

Governing More than Language:
Rationalities of Rule in *Flores* Discourses

by

Melinda Arlene Hollis Thomas

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Graduate Supervisory Committee:

David Lee Carlson, Chair
Erik Malewski
Gustavo Fischman
Jory Brass

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ABSTRACT

This project offers an exploration of the constitution of English language learners (ELLs) in the state of Arizona as subjects of government through the discursive rationalities of rule that unfolded alongside the *Flores v. Arizona* case. The artifacts under consideration span the 22 years (1992-2014) of *Flores*' existence so far. These artifacts include published academic scholarship; Arizona's legislative documents and floor debate audio and video; court summaries, hearings, and decisions; and public opinion texts found in newspapers and online, all of which were produced in response to *Flores*. These artifacts lay bare but some of the discursive rationalities that have coagulated to form governable elements of the ELL student population—ways of knowing them, measuring them, regarding them, constituting them, and intervening upon them. Somehow, some way, students who do not speak English as their first language have become a social problem to be solved. ELLs are therein governed by rationalities of English language normalization, of enterprise, of entrepreneurship, of competition, of empowerment, and of success. In narrating rationalities of rule that appear alongside the *Flores* case, I locate some governmental strategies in how subjects conduct themselves and govern the conduct of others with the hope that seeing subject constitution as a work of thought and not a necessary reality will create a space for potentially unknown alternatives. Through this work, I'd like to make possible the hope of thinking data differently, rejecting superimposition of meaning onto artifact, being uncomfortable, uncertain, undefinitive, and surprised. With that, this work encourages potential paths to trod in the field of curriculum studies.

DEDICATION

To my Andrew,

You've always been a loving, patient, thoughtful, and joyful companion on this ride.

We each came many miles to find our crafts;

I am so thankful we found each other.

This is *your* book too!

To my Dad & Mom—Dr. Greg & Jeanie Hollis,

For letting me know for all of these years that you are proud,
and for laying a supportive groundwork of who I'm becoming.

You made this accomplishment possible.

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Chapter 1

INTRODUCTION

“Arizona is a crystal ball; it is as if one can look at the condition of education in the state today and see public education in the nation 15 or 20 years hence” (Glass, 2008, p. 196).

Situating Flores

According to a 2012 report by the Morrison Institute, between the years 2001 and 2010, Arizona’s Hispanic population grew by 17.3%. Nearly 47% of Arizona’s children under the age of 19 today are Latino/a. Relatedly, 27% of Arizona’s current residents speak a language other than English in their homes (U.S. Census Bureau, 2012).

Changing demographics in Arizona have had a notable impact on the state’s public education system. When comparing data from their 2001 and 2012 studies, the Morrison Report found that Arizona’s Latino/a children, its fastest growing population group, “continue to display substantial shortcomings in educational performance levels, lagging well behind the state’s White population” (p. 10). With that, approximately 170,000 Arizona public school students are in need of appropriate English language instruction (Batalova & McHugh, 2010).

The numbers and statistics presented in the paragraph above are educative and interact with the realm of curriculum for several reasons. For one, accounting for a population, its growth, and its performance helps scholars and policy makers come to grips with the importance of intervention. As traditionally underserved populations grow in number, people begin to pay more attention to mounting inequalities or what we call

performance gaps. Related policy abounds. The *Flores v. Arizona*¹ case, which may appear as the star of this study, albeit mistakenly, is a catalyst for these conversations and responses. For another, the statistical numeration and categorization of Arizona's population of English Language Learners (hereafter referred to as ELLs) is but one part of a larger stream of discourses, a curriculum of the constitution of people as subjects of government. This constitution, and the discursive rationalities of rule that swarm it, is the more accurate point of focus across the work that follows. This group of people we categorize as ELL is an object upon which we focus our economic rationalities in Arizona, a state in which so much—tax dollars, English fluency, U.S. patriotism, competitive exam scores, future job prospects—is characterized as scarce and in danger. If we could name the discursive episteme of government that surrounds ELLs with just a word, I believe that word would be *cautious*. As a population, ELLs make possible the “the elaboration of distinctively governmental techniques and rationalities” (Dean, 2010, p. 127), and these techniques and rationalities will serve as the main point of focus in the work that unfolds in this book.

As of the moment I am constructing this text, Arizona's scholars, legislators, judges, and public opinion disseminators continue to respond, or fail to respond, to the challenges posed by an ever-challenging ELL population. If the prediction from Glass' (2008) *Fertilizers, Pills, and Magnetic Strips*, featured above, is accurate, the rest of the nation has a lot to learn from Arizona and from the *Flores* case. Yet, *Flores* is but a tiny microorganism in a huge ecosystem of subject-forming rationalities teeming around ELLs and every other namable and knowable population in the field of education. In

¹The *Flores v. Arizona* case is also referred to as *Flores v. Huppenthal* and *Flores v. Horne*. Across this work, I refer to the case either as *Flores v. Arizona* or simply as *Flores*.

narrating rationalities of rule that appear alongside this case, I locate not only some cracks in how we govern ourselves and others but also some alternative questions to ask and paths to tread in the field of curriculum studies.

Miriam Flores, the mother for whom the now infamous *Flores v. Arizona* class action suit is named, knew something of discrepancies in educational performance levels between native English and ELLs years before the Morrison Institute's 2001 study. For a detailed account of *Flores*' legal and legislative trajectory, please view Appendix B. Back in 1992, Miriam Flores and other parents whose ELL children attended school in Arizona's Nogales Unified School District filed a suit with the help of Southern Arizona Legal Aid in order to advocate for appropriate educational resources for their children. *Flores* made its way to the Supreme Court after decades of legal and legislative tumult in Arizona. The case was heard long after the aggressive abolition of bilingual education brought forth by Proposition 203² in 2000 (Mahoney, Thompson, & MacSwan, 2004), and after the state-sanctioned institution of Structured English Immersion (hereafter referred to as SEI) pull-out blocks for all classified ELL students.

While a similar, prior Supreme Court case, *Lau v. Nichols* (1974), resulted in the Equal Educational Opportunities Act (EEOA),³ the 2009 *Flores* decision determined that Arizona's use of SEI is effective and that Arizona's spending on ELL pupils is therefore

² For summary and text of Proposition 203 (2000), please visit <http://www.azbilingualed.org/AZ%20Hist-ALEC/prop%20203.htm>.

