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Recommended Citation

Kenzo K. Sung, & Ayana Allen-Handy, *Contradictory Origins and Racializing Legacy of the 1968 Bilingual Education Act: Urban Schooling, Anti-Blackness, and Oakland's 1996 Black English Language Education Policy*, 19 U. Md. L.J. Race Relig. Gender & Class 44 (). Available at: <https://digitalcommons.law.umaryland.edu/rrgc/vol19/iss1/4>

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**CONTRADICTORY ORIGINS AND
RACIALIZING LEGACY OF THE 1968 BILINGUAL
EDUCATION ACT: URBAN SCHOOLING, ANTI-
BLACKNESS,
AND OAKLAND'S 1996 BLACK ENGLISH LANGUAGE
EDUCATION RESOLUTION**

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INTRODUCTION

On December 18, 1996, Oakland, California's school board unanimously passed a resolution recognizing "Ebonics" as an official language and resolving that the federal Bilingual Education Act's mandates thus applied to "imparting instruction to African American students in their primary language."² While rightly referencing decades of linguistic research supporting the resolution's central claims as to the legitimacy of Ebonics or Black/African American English, in the following weeks the coverage and backlash went viral.³ Within days it seemed nearly everyone from U.S. Secretary of Education Richard

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¹ Some of the content for this article is adopted from an earlier article on bilingual education. See Kenzo K. Sung, "Accentuate the Positive; Eliminate the Negative": *Hegemonic Interest Convergence, Racialization of Latino Poverty, and the 1968 Bilingual Education Act*, 92 PEABODY J. EDUC. 320 (2017)

² Res. No. \$597-0063, Oakland Sch. Bd. (Cal. 1996) [hereinafter Oakland School Board Resolution].

³ See Elaine Woo & Mary Curtius, *Oakland School District Recognizes Black English*, L.A. TIMES (Dec. 20, 1996), <https://www.latimes.com/archives/la-xpm-1996-12-20-mn-11042-story.html>; Don Knapp, *Oakland Schools Adopt 'Black English' Policy*, CNN (Dec. 19, 1996, 11:15 PM), <http://www.cnn.com/US/9612/19/black.english/index.html>; Amy Pyle, *Educators Defend Use of Ebonics*, L.A. TIMES (Jan. 3, 1997), <https://www.latimes.com/archives/la-xpm-1997-01-03-me-15061-story.html>.

Riley to activist Reverend Jesse Jackson were voicing concern.⁴ In January 1997, Oakland's embattled school board substantively revised the resolution, but by then a U.S. Senate Hearing on Ebonics had already been convened and five states had created anti-Ebonics legislation: Florida, California, Georgia, South Carolina, and Oklahoma.⁵ Following the backlash, Oakland's school board dropped the word "Ebonics" from its implementation proposals, thereby ending the controversy as "the media mistakenly assumed it had reversed its plans."⁶

Yet the seemingly short-lived controversy did not begin or end with the decisions of Oakland's school board, but instead is best contextualized within a broader historical trajectory of bilingual education policy in the United States.⁷ Our purpose for this article is to demonstrate how the 1968 Bilingual Education Act ("BEA")⁸ marked a particular raciolinguistic formation of anti-Blackness, embedded in culture of poverty deficit assumptions, within which the Ebonics resolution controversy was ultimately debated.⁹ In writing toward this objective, we illuminate how white America's continued angst over the legitimacy of Black language, and Black culture more generally, hold in U.S. society is symbolized in the contradictory origins of the BEA. Furthermore, we assert how Black English was evoked in the original Oakland resolution connects to the BEA's legacy at a moment of rising backlash against bilingual education more generally.¹⁰

We begin our article with a review of existing literature on the BEA and its trajectory before outlining how utilizing theories of interest convergence, anti-Blackness, and raciolinguistic ideologies can offer a novel analysis of the legislation.¹¹ The third section utilizes this critical

⁴ Cheryl D. Fields, *Ebonics IQI. What Have We Learned? – Use of Ebonics Language to Teach African American Children*, DIVERSE ISSUES IN HIGHER EDUC. (July 5, 2007), <https://diverseeducation.com/article/8054/>.

⁵ Elaine Richardson, *The Anti-Ebonics Movement: "Standard" English Only*, 26 J. ENG. LINGUISTICS 156, 159 (1998); Tim Golden, *Oakland Scratches Plan to Teach Black English*, N.Y. TIMES (Jan. 14, 1997), <https://www.nytimes.com/1997/01/14/us/oakland-scratches-plan-to-teach-black-english.html>.

⁶ John R. Rickford, *The Ebonics Controversy in my Backyard: A Sociolinguist's Experiences and Reflections*, 3 J. SOCIOLINGUISTICS 267, 268 (2002).

⁷ See John U. Ogbu, *Beyond Language: Ebonics, Proper English, and Identity in a Black-American Speech Community*, 36 AM. EDUC. RES. J. 147 (1999) (noting how Oakland "increased national awareness of the language problems faced by African-American children in the public school").

⁸ Bilingual Education Act of 1968, Pub. L. No. 90-247, 81 Stat. 816.

⁹ See *infra* Part III.

¹⁰ See *infra* Part V.

¹¹ See *infra* Part II.

race analysis to illuminate how the BEA's contradictory origins ultimately reinscribed a particular raciolinguistic ideology of anti-Blackness.¹² The fourth section outlines how this history formatively shaped the 1996-97 Ebonics resolution and ensuing controversy.¹³ The article illuminates how socioeconomic concerns produced a contradictory convergence that ultimately limited the ability of Black communities to make future demands upon struggling urban schools.¹⁴ We conclude our article by explaining the findings' significance and suggesting strategies to reimagine bilingual education.¹⁵

II. THEORETICAL FRAMEWORK

A. *Review of Literature*

Research on the BEA's origins is generally framed through two narratives. The first celebratory "bottom up" narrative offers bilingual education as a victory by Latinx organizers inspired by the Black-led Civil Rights and Black Power movements, rightfully highlighting the organizing of minoritized grassroots actors who are too often marginalized from history.¹⁶ However, these accounts do not answer how and why Latinx activists were so successful at this historic moment when they were just coming into their own and other civil rights struggles over education reform were encountering serious resistance.¹⁷

¹² See *infra* Part III.

¹³ See *infra* Part IV.

¹⁴ See *infra* Part V.

¹⁵ See *infra* Conclusion.

¹⁶ See RUBÉN DONATO, THE OTHER STRUGGLE FOR EQUAL SCHOOLS: MEXICAN AMERICANS DURING THE CIVIL RIGHTS ERA 1–2, 57–85 (1997) (discussing the Mexican American population's "struggle for equal education during the civil rights era of the 1960s and 1970s" and the emergence of grassroots activism); ARMANDO NAVARRO, MEXICAN AMERICAN YOUTH ORGANIZATION: AVANT-GARDE OF THE CHICANO MOVEMENT IN TEXAS 1–8 (1995) (introducing Chicano social movements which all "variously influenced or complemented on another in their attempts to change American society"); GUADALUPE SAN MIGUEL, JR., CONTESTED POLICY: THE RISE AND FALL OF FEDERAL BILINGUAL EDUCATION IN THE UNITED STATES 1960-2001 1–4 (2004) (noting the "two major contending groups: the opponents and the proponents of bilingual education," the latter of which included Mexican-American activists who were "ideologically opposed to the assimilationist philosophy that underlay the subtractive and conformist policies and practices in the schools").

¹⁷ CARLOS MUÑOZ, JR., YOUTH, IDENTITY, POWER: THE CHICANO MOVEMENT 1–2 (rev. ed. 2007) (highlighting how the 1967 push for the BEA predated the 1968 East Los Angeles "blow-outs" as the first major education-focused action of the still-nascent Chicano Power movement).

The second “top down” narrative emphasizes how electoral politics shaped policymakers support of bilingual education.¹⁸ Research focused on how President Nixon’s support for bilingual education primarily grew from his hope of cementing Latinxs within his Republican “New Majority” to counter Democrats’ increasing sway among Black voters.¹⁹ Other scholars chart a wedge strategy among Southwestern politicians at the state level, including in Nixon’s home state of California.²⁰ Combining the respective explanatory power of both narratives offers a more nuanced historiography. Yet both accounts focus on the agency of activists and policymakers, minimizing how larger social forces also shaped the racialized terrain upon which both groups promoted bilingual education.²¹

“Some recent studies illuminate the relation between domestic policy and global politics and economies.”²² For example, some scholars illuminate how U.S. Civil Rights struggles were also influenced by the Cold War, a claim that is couched in a longer history intersecting U.S. militarism and language education policies.²³ Yet relatively little analysis has been done on the 1968 BEA in relation to broader social discourses of the time, and in particular, how its passage was understood within the War on Poverty’s cultural deficit framing that drew from racialized assumptions of an exceptionalized Black culture of poverty.²⁴ The goal of this article is to offer additional context for understanding the contradictions inherent in the original BEA and its inability to

¹⁸ See GARETH DAVIES, *SEE GOVERNMENT GROW: EDUCATION POLITICS FROM JOHNSON TO REAGAN 3–4* (2007) (“The main focus in this book is not the power of ideas *per se*, however, but rather on the institutional changes in American government that accompanied the civil rights revolution.”).

¹⁹ *Id.* at 141–165 (exploring the case of bilingual education during the Nixon era).

²⁰ MARK BRILLIANT, *THE COLOR OF AMERICA HAS CHANGED: HOW RACIAL DIVERSITY SHAPED CIVIL RIGHTS REFORM IN CALIFORNIA, 1941–1978* 4–15 (2010); Natalia Mehlman Petrzela, *Before the Federal Bilingual Education Act: Legislation and Lived Experience in California*, 85 *PEABODY J. EDUC.* 406, 416–17 (2010).

²¹ See generally BRILLIANT, *supra* note 20; DAVIES, *supra* note 18; Petrzela, *supra* note 20.

²² Kenzo K. Sung, “Accentuate the Positive; Eliminate the Negative”: *Hegemonic Interest Convergence, Racialization of Latino Poverty, and the 1968 Bilingual Education Act*, 92 *PEABODY J. EDUC.* 320, 321 (2017) (demonstrating how the shifting world economic system shaped the 1960s demands for bilingual education).

²³ MARY L. DUDZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY* 9–14 (2000); see Jeff Bale, *Tongue-Tied: Imperialism and Second Language Education in the United States*, 2 *CRITICAL EDUC.* 1, 3–4, 10–14 (2011) (discussing one theory which advocates “language education primarily to fulfill U.S. military . . . needs” and exploring the relationship between imperialism and language education).

