

Can the Undocumented Student Speak?

Eduardo Hernandez
Florida International University, USA

Abstract: The author argues that evolving issues of immigration law, free speech, skills and values education, and the nationalization of curricula are affecting the university and silencing the voices of undocumented immigrant students. A Freirean analysis is used to examine these issues and offers solutions.

Educators are concerned with empowering a diversity of voices through many avenues. Through postmodernism, educators seek to open dialogue in the classroom through speech, text, images, and pedagogy (Aronowitz & Giroux, 1991). Multicultural education has been retheorized to promote voice in the classroom (Nieto, Bode, Kang, & Raible, 2008). The use of multimodality, multiliteracies, and the new literacy can also create changes in a classroom (Carey, 2008).

How education is carried out, however, may silence voices in a multitude of ways. For example, modernism in the classroom encourages teachers to use Western centric and accountability-based curriculum, texts that are limited in scope and interpretation, and practices that do not include images and role models (Aronowitz & Giroux, 1991). Distortion of the image of education as well as the practice of education via manufactured crises over testing and pedagogy can also be a challenge (Berliner & Biddle, 1995). Adding to these issues are systematic pressures put on the university system by various forces. The government promotes accountability and policy making. Society, as a result, may be affected by a policy-making culture and its limited focus (Heineman, 2001). Conflicting notions of utopianism and doubt in education also add to a context of reform, creating periods of change that can be incremental at times and dysfunctional at other times (Tyack & Cuban, 1995).

The university can be a forum for transforming society through systematic change. Systematic change in the lower levels of public education system has been explored in the past (Fullan & Stiegelbauer, 1990). The university system, however, presents different challenges in recognizing what voices are silenced and what structures promote this silence. Many of these voices do not ever enter the university campus. One such voice is that of students who are the children of undocumented immigrant parents or who are undocumented themselves whose educational career may end in the K-12 public school system. If awareness of these systematic issues is not raised and addressed, the situation may become potentially worse. An exploration of these students' voicelessness at the university level may raise awareness to the systematic issues affecting the university and point towards their resolution.

Problem Statement

In a classic argument on subaltern theory, Spivak (1988) asks the question of whether the subaltern can speak. The doomed Bengali woman Spivak speaks of is a figure lost to patriarchy, economic inequality, and to others who are also the oppressed. Society keeps the Bengali woman at the margin. She is not listened to, written about, or spoken to; thus, it is as if she does not exist. Spivak argues for ways in which intellectuals and Westerners may find this woman's voice even if it is not easily available to the researcher. This discovery process helps maintain her status even if she herself speaks collectively with other subalterns (Spivak, 1988). The Bengali woman is a figure of the recent past. In the current context, however, there are many people whose voice is

not heard in the U.S., especially in academia. Immigration is one such issue that creates a voiceless class. In this paper, the author asks: Can the undocumented student speak? To answer this question, the author looks at the university and the forces that can silence a student. Specifically, how, through awareness, can the university (a) help to speak for undocumented students; (b) allow undocumented students to speak for themselves; and (c) improve undocumented students' condition?

The Issues

A gathering storm of issues, including immigration law, free speech, skills and values education, and nationalizing of the curriculum, can affect the higher education system. These seemingly unrelated issues interconnect and support each other but are typically addressed in isolation from each other. Furthermore, the elements of these issues are growing with each passing day and are garnering strength that can make them much harder to deal with in the future. The author argues that these issues can foreclose an undocumented student's future before it begins. Many of these issues enter the K-12 system and slowly creep their way into the university system in various ways. The focus of this paper is on the university system, primarily on the disciplines of Education and Law. However, this is a problem that affects the entire university system, and individuals in the university system must collectively search for a solution. The implications are not just for the university, its disciplines, or its students but for society as a whole.

These four issues intersect and strengthen each other in many ways creating a perfect storm of possible damage to the university's mission in the long run. While free speech is limited at the university, government speech can grow and a national curriculum can become government speech (protected speech). The skills- and values-based education that does not promote free thought and the way immigration laws are geared toward keeping undocumented students either silent in or absent from the university helps keep opposing views from manifesting at the university level. The status quo of power and culture is maintained and even strengthened.

