Bavaria were more modest than those of their Mexican-American counterparts in the late 1960s and early 1970s, the favorable German setting proved more long-lasting for Turkish-Germans, extending through the period under study. Policy expansion in the two German *Bundeslaender*, NRW and Bavaria, with elite agreement in support of Islamic religious instruction differed from the previous account of policy trajectories in California and Texas during the period of elite agreement described. Policy trajectories were also expansive, but lacking the multiple venues of the American system, expansion was more iterative. Thus, policy expansion in NRW and Bavaria was similar to the period in the late 1960s in the US before venue shifting to and *issue expansion* across the federal venues and the courts legitimized bilingual education interests (at the state and federal level) and won federal and judicial mandates which then forced the states to enact more expansionary policy. Nevertheless, iterative expansion in NRW and Bavaria continued for the entire period of the study as opposed to the ten year window of substantial expansion in the American setting.

The contentious issue in Islamic religious instruction has been finding appropriate lead organizations with whom the state could form corporatist partnerships. The mother tongue initiatives in both *Bundesländer* were made in concert with the Turkish consulate. But these courses operated under the paradigm that Turkish immigrants would return to their homeland and so these courses were designed to prepare their children for this eventual return. Once *Bundesländer* officials came to realize and accepted that these immigrants had become permanent settlers then the issue turned to finding appropriate Muslim lead organizations to serve as corporate partners. In NRW and Bavaria (as well as in all other German *Bundesländer*) this has proven difficult. Hence, education officials in both *Bundesländer* sought alternative means of providing these courses — as elites believed that religious instruction had a proven track record in integrating youth. NRW chose to establish a curriculum commission that included the education ministry, state officials, religious academics, scholars of Islam, and eventually expanded the commission to include Muslim congregations and associations. Bavaria's second iteration of Islamic religious instruction was also state-led but continued the partnership with the Turkish consulate. As this program matured, however, the influence of the Turkish consulate lessened. Bavaria ultimately sanctioned corporate arrangements at the local level beginning with the Erlangen pilot project beginning with the 2003-2004 academic year. Here local officials, academics and local Muslim lead organizations partnered to provide religious instruction at the local level. Local officials unofficially recognized these lead organizations, giving them authority over curriculum content. These courses were confessional religious instruction as called for by Article 7 III. This project has since spread to other localities. However, as a whole, expansion in Islamic religious instruction in

Bavaria was iterative and moderate.

In NRW, the expansion has been more substantial. NRW has the largest implementation of Islamic religious instruction programs in Germany. However, this has only meant NRW has implemented 200 programs out of a total of 5,000 schools. Even compared to bilingual education's reach (never rising above 30 percent of the student body nationally), this is still paltry. Perhaps venue shifting to the courts (in both cases) to force the state to adopt a Muslim lead organization at the state level might quicken the pace of expansion (Fuess, 2006). Nevertheless the commitment is there from elites to continue this moderate, iterative expansion. And as it will be evident in the next section, Mexican interest have not been privileged with such a long term commitment by American elites to bilingual education.

This commitment can be seen in the commitment to teacher training. In the American cases, the shortage of trained teachers was a perennial problem in expanding programs in both Texas and California. In Germany, NRW and Bavaria have recently established teacher training programs at the University of Muenster and University of Erlangen-Nuernberg, respectively. These programs are relatively new (beginning in 2004 and 2006, respectively), but there is commitment from these states to expand them for the foreseeable future.⁷¹

During the period of elite agreement in Texas and California as well as with the federal Bilingual Education Act and its subsequent reauthorizations, funds were allocated for teacher training. However, teacher shortages remained a perennial issue even during

⁷¹ The German Federal Ministry for Education and Research has recently granted 20 million over the next 5 years to the following universities to educate the much needed 2,000 Islamic theology teachers to guarantee a nation-wide coverage in schools: Münster/Osnabrueck, Tuebingen, Frankfurt/Gießen und Erlangen-Nuernberg.

this period of elite agreement and worsened during the period of elite disagreement after the 1970s.

In summation, elite agreement in the American setting, because of the multiple, interactive venues at the local, state, and federal levels led to more dramatic increases in policy than in the closed German setting for the four cases compared. However, elite agreement in the American setting was short-lived as the historically polarizing political dynamic of bilingual education in the US continued to be a political undercurrent even during the period of elite agreement over the pedagogical approach.

