Access denied: The rhetorical construction of undocumented students in postsecondary education

Yanira Estrada Figueroa

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ACCESS DENIED: THE RHETORICAL CONSTRUCTION
OF UNDOCUMENTED STUDENTS IN
POSTSECONDARY EDUCATION

A Thesis
Presented to the
Faculty of
California State University,
San Bernardino

In Partial Fulfillment
of the Requirements for the Degree
Master of Arts
in
English Composition

by
Yanira Estrada Figueroa
September 2011
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Approved by:

Mary Boland, Chair, English

Mary Boland, Graduate Coordinator

Jacqueline Rhodes
ABSTRACT

This thesis analyzes rhetorically the 1982 Supreme Court case *Plyler v. Doe*, sections of the Welfare Reform Act and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, and the 2011 version of the proposed Development, Relief and Education for Alien Minors (DREAM Act) in order to trace the underlying beliefs and assumptions that tacitly "justify" refusing undocumented students support for—and thus access to—postsecondary institutions. Analysis of the discourses in these judicial and legislative documents reveals implicit ideologies that maintain and propagate a racial and socioeconomic stratification that keeps undocumented students on the fringes of American society. To expose these hidden ideologies, the author uses critical discourse analysis (CDA), particularly relying on Norman Fairclough’s theories regarding "common sense assumptions" and his three tier methodological approach. Chapter one overviews the problems that undocumented students face in trying to gain access to postsecondary education by chronicling these legal and judicial events, as well as the cultural milieu which precipitated them. The author also offers a short literature review of CDA in the fields of linguistic,
composition, and rhetoric studies similar to the one at hand in order to illustrate both the method and the benefits of CDA for this particular rhetorical analysis. Chapter two analyzes rhetorically the Supreme Court case Plyler v. Doe using Norman Fairclough’s CDA framework to show how judicial language perpetuates inequitable power relations. Chapter three critically analyzes the discourses in portions of the Welfare Reform Act and the IIRARA that pertain to undocumented students, discussing how current ideologies embedded in these documents continue to marginalize undocumented students. In addition, chapter three closely examines the 2011 version of the proposed DREAM Act, contending that underlying racial ideologies have kept it from passing into law. The author concludes by discussing how critical discourse analysis can lead to defy and change hegemonic ideologies.
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CHAPTER ONE

LANGUAGE, POWER, AND THE UNDOCUMENTED

POSTSECONDARY EDUCATION STUDENT

We are the nation that has always understood that our future is inextricably linked to the education of our children—all of them. We are the country that has always believed in Thomas Jefferson’s declaration that “talent and virtue, needed in a free society, should be educated regardless of wealth and birth”

(Barack Obama, “What’s Possible for Our Children” May 28, 2008)

Surrounded by a group of high school students in a tiny auditorium in Mapleton Expeditionary School of the Arts in Thornton, Colorado, then presidential hopeful Barack Obama addressed the nation on educational reform. Besides the typical campaign promises of legislative reform and increased funding for public schools, Obama reemphasizes education as a right rather than a privilege, a right essential to America’s fundamental ideals of life,
liberty and the pursuit of happiness. Nonetheless, he acknowledges the still existing racial education gap despite years of civil rights progress: "[T]here are too many children in America right now who are slipping away from us as we speak, who will not be accepted to college and won't even graduate from high school. They are overwhelmingly black, and Latino, and poor" (Obama).

Through this brief televised address, Obama directs attention to the endemic failures of the American education system when educating students of color. Yet Obama, like most politicians, fails to address the underlying ideologies in American politics which facilitate the marginalization of students of color. Instead of such an analysis, he offers a tenet of the American Dream: "That is the promise of education in America, that no matter what we look like or where we come from or who our parents are, each of us should have the opportunity to fulfill our God-given potential" (Obama). Undoubtedly, this "promise" of the equalizing effect of American education is authenticated by Obama's racially marked presence, as he exists as an example of how a son of an immigrant and a student of color can succeed in the modern American educational system. Thus, despite his welcome concern for
the inequities in our education system, Obama’s speech overlooks the possible ideologies that shape past and present educational policies, and which, in turn, maintain and even widen the racial education gap.

This master’s thesis aims to expose these hidden ideologies embedded in legal, political, and legislative discourses, arguing that these ideologies maintain and perpetuate educational, socio-economic, and even racial inequalities in our society. In particular, I am interested in those discourses surrounding undocumented students that have worked to limit their access to postsecondary education, despite a constitutional right to K-12 public education. This population of students is most vulnerable and voiceless because to speak up is to identify as undocumented and thus risk deportation. In this project, then, I examine the language of those legal texts that have been defining the prospects of undocumented students for the last thirty years: the 1982 Supreme Court Case Plyler v. Doe, sections of the Welfare Reform Act and the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA) of 1996, and the recently proposed Development, Relief and Education for Alien Minors (DREAM Act). My goal is to better understand the ambivalent
and contradictory treatment of undocumented students, which has simultaneously held out the promise of the dream and announced them unworthy of it.

The impetus for my analysis echoes that of linguist Norman Fairclough: I wish to explore "the theoretical question of what sort of relationships are between language and ideology, and the methodological question of how such relationships are shown in analysis" (Critical Discourse Analysis 70). In other words, how do underlying beliefs materialize in language, and how can we expose these underlying beliefs? According to Fairclough, we can come to understand this language-ideology relationship through not only analyzing the text and the reader-audience interaction, but by analyzing the historical context(s) in which the text, reader, and audience are located. Because "discourse is use of language seen as a form of social practice, and discourse analysis is analysis of how texts work within sociocultural practice," we must "historicize" discursive acts (Critical Discourse Analysis 7, 19). Thus, to identify hidden ideologies embedded in the legislative and judicial discourses I have outlined above, and to better understand the ideological implication of such discourses on undocumented postsecondary students, we must
look closely at the historical contexts in which these discourses were produced. In the following section, I offer historical overview of the undocumented student within the American educational system.

The Undocumented Student in the American Postsecondary Education System

On August 11, 2002, the Denver Post published a story that illustrates the difficulties of undocumented students in economically accessing postsecondary education. Featured in the story was honor student Jesus Apodaca, a high school graduate from Aurora Central High School in Denver, Colorado, who had recently been accepted into the University of Colorado’s computer engineering program. Yet because of economics, Apodaca could not afford to attend: "Without that (in-state tuition), it’s too expensive. I want to start this fall. I’ve already been accepted. But I may not be able to go." (qtd. in Riley Al). According to journalist Michael Riley, Jesus’s family income was limited to $1200 a month, which would in no way be sufficient to cover the $7000 out of state tuition per semester. Like many American state universities, "CU does not allow children of undocumented workers to pay in-state tuition."
And federal law specifically prohibits federally funded scholarships to be awarded to undocumented aliens” (Riley). Thus despite Apodaca’s exemplary performance in high school (he graduated with a cumulative GPA of 3.93), and despite his receipt of various academic awards (including the Presidential Education Award), his prospect of a college education was dim.

Jesus Apodaca’s story exemplifies the difficulties undocumented students currently face in economically accessing postsecondary education: although allowed free K-12 education, many undocumented students do not attend postsecondary education simply because they cannot afford it. Presently, undocumented students have the constitutional right to receive free primary and secondary education due to a 1982 Supreme Court decision in the Plyler v. Doe case. This case challenged the constitutionality of a 1975 Texas law which attempted to limit the influx of undocumented immigrants by denying access to public education provided to their children. Professor of Education William Perez explains that Texas legislators, attempting to decrease the influx of “illegal” immigrants, prohibited the “illegal” use of public education.
In 1975, the Texas Legislature passed a law (Texas Education Code, Section 21.031) that denied undocumented immigrants access to public schools by withholding funds from school districts that enrolled undocumented children. This law also allowed public schools to demand proof of citizenship and to deny admission to those who could not verify their legal status in this country. (Perez xviii)

Ultimately the Supreme Court held that the Texas law violated the Equal Protection Clause of the Fourteenth Amendment of the Constitution (Perez xix). Maintaining that "illegal aliens" were considered "persons" under the United States Constitution, the Supreme Court claimed that keeping undocumented students out of the public school system was unconstitutional. Thus undocumented students are afforded the promise of free public education.

Yet this dream is cut short after undocumented students graduate high school. "Their educational rights expire once they’re beyond compulsory schooling age," states Perez. "Higher education is an elusive dream for these young adults, with only 10% of undocumented males and 16% of undocumented females ages 18 to 24 enrolled
in college” (Perez xix). The current lack of economic access for undocumented college students stems from the 1996 Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA). The Clinton approved bill dissuades states from providing postsecondary education benefits such as in-state tuition, state funded grants, or work-study opportunities to undocumented students unless the same type of benefit is offered to any citizen or national (Protopsaltis 2; Frum 84-85; Russell 2). Subsequently, most states prohibit undocumented students from receiving in-state tuition and state financial aid. Moreover, because they are neither legal residents nor citizens, undocumented students cannot apply for, qualify for, nor receive federal financial aid in form of grants, work-study programs, or student loans (Protopsaltis 2).

Despite these obstacles, over 50,000 undocumented students presently attend United States colleges and universities (Batalova and Fix 1; Zuckerbrod). Most of these students arrived as children, and thus they have been educated by and have graduated from United States public schools. In essence, many of the 50,000 undocumented students have been raised and socialized as American citizens, even if their birth certificates would show otherwise. And although “an
estimated 65,000 undocumented high school graduates have grown up in the U.S., they are denied access [to postsecondary education] available to their U.S.-born peers," as only "one out of 20 undocumented high-school seniors attend college" (Protopsaltis 2). Yet, in spite of this apparent inequity, neither Congress nor the Senate has been able to pass a comprehensive legislation to address the economic disparities undocumented students face. Many states tired of waiting for federal law to grant access to these students, have forged ahead with their own legislature. "At least 30 states have considered legislation to allow undocumented immigrants to receive in-state tuition, and 10 states [including California] have passed such legislation"; furthermore in three of the ten states—Oklahoma, New Mexico and Texas—"undocumented students are also eligible for state financial aid" (Russell 2).¹ Recent state legislative activity concerning undocumented students has ignited and fueled interest in the DREAM Act.

¹ As of June 2011, the California State Assembly debates a bill (AB 131) that would allow undocumented students state funded financial aid, including fee waivers, Cal-grants, and institutional aid (McGreevy and Mishak).
The Development, Relief, and Education for Alien Minors Act (DREAM Act) would provide undocumented students a pathway towards legalization, thus providing access to postsecondary education and "legal" jobs after graduation. Drafts of the bill date back to August of 2001. Although the House of Representatives passed it on December 8, 2010 it failed to pass in the Senate by a margin of 55 to 41 (Mascaro and Oliphant). The defeat of the DREAM Act maintains the inequities and denial of access to postsecondary education that most undocumented students suffer. The passage of the DREAM Act would have benefitted undocumented university and college students by (1) granting them “residency status in a state in order to qualify for in-state tuition rates,” and (2) by allowing them “access to state financial aid” (Russell 1). Failure to pass this bill continues to force undocumented students to the margins of American society and economy, as they are unable to gain the monetary resources to pay for higher learning. And for the few that do manage to pay for their postsecondary studies and graduate, they have little chance of working legally in the United States or continuing on to graduate school. For these students there are two options: (1) they may choose to return to their country of origin, a
country they may remember only in distant childhood memories; or (2) they (like the rest of undocumented population) can remain in the United States and "work illegally in the cash economy" settling "for work as domestic servants, day laborers, ambulatory sellers, and sweatshop factory workers" ("Economic Benefits" 2).