²⁴ See Bale, *supra* note 23, at 14–19 (discussing the Chicano civil rights movement, while noting the “persistent . . . poverty,” arguing the “struggles over schooling were central to the movement”).

reconcile the Oakland School Board's 1996 resolution to recognize Black English through a theoretical framework that intersects raciolinguistic ideologies,²⁵ anti-Blackness,²⁶ and hegemonic interest convergence.²⁷

B. *Raciolinguistic Ideologies*

Raciolinguistic ideologies can be defined as the conflation of “certain racialized bodies with linguistic deficiency unrelated to any objective linguistic practice.”²⁸ This racializing of subjects as linguistically deficient highlights the understanding of race as a formative, contested process in which racial markers are contingent and constantly being (re)formed through both material and discursive racial projects including bilingual education policy.²⁹ Thus, even labels such as language versus dialect, or “Standard English” versus “Ebonics,” must be “conceptualized as racialized ideological perceptions rather than objective linguistic categories.”³⁰

In particular, Nelson Flores and Jonathan Rosa state how idealization of monoglossic linguistic appropriateness and purity embedded in traditional bilingual education programs are racialized such that they not only marginalize “the linguistic practices of language-minoritized communities but is also premised on the false assumption that modifying the linguistic practices of racialized speaking subjects is key to eliminating racial hierarchies.”³¹ Linguistically-minoritized students thus seem to share a common positioning in this institutionalized racial hierarchy according to raciolinguistic scholars.³² For example, Flores and Rosa suggest that students labeled as “long-term English learners, heritage language learners, and Standard English learners can be

²⁵ Nelson Flores & Jonathan Rosa, *Undoing Appropriateness: Raciolinguistic Ideologies and Language Diversity in Education*, 85 HARV. EDUC. REV. 149, 151–55, 165–66 (2015) (exploring the ways raciolinguistic ideologies “affect the education of students”).

²⁶ See Michael J. Dumas, *Against the Dark: Antiblackness in Education Policy and Discourse*, 55 THEORY INTO PRAC. 11 (2016) (demonstrating how policy discourse is “informed by antiblackness”).

²⁷ See Sung, *supra* note 22, at 305–07.

²⁸ Flores & Rosa, *supra* note 25, at 150.

²⁹ See MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1990S 77–91 (2d. ed. 1994) (noting how “social movements and the state are interrelated in a complex way” and discussing the “model of the racial state” where every “state institution is a racial institution”).

³⁰ Flores & Rosa, *supra* note 25, at 152.

³¹ *Id.* at 155.

³² *Id.* at 161.

understood to inhabit a shared racial positioning that frames their linguistic practices as deficient” through classifications including “remedial” or “struggling” readers.³³

This structural framing of raciolinguistic ideologies reimagines race as fundamentally anchored in institutional structures such as language education policy that go beyond the individual negotiations of local actors.³⁴ For example, simply studying home linguistic and cultural practices cannot explain how minoritized youth are categorized in relation to ideological state apparatus such as schools and government social service agencies.³⁵ Instead, focus needs to be placed on how state institutions create structures, such as bilingual education based on perceived linguistic needs, from which language-minoritized students and communities interpellate.³⁶

C. *Anti-Blackness*

From a raciolinguistic perspective, the BEA should be understood as a formative racial project that intersected raciolinguistic ideologies with language education policy. However, this framing does not explicate the relational racialization in the BEA’s origins from which Black racializations are used as a foil from which Latinx demands for bilingual education are made comprehensible to 1960s policymakers. Anti-Blackness provides a framework that illuminates the distinct racial positioning of blackness, as opposed to the commonalities among those who are more generally defined as nonwhite or linguistically-minoritized.³⁷ Anti-Blackness theorizes a more complex racial hierarchy in which those racialized as Black are not just removed from whiteness, but from anyone who is racialized as non-Black.³⁸

³³ *Id.* at 149.

³⁴ *Id.* at 160; see also Jonathan Rosa & Nelson Flores, *Unsettling Race and Language: Toward a raciolinguistic perspective*, 46 LANG. SOC’Y 621-647 (2017).

³⁵ See ANGELA VALENZUELA, SUBTRACTIVE SCHOOLING: U.S.-MEXICAN YOUTH AND THE POLITICS OF CARING 20 (1999) (“School subtracts resources from youth in two major ways. First, it dismisses their definition of education which is . . . thoroughly grounded in Mexican culture . . . [and] subtractive schooling encompasses subtractively assimilationist policies and practices that are designed to divest Mexican students of their culture and language.”).

³⁶ Dafney Blanca Dabach, *Teacher Placement into Immigrant English Learner Classrooms: Limiting Access in Comprehensive High Schools*, 52 AM. EDUC. RES. J. 243, 243–45 (2015).

³⁷ Dumas, *supra* note 26, at 13.

³⁸ *Id.*

Rather than understanding anti-Blackness as racial conflict resolvable by way of political struggle or appeals to the state or its polity, Frank Wilderson explains that to be Black is to be “the very antithesis of a Human subject” and precludes the realization of Black humanity.³⁹ This irreconcilability stems from the exceptional U.S. history of Black enslavement and the “afterlife of slavery” in which the ontological position of modern Black existence is ultimately marked by the history of slavery.⁴⁰ As such, anti-Blackness’ theorization constrains the supposed mutability in the racial formation of Blackness within the continued institutionalization of slavery and its afterlife.⁴¹ Afropessimists thus critique the focus on commonality in racializations among those labeled people of color and the current mainstream discourses of multiculturalism more broadly as encouraging anti-Blackness.⁴²

Aspirational multiculturalism, or multiracialism, is so often supported in mainstream discourse as a more progressive ideology to racial colorblindness because it moves beyond a “melting pot” ideal.⁴³ Yet this liberal multiculturalism espoused by many bilingual education advocates of supporting minoritized students, languages, and cultures also promotes a particular raciolinguistic ideology of anti-Blackness.⁴⁴ Since the mid-twentieth century, official antiracist ideologies of liberal (and now neoliberal) multiculturalism have differentially included Black and

³⁹ FRANK B. WILDERSON III, *RED, WHITE & BLACK: CINEMA AND THE STRUCTURE OF U.S. ANTAGONISMS* 9 (2010).

⁴⁰ See generally SAIDIYA HARTMAN, *LOSE YOUR MOTHER: A JOURNEY ALONG THE ATLANTIC SLAVE ROUTE* (2007) (“The most universal definition of the slave is a stranger. Torn from kin and community, exiled from one’s country, dishonored and violated, the slave defines the position of the outsider.”); ORLANDO PATTERSON, *SLAVERY AND SOCIAL DEATH: A COMPARATIVE STUDY* (1982) (arguing that “slavery and freedom are intimately connected”); ELIZABETH BROWN & GEORGE BARGANIER, *RACE AND CRIME: GEOGRAPHIES OF INJUSTICE* (2018) (Relationship between the U.S. history of Black enslavement and its afterlife within a global project of coloniality).

⁴¹ Dumas, *supra* note 26, at 13–15; see also Laura C. Chávez-Moreno, *On a Definitive History of Anti-Black Racism* 25 *EDUC. R.* 1 (2018) (reviewing IBRAM X. KENDI, *STAMPED FROM THE BEGINNING: THE DEFINITIVE HISTORY OF RACIST IDEAS IN AMERICA* (2016)).

⁴² *Id.* at 14–15.

⁴³ See Victoria C. Plaut et al., *Do Color Blindness and Multiculturalism Remedy or Foster Discrimination and Racism?*, 27 *CURRENT DIRECTIONS IN PSYCHOL. SCI.* 200, 202–04 (2018) (examining how color blindness “can foster negative outcomes for people of color . . . [and] serves to reify the social order” while multicultural practices “can positively affect outcomes and participation of people of color in different institutional areas”).

⁴⁴ Kenzo K. Sung, *Raciolinguistic Ideology of Antiblackness: Bilingual Education, Tracking, and the Multiracial Imaginary in Urban Schools*, 31 *INT’L J. QUALITATIVE STUD. EDUC.* 8, 667–83 (2018).

non-Black people of color.⁴⁵ As Michael Dumas thus states, multiculturalism's supposed embrace of "non-Black bodies of color thus facilitates, and is facilitated by, anti-Blackness," and "can be justified as antiracist precisely because it is inclusive and more than white."⁴⁶ However, this understanding alone does not explain how liberal multiculturalism's raciolinguistic ideology of anti-Blackness formatively shaped both the BEA's origins and the Ebonics resolution controversy.

D. Hegemonic Interest Convergence

The theorization of anti-Blackness as shifting the fundamental racial binary from white/non-white to Black/non-Black opens new interpretations as to how differing group interests were supposedly imagined and arose. Of particular pertinence for this article is how Black culture and language were understood in the BEA Congressional Hearings and passage, as well as how these understandings limited the ability to demand recognition of Black English as a language later in time. The theory of hegemonic interest convergence allows an analysis of the politics of anti-Blackness as a raciolinguistic ideology present in both the BEA's origins and controversy surrounding the 1996 Oakland Ebonics resolution.⁴⁷ Interest convergence is a central tenet for critical race theorist Derrick A. Bell, Jr., who explains that "the interests of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites" as a way to understand the wax and wane of the Civil Rights Movement.⁴⁸

By revisiting Bell's formative influences in Critical Legal Studies, Sung reimagines a more robust theory of hegemonic interest convergence that challenges the typical liberal political science assumptions of politics which are waged based on rational "group interests."⁴⁹ The concept of hegemony is significant as it refers to the idea that elites maintain a non-totalizing power largely through getting non-elites to consent to rules based on the belief that it is in their best interests.⁵⁰

⁴⁵ See generally JODI MELAMED, REPRESENT AND DESTROY: RATIONALIZING VIOLENCE IN THE NEW RACIAL CAPITALISM (2011).

⁴⁶ Dumas, *supra* note 26, at 15.

⁴⁷ See Sung, *supra* note 22, at 305–07.

⁴⁸ Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980).

⁴⁹ Sung, *supra* note 22, at 314.

⁵⁰ See MICHAEL W. APPLE, IDEOLOGY AND CURRICULUM 71 (3d ed. 2004); SELECTIONS FROM THE PRISON NOTEBOOKS OF ANTONIO GRAMSCI 145–47, 542 (Quentin Hoare & Geoffrey Nowell Smith eds., trans., 1999).

Hegemonic interest convergence thus posits that political struggles occur within broader social structures that “shape both social consciousness and social formations within which interests are imagined, rather than simply a contestation among different fully rational groups whose interests may or may not converge.”⁵¹

Based on this reframing, this article examines how 1960s policymakers and activists framed support for the BEA within broader shifting social forces and movements. In particular, rising concerns over urban poverty that War on Poverty and Black Power discourses often centered on moved policymakers and Latinx activists alike to focus on how to address poverty in urbanizing Latinx communities.⁵² Bilingual education gained widespread support because it allowed policymakers to address poverty through an education-based reform without calling into question fundamental shifts in the global economy resulting in the rising automation and outsourcing of jobs.⁵³ Latinx activists also advocated for bilingual education, but as a minor part of a broader struggle for economic uplift and social change.⁵⁴ In the course of politicking and hegemonic interest convergence, policymakers reshaped Latinx demands by accentuating cultural explanations for poverty and unemployment.⁵⁵

The BEA thus served to trump other Latinx concerns as policymakers deflected attention from potential structural economic reforms.⁵⁶ But this was not the only deflection that policymakers successfully made. Despite the push amongst Latinx activists to connect bilingual education to broader struggles for legitimating all minoritized cultures and languages, the BEA’s Senate Hearings overwhelmingly promoted a raciolinguistic ideology among policymakers, social scientists, and educators that racially imagined linguistic deficit among Latinx communities regardless of actual language needs.⁵⁷ Furthermore, these essentializing cultural deficits built upon an explicitly 1960s anti-Black culture of poverty discourse, within which the War on Poverty was waged, ensured that any future claims to supporting Black students’ language needs as part of the BEA’s charge would fall on deaf ears.⁵⁸

⁵¹ Sung, *supra* note 22, at 314–15.

⁵² *Id.* at 308–09.

⁵³ *Id.* at 309, 311.

⁵⁴ *Id.* at 312.

⁵⁵ *Id.* at 311, 314–15.