Elite Division, Open System - California and Texas (1978 - 2010)

As the period of elite agreement resulted in dramatic policy expansion as the multiple policy venues afforded in American federalism provided a context for *issue expansion* and venue shifting through the interaction of policy venues at the local, state, and federal levels. During the period of elite division in the years after approximately 1978, anti-bilingual forces increasingly found policy venues favorable to policy rollback in bilingual education. This proved increasingly problematic for Mexican interests in the 1980s, 1990s and 2000s.

The late 1970s began a period of political backlash against liberal interventionism and increased focus on issues of education accountability (focusing on education outcomes and how to make schools accountable for these outcomes). However, as bilingual education policy regimes were entrenched, these regimes mitigated policy rollback through the 1980s. This was the case in both California and Texas. Through the mid-1980s, bilingual education regimes in both states were able to resist policy rollback attempts from *English*

Only forces which increasingly gained political resonance in the era of small government and education accountability. The politics of retrenchment (Pierson, 1994; Sheingate, 2000, Starke, 2006) — policy-makers hesitant to pursue retrenchment policies, fearful of electoral retribution from taking on the entrenched Latino advocacy network — provides an explanation for the ability of bilingual education policy regimes to mitigate reform efforts during this period.

From the mid-1980s forward, however, policy trajectories in the two American states began to diverge because of the presence of the voter initiative as a mechanism of policy change in California. This makes California the more open system. The voter initiative allowed for the politics of policy rollback where government officials could shirk blame for such initiatives. The passage of an Official English constitutional amendment in California in 1986 via the voter initiative legitimized policy rollback in bilingual education. The Chacone-Mascone Bilingual- Bicultural Education Act was allowed to sunset, most notably with Governor Deukmejian twice vetoing legislation that would have extended the act — all of this occurring within a year of the passage of the Official English initiative. Eleven years later after bilingual education continued without a governing bilingual education state law, California passed Proposition 227 which put an official statutory end to bilingual education. Again, this was accomplished via the voter initiative. Ron Unz's English for the Children ran a campaign that eschewed elite support, successfully arguing that elites were frustrating policy that had public backing.

In Texas, Mexican interests fared comparatively better. Proponents of Official English constitutional amendments were repeatedly frustrated in the legislature despite polling showing substantial support for an Official English constitutional amendment.

Sponsors of the initiative could never win the support of a majority of Republican legislators (including Republican governors) as there was fear within the Republican Party of alienating the well-entrenched Latino community. The same proved true of attempts to overturn bilingual education policy arrangements. The entrenchment of Latino interests allowed policy regimes to mitigate reform efforts.

Elite Division, Closed Policy Making Setting - Berlin (1975-2010)

In Berlin, Muslim interests ultimately prevailed via a manner similar to *English Only* forces — via venue shifting — in attaining their policy preferences when faced with a well-entrenched regime in opposition to their incorporation. Elite division concerning Islamic religious instruction played out differently in Berlin. In California and Texas, bilingual education policy regimes were well-entrenched and interest in the opposition aimed to end these policy regimes. These, thus were projects of policy rollback. In Berlin, Muslim interests pursued incorporation into current policy arrangements so that they could also provide religious instruction for their communities. This was a campaign for policy expansion. Although comparing periods of rollback and periods of attempted expansion is methodologically problematic (Pierson, 1994), this comparison highlights how multiple venues or lack thereof affects prospects for interests attaining their policy goals in the respective policy settings. In both the Berlin case and the US cases of Texas and California, interests outside the policy regime (the IFB in Berlin and *English Only* forces in California and Texas) went up against well-entrenched interests determined to keep them out of the policymaking process. In the politics of policy rollback in California and Texas, *English Only* forces faced an entrenched bilingual education policy regime. However, the multiple

venues of the American system presented alternative forums where alternative issue dimensions could be received more favorably, subsequently expanding the scope of conflict and potentially (or ultimately in the case of California) leading to policy change. This proved fatal for Mexican interests in California and highly problematic for those in Texas as policy dimensions transitioned from education opportunity in the 1960s and 1970s to education accountability and fiscal restraint from the 1980s forward. In the closed German system, these alternative venues are not available. In the case of Berlin and the IFB candidacy, the IFB also faced an entrenched regime but because of the lack of alternative venues (other than the courts) and corporatist interest intermediation structures, the IFB could only continually apply for state recognition and then venue shift to the court. This eventually was a successful strategy, but it was twenty years in the making as the German courts have only recently begun siding with Muslim interest in suits concerning corporate recognition. Additionally, the IFB process of entry into the governing policy regimes was far less dynamic than the *English Only* campaign, which involved federal venues, the courts, and the voter initiative.