The escalating cost of postsecondary tuition has driven many to question the allowing of in-state tuition to undocumented students in states such as California and Texas. In 2005, a group of out-of-state students filed a class action lawsuit in the California Superior Court (Martinez v. Regents of the University of California), claiming that California law violates federal law (Frum 87). This court case echoes contemporary racist anti-immigration sentiments in the United States, exposing a kind of resentment toward undocumented students. Fueled by the misconceptions that undocumented immigrants steal American jobs, abuse the American welfare system, and increase crime in the United States, the Martinez case shows how racial ideologies have fueled the exclusion of undocumented students from postsecondary education.

Let us return to Jesus Apodaca's story. Perez writes, "After reading the story, then U.S. representative for the
state of Colorado, Tom Tancredo, contacted the U.S. Immigration and Naturalization Service in Denver and asked that Apodaca and any of his undocumented relatives be deported" (xiii). Representative Tancredo claimed that it is legally and morally wrong to allow undocumented students in-state tuition: "It is a very bad idea to reward people for breaking your law" (Tancredo qtd. in "Lawmaker Seeks to Deport Family"). This action shows how anti-immigration ideology is deeply embedded in current public discourse. For Tancredo, any and all immigrants who live in the United States are criminals. The fact that Apodaca did not enter the country legally negates the reality that he was educated in American public schools since the age of 12, graduated from an American public high school, and was accepted into a highly competitive university program. One can argue that his rather controversial act to deport Apodaca and his family to INS authorities seems to be an authoritarian move by Tancredo. It may also be construed as an act of retribution against Apodaca’s breaking of his silence. For "illegal aliens" are (and should remain) hidden members of an underclass, living fringes of American society. In an ironic turn of events, Tancredo’s critics fired back, as a front page exposé in the Denver Post
exposed Tancredo’s hiring of a contracting firm which allegedly employed undocumented workers. Tancredo’s response: “I have never, to my knowledge, hired anybody illegally.” And when referring to the Denver contractor Creative Drywall Design, the business who allegedly hired undocumented workers, Tancredo responded, “It’s a wonderful company. I would recommend it to anyone” (qtd. in Eilperin). His response shows the double standard Tancredo holds against undocumented immigrants in comparison to companies that hire undocumented immigrants. Jesus Apodaca was breaking the law for living in the United States “illegally,” so needed to be deported immediately. Yet a company that allegedly hired undocumented workers did not deserve a similar call from Tancredo to INS to investigate the possible illegal hiring of undocumented workers. Quite the opposite, the Colorado Representative refers them to the rest of Denver via the Denver Post.

Of Common Sense and Ideology: Norman Fairclough and Critical Discourse Analysis

Jesus Apodaca’s story and Congressman Tom Tancredo’s reaction show us how racial ideologies underscore the public discourse in the United States. Sociolinguist
Norman Fairclough, in his book *Language and Power*, articulates how hidden hegemonic ideologies materialize through language, which in turn legitimizes power. Fairclough argues "that the exercise of power, in modern society, is increasingly achieved through ideology, and more particularly through the ideological workings of language" (2). Hence, those who control and manipulate language also control and manipulate power over social, political, economic, and educative institutions over any given population. Yet because hegemonic ideologies are often socially shared assumptions, the "exercise of power" is often deeply embedded and hidden within public discourse. "Institutional practices which people draw upon without thinking often embody assumptions which directly or indirectly legitimize existing power relations" (*Language and Power* 27). Such is the case with legal, judicial, and political discourses in American society. They covertly echo and stealthily perpetuate racial and socio-economic inequities within the American educative system.

Notwithstanding judicial and legislative precedents like *Brown v. Board of Education* and the *No Child Left Behind* legislation, the racial inequities in both secondary and post-secondary are tremendous. According to a recent study
by the National Center for Education Statistics, in 2009 the drop-out rate for immigrant Latino students was a staggering 32% compared to a 10% drop-out rate for US born Latinos and a 5% drop-out rate for US born white students (Aud, et al). Of the estimated 65,000 undocumented students who do graduate, only 5 percent attend postsecondary schools (Frum 81; Protopsaltis 2; Perez xix). Such disparities suggest underlying racial ideologies interwoven into very fabric American society. Yet because racial ideologies are deeply entrenched within American social consciousness, they may be difficult to locate and scrutinize.

Fairclough argues that ideology functions “as an ‘implicit philosophy’ in the practical activities of social life, back grounded and taken for granted” (Language and Power 70). Thus public discourse articulates the current philosophical zeitgeist of any given society. This is the case with the limits imposed on undocumented students in economically accessing postsecondary education: Racial ideologies (which include, but are not limited to, beliefs that undocumented students are criminals, that they leech off the system, and that it is socio-economically disadvantageous to the United States to allow undocumented
students financial aid) are communicated via public policy which in turn maintains and perpetuates a socioeconomic and racial divide in the United States. To better understand the racial ideologies that underpin public discourse, close and critical analysis of political, judicial, and legislative discourse is necessary. Because “the impress of power and ideology on language is not self-evident” or explicit, Fairclough advocates a critical analysis of public discourses to bring us closer to understanding how language maintains and perpetuates racial, political, and economic inequities in any given society (Language and Power 130). By understanding the hidden ideological workings of these discourses, we can understand how and why these discourses perpetuate racial and socioeconomic disparities within American society.

Referred to as either critical language studies (CLS) and critical discourse analysis (CDA), Fairclough’s critical socio-linguistic approach aims to expose “how language contributes to the domination of some people by others” (Language and Power 3).\(^2\) Unlike previous language

\(^2\) Although Fairclough uses the terms CLS and CDA interchangeably, in this thesis I will mainly refer to CDA. Ruth Wodak and Michael Meyer offer an in-depth historical review of critical
and discourse studies, Fairclough’s work goes beyond the study of discourses and discursive practices.

CLS analyzes social interactions in a way which focuses upon their linguistic elements, and which sets out to show up their generally hidden determinants in the system of social relationships, as well as hidden effects they may have upon that system. (Language and Power 4)

Thus critical discourse analysis, or CDA, looks beyond the discourse and discourse practices, and critically views the ideological and social context in which these discourses are created.

Central to Fairclough’s critical discourse analysis theoretical framework is the concept of “common sense assumptions,” which “are implicit in the conventions according to which people interact linguistically, and of which people are not consciously aware” (Language and Power 2). Thus a comment like, “Because they entered the United States illegally, undocumented students are criminals and so should not be afforded any type of economic benefit to attend college,” is understood as a “common sense discourse analysis in their article “Critical Discourse Analysis: History, Agenda, Theory and Methodology.”
assumption," and may not be construed as a racially prejudiced comment. Fairclough claims that such "ideological common sense" is "common sense in the service of sustaining unequal relations of power" because it deflects "attention away from an idea which could lead to power relations being questioned or challenged—that there are social causes, and social remedies, for social problems" (Language and Power 70-71; emphasis added by Fairclough). The phrase "undocumented students illegally entered the United States" deflects from the social causes of their migration (which includes ill-functioning economies and or sociopolitical unrest in their home countries) and the social remedies (which may include comprehensive immigration reform). By acknowledging these social causes and remedies, political and legislative officials (and the American public) must admit to an asymmetrical distribution of power, thus destabilizing existing sociopolitical and economic power structures within and outside the United States. Because "common sense is...in large measure determined by who exercises power and domination in a society or a social institution" (Language and Power 76), the creation and perpetuation of common sense assumption is an act of self preservation by
the group in power. Therefore, maintaining the common sense notion of undocumented students as criminals helps to maintain a racial stratification of society, keeping wealthy elitist class in power.

Previous Critical Discourse Analyses of Public Policy

A CDA approach to a rhetorical study is by no means novel. Nonetheless such discourse analyses are rare and far in between. In their essay collection Discourse Studies in Composition, editors Ellen Barton and Gail Stygall write that notwithstanding the "robust tradition of the analysis of language in composition studies, surprisingly little has been published about different approaches to the systematic analysis of discourse within the field of composition studies" (1). Subsequently Barton and Stygall’s book attempts to bridge the gap between discourse analysis theories/methodologies and rhetoric/composition studies. "What discourse studies," such as CDA, Barton and Stygall argue, "brings to composition, then is both a theory of language in use and a methodology with which to formulate and test insights about social interaction and structural analysis" (9). That is
the case with critical discourse analysis: Distinctive of CDA is the focus on how language and power affect one another in the societal context in which they are exercised.

In Barton and Stygall's volume, linguist Thomas Huckin offers a concise overview of the theoretical framework and methodology of CDA, and how it fits into composition/rhetorical studies. In his article "Critical Discourse Analysis and the Discourse of Condescension," Huckin writes that CDA benefits composition/rhetoric research in that it "offers a powerful arsenal of analytic tools," as it insists a "close reading be done in conjunction with a broader contextual analysis, including consideration of discursive practices, intertextual relations, and social factors" (157). Going beyond a simple rhetorical study where we analyze how language affects the reader, CDA attempts to investigate how language affects (and is affected by) not only the reader, but the social, economic, and political context in which it is produced. To go about this type of critical discourse analysis, Huckin prescribes three major steps when reading a text: first, the reader must read the text as an "intended reader"; second, the reader must take a more
critical or "resistant stance"; and finally the reader must pay attention to specific discursive features or "textual details" that signal power relations (158). It is in this final step where the abuse of power may become apparent. To aid the reader in his/her CDA discussion, Huckin offers a list of "analytical concepts" divided into four domains or four "levels of granularity":

(1) The word/phrase level analysis involves the scrutiny of specific words or phrases. At this level one can analyze metaphors, code words, and connotation.

(2) The sentence/utterance level analysis includes the examination of the way in which sentences interplay. In this domain one can analyze register, politeness, and intertextuality.

(3) The text level entails analysis of how the text functions as a whole. Here one can analyze genre, coherence, and framing.

(4) The higher concept level analysis looks closer at "the integrated study of text, discursive
practices, and broader social context” (Huckin 164).³

After his useful summary of CDA theory and methodology, Huckin provides a helpful example of a critical discourse analysis. In his article, Huckin studies the political discourse in a response letter from a United State senator. After asserting the epistle belonged “to the genre of response-to-a-constituent letter” (166), Huckin goes on to discuss how the letter contains “the discourse of condescension,” in which Senator Clayton Johnson asserts his political power over Professor Huckin through his linguistic choices. First Huckin finds that Senator Johnson ignores many of the points Huckin’s letter raises, committing many “textual silences” (167). Secondly, when noticing the intertextual and interdiscursive aspects of the letter, Huckin finds a hodge-podge of various discourses including “bureaucratese,” “fortune-cookie discourse,” and “paternalistic discourse” all of which are meant to show Senator Johnson as more knowledgeable than the reader, Professor Huckin (168). Thirdly, Huckin finds an insincere

³ Although Huckin does explicitly not include Fairclough’s concept of “common sense assumptions,” I would place it into Huckin’s final level of “granularity.”
and false solidarity in the switching of personal pronouns "I" and "you" to the use of the indirect pronouns "one" and "many" (167-168). Through his close and critical reading of Senator Johnson's letter, Huckin was able to identify specific instances where the Senator was practicing "discourse of condescension," thus identifying instances where the Senator was exerting his governmental power. "The clear message is that he considers himself superior to all of us ordinary citizens—not by virtue of any inherent qualities but by virtue of his position as a government official" (170; emphasis added by Huckin).