³ Richard Nixon proposed legislation in 1972 to promote equal educational opportunity regardless of race, color, or national origin, yet the EEOA did not pass until 1974, as *Lau* renewed interest in Nixon's proposal. In the *Lau* ruling, the Supreme Court decided that additional provisions, including instruction in Chinese and in English, needed to be offered for ELL students. The EEOA, passed thereafter, prohibits the denial of equal educational opportunity based on race, skin color, sex, and national origin, and it provides blanket legislation that has been used to address rights violations of ELL students (Bruner, 2010).

sufficient.⁴ Upon *Flores*' return to the District Court in the spring of 2013, Judge Raner Collins ruled in favor of the defendants, stating that "this lawsuit is no longer the vehicle to pursue the myriad of educational issues in this state" (p. 47), as the implementation of SEI "does not violate the EEOA" (p. 2).⁵ The Courts' decisions arguably legitimate ethnic segregation based on language differences and the denial of core academic content to ELL students, as long as EEOA requirements⁶ are otherwise met (Gándara & Orfield, 2010; Rios-Aguilar & Gándara, 2012a). What will happen with this particular case next remains to be seen, as the Arizona Center for Law in the Public Interest (2013) filed a Notice of Appeal in response to the district court's 2013 decision.⁷

The political landscape surrounding *Flores* is instructive in understanding the case and its contexts. First of all, the education of ELL students is often fastened to contentious political issues largely related to nationalism, immigration, ethnocentrism, and the politics of mono or multilingualism. ELL curriculum and instruction debates are therefore often mired in politics (Rolstad, Mahoney, & Glass, 2005). As Rossell and Baker (1996) contend, the field of language policy "is so ideologically charged that no one is immune from ideological bias or preconceived notions" (p. 25). This includes the perspectives of scholars who find evidence that supports the educational integrity of one

⁴ The state of Arizona ranks 49th in the nation with regard to per pupil spending (Martinez-Wenzl, Pérez, & Gándara, 2012). Further, per pupil spending in Arizona decreased by 21.8% between 2008 and 2012 (Oliff, Mai, & Leachman, 2012, September 4).

⁵ *Flores v. State of Arizona*, No. 13-15805 (Plaintiffs-Appellants' Opening Brief, September 5, 2013). Full text available at <https://aclpi.org/sites/aclpi.org/files/Opening%20Brief%20FINAL.pdf>.

⁶ The EEOA (1974) requires all public schools to provide ELL students with a program of instruction designed to foster competence in speaking, reading and writing English, while also enabling them to learn the standard academic curriculum provided to all students. The EEOA led to the establishment of Arizona laws that required school districts to provide specialized instruction for ELL's (U.S. Department of Justice, 2012).

⁷ The website for the Arizona Center for Law in the Public Interest states that the plaintiff's opening brief was due August 1, 2013. No new updates have been recorded, as of this writing. For the full text of ACLPI appeals of the *Flores* decision, please visit <http://aclpi.org/case/flores-v-huppenthal-et-al>.

approach to teaching ELL students over another, legislators who draft and vote for policy, judges who rule on litigation, and journalists who disseminate perspectives that report state issues to inform large audiences of readers, listeners, and viewers.

Consider too the implications of the age gap between White and Latino citizens in Arizona. A majority of the Arizona's White population is 45 years or older, and the greatest proportion of this majority population is 70 years or older. In contrast, the greatest number of Latinos is 40 years old or younger. As Glass (2008) points out, older White populations historically oppose paying taxes in the service of non-White children. Further, he writes:

Arizona's public schools are governed by policies that reflect the political and economic self-interests of an aging White middle class seeking to reduce its tax burden. The position of superintendent of public instruction is the third highest elected office in the state. As such, its incumbent, often an individual motivated to achieve higher office, is very responsive to the state's political climate. The state's education policy is characterized by conservative, market oriented, cost-cutting, and racially segregating programs. (p. 195)

Decades of conservative income and business tax policies in Arizona have produced millions in deficit spending (Altheide & Johnson, 2011). In response, the state continues to slash public education expenditures to balance the budget, including funding for ELL instruction.

Ethnically-charged legislative policy imposed in and out of Arizona's schools also carries a pedagogical message and a slew of consequences for non-White, non-English speaking children and families. Proposition 203 (2000) declared that:

The English language is the national public language of the United States of America and of the state of Arizona . . . and is also the leading world language for science, technology, and international business, thereby being the language of economic opportunity. (Proposition 203, Sec. 1)⁸

Following this rationality, in order to become “productive members” of the society described above, this voter-initiative⁹ decided that ELL students needed to learn English as “rapidly” and “effectively” as possible. In practice, this still translates to “sheltered English immersion during a temporary transition period not normally intended to exceed one year.” Proposition 203 also noted that funding levels for ELL students would remain unchanged. The supremacy of the English language, the rhetoric of economic opportunity through corporate and global competition, the taken-for-granted idealization of responsible and productive student subjects, the warehousing of students with language differences, the recategorization and reimmersion of those same students shortly thereafter, and the fiscal solvency of the state are here all rolled into one package. These tenants of Proposition 203 informed the *Flores* debates and continue to drive language

⁸ The full text of Proposition 203 is available at <http://www.azbilingual.org/AZ%20Hist-ALEC/prop%20203.htm>

⁹ Ron Unz, the wealthy software salesman who sponsored Proposition 227 in California in 1998 almost single-handedly financed Proposition 203 in Arizona in 2000. In an interview, he claimed that his motivations were not based on language education research in Arizona, as he claims “I don't really know about the programs in Arizona” (Unz, cited in Ruelas, 2000, B.1.). Instead of spreading research-based practices that support the education of ELL students in Arizona, Unz spoke instead of his interest in winning and therefore in spreading his name: “It's a challenge . . . Why do people become Olympic athletes? . . . It would be neat if people said, ‘There's that guy who got all those programs eliminated’” (Unz, cited in Ruelas, 2000, B.1.).

policy in schools today. And, Proposition 203 offers but a glimpse of Arizona's legislative rationalities.

Then, there's Arizona's House Bill 2281 (2010),¹⁰ which forbids Arizona public schools from incorporating curriculum that "promote(s) the overthrow of the United States government [or] resentment toward a race or class of people" or are designed for "pupils of a particular ethnic group" or "advocate ethnic solidarity" (p. 1). After the passage of HB 2281, students in the Tucson Unified School District (TUSD), 60% of whom hail from Mexican American backgrounds, witnessed the elimination of academic programs that feature Mexican American and Indigenous history, the work of Mexican, Latino, Chicano, and Native American writers, or have "race and oppression as a central focus" (Acosta as cited in Biggers, 2012, January 17, n.p.). HB 2281 followed SB 1070,¹¹ legislation described as "the broadest and strictest anti-illegal immigration measure in recent U.S. history" (Rios-Aguilar & Gándara, 2012a, p. 5). SB 1070 is particularly belligerent policy in that it targets Latino/a people, provides latitude to question any person suspected of being in the U.S. illegally, and "encourages lengthy detentions of people with a Latino phenotype" (Magaña & Lee, 2013).