In Berlin, religious instruction is not governed by Article 7 III and thus, it is not a mandatory course as it is in NRW and Bavaria. Nevertheless, policy arrangements have evolved to closely resemble the corporatist state-church arrangements of Article 7 III as in NRW and Bavaria. And since religious communities have come to be dependent on the state granting the provision of school space and generous subsidies to fund religious instruction programs, the *Bundesland*, subsequently, has assumed unofficial gatekeeping power over the entry of new religious communities.

In Berlin, however, there is elite division concerning religious instruction. The

SPD, which controlled the Berlin government for the entire period of the study was lukewarm to religious instruction — thus there was not the same consensus as in NRW and Bavaria that Islamic religious instruction was a means for integrating the Muslim student population.

Concerning the IFB, there was opposition across the political spectrum to its candidacy to provide Islamic religious instruction. The political establishment believed the IFB had extremist ties and so their candidacy was opposed by all the major parties, Christian religious communities, and even among most Muslims. The IFB eventually won the right to provide religious instruction in Berlin schools, but via a 2000 court ruling. As they were situated within the closed policy setting, the IFB could not venue shop to other venues except the courts.

More indicative of the SPD's lukewarm embrace of religious instruction was their comparative lack of effort to make alternative arrangements for providing some form of Islamic religious instruction as was the case in NRW and Bavaria. Berlin authorities were afforded a more moderate Muslim lead organization, the DITIB, with whom it could have partnered. Yet, neither the state nor the Christian religious communities were interested in collaborating with DITIB or any other Muslim organizations. And since the Berlin policy system was closed, these other Muslim interests were also unable to shop for more favorable venues with the exception of the courts.

This aspect of Germany's policymaking system allowed for less dynamic politics. Once a particular issue dimension was secured by policy regime participants, it was maintained by the gatekeeping power of these participants (in this case, the state and Christian religious communities). Additionally, because of the corporatist nature of

religious instruction policy arrangements, the voter initiative (attempted by the *Pro-Reli* forces concerning the status of religious instruction) was not an option for Muslims as state recognition of religious communities was not subject to the political market place as it was solely controlled by the education ministry.

Lastly, since policy concerning education only happens at the state level, *issue expansion* was less of a factor in influencing the debate (the possibility of policy actions in other venues legitimating policy actions in the *Bundesland*) at the *Bundeslaender* level. Perhaps if the IFB were recognized in another *Bundeslaender* this could have been influential (as *Bundeslaender* officials were conscious of the fact that recognition of a Muslim religious community would influence campaigns in other *Bundeslaender*). However, since there was elite division in Berlin concerning religious instruction, this is also doubtful as Berlin elites were cool to the idea of recognizing any of the Muslim communities.

In the American system, alternative venues are often available where more favorable conditions may exist for interests outside of governing policy regimes and these can influence political debate in other venues. Policy actions can take place in the executive branch, the federal legislature, the courts or in state venues. Policy outcomes/ political debate in one venue can also influence debate in other state or federal venues. Many commentators have opined, for example, that Proposition 187 in California influenced welfare and immigration legislation at the national level in the mid 1990s (see HoSang, 2010; Crawford, 1999). In the closed German setting these alternate venues are less available. In the Berlin example, religious instruction was not favored by the party that had controlled Berlin's government for over a generation. Muslim interests, subsequently

(despite the large Muslim population), were at a disadvantage: the IFB faced political opposition across the political spectrum and the religious instruction policy regime was uninterested in reaching out to the more moderate Muslim communities. In Texas and California, despite the fact that *English Only* interests faced an entrenched regime, multiple venues existed where they could have attempted to change the politics of bilingual education. California's *English Only* interests used the voter initiative to legitimize the politics of *English Only* approaches and then to actually end bilingual education when the legislature could not be coerced to do the same. Additionally, policy outcomes or actions at the federal level were influential on state policy. For example, pertaining to the latter, after 1980 OCR basically stopped policing districts concerning their compliance with the Lau rulings. In California, this led to districts falling out of compliance with federal law by the time Proposition 227 was passed. Federal law in bilingual education increasingly shifted more money to transitional bilingual education and *English Only* approaches and ended funding for cultural maintenance approaches. By the mid-1990s, Congress placed three-year funding caps on federal bilingual education funding brought on by the transition to education accountability as the governing issue paradigm in bilingual education at the federal level. Each of these actions influenced the politics of bilingual education that led to the incremental policy rollback in California (preceding the passage of Proposition 227) and Texas (Crawford, 1999; HoSang, 2010). Although these factors did not lead to the termination of bilingual education in Texas, they did legitimize *English Only* approaches, providing the opposition with more issue salience for their *English Only* policy preferences. This resulted in more incremental policy rollback in Texas bilingual education from the 1980s forward.