Education scholar Haley Woodside-Jiron similarly looks at political discourse, but she specifically focuses on California education policy in reading. In her article "Language, Power, and Participation: Using Critical Discourse Analysis to Make sense of Public Policy," Woodside-Jiron uses Fairclough's CDA theories to seek "deeper understandings of how power operates in policy" (Woodside-Jiron 174). In particular, Woodside-Jiron conducts a critical discourse analysis of public policy concerning reading instruction in California schools between 1995 and 1997. Using CDA as a working framework, she not only points out the power structures embedded in
public policy, but she is able to "show how that power is generated, the role individuals play in that power structure, and the implications that those lines of power have for policy consumers" (174). By conducting a CDA on reading policies, Woodside-Jiron exposes the complexities of power relations between the producers of public policy (typically elected and appointed politicians) and the receivers of said policies (typically educators, students, and parents).

First Woodside-Jiron's analyzes the way California state bill A.B. 170 handles "given" and "new" information to produce inequitable power structures. "Given" information is information that the reader already has knowledge of and understands; "new" information is information that is introduced and explicated after the foregrounding of "given" information. Woodside-Jiron specifically analyzes section 600200.4(a) which reads:

The State Board of Education shall ensure that the basic materials that it adopts for mathematics and reading in Grades 1 to 8, inclusive, are based on the fundamental skills required by these subjects, including, but not limited to, systematic, explicit phonics,
spelling, and basic computation skills (qtd. in Woodside-Jiron 182-183).
The "given" information is the fact that the State Board of Education adopts instructional materials for public school. The "new" information includes information on "the fundamental skills" students must gain from these materials, which include "systematic, explicit phonics" (qtd. in Woodside-Jiron 183). Logically, the bill should define and explicate the concepts "fundamental skills" and "systematic, explicit phonics". At least school teachers and parents would want to know what the policymakers mean by these concepts. Instead the bill forges ahead, turning the "new" information into "given" information without definitions or explications:

It is the intent of the Legislature that the fundamental skills of all subject areas, including systematic, explicit phonics...be included in the adopted curriculum frameworks and that these skills and related tasks increase in depth and complexity from year to year. (qtd. in Woodside-Jiron 183-184)

This gap in logic between "given" and "new" information in this legislative document lawmakers diminishes the
possibility of the questioning of new policy by educators and the public by introducing new and vague concepts (201), for it is hard to question a bill after it is passed. Thus, Woodside-Jiron points out that policymakers established and maintain inequitable power structures between political officials and the public.

Woodside-Jiron also points out lexical cohesion of the determiner "the" as a site of power practice by California policymakers. In the phrase "the fundamental skills required" (emphasis added by Woodside-Jiron) the seemingly insignificant word "the" "carries with it a tremendous amount of power", as it "serves in this context to signal some universal agreement on how reading is acquired. It assigns the status of fact to phonics as the fundamental or primary skill required in learning to read" (Woodside-Jiron 185). In addition, the use of "the" indicates a "commonsense agreement" between the writer (the policymaker) and the reader (most probably educators). In this way, policymakers establish new public policy that dictates what students should be learning and how teachers should be teaching (190). Interestingly, individuals who assumed power through the reading policymaking in California in the mid 1990s were those who had the least
contact with students, the actual consumers of the said policy. Thus it could be argued that these policies were a way through which policymakers could not only exert but maintain power within educative, as well as socioeconomic, institutions in California. “In the case of policymaking around reading in education, select policy players and policy informants took center stage while parents, teachers, administrators, taxpayers, and students where pushed to the margin” (Woodside-Jiron 202).

Anastasia Liasidou, education policy scholar, also identifies unbalanced power structures articulated in education legislation. In her article “Critical Discourse Analysis and Inclusive Educational Policies: The Power to Exclude,” she examines specifically legislative language pertaining to special education needs students in the Republic of Cyprus between 1999 and 2001. Liasidou argues that although these policies attempt to include and integrate special education needs students into the mainstream educational system, the authoritative language found in these documents exclude and marginalize these students. Through CDA, Liasidou aims to “expose the power/knowledge grid and its subjugating attributes, enshrined in two official legislative documents” by
analyzing how these documents (1) construct and position special education students, (2) construct and maintain "asymmetrical power relations", and (3) silence the human rights of special education students (483). Yet, the fact that education policy often has multiple authors and multiple discursive voices (all of which have varying and at times competing objectives and perspectives), makes it difficult to isolate specific discriminatory ideologies materialized through these documents. Thus, CDA is crucial to "disentangle the hybrid nature of the legislative document, and expose the ways that power is implicated in the constitution of the prevalent discursive orthodoxies responsible for the exclusion and disparagement" of certain groups of students (Liasidou 486). Because CDA looks not only at the text, the author(s), and the audience, but at the actual social context in which the document is written, we may be able to better understand how power ideologies transpire through these documents.

Initially, Liasidou examines the word order in an excerpt from Article 2 which discusses how students with special needs should be taught "among other things the teaching of daily routines of self-care, personal hygiene, movement, linguistic development and communication" (489;
emphasis in original). According to Liasidou, the order of these concepts denotes the prejudices of not only the writers of the document, but Cypress society as a whole. The fact that rudimentary tasks such as "self-care" and "personal hygiene" are listed before academic endeavors such as "linguistic" and "communication" development show that special education students are seen as inferior to regular education students.

It is apparent that these concerns imply the well-entrenched ideological disposition that constructed disabled children as fragile and pathetic creatures unable to take care of themselves and assume responsibility for their personal well-being. (Liasidou 490)

Thus by excluding and marginalizing special needs students, the language in these documents constructs them as second-rate students and citizens.

Liasidou also analyzes critically the definitions of special education needs students in the policies. She argues that by focusing on special education students' deficiencies rather than stipulating on their rights or articulating the schools' responsibilities, these policies demonstrate discriminatory ideologies and further
pathologize special education students. Included in this
definition in Article 2.1 is a quote that states that
special education students have "an inability that occludes
him the potential or hinders him to use the education
facilities of the kind that schools have for the children
of his age" (Liasidou 490; emphasis in original). Through
this definition, it is implied that special education
students are unable to overcome their biological and
cognitive deficiencies. Moreover, because "special needs"
students are overtly compared to "regular education"
students, "special needs" students are seen as the inferior
group because they are unable to use the "educational
facilities" like regular education students.

Ultimately, Liasidou argues, these legislative
documents help to construct and maintain a "two-tier"
educational system, where special education needs students
are second-class citizens. Yet by calling attention to the
"asymmetrical power relations" within these documents,
Liasidou is able to use CDA, a type of "emancipator
research tool" which may help educators and future
policymakers.

Understandably, the emancipator interest in
relation to CDA should not only be confined to
its theoretical potentials in unveiling relations of domination, but it should also be used as a practice-based and an action-oriented subject that, in conjunction with other subjects like, Reflective practice, Mentoring, Evidence-based research or Action research, can potentially contribute to the professional development of all those practitioners entrusted with the demanding and thorny task of implementing inclusive policies. (496)

Through the use of CDA, Liasidou hopes to encourage fundamental changes within special education practices, as well as the public education system as a whole. The aim of critical discourse analysis is to highlight social, political, and economic inequities articulated and materialized through public documents in order to forge change within public institutions. "The critical dimension of policy studies should be both acknowledged and established as a sine qua non element in the attempts towards transformative change" (Liasidou 497).
Critical Discourse Analysis as a Theoretical and Methodological Framework

Without a doubt, Huckin, Woodside-Jiron, and Liasidou’s theory and methodology extend Norman Fairclough’s critical discourse analysis work. All three not only refer to his work throughout their own work, but we can see how each has followed his “three dimensions, or stages, of critical discourse analysis”: (1) description of discursive act or text; (2) interpretation of discursive practice—interpretation of relationship among text, producers and receivers; (3) explanation of the relationship among the text, the discursive practice, and the broader social context (Fairclough Language and Power 21-22). It is this third step—the analysis of the text, the discursive practice, and their relationship to the society as a whole—that distinguishes CDA from either traditional rhetorical analysis or linguistic discourse analysis. Unfortunately, previous linguistic and rhetorical analyses tend to ignore social conditions—the sociopolitical, socioeconomic, and even racial contexts—that affect texts, writers, and readers. Linguistic discourse analyses primarily aims to describe discursive acts and interpret why they occur through pragmatic,
cognitive, or semiotic theoretical frameworks. Rhetorical analyses aim to study how the speaker interacts with the listener through the speech act, typically focusing on the methods of persuasion. In contrast, critical discourse analysis goes beyond the discourses and discursive practices, and interprets their social conditions and contexts. In addition, CDA hones into hidden ideologies and commonly shared beliefs that drive these discourses, scrutinizing how language helps to maintain an asymmetrical balance of power.

In the following chapter I will conduct my own critical discourse analysis of the following public documents: the Supreme Court case Plyler v. Doe, including the language in the syllabus and the individual judge opinions. Using Norman Fairclough’s CDA methodological framework of three dimensional critical discourse analysis, in conjunction with his theoretical framework of “common-sense assumptions,” I will examine how underlying racial assumptions contribute to and sustain unequal power relations. I interpret how these documents construct postsecondary education and undocumented students.
CHAPTER TWO

DOCUMENTING THE UNDOCUMENTED IN PLYLER V. DOE

Plyler v. Doe may be understood as a legal response to its anti-immigrant zeitgeist: Worries of an increasing drug trade and a growing recession, in conjunction with fears that immigrants stole jobs from American citizens, fueled the anti-illegal alien climate of the mid 1970s and early 1980s. According to the Center for Immigration Studies, immigration increased from 3,321,677 in the mid-1960s to 4,493,314 in the mid-1970s, and although it is difficult to discern the exact number of illegal immigrants, it can be estimated that the undocumented population ranged between 2.5 and 3.5 by 1980 (Edwards 3). Overreacting to the increasing number of undocumented immigrants and hoping to curb an influx of illegal aliens, the 1975 Texas congress amended the Texas education code, prohibiting the use of state funds in educating undocumented students. Legislators argued that undocumented "children caused crowding in schools, that they were costly to educate through bilingual education and that they hurt the learning of American children" (Unmuth). Some Texas school districts barred undocumented students from registering and
attending public schools. Other school districts like Tyler Independent School District charged undocumented students tuitions to attend primary and secondary schools. In response, four families sued Superintendent James Plyler and the Tyler Independent School District arguing that charging students tuition was unconstitutional.

Among these families was the Lopez family, who immigrated illegally in the mid-1970s. Despite his illegal status, Jose Lopez worked in a foundry in Tyler, Texas. After several years he decided to move his wife Lidia and his four children to the United States. Yearning for a better life for their children, Jose and Lidia decided to enroll their children in the local elementary school in 1977, but encountered a roadblock: the Tyler Independent School District was charging a $1,000 tuition fee per child, a cost that the Lopez family could not afford on their below minimum wage income. “School is very important for all children, and they should not be discriminated against because they are Mexican or white or black....They should be equal” (qtd. in Unmuth). It was this idea of “equality” that eventually led the Supreme Court to rule against Superintendent Plyler, the Tyler Independent School District, and Texas legislators in 1982. Unequivocally,
"[t]he landmark *Plyler vs. Doe* decision guaranteed illegal immigrants a free public education and established their civil rights and equal protection under the 14th Amendment" (Unmuth). But more importantly the language embedded in the court case documents begins to construct undocumented students within the American educative, socioeconomic, and political institutions.