Across the intersecting landscapes of Arizona's demographic realities, its legislative politics and its educational policies, multiple ways of knowing and governing social and student bodies emerge. It is amidst these exemplary Arizona policies and contexts that *Flores* developed and evolved. And it is with interest and concern for the governing effects of *Flores* discourses that this study emerges as well. Beyond its effects in the school budget, SEI classroom, or the experiences of children who are segregated

¹⁰ The full text of HB 2281 is available at <http://www.azleg.gov/legtext/49leg/2r/bills/hb2281s.pdf>

¹¹ The full text of SB 1070 is available at <http://www.azleg.gov/legtext/49leg/2r/bills/sb1070s.pdf>

from their peers for half the school day to be immersed in the English language in ways that might pass the EEOA but fail in other ways, *Flores* has alternative effects in terms of the rationalities it supports and sustains. Those rationalities are available on the surface of our discourses and our practices. Such rationalities have governing effects. So, what are the governing effects of *Flores* and post-*Flores* discourses? What kinds of subjects do these discursive rationalities aim to produce? How does power move between policy discourses that govern at a distance and subjects who speak and are spoken about? These are some of the questions that initially ignited this work. Working through Foucault's concept of governmentality with help from his primary texts and the governmentality studies of his predecessors would provide some of the tools to help me begin searching for answers.

Research Questions

With that, the questions I've set out to answer in this study are:

- What rationalities of rule are embedded in the discourses surrounding *Flores* (1992-present)?
- What kinds of subjects do the discourses of/around *Flores* produce?

These research questions warrant a discursive analysis of political reason. To delve into the realms of how society and its politics interact with the making of individuals, I argue that we must explore the landscapes of socialization through political rationalities and mechanisms that are evidenced in available discourses. The narrative possibilities that follow are just a small piece of a much larger research agenda that has many folds. There are countless ways to explore the effects of language policy, and there too are countless policies to explore. Yet, in Arizona, the effects of *Flores* command our attention here,

now, and in response to questions that are seldom asked of language policy, of discourse, and of their governing effects.

Governmentality Studies

Mitchell Dean (2010) identifies governmentality studies as an analytics of government or study “concerned with an analysis of the specific conditions under which particular entities emerge, exist and change” (p. 30). Rather than view Arizona’s ELL problems or interventions as self-evident or as necessary, I do something a bit different by examining the discursive elements that have coagulated to form the governable elements of the student population—the ways of knowing them, measuring them, regarding them, and intervening upon them. There are regimes of practices in Arizona’s education system which are ever-evolving and often borrowed from other systems to generate knowledge that define the population and its risk, reconcile those risks via insurance, hold the system and the population accountable, and deal with them appropriately.

Governmentality is a conceptualization of conduct, of rule, of the exercise of power, of person-shaping, of subject constitution, and of sovereign security that corresponds with the making of certain kinds of subjects (Barry, Osborne, & Rose, 1996; Cruikshank, 1999; Foucault, 1978/1991, 1982, 1988b, 1991; O’Malley, 1996; Rose, 2000). Governmentality studies examine the “conduct of conduct” (Foucault, 1982) as it unfolds across the surface of our realities in multiple, intersecting, enveloping, continuous, and contradictory ways. Governmentality is concerned not with hierarchal sovereign power as oppressive or dominative but with positive, productive power that may be manifest as interventions that nurture qualities like self-sufficiency and self-

fulfillment and encourages participation in programs and practices that promise the making of a self that is “more intelligent, wise, happy, virtuous, healthy, productive, docile, enterprising, fulfilled, self-esteemed, empowered, or whatever” (Rose, 1989, p. 12). Governmentality is a constitution of the population and the subjects that comprise it through their and our own common sense, desires, and interests at heart (Dean, 2010). The state need not invest in governing the people if the people are invested in governing themselves and their kin, neighbors, workers, students, and so forth.

Moments of Problematization

Dean (2010) remarks that the key starting point for an analytics of government is the “identification and examination of specific situations in which the activity of governing comes to be called into question” (p. 38). In this case, I identify *Flores* as a specific situation or “governable space” (Rose, 2000, p. 32), a created and sculpted modality that ushers in the reemergence of the education of ELLs as a problem for the state of Arizona. *Flores* constitutes a real, material context, a condition for ELL governance and its truths and possibilities. All the while, *Flores* also welcomes the materialization of discursive governing practices that simultaneously illustrate and ossify the ways in which subjects govern themselves and others. While the class action case seems poised to generate interest in institutional reform and corresponding program funding equity, *Flores* also ignites the shaping of the conduct of a population whose governability has become unruly.

The ELL population is problematized through discursive practices and their corresponding forms of knowledge, expertise, evaluation, and treatment. ELLs are governed by rationalities of English language normalization, of enterprise, of

entrepreneurship, of competition, of empowerment, and of success. As glimpsed above, the ELL population emerges via statistics that enliven the need for intervention and improvement. There is nothing natural, timeless, or intrinsically desirable about the product of proposed interventions. The beliefs that post-ELL experiences and opportunities are more positive than the experiences of ELL students and people “are learned through various governmental processes such as statistical studies in which individuals are encouraged to measure themselves in terms of deviation from norms of, say, happiness, health, wealth, beauty, or dangerousness” (Howe, 2002, p. 56-57), and in this case, English language, which discursively is conjoined with some of the norms above.

Somehow, some way, we’ve made truth of the thought that students who do not speak English as their first language have become a social problem to be solved. *Flores* discourses help us to map the problematization of ELLs because they narrate the identification of the problem, the creation of conditions for intervention, and the fabrication of the will that ““something must be done”” (Graham & Neu, 2004, p. 309). Rather than make a moral or intellectual judgment regarding the right or wrong education and treatment of this category or any category of students, I am interested in making possible an analysis of how certain kinds of subjects are produced (Gordon, 1980) and what this subject production might mean for curriculum, policy, educational research, and possible avenues in the field of curriculum studies.

