


Language, Sovereignty, Cultural Contestation, and American Indian Schools: No Child Left Behind and a Navajo Test Case

Teresa Winstead, Adrea Lawrence, Edward J. Brantmeier, and Christopher J. Frey

In this interpretive analysis elucidating fundamental tensions of the implementation of the 2001 No Child Left Behind (NCLB) Act within Native-serving schools, we point to ways in which NCLB further limits the already contested sovereignty tribes exercise over how, and in what language their children are instructed. We discuss issues related to the self-determination exercised by schools, some problematic cultural assumptions inherent in the NCLB law, and the legal tension between NCLB and the 1990/1992 Native American Languages Act. Finally, we examine the detrimental effects that NCLB accountability measures could have on Navajo communities, and look at how the Navajo Nation has addressed sovereignty over tribal education in recent years vis-à-vis NCLB.

Introduction

 n January 8, 2002, President Bush signed into law the No Child Left Behind Act (NCLB) of 2001. The Act is the most comprehensive reform of the Elementary and Secondary Education Act (ESEA) since it was originally enacted in 1965. NCLB initiates a new role for the federal government in education and intends to close the achievement gap between “disadvantaged” and minority students and their more-advantaged peers. In an Executive Order regarding American Indian and Alaska Native Education, the following four basic and sweeping principles of the law are articulated: “(1) stronger accountability for results; (2) increased flexibility and local control; (3) expanded options for parents; and (4) an emphasis on teaching methods that have been proven to work” (Bush, 2004).

As many reports on the status of Indian education over the years have documented, the objectives of NCLB, for the most part, sound like welcome

improvements for Native schools and students. However, there are problems with several provisions in the law dealing specifically with Indian schools. In this article, we point to ways in which NCLB further limits the already contested sovereignty tribes exercise over how, and in what language, their children are educated. The article is divided into four distinct yet overlapping sections. The introduction provides a brief history of American Indian education from the treaty era of the 19th century to self-determination of the 20th century, examining the evolving role of sovereignty in these eras of Indian education. The discussion then turns to three specific analyses of NCLB and its potential impact on Native-serving schools. First, the cultural themes of standardization and progress inherent in NCLB are analyzed in relation to cultural contestation between this education law and Native classrooms. Thereafter, we examine the potential impact of NCLB on Native language use in schools and provide a close analysis of the incongruities between the 1990/1992 Native American Languages Act (NALA) and NCLB. Finally, we offer a detailed look at the implementation of NCLB, and examine the economic implications for the Navajo Nation and recent legal responses to NCLB by the Navajo Nation government.

Our intent is to provide an interpretive analysis of some of the important issues NCLB creates for Native-serving schools and students. Given that all authors of this article are not American Indian/Alaska Native, we conceive our role as that of allies who support culturally inclusive and linguistically supportive practices. The Euro-American authors share a diverse array of experiences in both the education system and with scholarship related to Navajo education. Christopher Frey and Ed Brantmeier both taught high school in the Navajo Nation and later supervised student teachers there. Adrea Lawrence has conducted research about Navajo and Santa Clara Pueblo history and education, and Teresa Winstead conducted research in the Navajo Nation about sovereignty and tribally-controlled schools.

We are mindful of the history of research in American Indian/Alaska Native communities which has been, as Linda Tuhiwai Smith writes, “inextricably linked to European imperialism and colonialism” (1999, p. 1). We understand self-determination, decolonization, and social justice as interdependent conceptual elements that, in cooperation, create the framework from which decolonizing research is conducted. Our research orientation values respect, reciprocity, and Native community engagement. We are hopeful about the contributions further research will make toward addressing the problems and issues we highlight here.

Evolving Notions of Sovereignty

A discussion of the intersection of the education of Indigenous Americans, language policy, and federal education reform necessarily includes a discussion of varying notions of sovereignty and self-determination. These two concepts have similar impulses and move in the same direction, toward control and increasing autonomy, but are radically different in theory and practice. The political sovereignty of federally recognized American Indian nations has always

been maintained by the U.S. Supreme Court, although the federal interpretation of Indian sovereignty has changed over the years. Technically speaking, tribes have both an extra-constitutional and a constitutional relationship with the U.S. government. And as such, Indian nations possess the sovereign power to regulate their own internal affairs and occupy the position of the third sovereign power in the U.S., along with state and federal governments. However, at the same time that Indian nations are recognized as sovereign nations, they are subject to a judicially defined congressional plenary power which “vests in Congress the sole authority to legislate for the Indian tribes in all matters” (United States v. Wheeler, 1978). In addition, the courts are also actively involved in policy making. The simultaneous constitutional and extra-constitutional relationship between the federal government and tribes underscores, as Wilkins and Lomawaima explain, the “inconstancy, indeterminacy and variability characteriz[ing] the uneven ground of federal Indian policy” (2001, p. 6).

The federal definition of self-determination includes a measure of tribal control over internal affairs, including education, according to the Indian Self-Determination and Education Assistance Act (ISDEAA) of 1975 (P.L. 93-638):

Congress hereby recognizes the obligation of the United States to assure maximum Indian participation in the direction of education...[and to] provide for the full participation of Indian Tribes in programs and services conducted by the federal government. (Title XXV, Chapter 14, Subchapter II, S.1017 § 450(a))

In contrast, David Wilkins’ definition of tribal sovereignty emphasizes the power inherent in tribal nations:

Tribal sovereignty is the intangible and dynamic cultural force inherent in a given Indigenous community, empowering that body toward the sustaining and enhancement of political, economic, and cultural integrity. It undergirds the way tribal governments relate to their own citizens, to non-Indian residents, to the corporate world, and to the global community. (2002, p. 339)

In a discussion about the sovereignty of the Navajo, Wilkins quotes writer and social critic Frantz Fanon (1965, p. 139) in his discussion on Indigenous definitions of self-determination or sovereignty:

“The African peoples were quick to realize that dignity and sovereignty were exact equivalents, and in fact, a free people living in dignity are a sovereign people.” This is a definition that seems most compatible with many tribal nations, including the Navajo Nation, in their efforts to be self-determining. (Wilkins, 1999, p. 17)

The difference between these two ideas, first of self-determination as captured by the legal text of P.L. 93-638, and Wilkins’ idea of tribal sovereignty, hinges on the difference between *power over* and *power in* the tribes and the management of their day-to-day affairs. Self-determination, as a concept and as a practical and implementable law, grants tribes *power over* their schools and other matters on the reservation. A more robust definition of tribal sovereignty,

as Wilkins would describe it, emphasizes the inherent, intangible, and incontestable *power* in the tribes to control their destiny and thereby encompasses much more than federal definitions of self-determination can offer.