Immigration Law

Denial of the American dream for undocumented high school students is the product of several legal cases and laws that have developed over the years from public schools controversies in Texas to a nationwide movement. The nationwide movement is a legacy of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) and the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA). The product of this movement is that both work together to hinder the lives of undocumented immigrant students who were brought into the country illegally by their parents and by no fault of their own (Alfred, 2003). Students in college, for example, can not document that they are in-state residents and, thus, cannot be given a lower tuition rate in some states. Those who are allowed to pay out-of-state tuition can not apply for financial aid, thus, making it more economically viable not to attend college. The issue is often tied to stopping the flow of immigrants and the high costs of providing public services, such as education, although no link between the denial of education and stopping illegal immigration has been proven. On the contrary, changing the law may bring more money to the university (Salinas, 2006).

Free Speech

Free speech is at the center of a movement and counter-movement of several cases over the last few decades as they relate to education. The Hazelwood case (a simple controversy over what appeared in a school newspaper) set forth various other cases, rulings, and theories that have been built upon to limit how free speech is used in public K-12 schools through a broadening

literature of arguments and evolving legal precedents (Waldman, 2008). The situation has spilled over to the university and has been addressed by scholars who fear a looming threat (Fugate, 1998). For example, teachers' free speech in communicating the curriculum (i.e. teaching at the university) is not fully subject to constitutional protection depending on the context and may, in fact, be subject to other regulations (Buss, 1999). Regulation of free speech affects a broad section of people, but more so for undocumented students.

Skills and Values

The problem with accountability and a skills and values mentality has been the subject of debate in the discipline of Education inside the nation's public and private k-12 schools, because it limits the kind of knowledge that is learned. This focus in education, however, has not spread to other disciplines or to active awareness and coalition across the university. Research has shown, for instance, that legal education like much of education in general is moving towards a more skills-based mentality. Students leave college with an education, but both they and their employers often complain that what they have learned in school is not relevant to what they do in the day-to-day routine of practicing law. Since the McCrate Report (Matasur, 2003), the development of law schools has been towards the notion of more courses based on legal skills and values. These courses promote the need for better research skills (Matasur, 2003). Lack of peer review, social science methods, and research strategies can make law literature seem too limited for tackling larger social goals (Chambliss, 2008).

Nationalizing the Curriculum

A national curriculum is slowly developing in K-12 schools and to some extent the effects of this are affecting the nature of education at the university. According to Apple (1993), a national curriculum can be monocultural. An informal national curriculum existed before the drive to make it formal in recent years, and its primary manifestation was through the content of flawed textbooks (Apple, 1993). The university system can, in turn, get caught in an informal national curriculum through the flawed textbooks that pervade its curriculum. Students of today who experience a limited curriculum and flawed educational system may become both the college students of tomorrow and the faculty. The possibility exists that students of today may trap students of tomorrow in a vicious circle of *limitations to thought* if the university does not resolve the matter in the present.

Theoretical Framework

Freire's (1970) banking theory of education suggests that dehumanizing power lies in the humanitarians and their false generosity (i.e. the teacher and the pedagogy). Students are sometimes viewed as a *tabula rasa* devoid of culture, humanity, and identity who are subject to information (knowledge that is legitimated) being imputed or deposited into them. According to Freire, banking education has several characteristics including the following. The teachers teach and the students are taught, the teacher knows everything and the students know nothing, the teacher thinks and the students are thought about, and the teacher is the subject of the learning process while pupils are mere objects. The students can be educated in a sense but not liberated from the power that controls them until they challenge this form of education through the generation of their own codes, constructions, knowledge, and pedagogy. They must become aware of the conditions of their oppression and how they themselves are oppressors (Freire, 1970).