To locate the “how” of subject constitution, I traced rationalities of rule that are available through discourse, through what was said and written in response to *Flores* in several major, overlapping contexts—academic scholarship that problematizes the

population (Chapter 2), legislative (Chapter 5) and judicial (Chapter 6) rationalities of rule, and discursive rationalities available through public opinion documents (Chapter 7) that narrate the case between the years 1992 and 2014. As Miller and Rose (1990) remark, “it is in language that programs of *government* are elaborated . . . [through] shared vocabularies, theories and explanations” (p. 6-8). The tracing of discourses through multiple sites of knowing ELLs lays bare “a particular political rationality . . . [a] development of a shared way of framing and describing issues” (Flores, 2014, p. 2). Discourses simultaneously reveal and regulate relationships (Greene & Hicks, 2005) by disseminating truths and expectations for what is sayable and knowable about ELLs and all the subjects and subjectivities that surround them as a category.

In this work, I attempt to trace the emergence of a quasi-common vocabulary and its corresponding rationalities as they work together to synchronize technologies that service the constitution of ELL subjects. With that, the work captures and shares the language propelled through a diverse range of institutions—academia, Arizona’s legislature, state and federal courts, and public opinions—in order to illustrate that discourses have productive power and that subjects are constituted and directed by thought and not by reality (Rose, 2000). In other words, it might behoove us to pay attention to more than state policy passed down from above when determining whether we are doing right or wrong by children who are always already conditioned into categories that make them into certain kinds of people.

Human Subjects

Some qualitative research derives its data from responses provided by human subjects. I am no stranger to this practice, as I worked as a field interviewer and

qualitative data analyst for an external evaluation team when I first began my doctoral work at ASU. Our team was charged with gauging the impact of Arizona funds allocations on the quality of public and private services and experiences for a specific population of people in Arizona—families with young children. So, I conducted interviews with and observations of hundreds of parents, children, and service providers to better understand what their experiences were like and how the state might better support a specific set of needs through spending and service redevelopment. Using the coded data from the interviews and observations, our team recommend state interventions that would better support the needs of families with children ages 0-5 and the stakeholders that serve them in a variety of capacities related to child care, health care, and education because that’s what the state that hired the evaluation team wanted to know.

Different research questions invite different research methods. In the research discussed above, we wanted the research subjects to speak freely about a variety of topics so that we could better understand service gaps and recommend interventions. My decision to work in an archive rather than with human subjects to answer the research questions posed in this text is extremely deliberate. What we are already able to know and say about ourselves is always already part of the tension at work here. I am not in search of subjects’ experiences or performance gaps in order to recommend that to intervene to improve educational quality. On the contrary, the very thinkability of what we determine to be improvement on the lives, experiences, deficits, and future chances of the subject population and how we rationalize those thoughts in discourse is a primary topic under consideration here. Rationalities of rule are not located in a “single institution

nor one single apparatus of power, that is, the state” (Dreyfus & Rabinow, 1983, p. 113), nor are they merely located in the thoughts and perspectives of the constituted subjects. The perspectives of children categorized as ELL, their teachers, their peers, their parents, the pre-service teachers who will come to know them, are of obvious importance for many, many reasons, but those reasons are best explored in scholarship that aims to better know and manage the subject and its agents of instruction and reform rather than uncover how the subject is known. The latter is my purpose.

It is simply awkward to think of playing the role of social scientist or qualitative researcher while simultaneously investigating how the social sciences and human subject research play a hand in the subject-formation I’ve set out to explore. I will investigate this tension somewhat in Chapter 2 and a great deal in Chapter 3. For now I will note that just as I believe human subjects will not reveal the rationalities of rule that constitute them as certain kinds of people, I also believe that as the subject authoring this text, I will not reveal a complete picture of subject constitution. I won’t even come close. Luckily, such is not my goal. I try to appear throughout this text as skeptical of my own capacity for insight and non-ignorance given my belief that, to draw from a metaphor provided by Paul Veyne (2010), this is my fishbowl to bear too. With a series of examples, Veyne expands:

‘Each one of us can think only as people think in our own era’, as Jean d’Ormesson, a pupil of Foucault at the *École normale* and a fellow graduate in philosophy, writes, in agreement, here, with Foucault; and he goes on: ‘Aristotle, Saint Augustine and even Bossuet were incapable of bringing themselves to condemn slavery, to a condemnation which, a few

centuries later, had become self-evident.’ To paraphrase Marx, humanity raises problems only at the point when it resolves them. For as soon as slavery collapsed, along with the whole legal and mental set-up that supported it, so did the ‘truth’ of it. (Veyne, 2010, p. 14)

The rationalities I found and draw into the text belong to my reality too. The era that made *Flores* possible is my era. Its truths are my truths. Its spots of blindness are mine to share. Part of the joy of conducting this work is doing so with the hope that these subjects we’ve been governed to become and to insure or enhance—the successful, rational, competitive, entrepreneurial, cautious, insured, English-only ones—become less and less familiar and lots of other ways of knowing and being therein become more possible and more celebrated.

Conceptual Traditions: Rationalities of Rule

In an initial project that I undertook with a colleague, Dinny Aletheiani, Dr. David Lee Carlson, and Dr. Ann Ewbank entitled “‘Keeping Up the Good Fight’: The Said and Unsaid in *Flores v. Arizona*” (2014), we began to examine the discursive landscape surrounding the case with an analysis of pro-*Flores* public opinion texts. In this study, we found that newspaper and press release rhetoric written in support of the plaintiff and therefore in support of appropriate funding for ELL education in public schools was punctuated by neoliberal rationalities—commodification, competition, risk, security, insurance, and entrepreneurialism. Further, the discursive landscape that we examined contained notable silences as well, as considerations for social justice, pluralism, and democracy (for their own sake) were wholly absent from the data we analyzed.

The data set analyzed in this initial, springboard study began to unveil but one continent on a much larger discursive map. The contours of its landscape take shape across academic scholarship, legislative discourses, judicial rationalities, language policy rhetoric, and public opinion texts. Each of these artifact-types both signal and contribute to the governing effects of language policy discourses. In short, what we hear and believe about language policy itself teaches us what should be known, and why, and how. Following Fimyar's (2008) discussion of Foucault's (1979) "Truth and Power", an examination of discursive formations provides an opportunity for opposing strategies in which response to change might be otherwise limited.