Coffey and Tsosie argue for a similar distinction between political sovereignty, which in its current manifestation demonstrates a “profound lack of understanding of the inherent sovereignty of Indian nations,” and *cultural* sovereignty (2001, p. 192). Similar to Wilkins’ notion of tribal sovereignty as a dynamic cultural force, Coffey and Tsosie call for a reappraisal of the tribal sovereignty doctrine articulated in treaties, court decisions, and legislation toward a grounded notion of Indian cultural sovereignty as it is exercised and understood within tribal communities.

American Indian Education and Sovereignty: A Brief Look Back

Lomawaima writes that the social goals of education in the late 1800s were calculated to draw Native children away from tribal identification and communal living: “Indians were not being welcomed into American society (through boarding school efforts at ‘civilizing’), they were being systematically divested of their lands and other bases of an independent (tribal) life” (1993, p. 236). Given the assimilationist climate of this era of Indian affairs, it is no surprise that late nineteenth century schools neither encouraged participation in planning, nor the fostering of cultural integrity.

Some 50 years later, the 1928 Meriam Report presaged the arrival of a new and somewhat less oppressive era. Conducted by what later became the Brookings Institution, this federally funded study helped determine the effectiveness of boarding school education (James, 1988). The report recommended abandoning “The Uniform Course of Study” which stressed the cultural values of Whites, and to move Indian students from boarding to day schools where youth could learn both the “White and Indian worlds.”

However, the Meriam reforms failed to grant tribes even a modicum of *power* over their own educational affairs, and little was done to address the problems the study identified (Deloria and Lytle, 1983). This is amply demonstrated in the Kennedy Report (1969), which deemed Indian education “a national tragedy and a national disgrace,” pointing to the unacceptable 40 percent dropout rate among Bureau of Indian Affairs high schools as a primary indicator of the dismal condition of Indian schools (Red Horse, 1986, pp. 40-44). Wilkins describes this era as one of burgeoning Indian self-rule, in which tribes inhabited a position of quasi-sovereigns. Some of the post-Meriam Report developments have proven problematic; however, the revival of limited tribal self-government was a welcome post-assimilation era development (Wilkins, 2002).

The onset of the era of self-determination was preceded by an almost ten-year period of American Indian civil rights activism. This political agitation gave rise to a pronounced administrative response, the Indian Self-Determination and Education Assistance Act. This legislation and its many amendments granted tribes operation of education, health, and social service programs once

administered by the Bureau of Indian Affairs or other federal agencies, via contracts or grants. While the self-determination era marks significant progress toward greater tribal sovereignty, there have been many critics of its shortcomings, not the least of which are Native people themselves. One problem often cited is that “administration” is granted readily, especially to grant schools, but facilitation and planning authority are harder-won. Schools and communities must aggressively seek grants for training and support as these are limited and sometimes non-existent in the granting or contracting process. Many people are forced out of work due to funding dispersal delays. As a consequence of federal bureaucratic delays, employee payroll and other expenses are often not paid on time (Senese, 1991). A director of the Rough Rock School described self-determination legislation in the following way:

The system we operate under would defeat the President of General Motors. The system is a monumental fake and a hoax. It is a political game in which the community that refuses to lie down and die wins just enough to stand up for the next punch. (cited in McCarty, 2002, p. 113)

In her conclusion, McCarty calls attention to what she calls the “two faces of self-determination”:

The rhetoric of self-determination was and is betrayed by a federal bureaucracy tethered to a colonial system of patronage and control.... The fact that communities such as Rough Rock were able to gain a foothold in this system, seizing that moment of opportunity for self-empowerment, is a tribute to their ingenuity and resolve to realize the promise of local, Indigenous education control. (2002, p. 128)

As these comments demonstrate, the historic movement toward greater autonomy is marked, but the “self-administration” which dominates that eponymous era has in many ways failed to foster what Frantz Fanon calls “a free people living in dignity” (1965, p. 139). For in many cases, tribes were burdened with piles of paperwork and ever-impending funding deadlines instead of dignity and emboldened autonomy. They were granted *power over*, but their inherent and sovereign power was still not fully and formally acknowledged.

Contestable Cultural Themes in NCLB

The explicit and tacit cultural policies of the No Child Left Behind Act clash with the situated cultural and geographic realities of schooling in Indian Country. Ball (1990) maintains that policies are allocated values by decision-making bodies. The values inherent in policy handed down by governmental institutions often conflict with local cultural values, encouraging the cultural processes of assimilation, amalgamation, and appropriation. Contestation of the cultural themes of standardization and progress will be explored in this section. Cultural themes are defined here as generalized value orientations enacted via behaviors. A tension exists between the NCLB cultural policy, or the explicit and tacit values within a given policy, and the cultural values of many American Indian people and

institutions, thus further complicating implementation of NCLB in American Indigenous communities.

Cultural Theme One: Standardization

When judging the failure and success of individuals and schools based on performance on standardized tests, as NCLB does, the cultural theme of standardization should be interrogated. Standardization and legitimization of certain knowledge begs the question about the very purpose of schooling. Should U.S. schools homogenize a diverse citizenry toward a national culture, language, and identity at the expense of ethnic and linguistic diversity? Should teachers act as moral agents of the state in the homogenization process as Emile Durkheim (1961) suggested in the French context? Is the purpose of schooling to create an American melting pot, premised on the norm that homogenization, according to a “white dominant paradigm” (Howard, 2006), is desirable in the process of forging solidarity and unity among the “American” people? Or, should schools promote diversity, equality, and equity, with an understanding of the historical power imbalances prevalent in pedagogy, curriculum, assessment, and institutional structures, as contemporary multiculturalists posit (Banks & Banks, 2001; Sleeter & Grant, 1999)?