⁵⁶ *Id.* at 310–11.

⁵⁷ See *infra* Section III.

⁵⁸ See *infra* Section IV.

III. 1968 BILINGUAL EDUCATION ACT

Bilingual education gained widespread bipartisan support in the late 1960s, despite contentious debates over other public school and civil rights proposals.⁵⁹ In addition to Southwestern politicians including California Governor Ronald Reagan and freshman Texas Senator Republican George H. W. Bush, national leaders in both parties embraced the reform.⁶⁰ In Congress, legislators sponsored thirty-seven bilingual education bills that eventually merged into the 1968 Bilingual Education Act.⁶¹ The bill has some individuals “who are known as some of the leading liberals of the Senate and some of the staunchest conservatives,” Senate sponsor Democrat Ralph Yarborough from Texas explained, “[i]t cuts across party lines; it cuts across ideological lines.”⁶² Other supporters included 1968 presidential hopefuls Robert Kennedy, George Romney, and eventual victor Richard Nixon – who became instrumental to bilingual education’s early growth after winning the presidency.⁶³

Many Mexican American activists and community leaders also voiced economic concerns when discussing bilingual education during the 1967 Senate hearings.⁶⁴ League of United Latin American Citizens president Alfred Hernandez saw bilingual education as a path out of unemployment and poverty, stating that “the high illiteracy rate and the high rate of unemployment and underemployment of the Mexican-American” went hand in hand.⁶⁵ Corpus Christi labor leader Oscar Reyna reiterated Hernandez’s argument: “the problem of school dropouts is critical” because “our welfare rolls are swelled by the names of persons so deprived [by schools] of the right to use the capabilities with which they have been naturally endowed.”⁶⁶ Aptly summing up much of the support for bilingual education, Democratic Congressman Eligio

⁵⁹ Sung, *supra* note 22, at 303.

⁶⁰ ROSEMARY C. SALOMONE, *TRUE AMERICAN: LANGUAGE, IDENTITY, AND THE EDUCATION OF IMMIGRANT CHILDREN* 111 (2010); JULIE LEININGER PYCIOR, *LBJ & MEXICAN AMERICANS: THE PARADOX OF POWER* 184–86 (1997); Sung, *supra* note 22, at 303.

⁶¹ Gloria Stewner-Manzanares, *The Bilingual Education Act: Twenty Years Later* 6 *NEW FOCUS: NAT’L CLEARINGHOUSE BILINGUAL EDUC.* 1, 1 (1988).

⁶² *Bilingual Education: Hearings on S. 428 Before the Special Subcomm. on Bilingual Educ. of the Comm. On Lab. & Pub. Welfare*, 90th Cong., 1st Sess. 325 (1967) [hereinafter *1967 Senate Hearings*].

⁶³ See BRILLIANT, *supra* note 20, at 233; SALOMONE, *supra* note 60, at 136.

⁶⁴ Sung, *supra* note 22, at 308; *1967 Senate Hearings*, *supra* note 62. Representative Edward Roybal deemed bilingual education a “new field of economic endeavor.” *Id.* at 412.

⁶⁵ *1967 Senate Hearings*, *supra* note 62, at 400.

⁶⁶ *Id.* at 256.

de la Garza from Texas posited that bilingual education would invariably “be an economic enhancement for [children] in the future.”⁶⁷

Congressional debate over bilingual education in the 1960s epitomized the concerns that propelled the emergence of the Bilingual Education Act, and the 1967 Congressional hearings offered a key stage for policymakers and activists to express their broader positions with particular clarity.⁶⁸ Although concerns about race and culture were present, policymakers stressed bilingual education as a pedagogical tool to produce an economic end: Latinxs graduating from school, securing employment, and getting out of poverty.⁶⁹ California Democratic Congressman Edward Roybal, co-creator of the merged 1967 House bill, commented during the Senate hearings of the Special Subcommittee on Bilingual Education that bilingual education would offer a “new field of economic” opportunity for poor Latinxs.⁷⁰

The idea that improved educational attainment would constitute a path out of poverty drew on broader 1960s discourse focusing on the primary role of education in “War on Poverty” policy.⁷¹ Unlike the 1930s New Deal job creation and industrial policy programs, as historians Harvey Kantor and Robert Lowe explain, Great Society reformers “focused on education and training programs instead of intervening in the workings of the marketplace or expanding the welfare state.”⁷² “Education pays; stay in school” was the mantra repeated in promotional speeches by liberal poverty warriors throughout the 1960s, emphasizing the acquisition of employable skills and values as the “pay-off” for schooling.⁷³ President Lyndon B. Johnson is said to have orated that his

⁶⁷ *Id.* at 270.

⁶⁸ Sung, *supra* note 22, at 308.

⁶⁹ Vice President Hubert H. Humphrey, Remarks at the Hearing on Mexican-American Affairs 14–15 (Oct. 27, 1967) (published by the Minnesota Historical Society).

⁷⁰ 1967 Senate Hearings, *supra* note 62, at 412.

⁷¹ MICHAEL B. KATZ, THE UNDESERVING POOR: FROM THE WAR ON POVERTY TO THE WAR ON WELFARE 83 (1989) (“In the tradition of American liberalism, early poverty warriors defined reform as education, not redistribution . . .”); Wayne J. Urban, *What’s in a Name: Education and the Disadvantaged American*, 45 PAEDAGOGICA HISTORICA 251, 253 (2009); see Sung, *supra* note 22, at 309.

⁷² Harvey Kantor & Robert Lowe, *From New Deal to No Deal: No Child Left Behind and the Devolution of Responsibility for Equal Opportunity*, 76 HARV. EDUC. REV. 474, 477 (2006); see also Harvey Kantor & Robert Lowe, *Class, Race, and the Emergence of Federal Education Policy: From the New Deal to the Great Society*, 24 EDUC. RESEARCHER 4, 7 (1995); JEAN ANYON, RADICAL POSSIBILITIES: PUBLIC POLICY, URBAN EDUCATION, AND A NEW SOCIAL MOVEMENT 34 (2012).

⁷³ Sung, *supra* note 22, at 309 (quoting IVAR BERG, EDUCATION AND JOBS: THE GREAT TRAINING ROBBERY xi (1971)).

central goal in launching the War on Poverty was to eliminate poverty with education, explaining that through his programs people would “learn their way out of poverty.”⁷⁴

A. *Latinx Poverty and Education*

While the New Deal primarily focused on addressing poverty directly through industrial policy and job creation, amid concerns of contracting job markets the 1960s antipoverty warriors turned to promoting social policies instead of economic ones – making educational reform the new cornerstone of the modern welfare state.⁷⁵ Empirically, the idea of using schools to address poverty seemed particularly relevant since the median Latinx age was under twenty and a majority of Latinx youth dropped out of school by the ninth grade.⁷⁶ Additionally, a focus on education allowed policymakers to promote an ideology of “human capital,” which posited that the primary reason people were jobless was a lack of employable skills, including communication in English.⁷⁷

The language during the hearings in support of the bill represented policymakers’ faith in the development of human capital through a “gospel of education” to address Latinx poverty and unemployment.⁷⁸ “As our industrial society has become less flexible in its assimilation” of Mexican American communities, New York Democratic Congressman William Ryan testified, “the Bilingual Education Act will do much to equalize the opportunity for achievement in the classroom and the employment market.”⁷⁹

Yet the 1960s combination of rising automation and outsourcing meant that many of the jobs Latinxs had traditionally held were

⁷⁴ *Id.*; see HAROLD SILVER & PAMELA SILVER, AN EDUCATIONAL WAR ON POVERTY: AMERICAN AND BRITISH POLICYMAKING 1960–1980 4, 70 (1991).

⁷⁵ Sung, *supra* note 22, at 309.

⁷⁶ See 1967 *Senate Hearings*, *supra* note 62, at 67 (discussing the percentages of “educational disparity between Mexican-Americans and [] fellow citizens” and low enrollment rates among Mexican-American students).

⁷⁷ *Id.* at 449 (“The worker that could work was good enough 40 years ago . . . now he must be able to understand complicated manuals . . . without educating these children, without this bilingual education, this bilingualism, these jobs would go on begging . . .”).

⁷⁸ W. NORTON GRUBB & MARVIN LAZERSON, THE EDUCATION GOSPEL: THE ECONOMIC POWER OF SCHOOLING 118 (2004); 1967 *Senate Hearings*, *supra* note 62, at 507 (discussing how important bilingual education was for Latinx “citizens who do have this language handicap,” as compared to “the days when the formal educational levels was lower, and there was plenty of jobs”).

⁷⁹ 1967 *Senate Hearings*, *supra* note 62, at 512.

disappearing regardless of applicant skills.⁸⁰ However, according to policymakers, bilingual education was not simply about the development of employable skills like speaking English.⁸¹ Instead, policymakers promoted bilingual education as a plausible solution to Latinx poverty and unemployment based on assumptions of “handicaps” in urban Latinxs’ cultural disposition.⁸² Policymakers articulated a human capital ideology that redirected concern from structural weaknesses in the labor market to a subtractive framework emphasizing the perceived linguistic “handicaps” and other supposed shortcomings of poor Latinxs.⁸³ Whereas the turn to education could be understood in terms of skills and human capital, policymakers’ support for bilingual education specifically built on the racialized concept of a “culture of poverty.”⁸⁴

B. *Culture of Poverty*

The fundamental assumption undergirding the “culture of poverty” was that difficulties of the urban poor stemmed from lack of proper cultural values, like discipline or motivation, necessary for employment regardless of specific skills.⁸⁵ This racialized antipoverty framework was built on social science research of urban Black communities and epitomized in Daniel Patrick Moynihan’s infamous U.S. Department of Labor report *The Negro Family: The Case for National Action*.⁸⁶ The Moynihan report emphasized how the disintegration of traditional Southern Black values and civic institutions supposedly resulted in inner-city ghetto entrenchment, an argument policymakers used to cast urban Latinx families as similarly unmoored and struggling in neighborhoods increasingly defined by disorganization and vice.⁸⁷ As Congressman Brown explained during the 1967 Senate hearings, one goal of bilingual education was applying “Spanish instruction as a means of improving English.”⁸⁸ However, Brown contended, “I do not . . . seek to affix the cause of this low

⁸⁰ See Douglas S. Massey & Robert J. Sampson, *Moynihan Redux: Legacies and Lessons*, 621 ANNALS OF AM. ACAD. POL. & SOC. SCI. 6, 8 (2009) (noting that the “public effort to generate jobs for low-income workers on the demand side was conspicuously absent”).

⁸¹ Sung, *supra* note 22, at 311.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 309.

⁸⁶ DANIEL PATRICK MOYNIHAN, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION*, U.S. DEP’T LABOR (1965).

⁸⁷ *Id.* at 21.