Practical Implications of this Study

The findings of this study speak to the importance of multiple venues in policy change. This study builds on Baumgartner and Jones' (1993) *punctuated equilibrium theory*, providing a research design in which it can be transported to other settings. In Germany, elite relations were determinative of policy direction. Once elite consensus was formed around particular problematizations of religious instruction with respect to the integration of Muslim students, policy arrangements coalesced, creating regimes that locked in these issue definitions with participants favorable to elites. Outside interests could only hope for favorable court rulings in the face of elite opposition in these closed policy environments. On the flip side, when elite agreement was favorable to Turkish interests, such as in the NRW and Bavaria cases, this led to iterative but expansionary policy even in the face of popular discontent to the increasing presence of Islam in public life. As the closed, corporatist setting insulates interest intermediation from popular politics and secures particular policy dimensions, religious instruction policy arrangement preceded the official national conversation about the importance of Muslim integration by 10-15 years. This provides evidence of the favorable setting in which Turkish interests were situated.

In the American setting, the multiple venues were a double-edged sword for both Mexican and *English Only* forces. In the American setting, elite agreement is more fluid as the presence of alternative venues provides the opposition with many access points to change the politics of an issue and thus alter political consensus (Baumgartner and Jones, 1993). In the 1960s and early 1970s, this benefitted Mexican/ bilingual education interests and hurt *English Only* forces as there was elite support for bilingual education in multiple

policy venues. After the 1970s, the *English Only* proponents increasingly found favorable venues in the American system. As the Latino population continues to grow and gain in political influence, there is no reason to expect their political prospects not to change (as has been evident at the Presidential level over the last two election cycles — they are increasingly becoming the king makers; this is similar to the influence of the Reagan Democrats in the 1980s, the heyday of the Republican backlash).

Areas for Further Research

This study has focused on the effects of elite consensus and the openness/ closeness of the policymaking process on policy trajectories in US bilingual education policy and Islamic religious instruction policy trajectories in Germany with a specific focus on localities. Concerning the American side, the obvious next step would be to explore policy trajectories in bilingual education in the new immigrant destination in the South and the Midwest⁷² — two contexts which have been increasingly attracted the interest of academics in the last decade. The South would be especially interesting as the recent wave of Latino immigration to that region marks the first time since the colonial era that the Southern states have had experience with incorporating an immigrant group (as the immigration wave of the 1880-1930 period skipped the South) (Stamps and Bohon, 2006⁷³;

⁷² Studying the provision of bilingual education in the Midwest would likewise be very enlightening as the recent Latino migration to the Midwest has been cited as a welcome inflow that is largely responsible for invigorating many dying small and mid-sized Midwest cities.

⁷³ Stamps, Katherine and Stephanie A. Bohon “Educational Attainment in New and Established Latino Metropolitan Destinations.” *Social Science Quarterly*; Vol. 87; No. 5; December 2006.

Wainer, 2006⁷⁴). As racial problems still persist concerning the integration of African Americans, it would seem that at first glance that elite views would be united in opposition to bilingual education. Additionally, Latinos have limited political incorporation in the South and campaigns for bilingual education only date back to the 1980s (Stamps and Bohon, 2006; Wainer, 2006), missing the expansive period of elite agreement at the federal level of the 1960s and 1970s, which was integral in state expansionary policies in the mid-1970s. Additionally, these policy systems lack voter initiative policymaking mechanism. Either a cross-local study with older immigrant destinations (such as Texas, which also lacks the initiative voter policymaking mechanism but has the presence of entrenched, incorporated Mexican interests) or a cross-national analysis with Berlin, a state with elite ambivalence towards Islamic religious instruction, may be illuminating concerning how the open versus closed policymaking systems and/ or the status of elite views towards the respective issues affect policy trajectories.

On the German side, comparisons of policy trajectories in religious instruction could be expanded to include Hamburg and Brandenburg. Both of these *Bundesländer* offer an inter-faith religious instruction course (Religion for All in Hamburg and *Lebensgestaltung— Ethik— Religionskunde* (LER) in Brandenburg) where the focus is more on inter-faith dialogue than confessional study. However, elite consensus concerning their provision differs. In Hamburg the elites support *Religion for All* while LER is more contested in Brandenburg by the religious communities which would prefer confessional religious instruction. Both have incorporated teachings in Islam and thus this would prove as an interesting case to see how differences in elite consensus manifested to produce

⁷⁴ Wainer, Andrew “The New Latino South and the Challenge to American Public Education” Tomas Rivera Policy Institute, School of Policy Planning and Development, University of Southern California; 2006.

incorporation of Muslim interests, perhaps adding to the findings of this study.