Standardized Language and Knowledge. Current standardization movements demand that we question the very purpose of schooling because standardization pervades language, pedagogy, curriculum, assessment, and institutional choices. Standardized knowledge tested through state assessment legitimizes a certain type of knowledge and way of knowing. For example, testing one’s ability to grammatically construct sentences or identify correct grammatical forms prioritizes the function of words over the forms of meaning involved in communication. English grammar pedagogy serves to reify an allegedly homogeneous Standard American English grammar. Dialect and stylistic differences that lie outside of the state’s conceptions of *correct* language use, established mostly by members of the Euro-American, middle-class dominant group, are viewed as *incorrect* and slated for “corrective action.” In effect, imposing Standard American English, central to perpetuating a dominant “linguistic ideology,” reinforces “power and status differentials among members of a population” (Brantmeier, 2007, p. 4). Lomawaima and McCarty argue that assessments administered only in English reinforce a system of institutionalized racism — those who are already proficient in English have a clear advantage over those who are not (2002, p. 298).

Assessments administered only in English can be viewed as a devaluation and de-legitimization of the use of American Indian/Alaska Native languages in the public sphere. The *acceptable* linguistic forms established and maintained in schools that operate largely according to White, middle-class values are measured on standardized tests and serve to perpetuate the cultural values and linguistic practices of the White, middle class — what Delpit (1988) labels the “culture of power.” State tests reify ways of communicating and “legitimate”

knowledge when standardized types of knowledge and ways of communication are established. Those communicative forms and knowledge paradigms outside the dominant hegemonic are subject to marginality and devaluation.

Success is defined as one's ability to reproduce standardized information. "Legitimate" knowledge, permeated with contestable cultural content, is constructed and then enforced by states through standardized measurement techniques. Is that standard achievement indicator inclusive of diverse cultural knowledge and ways of knowing? Are standardized tests culturally inclusive? Or should we perceive standardized tests as reflective of mainstream, Euro-American cultural standards?

The situated challenges in schools serving Native children need to be more closely examined. Fifty-five percent of students in BIE-funded schools are categorized as limited English proficient (Bureau of Indian Affairs [BIA], 2002, p. 22). The Office of Indian Education Program's (OIEP) Plan states that:

A state must ensure that all students have the opportunity to demonstrate their achievement of state standards; consequently, it must provide well-designed assessments appropriate for a broad range of students with accommodations and alternative methods for students who need them. (BIA, 2002, p. 10)

In response to such statistics, researchers, administrators, and Native leaders have recommended that to increase Native student achievement, education programs should stem from an emphasis on language and culture and that tribes should be consulted in developing state curricula (*Native American Languages Act Amendments*, testimony of Dick, Worl 2000; *Native American Languages Act Hearing*, testimony of Hinton, 2003; *Recovery and Preservation*, testimony of Montoya, 2006). As Indigenous children come from diverse family and tribal backgrounds and have varying degrees of Native linguistic and cultural knowledge, it would seem imperative that test developers adhere to OIEP stipulations for the development of standardized tests to eliminate cultural bias, acquire grassroots input, and provide for assessing achievement of LEP and special education students (BIA, 2002, p. 12). Considering the numerous clauses in the Office of Indian Education's plan that create a special status for American Indian/Alaska Native students, assessment could become more culturally inclusive and fair to students and schools taking them, though the process of infusing tests with cultural relevancy will be long and arduous.

Cultural Theme Two: Progress

NCLB addresses the achievement gap between individuals in schools, groups in schools, and among schools in a state by demanding "accountability" from each in the form of reports of adequate yearly progress (AYP). If a Title I school fails to reach AYP for two consecutive years, punitive sanctions are imposed and will increase with each failing year. Progress is glaringly valued in such an industrial production model for education, with English language learning at the forefront of the "production of the educated person" (Levinson, Foley, & Holland, 1996).

Such a progress-oriented policy assumes perpetual growth until no child is indeed left behind. Fundamentally, it assumes that some schools are presently failing and need to be changed. The future becomes a horizon of possible success and the present becomes tainted with failure. The NCLB policy mirrors mainstream values that Samover, Porter, and Jain identify as the Euro-American, middle-class values of action-orientation, optimism, and progressivism (2003, pp. 302-304). They argue further that gender differentials exist in the socialization processes of these values. For example, boys are often encouraged to be more future-oriented than girls, who teachers might tacitly direct toward reproductive roles (2003, p. 303). Conceptions of action, progress, change, and future conveyed in the above truth claims mainly stem from Euro-American, middle-class cultural orientations to time.

Educational “progress” is inherently cultural and political and tied to the dominant hegemonic. Why do Euro-American power elites promote an action/progress/change/growth orientation, and how are the rhetoric and metaphors of progress used? What deeper assumptions undergird dissatisfaction with the present and future? Growth and progress seem to be embedded in historical processes of Euro-American “manifest destiny” and the policies of Western expansion that limited American Indian/Alaska Native linguistic, geographic, economic, and cultural autonomy. Progress meant Euro-American westward expansion into Native lands. Progress meant, and means, speaking (“standard”) English. Progress meant Christianizing the “Natives” in order to develop “morally appropriate” Christian human beings. Progress meant reforming Indigenous subsistence systems and lifestyles, encouraging sedentary farming communities, and the establishment of “trading houses” to “deculturize” American Indian people (Spring, 2007, p. 17). Progress meant action/progress/ change/growth, but according to whose model? *Who* defines progress and for what self-interested reasons are the critical questions to consider.

In *Prison Notes*, Antonio Gramsci asserts that the “directive center” exerts the hegemonic, or moral and intellectual persuasion through institutional means (Morrow & Torres, 1995) on intellectuals through two principal means:

a general conception of life that is different from old ideologies, is dominated by coercion, and instills a sense of struggle of old ideologies and by providing an educational principle or original pedagogy to the most homogenous group of education [thus exposing the idea to the most people in a society], and by doing so guides the activities of those educators. (Gramsci, 1972, pp. 103-104)

NCLB aims to “leave no child behind” through an outcome-based learning movement rooted in accountability. One central concern of the law, and specifically its accountability measures, is that sanctions for “failure” are situated at the school level, in the classroom, and in particular with the teacher. In many American Indian contexts, the placement of responsibility with the teacher and in the classroom ignores the larger community context of schooling, the possible adverse effects of an accountability regime that punishes teachers and communities

economically, and this blame complicates current efforts of American Indian language transmission and revitalization.