A Critical Discourse Analysis of *Plyler v. Doe*

To begin to understand how undocumented students are constructed in our current society, we must first do a close reading of the discourses in the *Plyler* case. Among the texts are the syllabus of *Plyler v Doe*, the upholding opinion written by Justice Brennan, and the dissenting opinion written by Chief Justice Burger. By carefully studying these documents, we can observe not only how the texts function in the context in which they were written (these documents' form and function operate in the very specific field of judicial/litigation discourse), but they exemplify how various texts interact with each other, and with other discourses outside the textual interaction. Brennan's opinion, for example, not only refers to the *Plyler* syllabus and Burger's dissenting opinion, but it
also refers to other court cases as precedence, to legislative texts involved in the case, as well as to public opinion. The interconnectedness of these discourses presupposes an underlying system of beliefs (or what Fairclough would term “common-sense assumptions”). Yet because these “assumptions” are commonly implicit, careful study of texts at varying levels is required. As discussed in the previous chapter, Fairclough devised a three stage system to help in the critical discourse analysis of a text, which includes the description of the text, the interpretation of the discursive interaction, and the explanation of the social context.¹ By attending to all three levels of the Plyler texts, we may come closer to understanding what (if any) racial ideologies shape social perceptions of undocumented students.

Words, Words, Words: The Construction of Alien Children

Fairclough’s first level in his CDA methodology, involves close attention to the basic components of a text: diction, sentence structure, and textual organization. He observes, “The set of formal features we find in a specific

¹ Because of discourse’s fluid nature, critical discourse analysis at each of these levels may not occur independently.
text can be regarded as particular choices from among the options (e.g. of vocabulary or grammar) available in the discourse types which the text draws upon" (Language and Power 92). Thus word choice, punctuation, and even word order carry huge meaning, however insignificant they may seem at first glance.

Let us look at the use of label "alien," which both Brennan and Burger use to identify noncitizens living in the United States. Latino studies scholar Paul Allastson writes that the term "alien" is a "routine US government and legal designation for any person who is not a citizen by birth or by the naturalization process" (129). Yet because it is synonymous with words such as foreigner, stranger, and extraterrestrials, the term "alien" carries a negative connotation. When used as an adjective, the word "alien" signifies "excluded, inconsistent, repugnant, estranged, opposed, hostile, and simply strange (in appearance or character)" (Allastson 129). All three Plyler texts primarily use the derogatory term "alien" instead of a more neutral term like "immigrant," "noncitizen," or "nonresident."2 Yes it could be argued

2 Brennan does use the terms "noncitizens" and "undocumented persons" at the end of his opinion, yet I question why he does
that Brennan, Burger, and the author of the Plyler syllabus were merely following convention and pragmatics, since using a term that is routine and common to identify persons who are not citizens (born or naturalized) in the United States. Yet this word is by no means free of racial ideology. Allastson writes that the term dates back to the 1798 Alien and Sedition Acts in which immigrants were seen as "potential enemies of the state" (129). In addition,

For many Latino/as the widespread use of "alien" is immediately related to broader discourses of denigration and "othering" that regard all Latinos/as as an "alien" constituency, and thus as somehow non- or un-and even anti-American.

(Allastson 129)

Understanding the pejorative power of the term "aliens," we must question the reasons why Supreme Court Justices would use such a word instead of a more neutral word such as "immigrant." In order to fully understand the underlying racial ideologies in the selection of the term "alien," we should also look at adjectives, synonyms, and antonyms used in conjunction with the term.

not use these more neutral terms in lieu of the more pejorative term "alien."
The Plyler case syllabus opens on the premise that the Fourteenth Amendment guarantees all persons "due process of law" and "equal protection of the law." In particular, the Plyler syllabus iterates the term "alien" by stating that "an alien is a "person" in any ordinary sense of the term" (202), thus protected by the Fourteenth amendment. This definition attempts to mollify any negative connotations brought about by the term "alien"; yet substituting the term with the word "stranger" in the same paragraph seems to maintain the negative undertones of the word "alien." Specifically, the Plyler syllabus states that "the Fourteenth Amendment's protection extends to anyone, citizen or stranger" (202). More than acting as an antithesis to offer balance, the juxtaposition of "citizen" and "stranger" calls attention to an underlying racial ideology that immigrants or "aliens" are different that normal Americans, that they are outsiders, interlopers, and even invaders in our country. Brennan echoes this racial ideology by twice repeating the same word pair "citizen or stranger" in his opinion (Plyler 214-215). The first instance occurs in a quotation from Representative Bingham in an 1866 congressional debate precluding the drafting and passage of the Fourteenth Amendment. "Is it not essential
to the unity of the Government and the unity of the people that all persons, whether citizens or strangers, within this land, shall have equal protection in every State in this Union in the rights of life and liberty and property?" (qtd. in Plyler 214). Placing this quote in historical context, subsequent to the Dred Scott decision and concurring with other Reconstruction Amendments, the term "stranger" without a doubt conveys racial and classist implications. The Fourteenth Amendment was ratified to nullify the Dred Scott decision, which held that descendants of Black slaves were not American citizens and thus were not extended Constitutional protections and freedoms; yet the Fourteenth Amendment has constructed philosophical dichotomy between "citizen" and "non-citizen," between "citizen" and "stranger." Despite the fact that both are afforded the same protections and freedoms under the Constitution, the "stranger" is culturally, racially, and economically different. Ironically, by affording rights and privileges to one group (decedents of African slaves), another group (non-citizens) is ideologically differentiated.

Brennan uses the word pair "citizen or stranger" which again reaffirms that the Constitutional protection extends
to both citizens and non-citizens; yet the ideological dichotomy is reiterated by the conjunction "or." The use of the word "or" suggests not only comparison between "citizen" and "stranger," but a distinction, and even a separation between both members of American society. Thus, juxtaposition of terms "citizen" and "stranger" by the conjunction "or" has an "othering" effect on immigrants, and, by extension, immigrant students. This "othering" construction created by the Plyler texts underscores the racial and classist attitudes that underpin the past and current political, legislative, and judicial atmosphere and the societal context in which they exist.

This "othering" construction of undocumented students may also be seen by the adjectives used to describe the plaintiffs of the Plyler case. In particular, the Plyler syllabus refers to the plaintiffs as "illegal aliens" (202) and "undocumented children" (203); the Brennan's opinion refers to them as "undocumented school-age children of Mexican origin" (206), "immigrant Mexican children" (207), "alien children" (209), and "illegal entrants" (220); and the Burger dissent refers to undocumented students as "illegal alien children" (244) and "Mexican immigrants" (245). As discussed earlier, the term "alien" carries with
it an implication of strangeness, otherness, and even pathology. But adjectives such as "illegal" and even "Mexican" amplifies the iniquitous nature of the "alien children." Some would argue that these adjectives merely denote the attributes of undocumented students, yet the word Mexican (although it signals the origination of a person from Mexico) is a loaded word. Besides signaling that undocumented students are not American, it also implies a racial and class difference. Because historically the majority of illegal immigrants have been manual laborers, they may be viewed as racially inferior. Moreover if we analyze the historical context of the word "Mexican," we may also argue that in the past (and even in the present) Mexicans have been seen as enemies. Without a doubt, the Mexican-American War of the mid-1800s has left behind residual animosity between Mexican and American citizens. It is not a coincidence that the Plyler case originated in Texas, were racial tensions between Mexicans and Americans are in constant ebb and flow. In reality, the origin of undocumented students has little to no relevance to the Plyler case. The fact is that whether the plaintiffs in the Plyler came from Mexico, or from Argentina, or from France, or from China is irrelevant to
both Brennan’s justification for and Burger’s dissention of the unconstitutionality of the Texas law §21.031. Yet the fact that both Brennan and Burger use the adjective “Mexican” may reveal an underlying racial ideology: since they find it necessary to not only identify the “aliens” as “illegal,” but as “Mexican” demonstrates a need to racially mark the plaintiffs of this case in order to highlight their racial and class inferiority.

This inferiority is also signaled by analogizing the undocumented student’s residential status to a “disability” by the Plyler syllabus and the Brennan opinion. The syllabus reads that “the Texas statute imposes a lifetime hardship on a discrete class of children not accountable for their disabiling status” (Plyler 202). Brennan concurs, writing that:

the increases in population resulting from the immigration of Mexican nationals in the United State had created problems for public schools for the public school of the State, and that these problems were exacerbated by the special educational needs of immigrant Mexican children. (qtd. in Plyler 207)
Furthermore, Brennan identifies their illegal status as "special disabilities" (223), and stating that undocumented students are "disabled by their classification" (229). The term "disability" suggests that undocumented students suffer from an inherent physical or mental handicap, which in turn suggests an embedded assumption of the innate inferiority of undocumented students. Yes, it is true that Brennan and the author of the Plyler syllabus may be indicating a social "disability" (since these students are kept on the socioeconomic and educative fringes), but one cannot help but associate the concept of "disability" with that of biological defectiveness possibly caused by race. Thus the use of the term "disability" may be considered as an indicator of underlying beliefs of the mental or physical inferiority of undocumented students.

In conjunction with the term "disability," both Brennan and Burger use the term "illiterate" to refer to undocumented students. Brennan writes,

> It is difficult to understand precisely what the state hopes to achieve by promoting the creation and perpetuation of a subclass of illiterates within our boundaries, surely adding to the
problems and costs of unemployment, welfare, and crime. (qtd. in Plyler 230)

Burger agrees, "I fully agree that it would be folly—and wrong—to tolerate creation of a segment of society made up of illiterate persons, many having a limited or no command of our language" (qtd. in Plyler 242). Brennan and Burger's argument relies on the supposition that undocumented immigrants are illiterate because of their limited English ability. Unfortunately, this assumption ignores the possibility that many immigrants have been educated in their home country. The presumption that undocumented students' illiteracy also carries a sense of shame. Brennan writes that if not educated in public schools, "The stigma of illiteracy will mark them [undocumented students] for the rest of their lives" (qtd. in Plyler 223). By describing the condition of illiteracy as a "stigma" or mark of disgrace, Brennan equates the inability to read and write in English as a humiliating and degrading circumstance, almost to the point that their English language fluency is socially deviant. Thusly,

3 Statistically, illiteracy rates between immigrants and native born Americans are similar. In 2002, 70% of immigrants held a high school diploma (Camarota), whereas 73.9 of native born Americans held the same degree (Aud, et. Al. 65).
undocumented students are not only inclined to be mentally and physically deficient (as indicated in my discussion of the use of the word "disability"), but they are also morally and ethically defective. This assumption that undocumented students are unethical is extended by Brennan’s argument that if students are not taught to read and write English, they will add “to the problems and costs of unemployment, welfare, and crime” (Brennan qtd. in Plyler 230). Brennan and Burger’s common sense notion of the illiterate illegal immigrant implies criminality: Because they cannot read or write, undocumented immigrants are utterly unemployable, and thusly their only option is a life of crime.4 Using common sense, Brennan reasons that undocumented students’ limited English abilities will burden American society by contributing to crime and government welfare dependency. Brennan does not even substantiate his argument with any statistical data or authoritative evidence. His entire claim relies on the common-sense assumption that undocumented immigrants are

4This supposition negates the fact that millions of undocumented workers already work for legitimate businesses in the United States. They primarily work as manual laborers (construction workers, crop pickers, dish washers, meat processors, and hotel maids), in jobs in which literacy (let alone English language literacy), is not needed nor required.
criminals who have illegally entered our country to take advantage of our social programs.

Yet Brennan's assertion that uneducated undocumented students are socially, economically, and legally liable contradicts his previous admission that there is a lack of evidence sustaining the argument that undocumented immigrants are a cost to American society:

There is no evidence in the record suggesting that illegal entrants impose any significant burden on the States' economy. To the contrary, the available evidence suggests that illegal aliens underutilize public services, while contributing their labor to the local economy and tax money to the state. (qtd. in Plyler 228)

Even though Brennan argues that if not educated, undocumented students pose a future burden on American society and economy, he contends that there is no statistical data that reveals that the state of Texas suffers economically because of its illegal residents. This contradiction seems to articulate the public's ambivalence and confusion about the true costs of
illegal immigration. Ideologically, the undocumented student is seen as the “other,” yet she is endowed with the same unalienable rights as American citizens. 