This approach to discourse is distinct from the purpose of critical pedagogy in an important way. Foucault (1980) argues that the problem of a politics of truth "is not one of changing people's 'consciousness' or what's in their heads, but the political, economic, institutional regime of production of truth" (p. 133). The pedagogical qualities of language policy are productive—subjects are carved out of the landscape of language policy; the discourses that lay bare its rationalities wield the carving knives. Those subjects are able to act upon themselves and others in ways related to and seemingly disconnected from policy itself. Tracing *Flores* discourses with an eye toward rationalities of rule makes possible the constitution of another, but not necessarily better, politics of truth.

Contribution to Curriculum Studies

These research questions intersect with some of the central concerns of curriculum studies that Marshall et al. (2007) situate as a prelude to contemporary curriculum theorizing: "What is worth knowing and experiencing?" . . . 'Why? When?

Where? How? For Whom?" (p. 2-3). Relatedly, Jardine (2002) reminds his student teachers that schools are not the real world because, "*We made them up*, whether on purpose or by default, and, of course, as people who have been schooled, and to greater or lesser degrees, *we ourselves have been made up by what has been made*" (p. xv, italics original). Indeed, questions of subject-production amidst the rationalities surrounding the case are at the core of the proposed study. Reactions to the *Flores* case, be they in policy, rhetoric, or practice, provide insight into manifold curricula of "us" and "them" (Asher, 2010) in the world of knowing as it is made and acted upon, as subjects are produced and positioned to govern themselves in response to the world.

Further, the effects of *Flores* have colonizing consequences for curriculum and its subjects (students and readers and writers thinking and being in response to the case) in more ways than one. The rationalities surrounding *Flores* discourses occupy, control, and exploit, and in turn, they elicit tensions and power flows. As we make meaning of and decisions surrounding which languages should be taught, and how, and by whom, and for how long, and with what resources, we develop and reinforce knowledges and valuations while also performing their presumed truth and weight in what we believe, say, and do—in who we make and in who ourselves become through this manifold curriculum of self and other. As Asher (2010) argues, "colonialism is insinuated with discourse, disciplinary knowledge, and education" (p. 395), and we are all implicated in and affected by the effects of colonialism brought forth by governing policies and practices in U.S. schools.

This study will initiate acts of curriculum theorizing that are hopefully capable of welcoming thoughts that are in excess of the rhetorical rationalities and subject-making

that I am positioning it to examine. By analyzing what is sayable and knowable about language curriculum in Arizona in the *Flores* data available, this study also engages “the unknowability that resides at the crossroads of discursive challenges (within a particular episteme that cannot fully reveal itself) and the need to take action informed by our doubts and uncertainties” (Malewski, 2010, p. 535). That is, in unsettling not only post-*Flores* policies but also the sentiments they behold and usher in, we might find ourselves uncomfortable with the thinkable and encouraged by what the unknown might allow us to imagine differently. In hearing/reading what is there, we might long for what else is not and seek it out. We might therein ponder what the unsaid, unwritten, unknown could entail and enact.

Chapter Overviews

The chapters that follow focus on what can be detected about the flow of power via discursive rationalities surrounding ELL subjects discussed under *Flores* that I researched as four distinct “rationalities of rule”—academic scholarship (Chapter 2), the legislature (Chapter 4), the courts (Chapter 5), and the public (Chapter 6)—but that work in concert to weave a story of the governmentality of ELL student subjects via the discourses that abound, the desired production of certain kinds of subjects, and the movement of subjects through the power dynamics available for speculation on the surface of the *Flores* case. The arenas I’ve tapped for data are but few of the many sites in which the rationalities and production of the ELL student body might be beheld.

Chapter 2—Critical review of scholarship.

Chapter 2—Critical Review of Scholarship—begins with a general review of language policy scholarship designed to survey “the academic conversation” surrounding

ELL education. The conversation therein illuminates the concerns of the field at large, many of which cast ELL students as a problem to be solved with one or more research-based interventions. This general review is followed by a critical review of scholarship that speaks for or about ELL student subjects and who they become in light of the *Flores* case. Chapter 2 therein argues that academic scholarship has material effects in the ways it positions and studies ELL subjects as objects of knowledge. The discursive effects of the academic conversation also materialize in the recommendations, implications, and promises of generalization and replication that research-as-science may interject into researcher and practitioner communities. I offer this review as a way of positioning the academic battlefield and identifying the conventions of battle that arise in the scholarship I accessed. This review identifies themes and gaps in contemporary language scholarship while it also sets the stage for the alternative avenues that I use in working through the remaining discourses under study in this work.

Chapter 3—Methodological avenues.

Chapter 3—Methodological Avenues—opens with the problems raised in the literature review—the naming, classifying, measurement, assumptions, risk assessments, and conclusions that aim to constitute and reconstitute ELLs as subjects of knowledge and language reform. A critical narration of these problems makes way for a problematization of the social sciences. One goal of this chapter is to trouble my own positionality as an educational researcher attempting to embark on “data driven” scholarship that simultaneously works to question how we use educational data and discourses to categorize and to govern. This positionality provides a platform for a survey of governmentality studies in the field of education, or alternative approaches to

educational research that inspire my work and quite frankly make it thinkable, approachable, and possible. The chapter follows with a discussion of the conceptual tools used across the study—rhizomatic exploration, archaeology, governmental and interpretive analytics, discourse tracing, an attention to rationalities of rule and tenants of advanced liberalism. It concludes with a general overview of the collection and analysis processes undertaken in Chapters 4, 5, and 6 to explore legislative, judicial, and public opinion rationalities of rule.

Chapter 4—Legislative rationalities of rule.

Chapter 4—Legislative Rationalities of Rule—includes a description and analysis of policy documents and floor debate audio and video surrounding *Flores* from Arizona’s legislative chambers. I selected this archive as a point of focus for several reasons. First of all, the Arizona legislature is often upheld or vilified as the responsible party for the passage of the policies enacted on, for, and against people across the state. From a hierarchal state power perspective, legislative decisions may appear as an obvious choice of study. Yet, the purpose of this work does not hinge on the trickle down effects of power but rather on “an assemblage of practices, techniques and rationalities for the shaping of the behavior of others and of oneself” (Dean, 2010, p. 251); it is a critique not of political power but one of political reason, including the conditions of legislative discourse and action. The discourses surrounding Arizona’s legislative policies carry with them the thoughts that govern their possibilities, and it is this site of government, the rationalities of rule rather than the rules and laws as enacted, that is of primary importance in my work.