How might notions of progress be differently defined by local American Indian institutions and people? Outcome based learning resituates *power over* curriculum and assessment in state departments of education throughout the country. This resituation of power over curriculum and assessment within the “directive center” (Gramsci, 1972) can diminish the agency, the inherent *power in* both local cultural actors and institutions. The cultural themes of standardization and progress need to be critically examined and contested when ascertaining the impacts of NCLB policy on American Indian educational practices. The hegemonic exerts force and forges institutional processes and both individual and collective identities. Gramsci would be alarmed.

Contested Legal Terrain: NCLB and the Native American Languages Act

A product of American Indian/Alaska Native linguistic scholarship and activism, the 1990/1992 Native American Languages Act (NALA) is a very clear statement by the U.S. government in support of Indigenous languages. In much the same spirit as the Indian Self-Determination and Education Assistance Act, NALA promises to protect and preserve Native languages, including their use in schools.

This spirit of support can also be seen in sections of NCLB. Section 3125 of Title III of No Child Left Behind, pertaining to bilingual education, states, “Nothing in this part shall be construed...to limit the presentation or use of Native American languages” in Native American communities (NCLB, 115 STAT. § 1425-2094, 2002, (3125 [3])). However, this is complicated in Title III, section 3128, which stipulates that instruction, staff development, and curricular materials in American Indian/Alaska Native languages are authorized so long as they increase the English proficiency of American Indian/Alaska Native children (NCLB, 115 STAT. § 1425-2094, 2002, (3128 [3])). While this stipulation appears to value both English and Indigenous languages, the expectation is clear that students’ primary linguistic proficiency will be in English, without consideration for developing proficiency in other languages (Hornberger, 2000). Curiously, Section 3216 stipulates that programs serving Native children “may include programs of instruction, teacher training, curriculum development, evaluation, and assessment designed for Native American children learning and studying Native American languages...” as long as their goal is to increase English proficiency (NCLB, Title III, Part A, §3128; Title III, Part B, §3202; Title III, Part B, §3216). This is despite recent scholarship suggesting language immersion programs may improve both Native and English performance on standardized tests (Holm & Holm, 1995; Lomawaima & McCarty, 2006; *Native American Languages Act Amendments*, testimony of McCarty, Wallace, 2000; *Recovery and Preservation*, testimony of Wilson, 2006).

Language Policy Implementation and Language Survival

In April 2004, Secretary of Education Rodney Paige announced changes in the reporting requirements for students identified as LEP (referred to as English language learners or ELLs under NCLB). ELL students enrolled in a school less than a year were exempted from the state reading test, and instead may substitute an English language proficiency test. They must, however, take the state mathematics test. None of the scores for ELL students are required to be included in the school's annual yearly progress report, but they do figure into the school's participation count. In addition, students deemed proficient in English in the previous two years may maintain their ELL/LEP status in the annual yearly progress tabulations for English language learners (U.S. Department of Education, 2004; Zehr, 2004). Although these changes have given schools with significant ELL populations breathing room to meet new testing requirements, the revisions do not fundamentally alter the goal of rapid English-language acquisition.

Changes to the original 1990/1992 Native American Languages Act were echoed in testimony provided to Congress in 2000, 2003, and 2006. Among the recommended changes were the establishment of language nests, language survival schools, language restoration/revitalization programs, and Native-language teacher preparation (*Native American Languages Act Hearing*, testimony of Cheek, Hinton 2003; *Recovery and Preservation*, testimony of Cornelius, Montoya, Shije 2006; *Native American Languages Act Amendments*, testimony of Jackson, Worl 2000). These recommendations were incorporated, in different forms, into P. L. 109-394, the Esther Martinez Native American Languages Preservation Act (NALPA) passed in December 2006.¹ NALPA augments but does not replace NALA, laying out specific parameters for each authorized program, such as instructional and childcare services for students and their families, Indigenous languages as media of instruction, enrollment and contact hour requirements, Native language curricular development, teacher training, and program location. While NALPA does not resolve the ambiguities regarding Native language use in NCLB, it does assert the importance of Native language learning and use among American Indian/Alaska Native schoolchildren, whether their schools serve primarily Indigenous children or not.

Contestable Jurisdictional Claims

Notably, the language survival schools and nests do not go through the Bureau of Indian Affairs or come under the jurisdiction of the Secretary of Interior as NCLB does (see NCLB, Title X, Part E, §1137(b)). This is a break from NCLB wherein the Secretary of Interior is the U.S. governmental authority in charge of Native education. While tribal authority is present at each juncture, it is unclear how the two U.S. government agencies — the Department of Education and the Department of Interior with the Bureau of Indian Education (BIE) — would resolve jurisdictional issues among themselves. It does appear that the authority given to the Secretary of Interior under NCLB might trump tribal efforts to maintain and revitalize Indigenous languages under the NALA and NALPA.

Ultimately, this may need to be tested in court where the laws would be read side by side. There is a chance that the court may interpret the Secretary of Interior's authority to be more limited than what appears to be the case in section 1137, but the chance that the court would privilege the Secretary of Interior's authority over that of tribal bodies remains a concern among Native community members.

Under NCLB, the U.S. government claims "sole responsibility for the operation and financial support" of BIE schools (NCLB, Title X, Part E). Whether or not NCLB actually upholds the federal government's trust obligation for providing Native students' formal education is ambiguous. The accreditation requirements of NCLB may indeed permit treaty violations, since, during the three-year accreditation period, the BIE can contract with outside entities (NCLB, §1121(b)(3)(B)). Historically, there is precedent for such contracting under the Snyder Act of 1921 and the Johnson-O'Malley Act of 1934, wherein the federal government hired states to provide educational services to Native children (Deloria and Lytle, 1983, p. 242). Likewise, if a Native-serving school is deemed failing by the tribe's chosen accreditation agency, the tribe may take operational control of that school, or the BIE can "contract with an outside entity" to assume control of the school (NCLB, Title X, Part E, §1121(7)). If the tribe declines to exercise its authority, the BIE must consult the tribe in hiring an outside agency (NCLB, Title X, Part E, §1121(b)(8)(D)(iv)(II)) in order to fulfill its trust obligations ("Note: Privatization of Federal Indian Schools," p. 1476). Although these stipulations would appear to buttress Indian self-determination, the U.S. government has not always honored tribal sovereignty. In his 2005 testimony to the Senate Indian Affairs Committee, Roger Bordeaux (*Indian Education*, 2005), the superintendent of Tiospa Zina Tribal School on the Sisseton Wahpeton Dakota Reservation in North and South Dakota, reported that the BIA and Department of Interior have acted to "close, consolidate, transfer, or substantially curtail" schools and educational programs without consulting tribal authorities.