Another potential *Bundesland* of focus is Hessen. Hessen recently became the first state to officially recognize a Muslim community. It is similar to NRW in its elite support for religious instruction. Additionally, the Ahmadiyya Muslims appear to be similarly ostracized from the Muslim establishment as the Alevites, suggesting that they are a more moderate sect. This may speak to the ease with which *Bundesland* officials could find common ground on curricular and political issues to grant recognition. Research concerning how *Bundesland* officials were able to come to terms with a Muslim community — something that has been elusive to other western *Bundesland* with similar elite support could also be enlightening.

Additionally, Ireland (2004) argues that as Germany made cuts to its welfare state, it did so via devolving responsibility of state welfare provisions to the *Bundeslaender*. The *Bundeslaender* increasingly used religious communities (as both the Catholic and Protestant Church are the main providers of care for children, the elderly and the sick and, hence, have always played a significant role in the provision of the German welfare state) to fill the gaps that states could not provide. This would be an interesting area of study to apply the methodology of this study as Ireland (2004) also argues that such state-interest arrangements in the provision of social welfare vary per locality. Would local fiscal conditions affect the politics of recognition for these Muslim communities — possibly making them politically more appealing for *Bundesland* officials to extend recognition.

Limitations of the Study

As this study only focuses on particular issue areas in immigrant integration, its findings are limited to these issue areas. It builds on Hofhansel (2010) and Freeman (2004) who argue that the literature on *national* integration regimes misses the complexity of the immigrant integration experience. They instead argue institutional arrangements that facilitate immigrant integration vary per issue areas or sectors of the polity, and that these institutional arrangements are determinative of the opportunity structures which facilitate immigrant integration politics. Nevertheless, although this study illustrates particular institutional configurations and elite relations in particular issue areas, the cross-national findings show that policy trajectories are generally indicative of national institutional regime types that have been identified in the integration regime literature.

Additionally, with respect to the Texas case, there is limited literature or accounts of policy developments in the state after 1981. Sanchez (2007) also mentions this hole in the literature. It is especially the case concerning accounts of *English Only* movements and how the Texas legislature has dealt with these trends while continuing to support bilingual education arrangements. I have attempted to do this in this study. However, as my resources and residence precluded an on-the-ground research project in Texas, obtaining information was difficult. This would appear to be a ripe area for historical institutionalist interested in immigration politics and immigration scholars. As Texas is a politically conservative state but did not experience the policy rollback in bilingual education as other states such as California, more research is needed in this area to compliment or challenge the work I have done.

Lastly, the study is heavily reliant on secondary sources. This methodological

choice was made due to the lack of resources and the breadth of the study — 5 cases looking at a 45 year period of policy development. A single case study that focused more in-depth on legislative debates or an empirical study of issue dimension saliency would compliment arguments established here as well as add more empirical vigor to these findings.

Conclusion

Turkish interests are better situated in the German setting — this is the overall conclusion of this study. Due to Germany's elite response to never repeat the atrocities of the Third Reich as well as national security considerations in the post 9/11 era, German elites are more determined to find ways to integrate their Muslim population. The long history of elite support for using church-state institutions as a means of integration further favors Muslims, whose different religion is viewed as problematic. Church-state institutions thus present a German way of dealing with the issue of immigrant integration. Ideally, in using church-state institutions to integrate Muslim youths, German elites attempt to express tolerance as well as create a German Islam — thus, both rendering the national security issues and perceived cultural incompatibilities moot.