Ideologically, the “alien child” is seen as the illegal, deviant, and pathological. By law she is protected by the same Constitution as American citizens. Thus the amalgamation of the benefits imbued by the Fourteenth Amendment and societal common sense assumptions construct the undocumented student as a paradoxical member of society, one educated as an American but kept as an outsider.

Plyler, Brennan, and Burger: Textual Interaction within Litigation Discourses

As discussed in the previous section, there is evident textual interaction among the Plyler syllabus, Brennan’s opinion, and Burger’s dissention. These text exemplify the discursive interaction typical of the judicial/litigation genre, which rely on precedents (or previous legal cases to decide subsequent similar cases) and other authoritative texts to support and substantiate claims. Of interest at

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5 And this public uncertainty, I believe, is fueled by that fact that undocumented immigrants live in the shadows of our society and our economy. But this discussion I will develop further in the next chapter.
this point of my analysis is the use of these outside texts and how both Brennan and Burger react to them. Through this reaction we not only observe the dynamics of the interaction between Supreme Court Justices as they support or dissent the court ruling, but we also witness how common sense assumptions are viewed and even transformed through judicial language. Fairclough comments on this type of textual interaction:

Discourses and the texts which occur within them have histories, they belong to historical series, and the interpretation of intertextual context is a matter of deciding which series a text belongs to, and therefore what can be taken as common ground for participants, or presupposed. As in the case of situational context, discourse participants may arrive at roughly the same interpretation or different ones, and the interpretation of the more powerful participant may be imposed upon others. So having power may mean being able to determine presuppositions (Language and Power 127).

Thus by critically viewing the outside texts Brennan and Burger decide to use in their own texts, and by analyzing
how their interpretations of these outside texts coincide or differ will not only expose underlying societal ideologies, but power struggles as well. Of particular interest is the reference of three Supreme Court Cases as precedence to the *Plyler* decision: *Trimble v. Gordon*, *Weber v. Aetna*, and *San Antonio Independent School District v. Rodriguez*. Brennan uses all three to support his opinion on the *Plyler* decision, while Burger counter argues.

In his opinion, Brennan uses the *Weber* and *Trimble* cases to support his argument that undocumented children should not be punished for their parents’ decision to bring them to the United States illegally. Both held that laws disallowing beneficence illegitimate children were unconstitutional under the Fourteenth Amendment. Brennan analogized the undocumented students’ predicament to that of illegitimate children by quoting both court cases. Using wording from the *Trimble* decision he argues that the “parents have the ability to conform their conduct to societal norms” and rectify their illegal status by returning to their home country, but undocumented students “can affect neither their parents’ conduct nor their own status” (qtd. in *Plyler* 220). He quotes the Weber case:
[V]isiting...condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the...child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth, and penalizing the...child is an ineffectual—as well as unjust—way of deterring the parent (qtd. in Plyler 220).

By comparing the undocumented student’s situation to that of an illegitimate child, Brennan, in essence, is comparing the undocumented student to an illegitimate child himself. Interestingly, the words “illegitimate” is synonymous with “illegal” since both carry a connotation of unlawfulness to some extent. Yet the term “illegitimate” carries a moral connotation: In other words, the illegitimate child is born out of an unlawful, an immoral union. Some may even go as far as to say that an illegitimate child is born out of sin. Thus, this analogy begins to construct the undocumented students as not only unlawful by nature, but inherently depraved and corrupt. Moreover, since undocumented students, like illegitimate children, are
portrayed as individuals who have little to no control over their situations, they are also portrayed as individuals who have little to no control over the actions their depraved nature may lead them. This analogy, much like the description of undocumented students as "illiterate" discussed earlier, supports the common sense assumption that undocumented students, without guidance, will turn to criminality.

Because of the nature of a Supreme Court Justice's dissenting opinion, the reader anticipates opposition to both Brennan's majority opinion and the Plyler decision. Yet, Burger's reaction to this analogy is not to question the analogy itself (since it is probably that both share a similar common sense perception of depraved undocumented student); rather he calls to question the innocence of undocumented children. He does this by adding quotation marks to the word "innocent" when describing the plaintiff children. Although one could argue that Burger was merely quoting Brennan's words, Brennan does not even use the word "innocent" in the section of his text in which he discusses illegitimate children. Thus we can ascertain that his use of quotation marks is meant as a sarcastic emphasis to relay his opinion that undocumented children are not
innocent," that in fact they (like their parents) are illegal entrants who are breaking the law. In addition, he also places quotation marks around the word "control" to exhibit the same sarcastic affect. Again, one could argue that Burger is merely quoting Brennan, but I question why he only placed quotation marks around the word "control" rather than quote the complete sentence or phrase. The highlighting of the words "innocent" and "control" for sarcastic effect seems to highlight the assumption that undocumented students willingly and knowingly break the law, that by choice they are criminals. But what drives their criminality may be more than just immoral tendencies as insinuated by Brennan. Burger argues that states have the right to classify persons according to factors and characteristics over which they may not have power. Burger offers his own analogy, comparing undocumented students to mentally ill individuals:

Indeed in some circumstances, persons generally, and children in particular, may have little control over or responsibility for such things as their ill health, need for public assistance, or place of residence. Yet a state legislature is not barred from considering, for example,
relevant differences between the mentally healthy and the mentally ill or between the residents of different counties simply because these may be factors unrelated to individual choice or any "wrongdoing" (qtd. in Plyler 245).

In truth the analogy between a student’s residential status and mental capacity seems a bit forced, and in order for the analogy to work the reader must assume a connection between freedom of choice and mental capacity. Moreover, despite the fact that Burger does not overtly refer to undocumented students as "mentally ill," this analogy asserts the undocumented student’s mental pathology. Thus an undocumented student’s criminality and immorality may not rest on her birth, but rather on her mental health.

This last analogy constructs insidiously the undocumented student as an irrational and menacing being, which in turn reflects and even creates a feeling of fear. Interestingly, both the Brennan opinion and Burger’s dissent echoes this feeling of fear by referencing to escalating number of illegal immigrants. Brennan writes,

Sheer incapability or lax enforcement of the laws barring entry into this country, coupled with the failure to establish an effective bar to the
employment of undocumented aliens, has resulted in the creation of a substantial "shadow population" of illegal migrants—numbering in the millions—within our borders. (qtd. in Plyler 218)

The use of the words "incapability" and "failure" highlights a lack of border control, while the words "shadow population" and "aliens" emphasize the menacing threat that is the illegal immigrant. Moreover, the indefinite number "millions" incites irrational fear, if not panic, that the United States is under attack. This sense of panic is maintained by Brennan's use of the phrase "illegal entrants" (qtd. in Plyler 220, 226, 228) to depict undocumented immigrants not only as intruders and trespassers, but as burglars and thieves. And all of these descriptions not only expose the common sense assumption that countless of illegal immigrants are swarming our borders and invading our country.

Burger also taps into this irrational fear of "illegal entrants" by stating that "The Court makes no attempt to disguise that it is acting to make up for Congress' lack of "effective leadership" in dealing with the serious national problems by the influx of uncountable millions of illegal aliens across our borders" (qtd. in Plyler 242). Burger
calls attention to the alarming fact that government has little to no control over the invasion of "illegal aliens." Again the image of "uncountable millions of aliens" serves a purpose of creating fear and panic. Consequently, undocumented students are constructed as fearful mobs of thieves, not unlike the pillaging Barbarians or Vandals who invaded Europe.

Despite the use by both Brennan and Burger of the ambiguous word "millions" to number the amounts of "illegal entrants" into the United States, both footnote estimates to contemporary studies of illegal immigration. Brennan writes in his footnote that "The Attorney General estimated the number of illegal aliens within the United States at between 3 and 6 million" (qtd. in Plyler 128). Burger's footnote concurs with Brennan's, as Burger states that "The Departement of Justice recently estimated the number of illegal aliens within the United States at between 3 and 6 million" (qtd. in Plyler 242). Yet he magnifies this fear by including a larger estimate quoted from the May 1982 edition of the Christian Science Monitor: "Other estimates run as high as 12 million" (qtd. in Plyler 242), a number that almost doubles the number cited by the Attorney
By citing an estimate that exponentially grows from 3 million, to 6 million, to 12 million seems to amplify an already common fear of the swelling number of "illegal aliens." Brennan and Burger’s shared assertion of the uncontrollable escalation of the “alien” population, not only swells fears and panic, it also has a dehumanizing affect on both undocumented immigrants and their children as well. By portraying illegal immigrants as a mob of millions, the public no longer sees undocumented students as people. They are just extension’s of the hordes that overrun our borders.

Alien Versus Citizen: The Construction of Undocumented Students to Maintain an Uneven Social Structure

The preceding discussion focuses on the textual and intertextual discourses surrounding undocumented students. Many of the markers, labels, and depictions used by Brennan, Burger, and the author of the Plyler syllabus assert common-sense assumptions that construct undocumented

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6 Interestingly, the reference to statistics from a right-winged, Christian magazine not only highlights Burger hyper-conservative inclinations, but I would argue supports my interpretation of Burger’s language as racially driven. By referring to a text read—or at least known—by the general public, Burger seems to ground his own arguments in common sense assumptions.
students as other, as deviant, as pathological, and as immoral. This construction, according to Fairclough, is indirect and unintentional: "Reproduction is for participants as generally unintentional and unconscious side-effect, so to speak, of production [of the text] and interpretation [of the intertext]" (Language and Power 135). Hence, the discursive interaction Burger and Brennan shapes unintentionally the power relations and social struggles between citizens and non-citizens. In essence, by dehumanizing the undocumented student, by pathologizing her, by "othering" her, the Plyler documents, and the discourses found therein, maintain an unequal power structure, were white legal citizens maintain socioeconomic and political power.

Ideally, the Plyler decision attempted to equalize undocumented students, as it (1) articulated that illegal aliens were "persons," and thus (2) could be protected by the Equal Protection and Due Process Clauses of the Fourteenth Amendment. But that is not to say that the group in power will not attempt to maintain an unequal balance of power. In fact Fairclough writes: "On the contrary, those who hold power at a particular moment have to constantly reassert their power, and those who do not
hold power are always liable to make a bid for power” (Language and Power 57). Moreover, since “the power-holders have surrendered power” they now “forced into less direct ways of exercising and reproducing their power” (Fairclough, Language and Power 60). Thus discourses that expose racial and classist ideologies use code words, markers, labels, and depictions that aim to discredit undocumented students, many of which are seldom questioned because they are seen as common sense assumptions. As discussed previously, labels such as “illegal” and “illiterate” criminalize the undocumented student; code words like “Mexican” degrade undocumented students to ethnic stereotypes; analogies to “illegitimate” children construct an immoral being; while depiction of hordes of millions of “aliens” dehumanize the undocumented students. All of these are aimed to undercut the true intentions of the Plyler decision, the creation of some semblance of educative equality within the United States. Yes, the plaintiffs in the Plyler case are allowed to attend public school alongside their citizen peers, but not without being marked first. Thusly undocumented students were marked as “alien,” as “strangers,” as “criminals,” so as to maintain
an uneven balance of power between the "citizen" and the "stranger."