In addition to direct challenges against the U.S. government in federal courts, legal arguments in favor of NALA and NALPA might likewise be made through international law. Legal scholar Rosemary Blanchard (2003) recommends that Indian tribes use "customary law," or the evolutionary sense of what is right and wrong in human communities. Customary law includes inalienable rights, or those rights that one has simply because one is human (United Nations General Assembly, 1948). In arguing for Indigenous language rights, Blanchard cites Article 27 of the International Covenant on Civil and Political Rights which states that "ethnic, religious or linguistic minorities" should be able "to enjoy their own culture to profess and practise their own religion, or to use their own language" (United Nations, 1976). This sounds very much like NALA, and indeed the U.S. Congress ratified the International Covenant on Civil and Political Rights in 1992 without amendment. Moreover, as Blanchard notes, the U.S. Supreme Court recently cited domestic and international public opinion in footnote 21 of the majority opinion of *Atkins v. Virginia* (2002), wherein the court disallowed capital punishment in cases with the mentally disabled.

Implications for the Navajo Economy and Language, and the Tribe's Responses

Along with conflicts between NCLB and Indigenous legal, cultural, and linguistic traditions, there are potentially serious economic ramifications with full implementation of NCLB. This is particularly true in the Navajo Nation, given the reservation economy's reliance on educational institutions. This section will review the challenges for Navajo communities, and the steps the Navajo Nation has taken toward addressing these concerns.

NCLB Accountability Measures and Navajo Communities

Nationally, criticism of NCLB has generally fallen into two camps. One camp argues that the failure to fully fund the program endangers its success, a criticism voiced by many American Indian educators. John W. Cheek, executive director of the National Indian Education Association (NIEA), criticized NCLB mandates as "expensive and without the requisite funding to support them...the new education law risks falling short of its intended goal" (*FY2004 Budget*, 2003, p. 1). In testimony to the Senate Subcommittee on Indian Affairs two years later, David Beaulieu, President of NIEA in 2005, echoed Cheek's reports of underfunded NCLB mandates (*FY2004 Budget*, 2005). While it is true that federal funding remains inadequate, our analysis is driven by critiques of the fundamental legal and cultural problems with NCLB. Whatever the immediate cause or broader cultural implications, the failure of Navajo schools and the full implementation of NCLB sanctions will have immediate and critical economic ramifications for the Navajo Nation.

Schools and school districts not attaining AYP face a series of choices and sanctions. After two years non-attainment, NCLB requires development of a plan to "turn the school around." Since many schools already have Comprehensive School Reform Plans, these "school improvement" measures are generally not a significant hurdle. The accountability measures intensify in the third year of non-attainment, when school districts, under "corrective action," must allow students to transfer to other public schools that are meeting their AYP, and, perhaps more significantly, pay for their transportation. These accountability measures are a considerable financial burden for sprawling Navajo public school districts already struggling to transport students over great distances every day. Inevitably, school choice will increase maintenance costs because buses must travel over rutted, dirt roads. It is also a burden for students, some of whom already spend three or four hours a day getting to and from school.

In the fourth year of non-attainment, or "restructuring," sanctions become progressively more severe. In addition to previous rules, schools may (be required to) reassign or fire staff, and adopt a new curriculum. In the fifth year of non-attainment, the school district in effect loses its right to manage the school. The school then can be closed for good, or reopened as a state or corporate-administered charter school. Already, few Navajo schools are maintaining AYP

(see Patrick, this issue). Only seven of 63 schools on the Navajo Nation made AYP in both 2003-2004 and 2004-2005 (Begay, 2004; Office of Indian Education Programs 2004, 2005); ten met AYP in 2005-2006, but that year six BIE schools were in their second year of restructuring, and ten in their third (Office of Indian Education Programs, 2006).

The most severe sanctions ignore the omnipresence of the education sector in the Navajo Nation economy, where schools are often the *only* source of full-time employment, and a major source of part-time and seasonal work. As McCarty (1989, 2002) notes, schools such as the Rough Rock Demonstration School (now Rough Rock Community School) were established not only for educational, but for economic development purposes as well. The reassignment or firing of large numbers of Navajo employees would force families into a series of grueling choices: either to move to another community or off the reservation, or to send their children to boarding schools or on long bus rides to other schools. The closure of schools would devastate the already weak reservation economy where 35.6 percent of all jobs are in education and social services, and 27.9 percent are in management and professional occupations (U.S. Census Bureau, 2000). The majority of these jobs are in schools and are held by local Navajos. The ubiquity of educational employment in the Navajo Nation has been part of a long-term effort by tribal and federal authorities for economic and educational development that focuses on developing Navajo teachers, who are now the backbone of the reservation economy. Should these jobs be privatized, wages would likely fall, exacerbating the staggering poverty rate on the reservation, which ranges from 40 percent of all families, to 67 percent of female-headed households with children under age five (U.S. Census Bureau, 2000).

NCLB and the Threat to School-based Navajo Language Programs

Despite its goal of increasing flexibility, NCLB's fundamental goal of accountability through standardized tests threatens policies and institutions that support Navajo language teaching. Since the opening of the Rough Rock Demonstration School in 1966, organized language teaching and revitalization efforts have been located almost exclusively in educational institutions. The loss of Title I funding, and possible school closure under NCLB endangers these sites of Indigenous language learning, ironically because students are not achieving on the English-language state assessments. Over time, continued student "failure" triggers increasingly draconian accountability measures, and jeopardizes the very institutions charged with teaching and transmitting the Navajo language.