Method and Analysis

Keyword searches with various terms such as *undocumented student* and *university* were used to explore the related literature in various databases and search engines including

HeinOnline and Google Scholar. Using Friere's insights, an analysis of the systematic problems with the university is examined from the perspective of an undocumented student. Immigration law, free speech, skills and values, and nationalizing of the curriculum are explored to show how an undocumented student is disempowered.

Immigration Law

The specter of deportation and family separation distracts from study and puts pressures and limits on education. Students cannot link their story to a lesson on the law to promote learning without risking exposure. Neither can they participate in university events that demand documentation such as travel abroad programs or international conferences. Education course discussions may falsely focus on safer topics.

Free Speech

Students do not speak up for fear of drawing attention to their own status. A lifetime spent promoting this behavior can make it an unconscious act. Consequently, many opportunities to speak in the classroom and throughout the campus are lost. They must lie about their family background to protect their family or avoid shame and cannot challenge anti-immigrant voices on or off campus. More complex activism is stalled.

Skills and Values

The product of skills- and values-based education can have many consequences in the professional world. It can affect how a discipline is put into practice. This, in turn, can affect the status of the undocumented. In the law, two practice styles (mega-lawyering versus ordinary lawyering) have been explored. Mega-lawyering is more legalistic, firm based, and less political; ordinary lawyering is more individualistic, public, and political (Bloom, 2008). A student more focused on the mechanics of the law can enter into mega-lawyering and become less successful in their advocacy for an undocumented student while an ordinary lawyer can tackle the issue in various ways beyond courtroom mechanics because they have been taught in a more multidimensional way.

Nationalizing the Curriculum

The various tests and materials used in education are biased to certain cultures (Berliner & Biddle, 1995). The informal national curriculum of textbooks denies the values of minority cultures (Apple, 1993). This provides an environment that starts in the K-12 system and extends into the university through its curriculum of creating learning and pedagogy that deny the existence of the undocumented student's voice. These students can not see themselves in print, images or discourse.

The net result is that the university becomes a site for a kind of banking education for undocumented students. The teachers teach, and the students are taught. The teacher knows everything that is valued, and the students know nothing that is valued. The teacher thinks, and the students are thought about because they are either absent from campus or do not feel free to express their thoughts. The teacher is the subject of the learning process as reflected by the culture they share with the informal curriculum and other facets of a biased education while pupils are mere objects. Students may become fatalistic and fail or not even appear in college.

Possible Solutions

The university in conjunction with students should confront these problems. Changing residency requirements for tuition purposes so that undocumented students can find alternative ways to prove that they have been in the country without revealing their status can mitigate the negative effects of immigration law. However, political and legal pressure to be stricter against immigrants prevails. Various solutions have been offered to improve free speech in education,

such as sliding rule solutions to free speech (Waldman, 2008); extending viewpoint neutrality regulations (Tobin, 2004; Wright, 2007); and public forum analysis (Golby, 2006). These ideas basically mean giving a certain kind of disclaimer to avoid a legal free speech case or interpreting acceptable free speech differently once a case is underway so that new precedents are set.

The skills and values approach in education can be fought through legislation, policy making, and legal maneuverings as well as through education by promoting more of a social science mentality into disciplines such as law to improve legal literature (Chambliss, 2008). While the government promotes accountability and policy making that affects the whole society, the promotion of social science can also affect everything in a society including the government and the court system when it is tied to judicial activism (Heineman, 2001). Promoting a lawyer who is able to look beyond skills and values to a bigger picture may be important in fighting cases and promoting legislation (Bloom, 2008). At the university, a national curriculum can be curtailed by challenging the dependence on textbooks and their content. On a larger level, change on various fronts must address all these issues. Awareness must be promoted. The university may even have to speak when the undocumented can not speak for themselves.

On a larger level, a multidimensional problem demands multidimensional action. Specifically, the disciplines of education and law can (a) identify, promote, and model the various solutions needed; (b) conduct mixed methods and mixed design multidisciplinary projects on this theme; (c) promote awareness of these issues via lessons, presentations, town hall meetings, service learning, and case work projects; (d) reach out to the rest of the university community to join in; and (e) recognize the current and historical contributions of undocumented students on and off campus.