⁸⁸ *1967 Senate Hearings, supra* note 62, at 429.

educational attainment to the language problem alone.”⁸⁹ Rather, there were “many other[]” issues urban Latinxs faced including a “poor [home] environment which too often fosters a distorted sense or priority of values.”⁹⁰

Brown was not alone in his assessment that language skills were only a small part of a larger cultural nexus that helped produce Latinx poverty and unemployment.⁹¹ Rather, his raciolinguistic logic, by which language became an analogue for race, drew from what policymakers perceived as a near unquestioned hegemonic culture of poverty framing regarding the converging interests of struggling Latinxs and the Johnson administration’s “poverty warriors.”⁹² Indeed, the Los Angeles Mayor’s office similarly supported bilingual education based on the understanding that 80% of all Latinxs were U.S. born and “many second and third generation Americans of Spanish ancestry, although they speak English, have had difficulty in adapting to our fast-moving [urban] society.”⁹³ One U.S. Office of Education expert further clarified during the hearings that urban Latinx youth “have an additional cultural barrier” being in home environments that have “learned to accept failure” and “lack aspirations,” thereby making them “almost diametrically opposed to those [values] found in the dominant culture of the school world.”⁹⁴

While true that Latinxs in the Southwest moving to cities from seasonal work camps did not often have equivalently robust civic institutions like the Baptist churches that served African Americans in the rural South, policymakers clearly drew from this fundamentally anti-Black anxiety in describing their concerns of urban Latinx youth also becoming “culturally deprived, disadvantaged, disaffected, alienated, socially unready.”⁹⁵ Academic experts also echoed concerns regarding comparative “ghettoization” as steeped in anti-Blackness as the

⁸⁹ *Id.* at 427.

⁹⁰ *Id.*

⁹¹ Sung, *supra* note 22, at 310.

⁹² *Id.*

⁹³ 1967 Senate Hearings, *supra* note 62, at 439, 466. See also CALIFORNIANS OF SPANISH SURNAMED, CAL. ST. DEPT. INDUSTRIAL RELATIONS (1964) (containing more state statistics on Latinxs in 1960).

⁹⁴ 1967 Senate Hearings, *supra* note 62, at 61, 67.

⁹⁵ *Id.* at 546; Sung, *supra* note 22, at 310.

reference point by which other minoritized groups were measured.⁹⁶ As explained by sociologist Dr. Frank Cordasco, “the Mexican-American poor, largely an urban minority, are not newcomers to the American schools, nor do they present American educators with new problems” as there was already a “common denominator” of reference of “the Negro in-migrant rural poor huddled in the urban ghettos in the 1960s.”⁹⁷

Dr. Cordasco’s 1967 statements drew from contemporary urban social disorganization theories, which posited that urban delinquency and criminal behavior among Black communities migrating into cities was the result of the fragmentation of traditional civic institutions and normative “self-policing” structures.⁹⁸ Policymakers’ promotion of bilingual education also echoed prior progressive urban reformers like Jane Addams’ Hull House Association, which promoted ethnic renewal as a means to help renew civic institutions and cohesive ethnic structures with some sort of disciplinary power in America’s urban slums.⁹⁹ In this way, policymakers like Congressman William Ryan presented bilingual education to help create civic institutions through which the Latinx community could self-police its “pistol-packing” urban youth instead of alternatives such as hiring more truancy officers.¹⁰⁰

C. *Contingent Community Reserves*

Bilingual education programs, presumably staffed by local Latinx educators and teacher aides, would thus offer community leaders an institutionalized platform to share resources and assert authority among urban Latinx families within a hegemonic process imbued in elements of both coercion and consent.¹⁰¹ Beyond language education, “these programs are designed to impart to Spanish-speaking students a knowledge of and pride in their ancestral culture and language,” Senator Yarborough explained, alongside “efforts to establish closer cooperation between [adults in] the school and the home.”¹⁰² These

⁹⁶ 1967 *Senate Hearings*, *supra* note 62, at 546 (discussing the “ghettoization” resulting from “enforced acculturation” mixed with “bitterness and confusion” and the “rejection of the well-springs of identity, and more often than not, the failure of achievement”).

⁹⁷ *Id.*

⁹⁸ Sung, *supra* note 22, at 310 (citing ROLF LINDER, *THE REPORTAGE OF URBAN CULTURE: ROBERT PARK AND THE CHICAGO SCHOOL* (1996)).

⁹⁹ Sung, *supra* note 22, at 310 (citing MARY JO DEEGAN, *JANE ADDAMS AND THE MEN OF THE CHICAGO SCHOOL, 1892-1918* (2005)); *see generally* BARBARA GARLAND POLIKOFF, *WITH ONE BOLD ACT: THE STORY OF JANE ADDAMS* (1999).

¹⁰⁰ 1967 *Senate Hearings*, *supra* note 62, at 510.

¹⁰¹ Sung, *supra* note 22, at 311.

¹⁰² 1967 *Senate Hearings*, *supra* note 62, at 410.

assumptions of cultural deficits and social disorganization permeated the final version of the BEA.¹⁰³ The law offered no definition for “bilingual education” other than “new and imaginative... programs designed to meet special educational needs,” defined by a vague combination of federal poverty guidelines and “limited English-speaking ability.”¹⁰⁴

Gone from the final BEA was any explicit mention of actual language instruction, including the removal of “teaching Spanish as the native language” and “teaching of English as a second language” from the original bill.¹⁰⁵ Instead, potential program foci included imparting, “to students knowledge of the history and culture associated with their languages” as well as establishing “closer cooperation between the school and the home.”¹⁰⁶ In fact, the final BEA shifted even further from language concerns to a raciolinguistic culture of poverty. For example, the recommendation of “optimum use... of the cultural and educational resources of the area to be served” did not actually refer to the cultural resources of Latinx communities, but rather those of “State educational agencies, institutions of higher education” and other “public and non-profit private agencies such as libraries, museums.”¹⁰⁷ Furthermore, the final law linked eligibility with compensatory requirements based on federal poverty guidelines, thereby codifying English language deficit and poverty.¹⁰⁸

Latinx leaders clearly pushed back on the cultural deficit assumptions during the Senate hearings, as well as beyond the hearings through various political actions including the 1968 Los Angeles

¹⁰³ See James J. Lyons, *The Past and Future Directions of Federal Bilingual-Education Policy*, 508 ANNALS AM. ACAD. POL. & SOC. SCI. 66, 68–69 (1990) (discussing how the bill “differed” from the original draft by transforming the focus into a “remedial or compensatory program to serve children who were ‘deficient’ in English-language skills and changes which “dropped the notion that our schools could benefit from the linguistic skills and cultural experiences of ethnic language-minority Americans”).

¹⁰⁴ Bilingual Education Act of 1968, Pub. L. No. 90-247, § 702, 81 Stat. 816, 816 (1968).

¹⁰⁵ Lyons, *supra* note 103, at 68.

¹⁰⁶ Bilingual Education Act of 1968 § 704(c).

¹⁰⁷ Bilingual Education Act of 1968 § 705(a)(8); see also Erin Doran & Óscar Medina, *The Intentional and the Grassroots Hispanic-serving Institutions: A Critical History of Two Universities*. 11 ASSOC. MEXICAN AM. EDUC. J. 39 (2017) (example of how this policymaker goal did align with genuine Latinx activism to build closer connections between educational institutions and local Latinx communities, despite different base assumptions).

¹⁰⁸ See Lyons, *supra* note 103, at 68 (stating that “[t]he new perception of eligible children as deficient in English as opposed to proficient in another language was reinforced by another provision added to the law in conference committee, that grantee schools have a high concentration of children from low-income families”).

blowouts.¹⁰⁹ Yet in the course of politicking, policymakers were able to generate limited consent for bilingual education as a genuine compromise, and one that activists hoped would at least offer more resources and community control from which to build upon.¹¹⁰ However, in producing this hegemonic interest convergence, the assumptions inherent in the BEA's origins also created a contradictory reframing of the raciolinguistics of poverty. Urban Black communities became the normative referent by which Latinx cultural deficits were made comprehensible, while excluding Black language and culture from the concessionary resources that bilingual education offered despite agreement among policymakers and activists that the primary issue was not the actual speaking of another language instead of English per se.¹¹¹

IV. 1996 OAKLAND EBONICS RESOLUTION

Three decades after the Senate Hearings began for the original 1968 BEA, and at the cusp of the successful yearlong drive to pass California Proposition 227 that would dismantle bilingual education statewide, the continued plight among urban schools and the anti-Black culture of poverty explanations for said struggles seemed to echo the 1960s.¹¹² This broader context is key to understanding the national controversy that resulted in response to Oakland's 1996 "Ebonics" resolution. Oakland was the only California school district with a majority of Black students, placing it as one of the epicenters of both the 1980s crack epidemic and 1990s West Coast hip-hop cultural renaissance.¹¹³ While Black students comprised of 53% of district enrollment, they were 71% of the students classified as needing special education

¹⁰⁹ Louis Sahagun, *East L.A., 1968: 'Walkout!' The Day High School Students Helped Ignite the Chicano Power Movement*, L.A. TIMES (Mar. 1, 2018, 3:00 AM), <https://www.latimes.com/nation/la-na-1968-east-la-walkouts-20180301-htlmlstory.html>.

¹¹⁰ Sung, *supra* note 22, at 314.

¹¹¹ *Id.* at 309–10.

¹¹² See Lillian Mongeau, *Battle of Bilingual Education Once Again Brewing in California*, PBS NEWSHOUR (Apr. 18, 2016, 5:08 PM), <https://www.pbs.org/newshour/education/battle-of-bilingual-education-once-again-brewing-in-california>; Jazmine Ulloa, *California Will Bring Back Bilingual Education as Proposition 58 Cruises to Victory*, L.A. TIMES (Nov. 8, 2016, 9:32 PM), <https://www.latimes.com/politics/la-pol-ca-proposition-58-bilingual-education-20161012-snap-story.html> (discussing the repeal of Proposition 227).

¹¹³ Golden, *supra* note 5; Robert Lindsey, *Drug Related Violence Erodes a Neighborhood*, N.Y. TIMES (Apr. 4, 1988), <https://www.nytimes.com/1988/04/04/us/oakland-journal-drug-related-violence-erodes-a-neighborhood.html> (original article from the Oakland Journal); Michael E. Ross, *Rap by the Bay: Oakland Emerges as a Force in Pop*, N.Y. TIMES (Sept. 10, 1989), <https://www.nytimes.com/1989/09/10/arts/rap-by-the-bay-oakland-emerges-as-a-force-in-pop.html>.

services and had a D+ district-wide grade point average – the lowest among all categorized groups.¹¹⁴

In trying to address this longstanding issue, in 1996 the Oakland School Board was presented the report and recommendations of the city’s African American task force.¹¹⁵ To emphasize the high stakes, task force member and resolution co-author Toni Cook explained to the board, “if we don’t do something, where these children are heading is one of the greatest industries in the state of California – and that’s the prison industry.”¹¹⁶ For those present, the Oakland’s School Board unanimous passage of what became known as the “Ebonics” resolution was not surprising and happened with little particular notice or fanfare.¹¹⁷

The resolution was understood to be an expansion of the district’s ten-year pilot Standard English Proficiency (SEP) program for Black students.¹¹⁸ A statewide initiative supported by federal Title I funding, the SEP program emphasized teaching phonic, grammatical, and syntactical differences between “standard English and what the students speak outside the classroom.”¹¹⁹ According to Oakland school officials, the primary difference in the new Oakland resolution from what was already being practiced in Oakland, Los Angeles, and other

¹¹⁴ Peter Applebome, *School District Elevates Status of Black English*, N.Y. TIMES (Dec. 20, 1996), <https://www.nytimes.com/1996/12/20/us/school-district-elevates-status-of-black-english.html>; Theresa Perry, “*I’on Know Why They Be Trippin’*”: Reflections on The Ebonics Debate, in THE REAL EBONICS DEBATE: POWER, LANGUAGE AND THE EDUCATION OF AFRICAN-AMERICAN CHILDREN 3, 3 (Theresa Perry & Lisa Delpit eds., 1998).