The law's exclusive focus, through its accountability measures, on schools as educational spaces ignores their economic, social, and cultural relationship with the wider community. An important question is to what extent the accountability measures will *push* Navajo culture and language out of schools, and whether and how this will affect the short- and long-term viability of the Navajo culture and language, and the Navajo Nation as a whole.

Local Control and Responses from the Navajo Nation

Despite nearly 40 years of modest integration of Navajo language and culture in schools, there is still widespread concern about the viability of the Navajo language (Spolsky, 2002). Furthermore, there is no consensus among Navajo people about the place of the Navajo language and culture in schools (Batchelder & Markle, 1997). NCLB has the potential to upend the (limited) emphasis on local concerns, and accentuate state and national interests at the expense of local and tribal empowerment. In an attempt to navigate this contested terrain, the Navajo Nation expanded its educational authority with the passage of the Navajo Sovereignty in Education Act (NSEA) of 2005.

The NSEA was a revision and reorganization of Titles 2 and 10 of the Navajo Nation Code. Most importantly for the purposes of this discussion, the NSEA codified the “inherent authority” and responsibility of the tribal government for the education of Navajo people, without abrogating the trust responsibility of the federal government or the rights of Navajos to a state-funded, public education (Navajo Nation Council, 2005). The law also created the Department of Diné Education out of the former Navajo (Diné) Division of Education, in order to assume parallel responsibilities of a state education agency (SEA) while maintaining close working relations with the SEAs of Arizona, New Mexico and Utah, and to ensure tribal representation and authority over the content of accountability measures.

While Navajo Nation President Joe Shirley, Jr. said the new law would “benefit our Navajo students, schools and parents and strengthen our Navajo culture,” he also spoke of Navajos as being “true sovereign[s]” and of “the need to conduct ourselves as such” (Norrell, 2005). Shirley’s statement gets to the heart of the veto power these new legal arrangements have over federal and state control of Navajo schools. NSEA directly addresses the importance of culturally and linguistically appropriate measures by approving the creation of “applicable, measurable academic achievement standards, including any such standards established by the Navajo Nation” (NSEA, §202). Although these standards are still being composed, some communities are already looking to expand their control over public schools by citing the need to meet tribally-constructed progress goals (Hassler, 2006). The extension of tribal education authority is still in its infancy, but should address or at least blunt the linguistic and economic impacts of NCLB. The law reinforces Navajo language teaching by mandating that “instruction programs foster competence in both the English Language and Navajo Language skills” (NSEA, §101), protecting Navajo preference laws, and encouraging culturally appropriate character development (*k’ é*).

Furthermore, NSEA addresses the potential closure of schools and the transportation issue in section 120. There, in addition to emphasizing the necessity of improving bus routes, the law stipulates that the tribe shall work to “avoid excessively long bus travel,” without justifying “the closure of any school nor the denial of day attendance opportunities to students within a school’s day attendance area.” This last sentence is perhaps the most direct acknowledgement

of the hardship that students (and communities) face with the potential closure of community schools. Whether the tribe will have the funding and the will to intercede, however, remains to be seen.

Despite these promising legal changes, tribal control may be resisted from below. In addition, there is strong resistance among many Navajos to tribal government control of education, in part because of the inclination toward community governance and widespread distrust of the Navajo Nation government. According to Diné cultural expert Frank Morgan, within the four sacred mountains that mark the boundaries of Diné Bikeyah, or Navajo Country, “There are some things you shouldn’t bring in — TV, videos, tribal government, gambling, drugs. Those things are harmful, whatever you do with them” (House, 2002, p. 81). This mistrust — further exemplified in 2001 when Navajo voters rejected tribal government management of local Indian Health Service institutions — is a major barrier to tribal control of schools. If the tribal government itself codifies cultural and language teaching and restricts local autonomy, especially without additional (financial) support, there will likely be resistance from teachers, schools and communities.

Toward Closure

The economic centrality of schools on the Navajo Nation, and the specter of institutional realignment add yet deeper dimensions to local and tribal efforts for self-determination, local education control, and language revitalization. Even as we attempt to address the many questions and problems, we are left with more questions. Given the nuanced understanding of sovereignty explored here, who should define and control the purposes of schooling in the Navajo Nation? How can notions of sovereignty, the inherent *power in* tribes, be instilled or fortified to ensure deep self-determination and cultural sovereignty? To what extent would the closure of schools in small communities push people into larger communities? Would children be forced to move away from their homes and extended families to attend school, thus increasing student rootlessness? Or will new educational institutions emerge, perhaps in the form of charter schools or grant schools, or something we don’t even recognize as a “school,” which could navigate the NCLB requirements and more adequately address and integrate the educational goals of local Navajo communities? What are the implications for smaller tribes, those without the population, resources, and political strength of the Navajo Nation? On the other hand, should tribes wait out this phase of federal oversight, in hopes that opposition will force major revisions to the law in the coming year?

We have attempted four rather ambitious projects in this article. First, we have provided a brief summary of Indian education legal foundations, focusing on the differences between nuanced definitions of sovereignty and self-determination vis-à-vis American Indian educational history. Second, we have elucidated how the Euro-American cultural themes of standardization and progress are reproduced in the NCLB industrial model of education. Third, we have examined how the legacy of Indian education and cultural contestation are

playing out with the No Child Left Behind Act and language policy. Fourth, we have sought to look ahead, to possible broader effects of implementation of NCLB on the Navajo Nation, both to the economic ramifications of widespread school closures, but also the threats to Navajo language (re)production, cultural values, and tribal sovereignty.

The schooling of Native children, now as in the past, has serious implications for identity construction. The historical, legal, cultural, and economic implications of NCLB threaten, yet again, to displace the rights of self-determination and cultural sovereignty for a free people living in dignity. However, there is a tremendous *power in* the agency of local actors and institutions that have creatively adapted and integrated external constructs through their own means and for their own ends.

Teresa Winstead is an Adjunct Professor in the Education and Social Sciences Divisions at St. Martin's University.

Adrea Lawrence is an Assistant Professor in the School of Education, Teaching and Health at American University.

Edward J. Brantmeier is an Assistant Professor in the School of Education at Colorado State University.