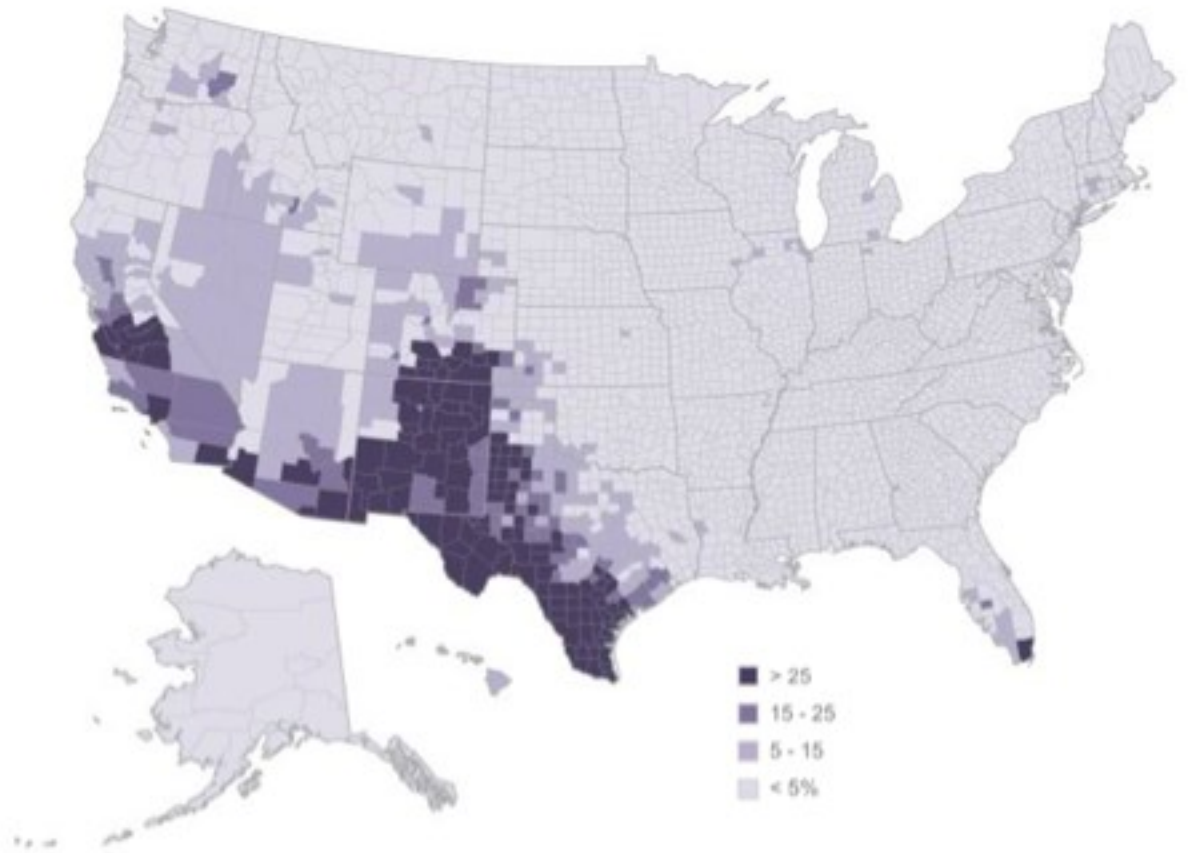
In the US, perennial issues of problematic race relations (black-white race relations) that have historically extended to the immigration debate, situated within a more open political system with elite division over the issue of language puts Mexican interests in a more precarious position. The only thing that Mexicans have in their favor are their growing numbers and the potential political force this could render. However, in the new immigrant destinations where their numbers are growing this is as likely to lead to policy restrictionism as expansion due to the multiple venues available to both Mexicans and

opponents of Mexican political incorporation. Additionally, as Mexicans political incorporation has lagged behind their growing numbers, Mexican political mobilization is increasingly the crucial factor. However, as the increased naturalization and political mobilization in the wake of Proposition 187 showed, when Mexican perceive a real threat, they will mobilize. And because of the multiple venues available to opponents of Mexican interests and the perennial polarization that immigration renders, their ability to organize collectively will be determinative of their political prospects.