¹¹⁵ OAKLAND UNIFIED SCHOOL DISTRICT, Resolution No. 9697-0063, *A Policy Statement and Directing the Superintendent of Schools to Devise a Program to Improve the English Language Acquisition and Application Skills of African-American Students* (1996); see Julia Deák, *African-American Language and American Linguistic Cultures: An Analysis of Language Policies in Education*, 22 WORKING PAPERS IN EDUC. LINGUISTICS 105, 107 (2007) (discussing the role of the Task Force and its findings).

¹¹⁶ Golden, *supra* note 5; see also Adam Alvarez & H. Richard Milner IV, *Exploring Teachers’ Beliefs and Feelings about Race and Police Violence*, 29 TEACHING EDUC. 383-394 (2018) (On white teachers’ perceptions reinforcing ideologies of Black criminality, such as referencing police killing of unarmed Black people as a natural consequence of not following orders without attention to how race factors into police bias, functions as a type of colorblindness that reinforces anti-Blackness).

¹¹⁷ Richard Lee Colvin, *Oakland District Says Policy on Ebonics Misunderstood*, L.A. TIMES (Dec. 31, 1996), <https://www.latimes.com/archives/la-xpm-1996-12-31-mn-14142-story.html>; Alexander Russo, *Lessons From the Media’s Coverage of the 1996 Ebonics Controversy*, PHI DELTA KAPPAN (Mar. 21, 2018), <https://www.kappanonline.org/russo-ebonics-coverage-65649-2/> (discussing the “uproar” after the Ebonics resolution passed).

¹¹⁸ Golden, *supra* note 5.

¹¹⁹ *Id.*

urban districts statewide was of terminology and rationale.¹²⁰ By legitimating “Ebonics” a “different language,” the resolution also left open the possibility of applying for a piece of the \$262 million federal Title VII bilingual education funding.¹²¹

While the resolution’s actionable items did not seem to stray far from existing implemented district policy, mainstream public reaction was fast and furious. The following day a news article titled “Oakland Schools OK Black English” featured in the local San Francisco Chronicle,¹²² that was then picked up nationally with front-page articles with similarly sensationalized titles.¹²³ What followed in the coming days and weeks was a range of pundits who overwhelmingly voiced a hostile and antagonistic opinion couched in anti-Black raciolinguistics toward the Oakland resolution.¹²⁴ As one New York Times columnist described, “there’s something bizarre about the burning Ebonics debate: for all the smoke and noise it isn’t really a debate at all... there isn’t a public personage of stature in the land, white or black, left or right, Democrat or Republican, who doesn’t say that the Oakland, CA school board was wrong, if not deranged, to portray black English as a ‘genetically based’ and ‘primary’ language equivalent to English and to imply that it is worthy of public funds set aside for bilingual education.”¹²⁵

A. *Defining a Language*

Though the media seemed to somewhat overstate the point, scholars like Theresa Perry agreed that it almost seemed like an “orchestrated movement” despite the fact that there was “little to no

¹²⁰ See Applebome, *supra* note 114 (“The goal is to give African-American students the ability to have standard English proficiency in reading, writing and speaking,” stated Oakland district spokeswoman Sherri Willis. “To do that, we are recognizing that many students bring to the classroom a different language, Ebonics.”); see also Carrie Sampson, *(Im)Possibilities of Latinx School Board Members’ Educational Leadership Toward Equity*, 55 EDUC. ADMIN. Q. 296–327 (2019) (Broader contextualization of struggles of local school boards to address issues intersecting race and language).

¹²¹ *Id.*

¹²² Lori Olszewski, *Oakland Schools OK Black English: Ebonics to be Regarded as Different, Not Wrong*, S.F. CHRON. (Dec. 19, 1996), <https://www.sfgate.com/news/article/PAGE-ONE-Oakland-Schools-OK-Black-English-2955790.php>.

¹²³ Applebome, *supra* note 114; *Oakland Schools Sanction ‘Ebonics’*, CHI. TRIB. (Dec. 19, 1996), <https://www.chicagotribune.com/news/ct-xpm-1996-12-19-9612200392-story.html>.

¹²⁴ See H. SAMY ALIM & GENEVA SMITHERMAN, *ARTICULATE WHILE BLACK: BARACK OBAMA, LANGUAGE, AND RACE IN THE U.S.* 195 n.9 (2012) (discussing the reaction of linguists to the Oakland resolution, while the rest of the world “went apeshit” over the news).

¹²⁵ Frank Rich, *The Ebonic Plague*, N.Y. TIMES (Jan. 8, 1997), <https://www.nytimes.com/1997/01/08/opinion/the-ebonic-plague.html>.

awareness” among the various “editorial writers, columnists, pundits, talk show hosts, educational leaders and spokespeople for the race (for Black people)” across a range of political persuasions who “together took aim at the Oakland resolution.”¹²⁶ Beyond the usual white conservative attacks against legitimating any language beyond Standard English, within days of the Oakland resolution President Bill Clinton termed Black English as “slang” and his Secretary of Education Richard Riley issued a public statement calling it a “non-standard form of English” and “not a foreign language” eligible for Title VII funds.¹²⁷ By January 1997, the five states of Florida, California, Georgia, South Carolina, and Oklahoma had formulated anti-Ebonics legislation,¹²⁸ and the U.S. Senate called for an official Hearing on Ebonics.¹²⁹

Mainstream media likewise highlighted the range of prominent Black figures who spoke out against the Ebonics resolution. Among the two most heavily quoted were poet Maya Angelou, who stated that “the very idea that African-American language is a language separate and apart” could encourage Black youth to not learn Standard English, and Reverend Jesse Jackson, who warned that the resolution could undermine efforts to preserve available affirmative action program opportunities.¹³⁰ It seemed the sole publicized supporters repeatedly quoted in news articles were a set of Black academic linguistics and allies who were also backed by their broader professional association.¹³¹ Unlike the deafening silence among educator professional associations, the Linguistic Society of America (LSA) overwhelmingly voted to support the Oakland resolution at their January 1997 business meeting, offering a public statement noting that “the variety known as ‘Ebonics,’ ‘African American Vernacular English’ (AAVE), and ‘Vernacular Black English’ and by other names is systemic and rule-governed like all natural speech varieties.”¹³²

¹²⁶ Perry, *supra* note 114, at 4–5.

¹²⁷ GENEVA SMITHERMAN, TALKIN THAT TALK: LANGUAGE, CULTURE, AND EDUCATION IN AFRICAN AMERICA 157 (2000).

¹²⁸ Richardson, *supra* note 5, at 159.

¹²⁹ Rickford, *supra* note 6, at 269.

¹³⁰ Golden, *supra* note 5.

¹³¹ See Applebome, *supra* note 114 (noting support from Stanford Professor of Education and Linguistics John Baugh who said the “board was addressing a valid issue”).

¹³² John R. Rickford, *LSA Resolution on the Oakland “Ebonics” Issue*, LINGUISTIC SOC’Y AM. (Jan. 3, 1997), <https://www.linguisticsociety.org/resource/lsa-resolution-oakland-ebonics-issue> [hereinafter *LSA Resolution*]. This resolution was drafted by John Rickford and adopted by the Linguistic Society of America on July 1, 1997. *Id.*

The LSA's statement of support further noted the sociocultural dimensions of how speech varieties are labeled.¹³³ According to the LSA, "the distinction between 'languages' and 'dialects' is usually made on social and political grounds than on purely linguistic ones."¹³⁴ By way of example, the LSA noted that Chinese is regularly understood to have multiple "dialects," though their speakers cannot understand each other, while Swedish and Norwegian are regarded as separate "languages" despite speakers generally understanding one another; in both cases, the descriptors clearly had more to do with nationalistic politics than specific linguistic criteria.¹³⁵ The LSA's statement concluded that "what is important from a linguistic and educational point of view is not whether AAVE is called a 'language' or a 'dialect' but rather that its systematicity be recognized," and by this count, "the Oakland School Board's decision to recognize the vernacular of African American students in teaching them Standard English is linguistically and pedagogically sound."¹³⁶

By January 15, 1997 the Oakland school board revised the resolution to rephrase the most debated wording regarding the historical trajectory of Black English and its use in schools.¹³⁷ Of particular note was the substitution of Ebonics/African Language Systems (ALS) being "genetically-based" in the linguistic sense of language ancestry to clarifying as having "origins in West and Niger-Congo languages and not merely dialects of English."¹³⁸ Also amended was implementation wording from featuring ALS "in instructing African-American children both in their primary language and in English" to instead "move students from the language patterns they bring to school to English proficiency."¹³⁹ In addition, the revised resolution flipped the order of the

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Oakland School Board Amends Ebonics Policy*, CNN (Jan. 16, 1997, 10:30 AM), <https://web.archive.org/web/20180724182405/http://edition.cnn.com/US/9701/16/black.english/>.

¹³⁸ *Id.*

¹³⁹ OAKLAND UNIFIED SCHOOL DISTRICT, Resolution No. 9697-0063, *A Policy Statement and Directing the Superintendent of Schools to Devise a Program to Improve the English Language Acquisition and Application Skills of African-American Students* (1996), <https://www.edweek.org/ew/articles/1997/01/15/16oakc.h16.html?print=1>; *but see* OAKLAND UNIFIED SCHOOL DISTRICT, Amended Resolution No. 9697-0063, *A Policy Statement and Directing the Superintendent of Schools to Devise a Program to Improve the English Language Acquisition and Application Skills of African-American Students* (1997), <http://www.cnn.com/US/9701/16/black.english/ebonics.amend.html> (removing language about Ebonics as a primary language).

two instructional purposes so “acquisition and mastery of English language skills” was now listed before respecting and maintaining “the legitimacy and richness of” Black English.¹⁴⁰

Clarifying that the revised resolution called for recognition of Black students’ language differences in order to improve their proficiency in English, task force head Sylvester Hodges publicly stated, “the debate is over, we are hoping that people understand that and will join us” in supporting the resolution.¹⁴¹ Oakland School Board president Jean Quan likewise downplayed the issue as one more of semantics than real substance, explaining “I don’t think this will have much impact on what we were really intending to do. I think the policy has always been pretty clear. It was the resolution that was not very clear.”¹⁴² Yet the controversy continued for four more months until Oakland’s School Board dropped the “Ebonics” identifier in its resolution entirely.¹⁴³ It seemed the many columnists, educators, and politicians who attacked the original resolution “tended to agree that the issue is more about the symbolism than the specifics,” arguing that the stigma of recognizing Black English as a language could end up hurting Black students more than any instructional method changes could help.¹⁴⁴

B. Uplifting a Culture

So why was the idea of recognizing Ebonics, or Black English, so controversial? Clearly the controversy was not built on linguistic questions, as the January 1997 Linguistic Society of America official statement alongside those of the several Black linguistics who were continually questioned by mainstream media, should have quickly put those concerns to rest.¹⁴⁵ Indeed, despite the widely referenced, later debunked, study by Betty Hart and Todd R. Risley regarding the supposed limiting vocabulary of Black English-speaking children,¹⁴⁶ there is a

¹⁴⁰ *Id.*

¹⁴¹ Golden, *supra* note 5.

¹⁴² *Id.*

¹⁴³ *Oakland School Superintendent Leaves Post*, L.A. TIMES (Aug. 7, 1997), <https://www.latimes.com/archives/la-xpm-1997-aug-07-mn-20320-story.html>.

¹⁴⁴ Golden, *supra* note 5.