Conclusion

Fullan argues that systematic change is accomplished through individual and systematic meaning making. An entire culture has to change (Fullan & Stiegelbauer, 1990). At the university, this may mean that everyone has to work together to change the culture. The end of subaltern status may be more preferable than giving voice to it. It may not be about speaking for the undocumented student or having them speak, but helping change their status. Undocumented students should speak, learn, and contribute.

References

- Alfred, J. (2003). Denial of the American dream: The plight of undocumented high school students within the U.S. educational system. *New York Law School Journal of Human Rights*, XIX(2), 615-650.
- Apple, M. W. (1993). The politics of official knowledge: Does a national curriculum make sense? *Teachers College Record*, 95(2), 222-241.
- Aronowitz, S., & Giroux, H. (1991). *Postmodern education: Politics, culture and social criticism*. Minneapolis, MN: University of Minnesota Press.
- Berliner, D., & Biddle, B. (1995). *The manufactured crisis: Myths, fraud and the attack on America's public schools*. New York: Addison-Wesley.
- Bloom, A. (2008). Practice style and successful legal mobilization. *Law & Contemporary Problems*, 71(2), 1-16.
- Buss, W. G. (1999). Academic freedom and freedom of speech: Communicating the curriculum. *The Journal of Gender, Race, and Justice*, 2, 213-278.
- Chambliss, E. (2008). When do facts persuade? Some thoughts on the market for empirical legal studies. *Law and Contemporary Problems*, 71(2), 17-39.
- Freire, P. (1970). *Pedagogy of the oppressed*. New York: Continuum.

- Fugate, R. E. (1998). Choppy waters are forecast for academic free speech. *Florida State University Law Review*, 26, 187-217.
- Fullan, M. G., & Stiegelbauer, S. (1990). *The new meaning of educational change* (2nd ed.). New York: Teachers College Press.
- Golby, J. (2006). The case against extending Hazelwood v. Kuhlmeier's public forum analysis to the regulation of university student speech. *Washington University Law Review*, 84(5), 1263-1286.
- Heineman, R. (2001). *The world of the policy analyst: Rationality, values, and politics*. Chatham, NJ: Chatham House.
- Jewitt, C. (2008). Multimodality and literacy in school classrooms. *Review of Research in Education*, 32, 241-267.
- Matasur, R. A. (2003). Skills and values education: Debate about the continuum continues. *New York Law School Journal of Human Rights*, 19(1), 25-58.
- Nieto, S., Bode, P., Kang, E., & Raible, J. (2008). *Identity, community, and diversity: Rethorizing multicultural curriculum for the postmodern era*. In M. F. Connelly (Ed.), *The Sage handbook of curriculum and instruction* (pp. 176-197). Los Angeles: Sage.
- Salinas, V. J. (2006). You can be whatever you want to be when you grow up, unless your parents brought you here illegally: The struggle to bring in-state tuition to undocumented immigrant students. *Houston Law Review*, 30(3), 847-878.
- Spivak, G. C. (1988). Can the subaltern speak? In C. Nelson & L. Grossberg (Eds.), *Marxism and the interpretation of culture* (pp. 271-313). Urbana: University of Illinois Press.
- Tobin, S. B. (2004). Divining Hazelwood: The need for a viewpoint neutrality requirement in school speech cases. *Harvard Civil Rights-Civil Liberties Law Review*, 39, 218-265.
- Tyack, D., & Cuban, L. (1995). *Tinkering toward utopia. A century of public schools reform*. Cambridge, MA: Harvard University Press.
- Waldman, E. G. (2008). Returning to Hazelwood's core: A new approach to restrictions on school-sponsored speech. *Florida Law Review*, 60(1), 163-124.
- Wright, R. G. (2007). School-sponsored speech and the surprising case for viewpoint-based regulations. *Southern Illinois University Law Journal*, 31, 175- 216.