Following the argument that government is the work of thought and should not be taken for granted as a necessary part of our reality (Rose, 2000), I locate discourses that begin to act like reality when they script and guide common sense beliefs and corresponding practices, when they shape who we believe people are or ought to be and how subjects form themselves in their interactions with these knowledges. Some of the governing realities apparent in this archive include competition that takes many forms, statistical measurement used to conceptualize students' English language skills as a problem for the state of Arizona, rationalities of risk and responsibility, as well as hopeful projections of ELL student success once mainstreamed and "fixed" of their imprudent, unproductive, and uncompetitive mother tongues. To summarize, I found that legislative rationalities of rule constitute the reformed post-ELL subject as a productive, employable, active, competitive, global citizen and the risky, failing, threatening, and "stuck" still-ELL as a burden to the state of Arizona. Through legislative discourses, Arizona's children are imagined as formidable future workers and contenders in the service of a state and the globally competitive nation state that is not interested in "nannying" them for much longer.

Chapter 5—Judicial rationalities of rule.

Chapter 5—Judicial Rationalities of Rule—moves beyond the legislative documents to explore the judicial archive, a document set comprised of all available *Flores* case histories, consent orders, oral arguments, transcripts and court opinions and decisions from the Circuit Court, Ninth District Court, Court of Appeals, and Supreme Court. The decision to shift to a very different type of archive illustrates that Arizona's legislative rationalities and moves do not deplete the seat of influence, authority, political

action, or rationality. Judicial discourses and arrangements govern and lay bare the art of subject formation too. As with legislative rationalities, it may at first seem as though the judicial decisions made across *Flores* would be of primary importance, but such is not necessarily the case. A court's decision exemplifies but one of the competing forces that exert power and authority, and the subjects at stake in that exertion are shaped by *means* more so than ends.

The judicial archives studied herein reflect an overwhelming concern for Arizona's financial constraints, and the ELL student emerges amidst economic debates and is therefore subject to economic logic. Judicial consensus surrounding *Flores* occurs on the grounds of the desire to secure social and economic prosperity. These discourses constitute a productive subject at a distance by agreeing that the self-sufficient, measurably "successful" student is an appropriate participant in the sovereign state. A discursive push for social and economic security and prosperity is manifest in competitive free market mentalities that identify ideal student and district performance according to success as measured by assessment metrics, as this success signifies the ability to compete in the marketplace during and after the schooling process. In this archive, much attention is given to district success and competition as well, as individual districts are made responsible for their own prudence and solvency and are rewarded and punished in the educational marketplace accordingly. District-level responsabilization trickles down to ELL students, subjects governed by their percentages, responsible for proving district and individual risk recovery through reclassification and successful school performances.

Chapter 6—Public opinion rationalities of rule.

Chapter 6—Public Opinion Rationalities of Rule—picks up where the initial study we published left off (Thomas, Aletheiani, Carlson, & Ewbank, 2014), but with some notable exceptions. I expanded the keyword searches and the dates to include public opinion documents that emerged between 1992 and 2014, whereas the previous study stopped at 2009. I also did not categorize the archives as pro-*Horne* or pro-*Flores* and instead included all public opinion texts available on all “sides” of the debate. The archives examined include newspaper articles, opinion letters, op-ed columns, policy institute websites, blogs, and similar genres of texts written for a wider audience and more widely accessible in print and online at little or no cost. While the original study examined the discourses found in just over 30 pro-*Flores* public opinion documents, the archive narrated in Chapter 6 of this work includes 204 documents, which is reflective of a more comprehensive data set that mirrors the breadth and depth of scholarly, legislative, and judicial discursive terrains explored in previous chapters. The public opinion documents in this archive open a distinct but related discursive trove that joins forces with the rationalities of rule found in the other archives explored in terms of thematic overlaps and the capacity of discourses to map and to disseminate the conduct of ELL conduct.

This chapter opens and closes with Nikolas Rose’s (2000) discussion of advanced liberalism, a concept that beautifully encapsulates the complex blend of rationalities of rule evidenced across the *Flores* discourses, including the public opinion archive. Mitchell Dean (2010) describes, “[a]dvanced liberalism will designate the broader realm of the various assemblages of rationalities, technologies and agencies that constitute the

characteristic ways of governing in contemporary liberal democracies” (p. 176). If classical liberalism heralds a liberation of the market from regulations to let the natural flows of economics run their course, and neoliberalism maximizes market mentality by further freeing entrepreneurs to corporatize and privatize public works and social services, advanced liberalism signals a total demise of the social and the emergence of each and all as free, self-governing subjects who, “in order to act freely . . . must first be shaped, guided and moulded into one capable of responsibly exercising that freedom through systems of domination” (Dean, 2010, p. 193). The free ELL subject is free to make some choices with regard to his or her education, and the public opinion discourses suggest that the rational, prudent, and successful ELL subject will elect to learn English quickly, to reclassify, to compete with other children in school and career fields, to seek economic success and to compete in the economy.

Chapter 7—Conclusions.

Chapter 7—Conclusions—folds this study’s “findings” and its limitations back into the curriculum studies conversation. It reasons that *Flores* discourses provide but one example of the curriculum of subject-formation that is instructive in how we govern ourselves and others and how we might alternatively pursue academic research both with a governmentality framework and with attention to how we come to know and to conduct our studies.

References and appendixes.

All references to source citations drawn from in this work are cited in APA 6th edition format as in-text citations and are listed in the References section of the text, with some notable exceptions. Since this study is archival in nature, there are hundreds of

primary archives referenced in text throughout the work. For ease of reference, primary data sources, that is, material drawn from the legislative, judicial, and public opinion archives, are sometimes referenced via footnote contextually at the bottoms of the pages in which they are referenced. Primary sources are also compiled into inclusive reference lists as Appendices to the book. The Appendices are listed in the table of contents, and the location of specific Appendix content is referenced in each chapter of the text, as needed to direct the reader to source lists, codes used in data analysis, and other relevant chapter content that is important for referential purposes but that might distract the reader from the reading experience, which I sincerely hope is a delightful one.

Chapter 2

CRITICAL REVIEW OF SCHOLARSHIP

A discursive formation . . . it is essentially incomplete, owing to the system of formation of its strategic choices. Hence the fact that, taken up again, placed, and interpreted in a new constellation, a given discursive formation may reveal new possibilities . . .

(Foucault, 1972, p. 67).