¹⁴⁵ See *LSA Resolution*, *supra* note 132.

¹⁴⁶ See BETTY HART & TODD R. RISLEY, MEANINGFUL DIFFERENCES IN THE EVERYDAY EXPERIENCE OF YOUNG AMERICAN CHILDREN 10–11 (1995) (finding that African-American children from a low-income preschool had a smaller vocabulary than white children of university professors, and predicting a widening gap in achievement); *contra* Tryphenia B. Peele-Eady & Michèle L. Foster, *The More Things Change, The More They Stay The Same: African American English, Language Policy, and African American Learners*, 31 INT’L J. QUALITATIVE STUD.

clear and longstanding amount of scholarly literature supporting Black English's legitimacy as a meaningful, rule-governed language that dates back decades.¹⁴⁷ As Tryphenia Peele-Eady and Michele Foster explain, "like other varieties of English, African-American Language has both form – its own phonology, morphology, grammar and syntax – and function – ways of speaking and communicating"¹⁴⁸ that also clearly draw from African language systems.¹⁴⁹

Rather, the Ebonics resolution controversy went beyond question of linguistics and instead questioned whether Black culture itself is appropriate to preserve in the way bilingual education was supposedly imagined to do so.¹⁵⁰ As a means of contextualizing the longstanding controversy over Black language education, Peele-Eady and Foster compare the Oakland resolution to the 1979 federal district decision, *Martin Luther King Junior Elementary School Children et al. v. Ann Arbor School District*.¹⁵¹ They highlight that despite the Ann Arbor district being described as both affluent and "ideally" integrated, their schools failed to educate Black children by classifying them as potentially having learning disabilities because they spoke Black English.¹⁵² The two cases "represent the most notable and important efforts" to officially legitimize Black English as a means to support Black students' school success and affirm Black culture.¹⁵³

The Ann Arbor case, as it is commonly referred, was the first major legal court case for Black English and received sensationalized national media attention, reported in over 300 newspaper and magazine

EDUC. 652, 662 (2018) (stating this study was "debunked because of faulty methodology and imprecise use and understanding of what 'having a vocabulary' means").

¹⁴⁷ Sonja Lanehart & Ayesha M. Malik, *Language Use in African American Communities*, in , THE OXFORD HANDBOOK OF AFRICAN AMERICAN LANGUAGE 1, 3–4 (Sonja Lanehart ed., 2015); see generally TALKIN BLACK TALK: LANGUAGE, EDUCATION, AND SOCIAL CHANGE (H. Samy Alim & John Baugh eds., 2007) (drawing attention to the "two historically neglected dimensions of the Black American experience – the linguistic legacy and the related educational legacy of the African slave trade").

¹⁴⁸ Peele-Eady & Foster, *supra* note 146, at 655.

¹⁴⁹ LISA J. GREEN, AFRICAN AMERICAN ENGLISH: A LINGUISTIC INTRODUCTION 9–10 (2002); Lanehart & Malik, *supra* note 147, at 3–4; GENEVA SMITHERMAN, TALKIN AND TESTIFYIN: THE LANGUAGE OF BLACK AMERICA 2–3 (1977).

¹⁵⁰ Michele Foster, *Ebonics and All That Jazz: Cutting Through the Politics of Linguistics, Education, and Race*, 19 Q. NAT'L WRITING PROJECT 7, 11 (1997).

¹⁵¹ Peele-Eady & Foster, *supra* note 146, at 656 (discussing *Martin Luther King Jr. Elementary Sch. Children v. Ann Arbor Sch. Dist. Bd.*, 473 F.Supp. 1371 (E.D. Mich. 1979)).

¹⁵² *Martin Luther King Jr. Elementary Sch. Children*, 473 F.Supp. at 1381; see Peele-Eady & Foster, *supra* note 146, at 663.

¹⁵³ *Id.* at 653.

articles.¹⁵⁴ Like the Oakland resolution, the overwhelmingly negative and distorted mainstream media coverage of the Ann Arbor case was also “not simply, or merely, about language.”¹⁵⁵ Initiated in 1977, on the heels of the foundational *Serna*¹⁵⁶ and *Lau*¹⁵⁷ federal bilingual education court cases, Judge Charles Joiner’s decision that the Ann Arbor school district was guilty “of failing to take the children’s language into account in the educational process, and thus the district had violated the children’s right to equal educational opportunity” that echoed the same civil rights language of these two prior federal decisions.¹⁵⁸

However, the differences between the Ann Arbor case and *Lau/Serna* were telling in how Black English was perceived by the courts. While the Ann Arbor decision affirmed Black English as a “home and community language” in its own right and mandated teachers to take appropriate action, the linguistic concerns again took second string to the cultural affect.¹⁵⁹ As Judge Joiner explained, “teachers who fail[] to appreciate that the children speak a dialect which is acceptable in the home and peer community can result in the children becoming ashamed of their language, and thus impede the learning process.”¹⁶⁰ Beyond the lack of distinction between dialect versus language, Judge Joiner reinforced the difference between Black English speakers and other English learners as primarily contextual rather than linguistic: “in this respect, the black dialect appears to be different than the usual foreign languages because a foreign language is not looked down on by the teachers.”¹⁶¹

Judge Joiner thus highlights the issue as one of anti-Black perceptions of deficit that Black students and culture as inherently “looked down on” in schools.¹⁶² This deficit perspective could then be further internalized by Black youth for whom this is the language of their

¹⁵⁴ SMITHERMAN, *supra* note 127, at 156.

¹⁵⁵ Geneva Smitherman & John Baugh, *The Shot Heard from Ann Arbor: Language Research and Public Policy in African America*, 13 *HOW. J. COMM.* 1, 12 (2002).

¹⁵⁶ *Serna v. Portales Mun. Sch.*, 351 F.Supp. 1279 (D. M.N. 1972).

¹⁵⁷ *Lau v. Nichols*, 414 U.S. 563 (1974).

¹⁵⁸ Peele-Eady & Foster, *supra* note 145, at 657.

¹⁵⁹ *Martin Luther King Jr. Elementary Sch. Children*, 473 F.Supp. at 1383; Peele-Eady & Foster, *supra* note 145, at 662.

¹⁶⁰ *Martin Luther King Jr. Elementary Sch. Children*, 473 F.Supp. at 1376.

¹⁶¹ *Id.*

¹⁶² *Id.*; see also Leah Faw & Huriya Jabbar, *Poor Choices: The Sociopolitical Context of “Grand Theft Education,”* *URBAN EDUC.* 23 (2016).

“home and peer community.”¹⁶³ Yet even Judge Joiner’s rebuttal to this deficit-based scenario by learning to “retain fluency in ‘black English’ to maintain status in the community and they become fluent in Standard English to succeed in the general society”¹⁶⁴ perpetuated a different raciolinguistic ideology prevalent in bilingual education policy. The raciolinguistic ideology of appropriateness continues to reproduce a racial hierarchy in which Standard English becomes normalized as the language of power and social mobility in white mainstream society to which Black English speakers are taught they must assimilate by becoming bilingual to “succeed.”¹⁶⁵

While this raciolinguistic ideology of appropriateness-based approaches to language education is prevalent in the 1968 BEA and subsequent federal bilingual education policy, the overwhelming attack on attempts to legitimate Black English as worth maintaining in Black homes and communities highlights the exceptionality of anti-Blackness, even within an additive assimilationist framework of bilingual education. The original Oakland resolution went further than the Ann Arbor decision in legitimizing the maintenance of Black English by explicating how “African American[s] . . . shall not, because of their race, be subtly dehumanized” through a lack of support for their linguistic needs through the BEA.¹⁶⁶ Yet it too was forced to align with an exceptionally extreme appropriateness-based raciolinguistic ideology that denied the ability to even legitimize Black English as appropriate to teach in the classroom as a means of supporting bilingualism.¹⁶⁷

Unlike standard bilingual programs, Oakland spokespeople had to continually clarify during the resulting resolution controversy that courses would not be taught in Black English.¹⁶⁸ Linguists and educators associated with the Oakland resolution clarified during the January 1997 U.S. Senate Hearings on Ebonics that the statewide Standard English Program (SEP), from which the Oakland resolution was based, only involved Black English in class during exercises that involved “contrastive analysis of Ebonics and Standard English” to maintain federal Title I support for SEP.¹⁶⁹ An attempt to defund SEP at the state level through CA Senate Bill 205 was also defeated in April 1997, by focusing on the

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Flores & Rosa, *supra* note 25, at 152, 156, 163–64.

¹⁶⁶ Oakland School Board Resolution, *supra* note 2.

¹⁶⁷ See Flores & Rosa, *supra* note 25, at 163–64.

¹⁶⁸ Applebome, *supra* note 114.

¹⁶⁹ Rickford, *supra* note 6, at 270.

same point of the program only drawing from Black English to highlight its differences to Standard English.¹⁷⁰ The victory did not bode well for the BEA's legacy more generally, as California Proposition 227 passed in November 1997 effectively substituted bilingual education programs for English-Only immersion instead – while seemingly restructuring a continued raciolinguistic ideology of anti-Blackness in urban schools regardless.¹⁷¹

V. A PEOPLE DIVIDED?

If the Oakland resolution was already so reduced in its actionable programmatic offerings, drawing from assumptions of Black English that exceptionalized its recognition as a bilingual education opportunity, then why did it run into such broad resistance and what can be learned from this contradictory history? While the Oakland resolution did lead to a massive multiracial backlash that included a mainstream white perspective as a racialized attack on American culture, even more “disorienting for some African Americans, regardless of how they understood the board’s resolution or their position on it, was this strange configuration of folks who were attacking African American educators and community activists who obviously care deeply about the welfare of African American children” that included Jesse Jackson, Kweisi Mfume, and Maya Angelou.¹⁷²

For those on the Oakland resolution’s frontlines, the starting answer was how the mainstream media distorted and sensationalized the issue.¹⁷³ Oakland teacher and Ebonics resolution supporter Carrie Secret stated during an interview, “my job is to teach, and the media’s job is to sensationalize the news.”¹⁷⁴ Furthermore, Secret also focused on those pundits who were regularly interviewed by mainstream media for worthy sound bites but did not bother to properly understand the issue.¹⁷⁵ “I do blame those of us who picked up for the media and helped

¹⁷⁰ *Id.*

¹⁷¹ Ofelia García & Kenzo Ka-Fai Sung, *Critically Assessing the 1968 Bilingual Education Act at 50 Years: Taming Tongues and Latinx Communities*, 41 *BILINGUAL RES. J.* 1, 10 (2018).

¹⁷² Perry, *supra* note 114, at 5.

¹⁷³ *Id.* at 6 (noting how the media presented “phrases [and] sentences taken out of context, and outright distortions of the original resolution”).

¹⁷⁴ Barbara Miner, *Embracing Ebonics and Teaching Standard English: An Interview with Oakland Teacher Carrie Secret*, in *THE REAL EBONICS DEBATE: POWER, LANGUAGE AND THE EDUCATION OF AFRICAN-AMERICAN CHILDREN* 79, 88 (Theresa Perry & Lisa Delpit eds., 1998).