In the next chapter I will discuss how these markers continue to affect undocumented students well after they graduate from public schools. I will analyze critically the discourse in the IIRIRA, and how it not only continues to construct undocumented students indirectly as "stranger" and "alien," but how constructs them overtly as criminal, and how through legislative power, they are denied access to postsecondary education.
CHAPTER THREE

THE COERCIVE AND CONSENSUAL POWER OF AMERICAN LEGISLATIVE DISCOURSES IN THE WELFARE REFORM ACT, THE ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT, AND THE DREAM ACT

Our nation is a nation of immigrants. More than any other country, our strength comes from our own immigrant heritage and our capacity to welcome those from other lands. No free and prosperous nation can by itself accommodate all those who seek a better life or free persecution. We must share this responsibility with other countries.

(Ronald Reagan, qtd. in Spickard 392)

In calling for support for his immigration policy taskforce on July 30, 1981 and his subsequent 1986 Immigration Reform and Control Act (IRCA), which granted amnesty to three million undocumented immigrants, Ronald Reagan harkens back to the ideals embodied by the first
Pilgrims who settled Plymouth Rock and the immigrants who traversed the halls of Ellis Island. Moreover, Reagan highlighted the importance of immigrants to not only our American cultural identity, but their importance in American economic growth and stability. Unfortunately such a favorable view of immigration has yet to fully permeate our national consciousness. From the 1798 Alien and Sedition Act, which called for the deportation of foreigners deemed dangerous, to the 2001 anti-terrorist USA PATRIOT Act, which sanctions the indefinite detention of noncitizens "without charge or recourse to attorneys or courts" (Spickard 475), United States legislation has institutionalized discrimination against immigrants, constructing a shared image of the illegal alien. The contemporary immigrant is not seen as the pious Pilgrim, arriving at the American shores seeking religious freedom, nor is she seen as the tireless traveler welcomed by the glowing torch of the Statue of Liberty. The contemporary immigrant is seen as a shady figure or a criminal lurking and scheming for an opportunity to rob us of the American Dream.

As discussed in the previous chapters, most of our contemporary societal views on illegal immigration have
been constructed in the public discourse, which in turn has been based on xenophobic ideologies. Because these views are codified in legislative and judicial documents, they are accepted as common-sense ideology, seldom questioned or challenged. Moreover, it is through these common-sense assumptions that groups in power maintain power. According to Norman Fairclough, there are two ways groups in power may exercise power over any given population—coercion and consent:

In practice, coercion and consent occur in all sorts of combinations. The state includes repressive forces which can be used to coerce if necessary, but any ruling class finds it less costly and less risky to rule if possible by consent. Ideology is the key mechanism of rule by consent, and because it is the favoured vehicle of ideology, discourse is of considerable social significance in this connection. (Language and Power 28)

Thus much of the discussion in judicial discourses by Supreme Court Justices Brennan and Bunger in Plyler v. Doe can be seen as a mitigation of power through consent: Yes there was a divergence of opinion between the Supreme Court
Justices, but their overall assumptions about illegal immigrants were congruent. Their opinions articulated and reiterated socially consensual racial ideologies about the inferiority of undocumented students. In contrast, laws such as the Alien and Sedition Act of 1798 and the USA PATRIOT Act of 2001 attempt to control the immigrant population through coercion, limiting what immigrants can and cannot do within United States borders. Yet I argue that these acts of legislative coercion are not free of underlying racial ideologies. In fact, these coercive acts are a direct result of the consensual power of common-sense assumptions: American politicians agree upon the underlying racial assumptions of such laws, thus they agree to pass and enforce laws that espouse these assumptions. Consequently the discursive power of immigration legislation lies not only in the coercion it has on the immigrant population, but on the consent it solicits from the politicians, and, by extension, the general population. This is the case with the current situation of undocumented students: Many US citizens agree that American society would benefit from allowing undocumented students to receive free K-12 education, yet a small number of political leaders agree to allow undocumented students
unrestricted monetary access to post-secondary education. In fact, according to a poll published by the child advocacy group First Focus in June 2010, 70% of the American public favor the DREAM Act, and 69% favor states determining the provision of in-state tuition for undocumented students ("Public Support for the Dream Act"). Yet the DREAM Act has failed to pass in 2001, 2007, 2009, and 2010. Hence through consent--for the American public has elected those politicians who in turn have voted against the DREAM continuously--we have coerced undocumented students from attending postsecondary institutions by legislatively denying them access to college.

The Welfare Reform Act, the Illegal Immigration Reform and Immigrant Responsibility Act, and the Current Quandary of the Undocumented Student

In 2009, Penelope was a senior planning for college. In addition to worrying about college applications, SAT scores, and final exams, Penelope has an additional burden: how to pay for her college education. Only a year earlier, Penelope had found out about her illegal immigration status. She has been an excellent student; she has
taken Advance Placement courses; she has participated in extra-curricular activities; she has won numerous academic awards. Yet what awaits Penelope at the end of her high school academic road is the prospect of not attending college. According to William Perez, "Penelope’s worry about paying for college is a common experience for" many undocumented students. "The financial concern for undocumented students is even more intense because they are not eligible for any form of federal financial aid. Undocumented students must figure out on their own how to pay for college" (3). This financial limit to postsecondary education is due to legislation passed in 1996 during the Clinton administration. The Welfare Reform Act and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) prohibit undocumented students from applying for and receiving federal, state, and local financial aid. Unlike the *Flyler v. Doe* documents which function on what Fairclough would term "consensus," the two Clinton-Era laws function on a more coercive level; the discourses in these documents legally limit access to financial aid, thus dissuade undocumented students from attending post-secondary institutions.
To better understand the coercive power of the Welfare Reform Act and the IIRIRA, and the consensual control of the racial common-sense assumptions, we must critically analyze the discourses in both of these documents and the socio-political setting in which they were composed. Much like the critical discourse analysis conducted in chapter two, I will analyze the texts at three levels: (1) the textual level, (2) the inter-textual level, and (3) social-textual interaction level.

Unqualified Aliens, Self-Sufficient Undocumented Students, and the Welfare Reform Act

In general, the passage of the Welfare Reform Act of 1996 (officially titled the Personal Responsibility and Work Opportunity Act) aimed to restructure the so-called "broken" American welfare system. Socially, it signaled a social conservative push to the right by a Republican led legislature by highlighting the importance of traditional family values. Politically, it cemented President Clinton's re-election by appealing to the more conservative segment of the independent electorate. Economically, the Welfare Reform Act perpetuated rigid class stratification, making it harder for the working poor to access social
services such as federal and state subsidized childcare, housing assistance, food stamps, and health care. As for immigration, the Welfare Reform Act prohibited both legal and illegal aliens from soliciting and qualifying for many federal social services (including postsecondary federally funded education grants and loans) available to American citizens. The language embodied in the 1996 Act articulates the consensual public opinion that undocumented immigrants (and by extension undocumented students) should be prohibited from receiving public services. However the coercive power of the law falls short of its intended purpose—the deterrence of illegal entrance and habitation in the United States. In theory such restrictions on access to social services should have made illegal entrance to and residence in the United States less appealing, yet according to the Pew Hispanic Research Center, the number of illegal immigrants nearly doubled between 1996 and 2000 from about 6 million to about 10 million ("Fact Sheet: Hispanic and Arizona's New Immigration Law"). Thus, the coercive power embedded in the language of the Welfare Reform Act lies not in keeping undocumented students out of the United States; rather the coercive power lies in the
law's ability to keep undocumented students out of American's socio-economic and political mainstream.

Let us look at a few textual features to identify the consensual common-sense ideologies embedded in the language and thereby better understand the coercive nature of the document. Title IV (Sections 400 through 451) of the Welfare Reform Act specifically concern both legal and illegal immigrants. Section 400 begins with what appears to be some kind of preamble or introduction:

The Congress makes the following statements concerning national policy with respect to welfare and immigration: (1) Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes. (2) It continues to be the immigration policy of the United States that—(A) aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations, and (B) the availability of public benefits not constitute an incentive for immigration to the United States. (3) Despite the
principle of self-sufficiency, aliens have been applying for and receiving public benefits from Federal, State, and local governments at increasing rates. (4) Current eligibility rules for public assistance and unenforceable financial support agreements have proved wholly incapable of assuring that individual aliens not burden the public benefits system. (5) It is a compelling government interest to enact new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant in accordance with national immigration policy (8 USC 1601).

This introduction articulates guiding principles and underlying beliefs about immigrants and public assistance, as it justifies the exclusion of illegal immigrants from using "public resources." In particular, the use of the terms "self-sufficiency" and "self-reliance"—which denotes a sense of independence, autonomy, and self-reliance—function as exclusionary markers. Indeed the American experience encompasses the ideals of "self-reliance" and "self-sufficiency"; yet when one re-contextualizes the ideals of "self-sufficiency" and "self-reliance" into our
earliest American history, one begins to question the validity of these ideals. Consider one of the earliest traditional narratives of American immigration. Although it is true that the Pilgrims attempted to survive on their own in the American wilderness, the Native Americans not only fed and clothed them, but taught them how to adapt to a new environment. This sense of magnanimity and community is absent from the language in the Welfare Reform Act. Instead we find exclusionary language that obliges illegal aliens to fend for themselves.

According to the text, "self-sufficiency" is a basic principle of both our "earliest immigration statutes" and current immigration policy. Let us look at past immigration policy to further understand the connotative meaning of the terms "self-sufficiency" and "self-reliance." According to historian Paul Spickard, the "earliest immigration statutes" include the 1790 Naturalization Act (which restricts citizenship to free white males), the 1907 Expatriation Act (which took citizenship from women who married foreign nationals), and the 1917 Immigration Act (that required an admittance literacy test) (467-471). These laws and others listed by Spickard seem to entail an exclusionary element—keeping
immigrants from actively participating in American society, politics, and economy. Hence, through the historical context of previous xenophobic immigration legislation, "self-reliance" and "self-sufficiency" can be taken as coded words with more negative connotations. In this context, these terms are synonymous to exclusionary words such as separation, isolation, and disconnection. This concept of exclusion not only verbalizes the share public sentiment that illegal aliens are different and separate from the rest of the population, but it prohibits them from taking part of American society physically.

Section 401 of the Welfare Reform Act eventually details the public benefits that illegal immigrants are prohibited from accessing. According to this subsection, "an alien who is not qualified...is not eligible for any Federal public benefits" including:

(A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any
other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States (8 USC 1611.).

As discussed in chapter two, the term "alien" although commonly used in judicial and legislative documents, does carry a pejorative connotation. In addition, the term serves an exclusionary purpose, constructing the undocumented immigrant as a "stranger," "foreigner," and "invader." Of further interest is the use of the adjective "not qualified," which modifies and qualifies the noun "alien." The term "not qualified" perpetuates the negative assumption that undocumented immigrants are "unskilled," "incompetent," and "unfit." Yet more interesting is the grammatical choice of the negative particle: instead of constructing a morphological negation by using the prefix "un" to construct the adjective "unqualified," the composers of the Welfare Reform Act used syntactic negation by placing the negative particle "not" before the adjective "qualified." According to linguists Councill, McDonald, and Velikovich, this form of negation indicates explicit denial (51), highlighting the negative particle, rather
than modifying the phrase itself. I argue that this stresses or emphasizes the negative particle rather than the complete adjective phrase further expressing the notion that undocumented immigrants are inferior to not only American citizens, but legal residents. The use of the syntactic rather than the morphological negation also indicates that undocumented immigrants are somehow marked, that they are different from the normal population. Moreover, the use of the phrase "not qualified" connotes an unchangeable state of being compared to the changeable quality of the adjective "unqualified." The use of the qualifier "not" is much more stringent than the prefix "un": Although an immigrant is currently "unqualified," she may one day receive authorization to become qualified in the future; whereas an immigrant is "not qualified" will never be qualified.