Telescoping *Flores*

Contemporary astrophysicist, Neil deGrasse Tyson, makes a claim about understanding the universe that is illustrative of the imagined boundaries of discourses. He explains that, “in the observed universe, everyone gets to feel special. Everyone has an equal claim to center because there is no center.”¹² Our constellations are not what they appear to be. Every star is as big and bright as Earth’s sun, yet the light of them all simply does not reach us here on Earth, so we only speak and write and name and study according to a very narrow realm of possibilities. We may identify patterns based on what is visible and through visibility knowable, even when those patterns are not really there.

Drawing out Foucault’s use of a constellation as a metaphor in his passage from *Archaeology of Knowledge* above, the creation and identification of mnemonics and stories for the stars interact with social and cultural conditions. Different peoples identified different pictures in the calendar of the sky based on what was visible to them with the naked eye and thereafter with advancing technologies of sight. In short,

¹² Sagan, C., Druyan, A., & Soter, S. (Writers), & Braga, B., Druyan, A., & Pope, B. (Directors). (2014). A sky full of ghosts [*Cosmos: A SpaceTime Odyssey*]. In B. Braga, M. Cannold, A. Druyan, & S. MacFarlane (Producers). RGB Media.

constellatory configurations are imagined through a combination of possibilities and limits—the languages of local storytelling, available symbols, social and cultural needs, available technologies, and so forth. When conditions for forming and telling stories about constellations change, constellations themselves also change.

Like constellations that form what we see as patterns in the night sky based on prominent celestial spheres, a discursive formation is a defined but imagined boundary that functions to help us name and order. Discourses that establish language policies and practices for ELL students are cultivated through thoughts in texts that suggest irruption, transformation, contradiction, and difference, as well as through constancy and regularity. If there seems to be a unity of discourses on ELL student subjects alongside *Flores*, the semblance of coherence is based on the interplay of possible, limited ways of making this category of student subjects appear and mean something across a field of strategic possibilities.

With these discursive shifts, different narratives and ways of seeing and being around them emerge. In “Nietzsche, Genealogy, History”, Foucault (1984a) remarks that the archivist is tasked with the work of carefully retracing familiar discourses to breathe life into alternative possibilities. This chapter reflects an attempt at such retracing, reviving, and its corresponding disclosure as a story that, like the tales told by astronomers telescoping the night sky, is conditionally confined by possibilities and limits of what is sayable and knowable across an archive and through my capacity to locate, name, and explore that archive given the limits of what I am able to know.

In the world of this chapter, which includes a general review of language policy scholarship, then a critical review of scholarship that speaks for or about ELL student

subjects (and who they become in light of the *Flores* case), I argue that scholarship itself has material effects in the ways it positions and studies subjects as objects of knowledge.¹³ Scholarship also has additional material effects beyond the direct practices it undertakes as “the academic conversation” by way of its recommendations, implications, and the promises of generalization and replication it casts into researcher and practitioner communities. This review of the scholarship that has been written in response to the ELL “problem” and/or to *Flores* specifically attempts to take all of the above into account in order to narrate the landscape upon which scholarly discourses constitute ELL subjects. I offer this review as a way of positioning the academic battlefield and identifying the conventions of battle, as far as I can see them. This chapter is to function as both a “traditional” review of scholarship and as a critical analysis of academic discourses as a categorical archive, much like the analyses undertaken for legislative (Chapter 4), judicial (Chapter 5), and public opinion (Chapter 6) archives in later chapters, all after the methodology is further explicated in detail in Chapter 3. After the literature review, I offer some alternative ways of imagining language policy based on the themes and gaps identified.

General Language Policy Scholarship

There is an immense body of scholarship that is interested in ELL subjects without direct reference to the *Flores* case. Educational research that explores language

¹³ In a 1976 lecture, Foucault (1976/1980) urges for a view of individuals as simultaneously one of the “prime effects” of power and as an “element of its articulation” (p. 98). That is, the category “individual” is one of power’s inventions, and yet, the category we are able to refer to as “individual” is both a target and a marksman of power. Foucault therein encourages an analytics of power that ascends “from its infinitesimal mechanisms” to see how these mechanisms have been “invested, colonised, utilized, involuted, transformed, displaced, extended, etc., by ever more general mechanisms and by forms of global dominations” (p. 99).

policy without *Flores* is not often concerned with ways the discursive landscape governs the wider social body or with how the ELL student is constituted and activated. Exploring the rationalities of rule brought to light through the *Flores* case is indeed but one way to narrate the possibilities of language policy and its consequences, and it is an approach that I have yet to see emerge regarding ELL students thus far. In fact, scholarly approaches to language policy often tell a different tale, and in their telling, they contribute to the rationalities of rule that are part of the discursive landscape too, of course, even as they represent tensions, fractures, and ulterior motives in the logic of the policies they set out to research against.

Many scholars in the archive attempt to position their research in ways that wage war on post-*Flores* political interventions, and the archive as a whole largely rejects Arizona's most recent approach to language policies and practices as detrimental to the student subjects in question. By and large, instructional effectiveness and closing the achievement gaps is the name of the language policy research game. Language policy scholarship is traditionally focused on a need for research-based practices that will yield academic proficiency (Gold, 2006; Wong Fillmore & Snow, 2000) or on the detrimental social and academic effects of segregated language instruction (Balfanz & Legters, 2004; Berends & Peñaloza, 2010; Borman & Dowling, 2010). In terms of the former, numerous studies have emerged in support of bilingual programs (Slavin & Cheung, 2005; Willig, 1985).

For example, Thomas and Collier (2007) conducted a five-year mixed methods study on program effectiveness and found that dual language, bilingual immersion programs are the “only programs we have found to date that assist students to fully reach

the 50th percentile in both L1 and L2 in all subjects and to maintain that level of high achievement” (p. 7). They also found that when forced into segregated, remedial programs, like Arizona’s 4-hour SEI block, “students do not close the achievement gap after reclassification and placement in the English mainstream” (p, 7). Thomas and Collier urge that students who lack any English proficiency NOT be placed in short-term (1-3 year) pull out programs. This is but one of the scholarly recommendations that aggressively questions the implementation of SEI in Arizona.¹⁴ There is also some consistent scholarly consensus that shows that children who are immersed in an English only program actually need more time to acquire the English language than students schooled in L1 and L2 together (Collier, 1987, 1995; Cummins, 1991, 1992; Cummins & Swain, 1986; Ramírez, 1992; Ramírez et al., 1991; Wong Fillmore, 1991).

There is plenty of scholarship that tolerates or endorses SEI as well. Tong et al. (2008) examined the effectiveness of 2-year kindergarten and first grade SEI and transitional bilingual education (TBE) and found that students in both types of programs improved significantly. They recommend “enhancements and best practices” (p. 1011) in either program type in order to accelerate English fluency.