¹⁷⁵ *Id.*

them do their job,” stated Secret, “It bothered me that in 1997, scholarly African Americans did not tell the media, ‘let me take the time to go to the source and talk to someone in Oakland before I talk to you,’ that bothered me more than anything.”¹⁷⁶

Beyond mainstream media misrepresentation, internalized racism became a second explanation among Black academics trying to understand the Oakland resolution controversy.¹⁷⁷ This concern was also picked up by resolution supporters in Oakland, like teacher Carrie Secret, who recollected, “the downside of the debate is that there were African Americans who were so ashamed, so afraid, and so paranoid about what we were doing in Oakland.”¹⁷⁸ Scholars believed that this was an issue, but alone could not explain what Secret and others had noted about so many in the Black community as “tentative, ambivalent, or even downright opposed to the Oakland resolution.”¹⁷⁹

One factor seemed to be a divide in the Black community regarding the value of Black English split that along generational and socioeconomic lines.¹⁸⁰ According to Geneva Smitherman, the negative reactions towards the Oakland resolution, like those against “Black English” in 1979, reflects racist culture of poverty assumptions among people both Black and white “about the language and educational needs of Black working and unworking class people.”¹⁸¹ As an example, Smitherman states that during the Ann Arbor case, a popular Black journalist had asserted that defendants “could learn to read if their mothers would get the books in and the boyfriends out!”¹⁸²

As such, Smitherman contends that the assault on Black English spoken in under-resourced Black communities “is a way of reinscribing the subordination and powerlessness of Black youth and Black working-class people.”¹⁸³ The reactionary raciolinguistic ideology described,

¹⁷⁶ *Id.*

¹⁷⁷ Perry, *supra* note 114, at 6; SMITHERMAN, *supra* note 127, at 153 (“All too often the powerless internalize the linguistic and cultural norms of the powerful and denigrate their own native language and culture.”).

¹⁷⁸ Miner, *supra* note 174, at 88.

¹⁷⁹ Perry, *supra* note 114, at 6.

¹⁸⁰ SMITHERMAN, *supra* note 127, at 153.

¹⁸¹ *Id.* at 156.

¹⁸² *Id.*

¹⁸³ *Id.*; see also Geneva Smitherman, *Ebonics, King, and Oakland: Some Folks Don’t Believe Fat Meat Is Greasy*, 26 J. ENG. LINGUISTICS 97, 105 (1998) (“Most of the people who have been opponents of Ebonics are the same ones who have been dismissive of Hip-Hop. There is a

couched in a racialized respectability politics, pointed to a further issue that Smitherman implies as a seeming overdetermining of culture of poverty assumptions that drew from racializing 1960s discourses. As Smitherman explains, “as a linguistic minority, the Black so-called “masses”... have the cognitive-linguistic capacity to eradicate Ebonics if they desired to do so” since they are living in the United States where they are “continuously exposed to the Language of Wider Communication (aka “standard American English”) – in school, in the mass media, etc.”¹⁸⁴ But instead, according to Smitherman, Black communities have chosen to maintain Ebonics as a home and communal language regardless of its minoritized status in mainstream U.S. society.¹⁸⁵

Intentionality and agency on the part of Black communities to maintain their distinct language offers a key corrective to much of the mainstream culture of poverty assumptions being made both in the history of bilingual education policy and regarding the Oakland resolution in particular.¹⁸⁶ For example, Jesse Jackson argued that the Oakland resolution as “foolish and insulting to black students throughout the nation when it declared that many of its black students speak a language distinct from traditional English.”¹⁸⁷ Jackson continued, “I understand the attempt to reach out to these kids, but this is an unacceptable surrender, borderlining on disgrace... it’s teaching down to our children.”¹⁸⁸ This echoed other Black pundits, including syndicated columnist Patricia Smith, who opposed the resolution with an argument that is also widely used against bilingual education more generally: “we learned because we have the capacity to learn, so how can we say that our children don’t possess the same capacity?... What they’re saying in Oakland is

segment of the older Black generation, the middle class, civil rights leadership, that is anti-youth. Most of them have no idea if Ebonics works as a method of reaching Black students. But because they are so busy being reactive to anything that mainstream white politicians are against, once again they are speaking out. They haven’t scratched the surface in understanding how the Hip Hop Generation views the issue.”)

¹⁸⁴ SMITHERMAN, *supra* note 127, at 153.

¹⁸⁵ *Id.* at 153–54; see also Kenzo K. Sung, *Hella Ghetto!: (Dis)locating Race and Class Consciousness in Youth Discourses of Ghetto Spaces, Subjects and Schools*, 18 RACE ETHNICITY EDUC. 363, 372 (2015) (“While the interviewed youth often use the term ‘ghetto’ as a pejorative reference to local places or people, they also articulate ‘ghetto’ in ways that both illuminate and essentialize the struggles happening in their neighborhood”).

¹⁸⁶ *Id.*

¹⁸⁷ Neil A. Lewis, *Black English Is Not a Second Language, Jackson Says*, N.Y. TIMES (Dec. 23, 1996), <https://www.nytimes.com/1996/12/23/us/black-english-is-not-a-second-language-jackson-says.html>.

¹⁸⁸ *Id.*

that those kids are too dumb to learn the way we did, and that's insulting."¹⁸⁹

However, many of the key Black denunciators were considered luminaries within various Black English linguistic traditions, whether poet Maya Angelou, African American literary scholars like Henry Louis Gates Jr., or political leaders who drew from Black public oratory traditions including reverend Jesse Jackson.¹⁹⁰ Thus, the divide was not fully reducible to internalized racism or class/generational lines as a proxy for those who utilized Black English versus those who did not. Rather, the key question became why did "folks who love the language, use it exquisitely, and whose personal and political power is in no small measure tied to their use of Black Language, register ambivalence or outright rejection of the board's call for recognition of the legitimacy of Black Language and its suggestion that it be used to help African American children become fluent readers and writers?"¹⁹¹

A. *Appropriate/Appropriating Black English*

For Perry, the primary issue was a lack of developed racial consciousness to create meaningful counter-narratives among Black communities to the sensationalism of the mainstream news media.¹⁹² Because of this lack of a developed counter-narrative, the hegemonic narrative became the narrowed terrain upon which the debate over the Oakland resolution occurred, thereby negating the broader sociocultural dimensions.¹⁹³ For many in the Black community, the resolution was framed to stand in opposition to their "historic stance of wanting their children to gain oral and written competence in the formal and informal varieties of Black Language and "white" Standard English."¹⁹⁴ And thus the Oakland resolution, contrary to its enormous possibilities, threatened to be another instance of the narrowing of options for African

¹⁸⁹ Patricia Smith, *Ebonics Ain't The Answer*, 19 Q. 15, 15 (1997).

¹⁹⁰ Perry, *supra* note 114, at 5; Lisa Delpit, *What Should Teachers Do? Ebonics and Culturally Responsive Instruction*, in *THE REAL EBONICS DEBATE: POWER, LANGUAGE, AND THE EDUCATION OF AFRICAN-AMERICAN CHILDREN* 17, 25 (Theresa Perry & Lisa Delpit eds., 1998).

¹⁹¹ Perry, *supra* note 114, at 5.

¹⁹² *Id.* at 9 ("In my estimation, too many African Americans sided with our traditional adversaries in attacking the Oakland resolution because of the hegemonic character of the national discourse about education and the corresponding absence of a counterconversation led by African Americans . . . that refuses to disconnect discussions of education from our sociopolitical position in the larger society, our cultural formations, from our position as a racial caste group.").

¹⁹³ *Id.* at 8–9.

¹⁹⁴ *Id.* at 11.

American children” in which the mainstream media forced a false binary by which legitimating Black English was offered as a substitute for the instruction of Standard English.¹⁹⁵

Furthermore, Perry continues, she saw the ambivalence regarding the resolution among friends who she knew utilized and appreciated Black English “as rooted in concern about the narrow definition of Black Language being represented in the media in discussions and commentaries about the Oakland resolution, and [the] fear that this would be the understanding of Black Language that the public would be left with.”¹⁹⁶ Thus, it reinforces Flores and Rosa’s raciolinguistic critique stemming from the 1968 BEA hegemonic interest convergence that privileges Standard English as the appropriate language of power that linguistically minoritized students must assimilate into.¹⁹⁷ Within this raciolinguistic framing, the push for Lisa Delpit’s “codes of power” as a Black bilingualism still reinscribes an essentialized notions of Standard English as the language of power and social mobility that Black people need to embrace and espouse as their public/formal/appropriate language while saving Black English as appropriate for at-home/private/informal speech.¹⁹⁸

Yet according to Perry, the particular delegitimizing of Black English within language education went even further.¹⁹⁹ Unlike other languages typically targeted in U.S. bilingual education programs, Perry argues that the reductionistic framing of Black English as essentialized within a linguistic culture of poverty made invisible the fact it has “multiple varieties, oral and written, formal and informal, vernacular and literary... that for African Americans, language use is fundamentally and exquisitely contextual.”²⁰⁰ For Perry, “perhaps the most significant omission” in the public discussions regarding the Oakland resolution was the failure to examine acts of speaking, reading, and writing in Black English as it functions “for freedom, for racial uplift, leadership, citizenship.”²⁰¹

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 10.

¹⁹⁷ Flores & Rosa, *supra* note 25, 152, 156, 163–64; Sung, *supra* note 22, at 305–08.

¹⁹⁸ See LISA DELPIT, *OTHER PEOPLE’S CHILDREN: CULTURAL CONFLICT IN THE CLASSROOM* 21–47 (1996) (discussing the “five aspects of power” within the “culture of power”).

¹⁹⁹ Perry, *supra* note 114, at 9–10.

²⁰⁰ *Id.* at 10.

²⁰¹ *Id.* at 14.

Instead of simply chalking up the resistance to the Oakland resolution as racism, whether of the white or internalized varieties, Perry states that this “underconceptualizes what occurred” and that instead the mainstream media’s reaction provides “a powerful, contemporary example of how whiteness functions in American society.”²⁰² Drawing from social historian David Roediger, Perry defines whiteness as “that complex admixture of longing and hate that white people have for African Americans, their cultural formations, and their cultural products.”²⁰³ As such, Perry explains a seemingly contradictory raciolinguistic ideology of white America which embraces Black writers and artists “and at the same time, these opinion makers are repulsed by Black people, their language, their aesthetics, their rhythms, their history, that is represented, symbolized, interpreted in the African-American literary and scholarly traditions and commodified in popular culture.”²⁰⁴ This description builds from what Jodi Melamed describes as a neoliberal multiculturalism, in which culture is commodified by whiteness in a way that dislocates minoritized communities from the culture that is celebrated by whiteness. In dual language programs, for example, elite white, monolingual students build cultural capital through the commodification of minoritized multilingual communities.²⁰⁵

Perry thus pushes us to reimagine the purpose of Black English for Black communities beyond the reductionistic white imagination of it as portrayed in the 1967 BEA Congressional hearings and during mainstream portrayals of the 1997 Oakland resolution. Rather, as Oakland teacher Carrie Secret stated, teaching Ebonics was more than teaching a language, it was legitimating a culture: “if you don’t respect a children’s culture, you negate their very essence.”²⁰⁶ In her perspective, the SEP program that the Oakland resolution was trying to expand ultimately focused “on the culture of African American people and uses the culture to enhance reading achievement.”²⁰⁷ Or as Lisa Delpit, explained, “I can be neither for Ebonics or against Ebonics any more than I can be for or against air. It exists. It is the language spoken by many of our African American children. It is the language they heard as their mothers nursed them and changed their diapers and played peek-a-boo

²⁰² *Id.* at 15.

²⁰³ *Id.*; see also DAVID R. ROEDIGER, *THE WAGES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS* 5 (rev. ed. 2007).