APPENDICES

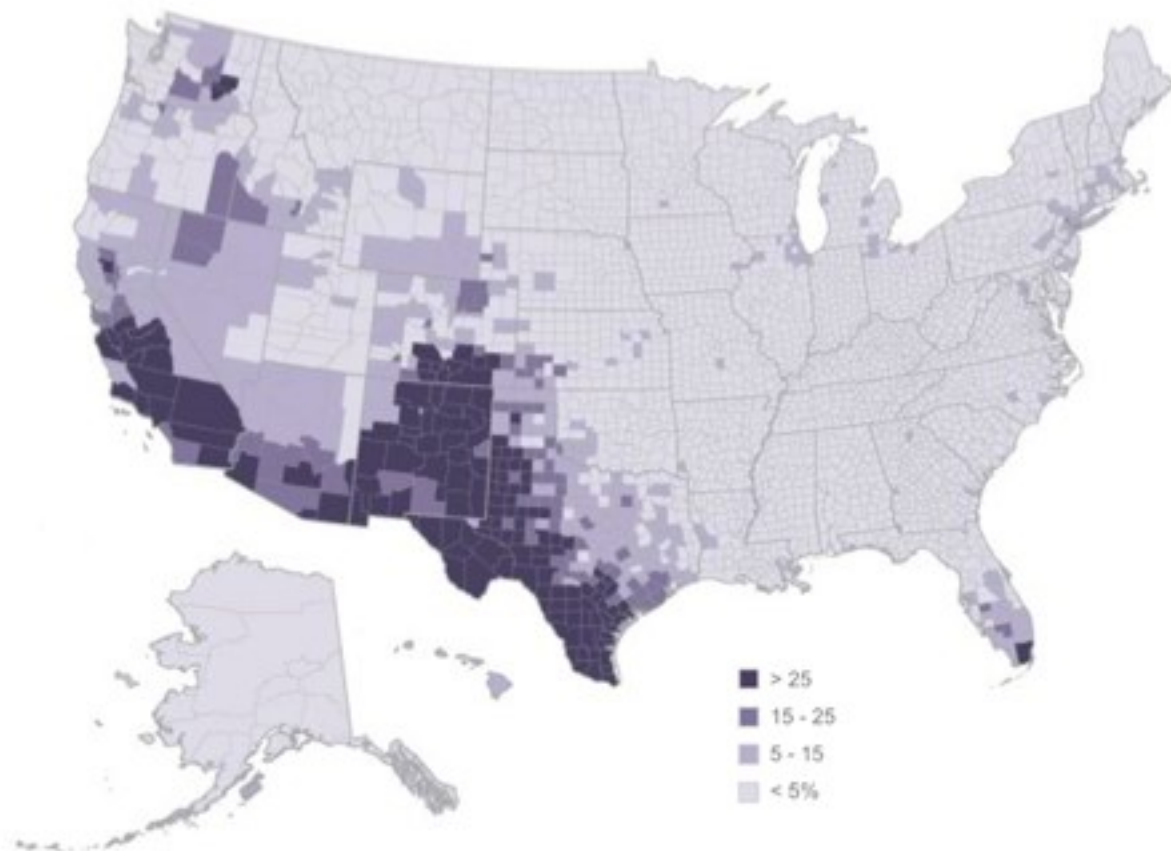
Appendix 1

Share of Latinos in the 1980s by County



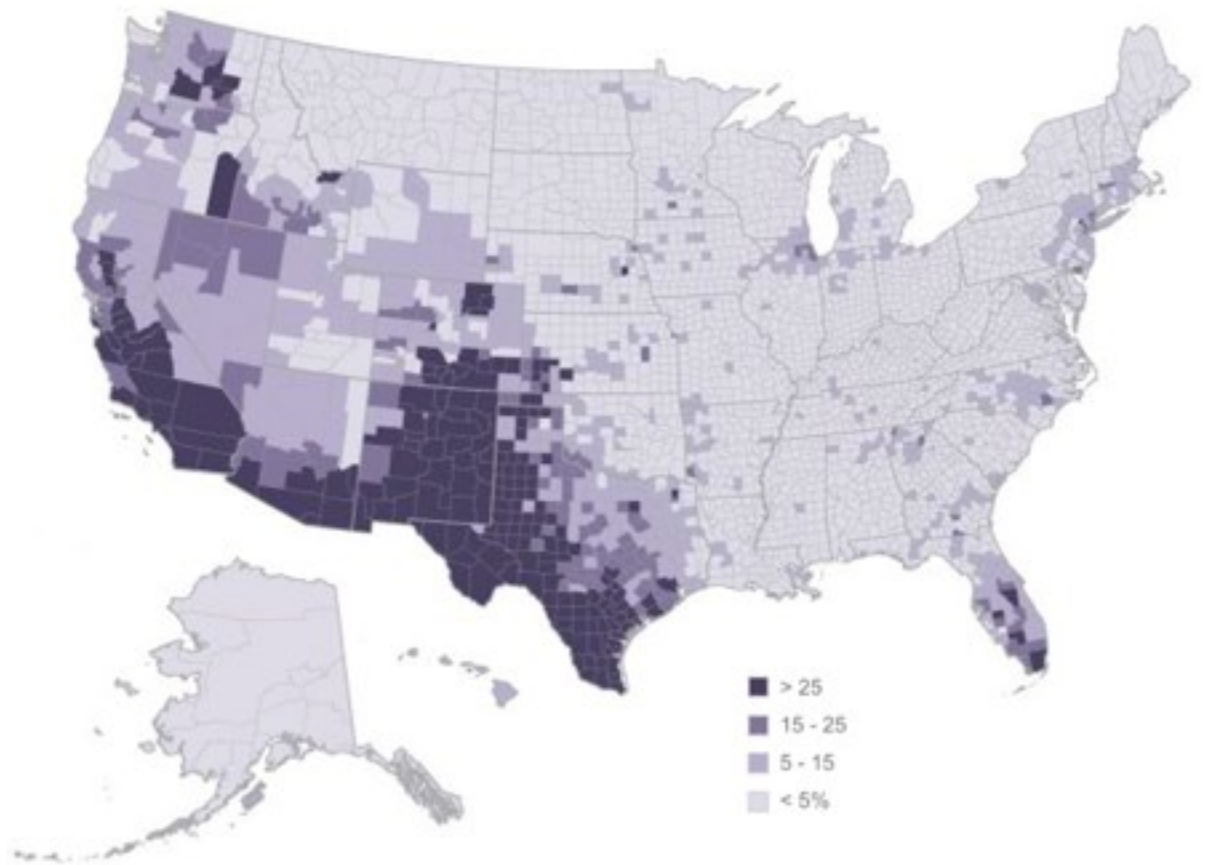
Appendix 1, continued

Share of Latinos in the 1990s by County



Appendix 1, continued

Share of the Latinos in 2000 by County



Appendix 2

Distribution of Muslims in the German Bundeslaender According to their Origin Country (in percentage)

	Southeast Europe	Turkey	Central Asia / CIS	Iran	South/Southeast Asia	Middle East	North Africa	Other Africa	Total
	<i>Old Bundeslaender</i>								
Baden-Wuerttemberg	21.7	18.3	0.0	11.7	9.4	9.5	8.2	5.6	16.6
Bavaria	12.7	14.1	26.1	12.7	9.4	11.3	7.6	16.8	13.2
Berlin	3.5	6.9	2.2	5.9	5.0	16.4	2.7	15.0	6.9
Bremen	0.5	1.8	-	2.0	1.8	1.1	1.3	3.7	1.6
Hamburg	1.2	3.2	-	5.4	13.1	3.5	2.3	15.0	3.5
Hesse	14.3	8.3	0.0	11.7	27.2	5.4	20.3	8.4	10.3
Lower Saxony	12.8	5.0	2.2	4.9	6.3	9.8	5.1	6.5	6.2
North Rhine-Westphalia	23.9	35.3	54.3	38.0	18.3	29.3	39.0	17.8	33.1
Rhineland-Palatinate	4.2	3.9	2.2	1.5	3.7	3.9	6.3	4.7	4.0
Saarland	1.2	0.6	0.0	2.4	0.5	1.2	1.1	1.9	0.8
Schleswig-Holstein	0.4	2.1	0.0	1.5	3.4	4.4	1.5	3.7	2.1
Old Bundeslaender total	96.7	99.4	87.2	97.5	97.9	95.5	95.2	99.1	98.4
	<i>New Bundeslaender</i>								
Brandenburg	0.3	0.1	-	0.5	0.3	0.3	0.2	-	0.1
Mecklenburg-Vorpommern	0.4	-	6.5	-	-	0.6	-	-	0.1
Saxony	0.6	0.3	-	2.0	1.0	2.4	3.0	0.9	0.7
Saxony-Anhalt	2.0	0.2	2.2	-	-	0.6	0.8	-	0.4
Thuringia	-	0.1	4.3	-	0.8	0.5	0.6	-	0.2
New Bundeslaender total	3.3	0.6	12.8	2.5	2.1	4.5	4.8	0.9	1.6

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BIOGRAPHY