Christopher J. Frey is an Assistant Professor of Educational Foundations and Inquiry at Bowling Green State University.

Endnote

¹Esther Martinez was a noted Tewa storyteller from Ohkay Owingeh (San Juan Pueblo) in New Mexico. There she taught the Tewa language and in this capacity, she actively sought to create and foster a Tewa language revitalization effort in collaboration with other linguists, producing *The San Juan Tewa Pueblo Dictionary* (Martinez, 1983) and other works. Shortly before her passing in 2006, the National Endowment of the Arts named Martinez a National Heritage Fellow.

References

- Atkins v. Virginia. 536 U.S. 304 (2002).
- Ball, S. J. (1990). *Politics and policymaking in education: Explorations in policy sociology*. London: Routledge.
- Banks, J. A., & Banks, C. A. (2001). *Multicultural education: Issues and perspectives*. New York: John Wiley & Sons, Inc.
- Batchelder, A., & Markle, S. (1997). An initial exploration of the Navajo Nation's language and culture initiative. In J. Reyhner (Ed.), *Teaching indigenous languages* (pp. 239-247). Flagstaff, AZ: Northern Arizona University.
- Begay, J. (2004, December 14). Most BIA schools fall short of reform standards. *The Navajo Times*.
- Blanchard, R. A. (2003). Bringing the discourse of international human rights law into the struggles of American Indigenous peoples for educational self-determination. *2003 Annual meeting: Accountability for educational quality: Shared responsibility*. Chicago, Illinois.

- Brantmeier, E. J. (2007). Speak our language ... abide by our philosophy: Language and cultural assimilation at a U.S. Midwestern high school. *Forum on public policy*. Diversity Section. Retrieved August 28, 2007 from <http://www.forumonpublicpolicy.com/papersspr07.html>
- Bureau of Indian Affairs (2002, June). Preliminary consolidated state plan application for grant for state assessment, No Child Left Behind Act of 2001, P.L. 107-110, 2002-2007. Retrieved April 8, 2004 from <http://www.oiep.bia.edu>
- Bush, G. W. (2004, April 30). Executive Order 13336: American Indian and Alaska Native education. *Federal Register*, 2004, pp. 25295-97. Vol. 69. No. 87.
- Coffey, W., & Tsosie, R. (2001). Rethinking the tribal sovereignty doctrine: Cultural sovereignty and the collective future of Indian nations. *Stanford Law and Policy Review*, 12, 191-210.
- Deloria, V., & Lytle, C. (1983). *American Indians, American justice*. Austin: University of Texas Press.
- Delpit, L. (1988). The silenced dialogue: Power and pedagogy in educating other people's children. *Harvard Educational Review*, 58(3), 280-298.
- Durkheim, E. (1961). *Moral education*. Glencoe, IL: Free Press.
- Esther Martinez Native American Languages Preservation Act, Pub. Law No. 109-394, 120 Stat. 2705 (2006).
- Fanon, F. (1965). *The wretched of the earth*. London: Grove Press.
- FY2004 Budget: Hearing before the Senate Committee on Indian Affairs, 108th Cong., 1st Sess. (2003, March 5) (testimony of John W. Cheek).
- Gramsci, A. (1972). *Selections from the prison notebooks of Antonio Gramsci*. New York: International Publishing.
- Hassler, B. (2006, June 1). CCSD to look into dropping rez schools. *Gallup Independent*. Retrieved 20 April 2007 from. <http://www.gallupindependent.com/2006/jun/060106ccsd.html>
- Holm, W., & Holm, A. (1995). Navajo language education: Retrospect and prospects. *Bilingual Research Journal*, 19(1), 141-167.
- Hornberger, N. (2000). Bilingual education policy and practice in the Andes: Ideological paradox and intercultural possibility. *Anthropology and Education Quarterly*, 31(2), 173-201.
- House, D. (2002). *Language shift among the Navajos: Identity politics and cultural continuity*. Tucson: University of Arizona Press.
- Howard, G. (2006). *We can't teach what we don't know: White teachers, multiracial schools*. New York: Teachers College Press.
- Indian Education: Hearing before the Senate Committee on Indian Affairs, 109th Cong., 1st Sess. 35-61 (2005, June 16) (testimony of David Beaulieu).
- Indian Education: Hearing before the Senate Committee on Indian Affairs, 109th Cong., 1st Sess. 80-98 (2005, June 16) (testimony of Roger Bordeaux).
- Indian Self-Determination and Education Assistance Act. Pub. L. No. 93-638. 88 Stat. §2203 (1978).
- James, T. (1988). Rhetoric and resistance: Social science and community schools for Navajos in the 1930s. *History of Education Quarterly* 28(4), 599-626.
- Johnson O'Malley Act of 1934. 25 U.S.C. § 452-457 (1934/1936).
- Levinson, B. A. U., Foley, D. E. & Holland, D. C. (Eds.) (1996). *The cultural production of the educated person*. Albany: State University of New York Press.
- Lomawaima, K. T. (1993). Domesticity in the federal Indian schools: The power of authority over mind and body. *American Ethnologist*, 20(2), 227-240.
- Lomawaima, K. T., & McCarty, T. L. (2002). When tribal sovereignty challenges democracy: American Indian education and the democratic ideal. *American Educational Research Journal*, 39(2), 279-305.