Sections 401 and 411 of the Welfare Reform Act specifically outline benefits and services illegal aliens, and by extension undocumented postsecondary students, may not receive. In short, these sections prohibit undocumented students from applying for and receiving any type of grants, loans, or postsecondary assistance subsidized by federal, state, and local governments. In
addition, undocumented students cannot apply for any type of federal, state, or local professional or commercial licenses. The restriction to federal grants, loans, postsecondary assistance seems to follow the principle contention in Section 400 that undocumented immigrants should not "depend on public resources" and be "self-reliant." Yet the exclusion of undocumented immigrants from professional and commercial licenses seems questionable. In truth, licenses do not constitute a public service. In fact, licenses are paid for by applicants looking to permit, authorize, and/or certify certain practices and/or professions. Thus, the prohibition of undocumented students from attaining professional and commercial licenses does not follow the "self-sufficiency" philosophy. On the contrary, such restrictions keep undocumented immigrants from exercising "self-reliance" by prohibiting them from obtaining driver's licenses, working permits, and professional credentials. Moreover, such restrictions actually push undocumented immigrants into the underground cash economy, relying on illegal ways of making money.
Because the Illegal Immigration Reform and Immigrant Responsibility Act was signed into law only nine months after Welfare Reform Act, and because both deal with prohibitions on illegal immigrants, one can be seen as an extension and expansion of the other. Whereas the Welfare Reform Act restricted educative and economic prospects to undocumented students, the IIRIRA criminalized their attempts to seek and attain state and federal aid to pay for postsecondary education. In previous judicial and legislative documents, the notion of undocumented students as "criminals" was inferred through the labels and modifiers used, but in the IIRIRA details of criminal penalties and fees were finally articulated. Thus undocumented students ran the risk of not only deportation if they were apprehended, but were subject to jail time, monetary penalties, and criminal fingerprinting. As indicated previously in this chapter, such laws did very little to deter illegal immigration; in fact the number of illegal immigrants doubled between 1996 and 2000 ("Fact Sheet: Hispanic and Arizona's New Immigration Law"). Thus, although the IIRIRA verbalized a consensual anti-immigrant
sentiment, it did very little to coerce unauthorized immigrants from crossing the border of the United States.

The impetus of the IIRIRA ignored one simple fact: Millions of illegal immigrants had come to United States as children and were culturally Americans. Many of them do not even realize that they are illegal until high school graduation is near and they go in search of their social security card in order to apply for a job, to join the military, or fill-out their Free Application for Federal Student Aid. Thus, the coercive power of the IIRIRA lies not on its ability to deter illegal immigrants from coming into the United States, nor does this power lie in IIRIRA's ability to persuade illegal immigrants to return to their countries of origins. The coercive power of the IIRIRA lies in its ability to keep undocumented immigrants in the socio-economic and political shadows of American society, thus guaranteeing a working sub-class that is forced to work for pennies on the dollar without any educative prospects of escaping the cash economy.

With the passage of the Welfare Reform Act, undocumented students are prohibited from applying for and receiving postsecondary financial assistance, and subsequently attaining any professional or
commercial licenses. Yet, the IIRIRA goes even further by restricting economic access, limiting the eligibility for preferential treatment of postsecondary undocumented students on the basis of residence:

an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident. (8 USC 1623)

As evident in this passage, many of the racial linguistics constructs present in the Plyler v. Doe and Welfare Reform Act are present here: we see the use of the pejorative terms "alien"; we see the emphasis on negative particle "not" to signal exception; we see the ideological juxtaposition of "alien" versus "citizen." All of these textual markers articulate the underlying racial assumption that undocumented students are subordinate to American citizens. Moreover because of their illegal status,
undocumented students should not be allowed state or local financial benefits including in-state tuition.

Interestingly, the Welfare Reform Act which was signed into law on January 3, 1996 gave state and the local government the freedom to choose to allow any benefits to undocumented immigrants through the legislative process. Acknowledging state rights, as allotted by the Tenth Amendment to the U.S. Constitution, the Welfare Reform Act authors provided a provision in Section 411 that allowed the states the authority to offer state and local benefits to undocumented immigrants:

A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) only through the enactment of a State law after the date of the enactment of this Act which affirmatively provides for such eligibility. (8 USC 1621)

Yet in Section 505 of the IIRIRA seems to have repealed this freedom months later, on September 30, 1996:

SEC. 505. LIMITATION ON ELIGIBILITY FOR PREFERENTIAL TREATMENT OF ALIENS NOT LAWFULLY
PRESENT ON BASIS OF RESIDENCE FOR HIGHER
EDUCATION BENEFITS. (a) IN GENERAL.—
Notwithstanding any other provision of law, an
alien who is not lawfully present in the United
States shall not be eligible on the basis of
residence within a State (or a political
subdivision) for any postsecondary education
benefit unless a citizen or national of the
United States is eligible for such a benefit (in
no less an amount, duration, and scope) without
regard to whether the citizen or national is such
a resident. (8 USC 1623)

In attempts to appease the staunchest conservative members
of American Society, lawmakers stripped states of the
Constitutional right to decide whether to allow
postsecondary students in-state tuition and other state
financial aid. Understandably, states have vested
interests in deciding to whom to offer state financial aid.
By establishing residential guidelines and allowing lowered
in-state tuition to state residents, states favor taxpaying
residents to guarantee a well educated state population.
In addition, colleges and universities that offer in-state
tuition to residents motivate high school students
graduating at the top of their class to remain in their home states, thus contributing to their states economic, social, and cultural growth. Yet the main stipulation of Section 505 of the IIRIRA ignores states' socio-economic interests in allowing in-state tuition to undocumented students. Instead, Section 505 articulates the common-sense notion that undocumented students take away benefits from all American citizens and all legal residents. By stating that undocumented students are not eligible for in-state tuition "unless a citizen or national of the United States is eligible for such a benefit," the language in IIRIRA reiterates the ideology that undocumented students steal from taxpayers and from all American students. Moreover, where the language Section 411 of the Welfare Reform Act motivates states to prohibit undocumented students' in-state tuition through consent, Section 505 of the IIRIRA drives states to comply through coercion.

It is interesting to view both the IIRIRA and the Welfare Reform Act in the context of other Clinton Era legislation. In particular, if we contextualize these two pieces of legislation with the 1994 North American Trade Agreement (NAFTA), we may be able to better understand the
racial and economic implication on illegal immigrants and, by extension, undocumented students. In essence, NAFTA attempted to free up commerce and trade among Canada, Mexico, and the United States by eliminating tariffs on imports and exports. One can argue that NAFTA was driven by corporate interests and corporate ideology, that NAFTA, along with the IIRIRA and the Welfare Reform Act were written to benefit American business and industry. Unfortunately, the construction of such unilateral policies disenfranchised the working class. As Spickard argues,

"After NAFTA, Mexico saw the value of its exports skyrocket....Meanwhile, Mexico lost 2.8 million farm jobs, compared to a gain of only 700,000 jobs in export manufacturing. Mexican and American capitalists were thriving, but Mexican farmers were losing out to U.S. agriculture. These economic forces, the direct results of international trade policy, pushed Mexicans out of agriculture and northward in search of jobs."

(370)

Because of NAFTA, American agricultural and manufactured exports increased and by extension so did the demand of cheap manual and agricultural labor. Yet comprehensive
immigration legislation was not drafted during the 1990s to attend to this basic economic supply and demand. In contrast, through the Welfare Reform Act and IIRIRA a more conservative stance was articulated compared to the 1980s' "Amnesty" legislation. In fact, "Amnesty" became a dirty word, as more and more Americans came to the consensus that allowing undocumented immigrants legal residency and citizenship meant rewarding criminality. Thus, political discussion about immigration reform results in stalemates, as the illegal immigrant population continues to increase. Fairclough states,

The power of the capitalist class depends also on its ability to control the state: contrary to the view of the state as standing neutrally 'above' classes, I shall assume that the state is the key element in maintaining the dominance of the capitalist class, and controlling the working class. This political power is typically exercised not just by capitalists, but by an alliance of capitalists and others who see their interests as tied to capital. (Language and Power 27)
Accordingly, we can see the monetary limit to postsecondary access and the congress’s inability to pass comprehensive immigration reform as a coercive act to maintain undocumented students in the underclass of illegal immigrants. Moreover, economically limiting undocumented students to postsecondary education benefits American capitalism, as manufacturing and agricultural companies were guaranteed an unlimited supply of cheap labor.

The Promise of a Dream: The Undocumented Student and the Prospect of the DREAM Act

On May 11, 2011 the United States House of Representatives and Senate reintroduced the DREAM Act, a bill that "would grant legal status to undocumented immigrants brought to the USA illegally if they attend college or serve in the military, and meet other conditions" (Camia "Democrats in Congress Renew Fight"). Yet despite the support from Democratic President Barack Obama, the DREAM Act has very little chance of passing through the Republican dominated House of Representatives and the conservative dominated Senate. Republican representatives such as Congressman Lamar Smith from Texas and Senator Jeff Sessions from Alabama call it "amnesty,"

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which rewards criminals and encourages illegal immigration (Camia). In essence the inability to pass the DREAM Act represents the racial common-sense ideology, despite evidence that passage of the bill would be economically beneficial to the country. According to a 2010 Congressional Budget Office (CBO) budget cost estimate, the passage of the DREAM Act would "increase revenues by $2.3 billion" and "net direct spending by $912 million" over a ten years; in addition, "enacting the bill would reduce deficits by about $1.4 billion" over the same ten year period ("S. 3992").

Despite the good intentions of the DREAM Act, if we carefully analyze its wording, we can see the continuation of the racial ideology first presented in the Plyler case, the Welfare Reform Act, and the IIRIRA. The introduction reads: "To authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents and who entered the United States as children and for other purposes" (H.R. 1842). Like the judicial and legislative documents I have

1 According to the CBO, the increase of revenue and spending depends the increase of income taxes paid by undocumented students legalized through the DREAM Act and their increase of income. In addition, undocumented students would provide income into both the Social Security and Medicare systems.
analyzed previously, this introduction also uses the inferiority marker "alien." Yet its use of terms such as "students," "children," and "residents" signals a move to humanize the undocumented student. Yet if we go beyond the introduction and analyze the wording of the document itself, the language reverts to labeling these "children" and "residents" as "aliens." The continued use of the inferiority marker "alien" in the complete text of DREAM Act signals a continuance of "othering" of undocumented students.

The actual listing of conditions for legal residency and citizenship in Section 3 of the document is even more telling: the alien must (1) be moral, (2) maintain a continual present in the United States (3) cannot be a convicted criminal, (4) submit biometric and biographical data, (5) have a background check, and (6) have a medical examination.\(^2\) Although such requirements can be seen as indicative of any person attempting to gain legal status in the United States, we can also consider how these requirements have articulated racial ideologies.

\(^2\) I provide abbreviated list requirements from the DREAM Act. For a comprehensive listing of all requirements, please refer to H.R. 1842, the actual text of the 2011 version of the DREAM Act.
The first requirement—found in Section (3) (b) (1) (C)—states that an undocumented student must "be a person of good moral character." This requirement raises the question of how this can be measured and judged; but more importantly, the condition calls to question the morality of undocumented students. As discussed in chapter two, because undocumented students are considered "aliens," they are considered corrupt, immoral and delinquent, which can be construed as systematic "pathologizing" of people of color, for race becomes a physiological indication of amorality and deviance. Thusly if undocumented students are allowed to gain access to postsecondary education, and subsequently allowed a pathway toward citizenship, they must prove moral and ethical character.