²⁰⁴ Perry, *supra* note 114, at 15.

²⁰⁵ García & Sung, *supra* note 171, at 2, 11 (quoting MELAMED, *supra* note 45, at 42).

²⁰⁶ Miner, *supra* note 174, at 80.

²⁰⁷ *Id.*

with them. It is the language through which they first encountered love, nurturance, and joy.”²⁰⁸

B. Black English is the Creation of the Black Diaspora

The position that language and culture are inextricably intertwined was not a new position amongst Black public leaders and intellectuals historically. Frantz Fanon also made this argument in his classic book *Black Skin, White Masks* that to speak a language “means above all to assume a culture.”²⁰⁹ Likewise, prior Black leaders from Dubois to Woodson called for “African-centered” education for Black children including instruction in what Dubois called the “Mother Tongue” or Woodson described as “our language as an African tongue that has been broken down by the conditions of enslavement.”²¹⁰

Perhaps best argued of its time was James Baldwin’s 1979 assessment of the Ann Arbor decision in his New York Times letter to the editor.²¹¹ In the article, he aptly states that arguments concerning “the status, or the reality, of black English . . . has nothing to do with the language itself but with the *role* of language.”²¹² He continues that understanding language necessitates understanding the social purpose of language, that “people evolve a language in order to describe and thus control their circumstances, or in order to not be submerged by a reality that they cannot articulate.”²¹³ Within a raciolinguistic perspective, this defining of language through its purpose is to articulate as a means of control or counter-narrate is key.²¹⁴ As such, language can be understood for Baldwin as “a political instrument, means, and proof of power.”²¹⁵

In making this argument, Baldwin thus points out that white concern over legitimating Black English in public schools reveals:

²⁰⁸ Delpit, *supra* note 190, at 17.

²⁰⁹ FRANTZ FANON, *BLACK SKIN, WHITE MASKS* 17 (Charles Lam Markmann trans., rev. ed. 2008).

²¹⁰ SMITHERMAN, *supra* note 127, at 158.

²¹¹ James Baldwin, *If Black English Isn't a Language, Then Tell Me, What Is?*, N.Y. TIMES (Jul. 29, 1979), https://archive.nytimes.com/www.nytimes.com/books/98/03/29/specials/baldwin-english.html?_r=1.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ See Perry, *supra* note 114, at 14 (noting the importance of the “function of the literacy acts”).

²¹⁵ Baldwin, *supra* note 211.

The brutal truth is that the bulk of white people in America never had any interest in educating black people, except as this could serve white purposes. It is not the black child's language that is in question, it is not his language that is despised: It is his experience A child cannot be taught by anyone whose demand, essentially, is that the child repudiate his experience, and all that gives him sustenance, and enter a limbo in which he will no longer be black, and in which he knows that he can never become white.²¹⁶

Baldwin points out that the assimilationist rationale behind the bilingual education platform negates the structural racial positioning of anti-Blackness in which Black children are asked to repudiate their experience from their public selves and perform a version of themselves that is no longer Black but can also never be white despite their best individual efforts.²¹⁷

For Baldwin, it is not only the history of Black English that clearly legitimates it as a language, but it is also the ability to glimpse behind the veil of racism. As Baldwin explains, it is obviously problematic "to penalize black people for having created a language that permits the nation its only glimpse of reality" behind the veil of racism, a linguistic double consciousness as "Black English is the creation of the black diaspora" in which "blacks came to the United States chained to each other, but from different tribes."²¹⁸ This exceptionality of African enslavement and racialization is such that Black English should be understood as part of the afterlife of slavery.²¹⁹ Moreover, as Baldwin outlines "not, merely, as in the European example, the adoption of a foreign tongue, but an alchemy that transformed ancient elements into a new language: *A language comes into existence by means of brutal necessity, and the rules of the language are dictated by what the language must convey.*"²²⁰

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ See HARTMAN, *supra* note 40.

²²⁰ Baldwin, *supra* note 211.

This relation of language to the exceptional history of African enslavement in U.S. history was likewise articulated during the Oakland resolution controversy by education and linguistics professor John Baugh.²²¹ “It would be misleading for the public to equate the language of the descendants of slaves with the linguistic problems of new immigrants from Russia,” states Baugh, “but having said that, there are very few instances where school districts have adequately tried to address the linguistic consequences of slavery.”²²² Reflecting on how the history of Black slavery would manifest in particular raciolinguistic perspectives seems significant to consider.

As an example that could not be any clearer of the value of Black English for the Black community, Baldwin gives the extended example:

There was a moment, in time, and in this place, when my brother, or my mother, or my father, or my sister, had to convey to me, for example, the danger in which I was standing from the white man standing just behind me, and to convey this with a speed, and in a language, that the white man could not possibly understand, and that, indeed, he cannot understand, until today. He cannot afford to understand it. This understanding would reveal to him too much about himself, and smash that mirror before which he has been frozen for so long. Now, if this passion, this skill, this (to quote Toni Morrison) ‘sheer intelligence,’ this incredible music, this mighty achievement of having brought a people utterly unknown to, or despised by ‘history’ – to have brought this people to their present . . . – if this absolutely unprecedented journey does not indicate that black English is a language, I am curious to know what definition of language is to be trusted.²²³

The question of the legitimacy of Black English for white America could thus be linked to Aime Cesaire’s idea of *negritude*, the colonial gift in which Black English could be understood as being gifted with the ability to peel back the racial myths that white Standard English

²²¹ Applebome, *supra* note 114.

²²² *Id.*

²²³ Baldwin, *supra* note 211.

legitimated and essentialized regarding slavery and racial oppression.²²⁴ As such, Baldwin understood that Black communities were struggling in the present, but “we are not doomed, and we are not inarticulate because we are not compelled to defend a morality that we know to be a lie.”²²⁵

CONCLUSION

The article demonstrates two points. First, the 1968 BEA marked a particular raciolinguistic ideology of anti-Blackness, embedded in culture of poverty deficit assumptions, from which the Oakland resolution controversy was ultimately debated within.²²⁶ Second, white America’s continued angst over what legitimacy does and should Black English, and Black culture more generally, hold in U.S. society is symbolized in the contradictory origins of the BEA as well as how it was evoked in the original Oakland resolution at a moment of rising backlash against bilingual education more generally.²²⁷ In demonstrating these points, we illuminate how a seeming interest convergence among 1960s policymakers and activists ultimately made the Oakland resolution for Black English to be included within the district’s bilingual education programs not simply indefensible in the court of public opinion, but incomprehensible as an implementable policy resolution based on a raciolinguistic ideology of anti-Blackness.²²⁸

²²⁴ See AIMÉ CÉSAIRE, DISCOURSE ON COLONIALISM 91–92 (Joan Pinkham trans., 2000) (“I would like to say that everyone has his own Negritude. There has been too much theorizing about Negritude. I have tried not to overdo it, out of a sense of modesty. But if someone asks me what my conception of Negritude is, I answer that above all it is a concrete rather than an abstract coming to consciousness. What I have been telling you about—the atmosphere in which we lived, an atmosphere of assimilation in which Negro people were ashamed of themselves—has great importance. We lived in an atmosphere of rejection, and we developed an inferiority complex. I have always thought that the black man was searching for his identity. And it has seemed to me that if what we want is to establish this identity, then we must have a concrete consciousness of what we are—that is, of the first fact of our lives: that we are black; that we were black and have a history, a history that contains certain cultural elements of great value; and that Negroes were not, as you put it, born yesterday, because there have been beautiful and important black civilizations. At the time we began to write, people could write a history of world civilization without devoting a single chapter to Africa, as if Africa had made no contributions to the world. Therefore we affirmed that we were Negroes and that we were proud of it, and that we thought that Africa was not some sort of blank page in the history of humanity; in sum, we asserted that our Negro heritage was worthy of respect, and that this heritage was not relegated to the past, that its values were values that could still make an important contribution to the world.”).

²²⁵ Baldwin, *supra* note 211.

²²⁶ See *supra* Part III.

²²⁷ See *supra* Part IV.

²²⁸ *Id.*; see *supra* Part V.

The findings are significant in two formative ways. First, they illustrate the contradictory intersecting assumptions with respect to poverty, race, language, and culture embedded in the BEA, and suggest a possible strategy toward reimagining bilingual education that legitimates the value of Black English on its own terms instead of within a cultural deficit framework.²²⁹ As Baldwin states, perhaps it may be worth turning the Black English controversy on its head such that the conversation should start with the assumption that the decision to maintain Black English instead of Standard English, despite the best efforts of mainstream white America to stamp it out, may be intentional as “it may very well be that both the [Black] child, and his elder, have concluded that they have nothing whatever to learn from the people of a country that has managed to learn so little.”²³⁰ Thus, rather than framing Black English as Black students failing to empower themselves through education, instead taking a more critical position toward language and power like Paulo Freire, who states that minoritized languages “help defend one’s sense of identity and they are absolutely necessary in the process of struggling for liberation.”²³¹

Second, the seemingly short-lived Oakland resolution controversy is symbolic of broader contradictory discourses and policies concerning urban schooling and communities that too often draw on assumptions that essentialize minoritized, and particularly Black, cultural deficit in urban communities.²³² In what has more recently been popularized as a “politics of refusal”²³³ Michael Dumas calls for a reimagination of urban educational reform that starts with *refusing schooling as a site of Black suffering* and instead of framing the academic outcomes of Black students as failure, to perceive it as a failure of the system and “insist on our humanity, and to demand that others understand that we

²²⁹ See *supra* Part V.

²³⁰ Baldwin, *supra* note 211.

²³¹ PAULO FREIRE, *THE POLITICS OF EDUCATION: CULTURE, POWER, AND LIBERATION* 186 (1985).

²³² See *supra* Part V; see also Ann M. Ishimaru & Sola Takahashi, *Disrupting Racialized Institutional Scripts: Toward Parent–Teacher Transformative Agency for Educational Justice*, 92 *PEABODY J. EDUC.* 348 (2017) (Analyzes how white educator and school discourses often frames Black parents advocacy for their own children as problematic and ultimately self-destructive).

²³³ See Carole McGranahan, *Theorizing Refusal: An Introduction*, 31 *CULTURAL ANTHROPOLOGY* 319, 320 (“Refusal marks the point of a limit having been reached: *we refuse to continue on this way.*”); see generally Audra Simpson, *On Ethnographic Refusal: Indigeneity, ‘Voice’ and Colonial Citizenship*, 9 *JUNCTURES: J. THEMATIC DIALOGUE* 67, 71 (2007) (providing the history of the refusal theory).

will do whatever it takes to be treated as human beings.”²³⁴ Reimagining language education as culturally affirming education²³⁵ starts with assuming the inherent value of minoritized languages and cultures to empower oppressed communities and humanize society at large. Refusing anything less from a society that still manages to learn so little, seems to us a good place to start.

²³⁴ Michael J. Dumas, *Things Are Gonna Get Easier: Refusing Schooling as a Site of Black Suffering*, HUFFINGTON POST (Dec. 6, 2007), https://www.huffingtonpost.com/michael-j-dumas/schooling-a-site-black-suffering_b_9205914.html.

²³⁵ Ayana Allen, Lewis M. Scott, & Chance W. Lewis, *Racial Microaggressions and African American and Hispanic Students in Urban Schools: A Call for Culturally Affirming Education*. 3 INTERDISCIPLINARY J. TEACHING LEARNING 124 (2013) (on language education as culturally affirming education).