- Lomawaima, K. T., & McCarty, T. L. (2006). *To remain Indian: Lessons in democracy from a century of Native American education*. New York: Teachers College Press.
- Martinez, E. (1983). *San Juan Tewa Pueblo dictionary*. San Juan Pueblo, NM: San Juan Bilingual Program.
- McCarty, T. L. (1989). School as community: The Rough Rock demonstration. *Harvard Educational Review*, 59(4), 484-503.
- McCarty, T. L. (2002). *A place to be Navajo — Rough Rock and the struggle for self-determination in Indigenous schooling*. Mawah, NJ: Lawrence Erlbaum Associates.
- Meriam, L., et al. (1928). *The problem of Indian administration*. Retrieved May 7, 2006 from http://www.alaskool.org/native_ed/research_reports/IndianAdmin/Indian_Admin_Problms.html
- Morrow, R. A., & Torres, C. A. (1995). *Social theory and education: A critique of theories of social and cultural reproduction*. Albany: State University of New York Press.
- Native American Languages Act of 1990. Pub. L. No. 101-477, 25 U.S.C. § 2901-2906 (1990/1992).
- Native American Languages Act: Hearing before the Senate Committee on Indian Affairs*, 108th Cong., 1st Sess. 84-90 (2003, May 15) (testimony of John W. Cheek).
- Native American Languages Act: Hearing before the Senate Committee on Indian Affairs*, 108th Cong., 1st Sess. 24-32 (2003, May 15) (testimony of Leanne Hinton).
- Native American Languages Act Amendments: Hearing before the Senate Committee on Indian Affairs*, 106th Cong., 2d Sess. 26-41 (2000, July 20) (testimony of Matthew Dick).
- Native American Languages Act Amendments: Hearing before the Senate Committee on Indian Affairs*, 106th Cong., 2d Sess. 41-50 (2000, July 20) (testimony of Genevieve Jackson).
- Native American Languages Act Amendments: Hearing before the Senate Committee on Indian Affairs*, 106th Cong., 2d Sess. 26-41 (2000, July 20) (testimony of Teresa L. McCarty).
- Native American Languages Act Amendments: Hearing before the Senate Committee on Indian Affairs*, 106th Cong., 2d Sess. 51-65 (2000, July 20) (testimony of A. Brian Wallace).
- Native American Languages Act Amendments: Hearing before the Senate Committee on Indian Affairs*, 106th Cong., 2d Sess. 26-41 (2000, July 20) (testimony of Rosita Worl).
- Navajo Nation Council (2005). *An Act relating to education, enacting the Navajo Sovereignty in Education Act of 2005, Amending Titles Ten and Two of the Navajo Nation Code, CJY-37-05*. Retrieved April 15 2007 from <http://www.dineeducation.navajo.org/PDF/Resolution%20CJY%2037%2005%20Navajo%20Sovereignty%20in%20Education%20Act%20of%202005.pdf>
- No Child Left Behind Act of 2001, Pub. L. No. 107-110. 115 Stat. § 1425 (2002).
- Norrell, B. (2005, August 12). Education reform elevates status of Navajo-controlled education. *Indian Country Today*. Retrieved August 24, 2007 from <http://www.indiancountry.com/content.cfm?id=1096411394>
- Office of Indian Education Programs (2004). Bureau of Indian education programs, Bureau-wide annual report card. Retrieved March 17, 2004 from <http://www.oiep.bia.edu>
- Office of Indian Education Programs (2005). Bureau of Indian education programs, Bureau-wide annual report card. Retrieved March 17, 2004 from <http://www.oiep.bia.edu>
- Office of Indian Education Programs (2006). Bureau of Indian education programs, Bureau-wide annual report card. Retrieved August 29, 2007 from <http://www.oiep.bia.edu>
- Privatization of federal Indian schools: A legal uncertainty (2003). *Harvard Law Review*, 116, 1455-1476.
- Recovery and preservation of Native American languages: Hearing before the House Committee on Education and Workforce*, 109th Cong., 2d Sess. 8-51 (2006, August 31) (testimony of Carol Cornelius).

- Recovery and preservation of Native American languages: Hearing before the House Committee on Education and Workforce*, 109th Cong., 2d Sess. 8-51 (2006, August 31) (testimony of Sam Montoya).
- Recovery and preservation of Native American languages: Hearing before the House Committee on Education and Workforce*, 109th Cong., 2d Sess. 8-51 (2006) (testimony of Amadeo Shije).
- Recovery and preservation of Native American languages: Hearing before the House Committee on Education and Workforce*, 109th Cong., 2d Sess. 8-51 (2006) (testimony of Ryan Wilson).
- Red Horse, J. (1986). Editorial commentary: Education reform. *Journal of American Indian Education*, 25(3), 40-44.
- Samover, L. A., Porter, R. E., & Jain, N. C. (2003). Understanding intercultural communication. In K. Cushner, A. McClelland, & P. Safford (Eds.), *Human diversity in education: An integrative approach* (4th ed.) (pp. 277-311). Boston: McGraw-Hill.
- Senese, G. (1991). *Self-determination and the social education of Native Americans*. New York: Praeger.
- Sleeter, C. E., & Grant, C. A. (1999). *Making choices for multicultural education: Five approaches to race, class, and gender* (3rd ed). New York: Wiley.
- Smith, L. (1999). *Decolonizing methodologies: Research and indigenous peoples*. London: Zed Books Ltd.
- Snyder Act of 1921. Pub. L. No. 110-80, 25 U.S.C. § 13 (1921/1998).
- Spolsky, B. (2002). Prospects for the survival of the Navajo language: A reconsideration. *Anthropology and Education Quarterly*, 33(2), 139-162.
- Spring, J. (2007). *Deculturalization and the struggle for equality: A brief history of the education of dominated cultures in the United States*. Boston: McGraw-Hill Humanities/Social Sciences/Languages.
- United Nations General Assembly (1948). *Universal declaration of human rights*. Retrieved May 3, 2003 from <http://www.un.org/Overview/rights.html>
- United Nations (1976). *International covenant on civil and political rights*. Retrieved May 3, 2003 from http://www.unhchr.ch/html/menu3/b/a_ccpr.htm
- U.S. Census Office (2000). *Profile of general demographic characteristics, 2000: Navajo Nation reservation and off-reservation trust land*. Retrieved December 28, 2004 from www.indianaffairs.state.az.us/tribes/Navajo.pdf
- U.S. Department of Education (2004, February 19). Secretary Paige announces new policies to help English language learners. Retrieved October 19, 2004 from <http://www.ed.gov/newspress/releases/2004/02/02192004.html>
- United States v. Wheeler. 435 U.S. 313, 319 (1978).
- Wilkins, D. (1999). *Navajo political experience*. Tsaile, AZ: Diné College Press.
- Wilkins, D., & Lomawaima, T. K. (2001). *Uneven ground: American Indian sovereignty and federal law*. Norman, OK: University of Oklahoma Press.
- Wilkins, D. (2002). *American Indian politics and the American political system*. Lanham, MD: Rowan and Littlefield.
- Zehr, M. A. (2004). Paige softens rules on English-language learners. *Education Week*, 23(4), 25.