This questioning of morality further leads to the questioning of allegiance, as Section (3) (c) (2)(A) brings to question the undocumented student’s loyalty and duty to the United States:

An alien shall be considered to have failed to maintain continuous physical presence in the United States...if the alien has departed from the United States for any period in excess of 90 days or for any periods aggregated exceeding 180 days.
This calls into question the loyalty of undocumented students. The majority of undocumented students have lived most of their lives in the United States and have been educated in American schools, thus they consider the United States their home. Yet legislators question the undocumented student’s allegiance. Moreover, the discourse of morality and allegiance as presented in the DREAM Act maintains that ethics and fidelity are inherent to those that hold an American birth certificate or a legal residency card or a US passport. It does not take into consideration that Americans are socialized to be loyal; that American morals and ethics are learned through years of education and upbringing that every student (whether legal or illegal) can learn.

The fourth and fifth requirement listed above involves the submission of personal data for background check purposes. Section (3) (b) (3) reads “The Secretary may not grant permanent resident status on a conditional basis to an alien under his section unless the alien submits biometric and biographic data, in accordance with procedures established by the Secretary.” And according to Section (3) (b) (4) (i) and (ii) this “biometric and biographic data” will be used “to conduct security and law
enforcement background checks...[and] to determine whether there is any criminal, national security, or other factor that would render the alien ineligible for such status." Although background checks are commonly requested when immigrants apply for legal residential status and citizenship, one may question the broad scope of these requirements. The rationale for the background checks is obvious and explicit in subsections (i) and (ii), yet the undefined scope of "biometric and biographical data" allows for speculation. What type of biometric data will be collected and for what purpose? Will this biometric and biographical data be shared with various state, federal, and global agencies? Where will this data be stored and secured? Because none of these issues are addressed in the body of the DREAM Act draft, the conceived implication and repercussions can be wide. The act of collecting such data espouses the common-sense notion that undocumented students are pathological; and the storage of such data suggests the fear that undocumented students may become criminals in the future. Moreover, the undefined methodology of biometric/biographical data collection may lead one to infer that such methodology would lead to broad interpretation by the federal government. Common biometric
and biographical data requested for legal residence and citizen application include information about residence, work history, and fingerprinting. But the use of the term "biometric data" encompasses the collection of physiological data such as DNA, as well as face, iris, and voice recognition. In addition, biometric data also encapsulates the collection of behavioral data. Such inclusive definition of biometric data may raise questions over the collection and storage of personal data. Are we risking privacy and civil liberties in the name of the ever elusive national security? Is there a danger of using biometric data as a surveillance tool or for racial profiling?

The medical examination requirement may warrant similar concerns. Sections (3) (b) (5) reads,

An alien applying for permanent resident status on a conditional basis under this section shall undergo a medical examination. The Secretary, with the concurrence of the Secretary of Health and Human Services, shall prescribe policies and

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3 For comprehensive information on current biometric data collection methods and applications, please refer to the National Science and Technology Council website at www.biometrics.gov.
procedures for the nature and timing of such examination.

Much like subsection (4), this requirement offers no explicit rationale or methodology for the collection of such biometric data, leaving Section (5) open to wide interpretation. Are we attempting to prohibit the legalization of immigrants with certain medical conditions or diseases? Will this data affect undocumented students educative and work prospects? Much like Subsection (5), the conditional medical exam may be construed as an invasion of privacy. It would seem that politicians are willing to sacrifice privacy and civil liberties in attempts to keep illegal immigrants off of American soil.

Although, the DREAM Act requirements detailed above may signal attempts by politicians to move more to the right in order to gain support for this bill, conservative politicians continue to vote against it. In fact, cosponsor Republican Senator Richard Lugar of Indiana refused to support the re-introduction of the bill arguing that Democrats were politicizing illegal immigration. According to a Lugar spokesman, Obama has “framed immigration as a divisive election issue instead of attempting a legitimate debate on comprehensive reform”
Notwithstanding, Lugar admittedly “supported the initiative, but he wanted them to work on getting more Republican support” (“DREAM Act Loses Republican”). Similarly, Republican Senator John Cornyn supports the DREAM Act in theory, but states:

This bill, sadly, does nothing to fix our broken immigration system [....] It may be worse that we're providing incentive for future illegal immigration. This bill does nothing for border security, workplace enforcement, visa overstays, which account for about 40% of illegal immigration in this country. In other words it does nothing to reduce the likelihood of future illegal immigration. (qtd. in Cohen)

Both Cornyn and Lugar not only contradict their own opinion, but they contradict public opinion, which supports the passage of the DREAM Act. In addition, they negate logical reasoning for passage of the DREAM Act: the socioeconomic benefits of allowing undocumented students monetary access to postsecondary education and providing a pathway for legal residence and citizen to undocumented students, as detailed by the CBO. Instead both deviate to
common-sense assumptions that illegal immigration is out of control and that illegal aliens steal American jobs, abuse our welfare system, and increase crime. Fairclough explains that this discursive discrepancy between belief and action, like that of Lugar and Cornyn, "deflects attention from an idea which could lead to power relations being questioned and challenged--that there are social causes, and social remedies, for social problems" (Language and Power 71). Despite the questionable racial language in a bill, the passage of a bill such as the DREAM Act would begin to erode common public assumptions of the racial pathology of undocumented students and, by extension, illegal immigrants. The passage of such a bill would bring to light the socioeconomic marginalization of undocumented students and, by extension, illegal immigrants. The passage of such a bill would begin to equalize postsecondary access by undocumented students, hence destabilizing the power of the capitalist class over American sociopolitical and economic institutions. Thus Lugar and Cornyn's refusal to support the DREAM Act and Congress's refusal to pass it in spite of public (and personal) opinion and economic remuneration can be
perceived as an authorial act of keeping undocumented students as permanent members of the hidden underclass.

Defying Ideology: Undocumented Students and the Accessing of Postsecondary Education

The current impasse of the DREAM Act is indicative of the hyper-partisan atmosphere of the 112th Congress: the legislature is politically divided by a House of Representatives compelled by newly elected ultra conservatives and a marginally Democratic Senate. In addition, the economic turmoil beginning in December 2007 has heightened anti-immigration sentiment across the United States. As evident by state legislation enacted in 2011, underlying racial ideology continues to materialize legislation that is ethically and morally questionable (as Arizona’s SB 1070—the so called “Paper’s Please” law), and economically unviable (like Georgia’s HB 87, which has caused a shortage of farm workers in that state). The political partisanship and the on-going economic recession, in conjunction with the racial common-sense assumptions concerning illegal immigration will undoubtedly continue to push the DREAM Act off the legislative table. Consequently, many undocumented students will forgo
postsecondary education, mostly because they cannot afford it, but mainly because there are no prospects upon earning college diplomas.

As I have discussed previously, the economic limits on postsecondary education institutions by the Welfare Reform Act and the IIRIRA are coercive acts of maintaining undocumented students in a lower economic stratum, thus guaranteeing a cheap labor force for the capitalist class. But I argue that such limitations on education are limitations on "access to discourse types," restricting what Fairclough would term "discoursal positions of power" (52). In other words, without postsecondary education, undocumented students may be less likely to understand the political discourses that construct them and, consequently, are less likely to question and change the inequitable power structures that oppress them. Thus, the DREAM Act impasse cannot simply be seen as an act of disenfranchising undocumented students, but an act of silencing them. Conversely the application, attendance, and graduation by tens of thousands undocumented students to and from postsecondary institutions can be seen as subversive acts of defiance. Fairclough writes, "Access to prestigious discourse types and their powerful subject positions is
another arena of social struggle" (Language and Power 60); hence elitist members of a capitalist society struggle to maintain power by limiting access to postsecondary institutions, while undocumented students strive to gain power by applying, attending, and graduating from postsecondary institutions in spite of these limitations.

Let us look at a specific example of how access of "prestigious discourse types" has defied hegemonic ideology. On June 22, 2011, Pulitzer prized journalist Jose Antonio Vargas published an autobiographical article in which he exposed his illegal status. Vargas' story embodies the experience of many undocumented students: Vargas unknowingly unintentionally entered the United States illegally; he was socialized and educated as an American; and Vargas contributed to the cultural, social, and economic growth of this country. Essentially, Vargas personalizes and humanizes the undocumented student. With his narrative of how he won a spelling bee in elementary school, or how he rode his bicycle to the DMV to get his license at age 16, Vargas reconstructs the undocumented student as an ordinary kid with ordinary life experiences. Thus his story offers an opposing view of the undocumented student. Contrary to the pathologized identity of the
undocumented student that has been constructed by legislative and legal documents, Vargas reconstructs the undocumented student as fundamentally American, calling into question our common-sense assumptions about undocumented students and illegal immigrants.

But more importantly, Vargas’s decision to articulate his experiences as an undocumented student subverts the code of silence espoused by current immigration policy, giving voice to those who those dare not speak in fear of retribution. “I’m done running,” Vargas writes,

I’m exhausted. I don’t want that life anymore.

So I’ve decided to come forward, own up to what I’ve done, and tell my story to the best of my recollection. I’ve reached out to former bosses- and employers and apologized for misleading them — a mix of humiliation and liberation coming with each disclosure. [...] I don’t know what the consequences will be of telling my story. (“My Life as an Undocumented Immigrant”).

Besides conveying his life experiences, Vargas’s story also expresses regret and remorse for the wrong he has done in order to survive in this country. In addition, his
expression guilt conveys a sense of hope and urgency that
the situation for undocumented students will soon change.
Without advocating for the DREAM Act directly, the reader
is forced to imagine how Jose Antonio Vargas’s life would
be different if he were allowed legal residence and
ultimate citizenship: He would be able to travel around the
world as a journalist; he would be able visit his mother
who he hasn’t seen in over 18 years; and he would be able
leave a life of fear of being arrested and deported.
Moreover, Vargas’s story allows us to question what
potential we are denying by limiting undocumented students
access to postsecondary education and a pathway to
citizenship. What other potential Pulitzer Prize winners,
innovative scientists, or groundbreaking political leaders
are being kept out of our universities? And is it
socially, ethically, and economically viable to sacrifice
such potential in the name of ideology?

Vargas’s story is also a clear example of how “having
access to prestigious sorts of discourse and powerful
subject positions enhances acknowledged status and
authority” (Fairclough, Language and Power 53). It is
through this “enhanced acknowledge status and authority”
that Vargas is able to defy underlying racial assumptions.
Because Vargas was able to acquire “prestigious sorts of discourse” through his postsecondary education, and because he was able use this “prestigious” discourse to articulate the quagmire of the undocumented student via a “prestigious” platform (that of the New York Times Magazine), Vargas was able to address a wider audience, including members of the public who would have otherwise dismissed him as merely another illegal alien. So should we advocate more undocumented graduates and professionals to defy common-sense ideology and come forward to voice their experiences? Unfortunately, to ask undocumented immigrants to expose themselves is not only unethical, but unwise.

What can be done is to continue to examine closely discourse that unfairly constructs undocumented students (and illegal immigrants for that matter) in the attempts to better understand how racial ideology, imbued in public rhetoric, continues to maintain undocumented students at the margins of the United States society. As I have shown through my rhetorical analysis, critical discourse analysis offers a way to identify latent ideologies that sustain inequitable power relations within any given society. Yet the power of CDA lies not only in the ability to merely
identify hegemonic ideologies, but in the ability to question, challenge, and change these ideologies. As Fairclough writes, "A critically oriented analysis can systematize awareness and critique of ideology. From awareness and critique arise possibilities of empowerment and change" (Critical Discourse Analysis 83). Hence CDA functions not only as a theoretical and methodological framework from which to study discourse and its social context, but it acts as a transformative catalyst, with the potential to revolutionize social structures and institutions.
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