Girma Parris was born July 5, 1971 in Silver Spring, Maryland. He earned his Bachelor's of Arts degree in American Government from American University in Washington DC. Girma graduated with University honors, *magna cum laude*, and was inducted into the Golden Key Honor Society, the Dean's List, Pi Sigma Alpha. In 2002, Girma joined the Phd program in Political Science at Johns Hopkins University.

During his graduate studies, Girma accrued years of teaching experience. From 2002-2007, he served as a teaching assistant for Dr. Benjamin Ginsberg's Introduction to American Politics class. Three of those years (2005, 2006, and 2007) he served as the Head Teaching Assistant for Dr. Ginsberg's Introduction to American Politics in which in addition to his teaching load, he served as the chief administrator for the course. For three semesters (2006, 2007, 2009), Girma was a Baden-Wuerttemberg Scholarship holder, serving as a visiting lecturer in the Political Science Department at the University of Mannheim (Mannheim, Germany) where he taught Introduction to American Politics and a survey course on American Political Development. In 2007, Girma received the Aitchison Public Service Fellowship in Government, Johns Hopkins University, serving as the Program Coordinator for the Aitchison Program in Government at Johns Hopkins University. From 2008 through 2014, Girma was a Lecturer in the Department of English and American Studies at the School of Humanities at the University of Mannheim (Mannheim, Germany).

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