Relatedly, there are many scholars who argue alongside the “time-on-task” principle and believe that students should be fully immersed in the English language as much and for as long as possible (Chavez, 1991; Clark, 2000; Epstein, 1977; Imhoff, 1990; Porter, 2000; Rossell, 1990). The scholarship therefore argues for SEI and against bilingual instruction. Combs (2012) notes that the time-on-task belief was shared by Alan Maguire, the economist and banker who headed Arizona’s ELL Task Force (created as

¹⁴ There are many other studies that question the implementation of SEI in Arizona. See, for example Combs et al., 2005; Mahoney, MacSwan, & Thompson, 2005; Wright & Pu, 2005.

part of Arizona's HB 2064). Maguire articulated his belief as follows: "More time on task. That's a tried-and-true educational standard. If you want to learn how to play the piano, what do they tell you to do? They tell you to practice" (cited in Kossan, 2007, July 15, A1).

After serious criticism of the four-hour SEI block in Arizona began to surface, the Arizona Department of Education website produced a literature review written by the Arizona English Language Learners Task Force (2007) complete with research that justifies the time-on-task argument. After criticizing qualitative case studies that speak in opposition to the DOE view as "studies that drew inferences that did not seem supported by data" (p. 1), the authors review an abundance of tangential studies that support the relationship between time-on-task and academic achievement. They quote, "[d]espite being somewhat difficult to operationalize, student engagement is recognized in the literature as an important link to student achievement and other learning outcomes (Capie & Tobin, 1981; Fisher, Berliner, Filby, Marliave, Cahen & Dishaw, 1980; McGarity & Butts, 1984)" (p. 1). Yet, the literature referenced in this section is dated by thirty years or more (note the dates in the quoted text above) and is largely focused on behavior management and general student engagement and achievement, and *not* with the process of learning a language.

Krashen, Rolstad, and MacSwan (2012) challenged the credibility of the time-on-task argument once more, noting that the Task Force document cited above "presents an incomplete view of the research" by cherry picking and feigning support and failing to include studies that provide counter-evidence. They conclude: "[a] consideration of a wider body of research and more accurate reporting of studies actually supports positions

far different from what the Task Force proposes” (p. 115). These positions include criticism of the limited role of teaching discrete language skills in isolation, as well as evidence to support the use of L1 in more accelerated development of English literacy and academic knowledge in L2.

Baker (1998), an education consultant from Utah, takes a more narrow SEI-only stance while rejecting time-on-task rationales. He claims that he became a proponent of SEI in the late 1970s because the method was so successful in teaching second languages in Canada. He first draws on Ramirez et al.’s (1991) longitudinal study to discuss early-exit (three year) programs and late-exit (seven year) programs. Baker remarks that “the superiority of SEI over bilingual education is clear” for both LEP students and “English-speaking at-risk students” (p. 200). After citing several other studies that prove the success of SEI with Vietnamese immigrants in California (Gertsen, 1985) and Latinos in Texas (Gertsen & Woodward, 1995; Webb, Clerc, & Gavito, 1987), Baker notes that correlation between SEI program and its positive effects “at these levels are unheard of in educational research” (p. 201). He continues: “[t]he correlations tell us we can pick any two ethnic groups and predict with perfect accuracy which one will have had the most success if we know the percentage of the population in ESL programs” (p. 201).

Yet, unlike the logic that fuels Task Force implementation of SEI in Arizona, Baker contends that the success of SEI is not due to time on task speaking English, as students in SEI classrooms that are encouraged to speak their first language experience equally positive results. He argues that the main factors that determine SEI program and therefore student success are small class sizes (not to exceed eight students), a “structured” approach in which the teacher adjusts to the level of the learner, and

competent teachers who have an excellent command of English. If SEI is done well, he argues, content and English can be taught together “by teaching content through learner-appropriate English” (p. 204).

At least two scholars published in response to Baker’s (1998) argument a year later and in the same journal (*The Phi Delta Kappan*). Krashen (1999) is critical of the lack of reported data to support Baker’s argument, as he suggests that in the California study Baker cites, the sample size is too small, no actual scores are reported for bilingual students, no demographic background information is included, and the name of the district is never disclosed. Krashen further claims that Baker’s other data is based on unpublished reports, vague descriptions, or flagrant misinterpretations of studies and their findings. He writes, “Baker claims that there is little research supporting the practice of teaching subjects in the primary language while the children are acquiring English. He may disagree with the results of this research, but plenty of it exists” (p. 706).

Drawing from a practitioner position and critical reading approach to Baker’s claims, Meier (1999) censures Baker’s piece for a “blatant misuse of data . . . inaccuracies and misleading statements” (p. 704), including abuse of the Ramirez study, specifically that early-exit SEI students do not experience sustained gains in their proficiency scores. He notes that the comparison to Canadian immersion programs is misleading and disconnected as well. In the Canadian model, which Meier notes is more of a two-way immersion program than an SEI program, dominant language students are learning the minority language, with the ultimate goal of becoming bilingual and biliterate. The students in question are not in danger of losing their primary language. He also writes, “[t]here is absolutely no evidence to support the notion that it is lack of

English that causes the language-minority students to drop out” (p. 704). He discusses a lack of academic literacy skills in students in their first years of an SEI program, noting that this level of literacy takes five years or more.

In response to English-only voter initiatives that result in these segregated, remedial programs, language policies like California’s Proposition 227, Arizona’s Proposition 203 and Massachusetts’ Question 2, Rolstad, Mahoney, and Glass (2005) provide an extensive review of studies that compare the instructional effectiveness of different programs for ELL students. The authors find research-based support for ELL programs that provide instruction in the students’ first language, and they conclude that “state and federal policies restricting or discouraging the use of native language in programs for ELL students cannot be justified by a reasonable consideration of evidence” (p. 574). Escamilla, Chavez, and Vigil (2005) similarly argue that, “participation in bilingual programs seems to be a factor in helping Spanish-speaking children learn to read and write in Spanish and, thus, meet state content standards” (p. 142-143).

In response to “wildly unrealistic” one-year periods during which children are placed in SEI and expected to emerge as fluent English speakers¹⁵ (Hakuta, Butler, & Witt, 2000, p. 13-14), many scholars focus on the length of instructional time it takes ELL students to master a second language (Gold, 2006). Estimates range from at least six years (Kiesmer, 1994), to three to five years for oral proficiency and four to seven years

¹⁵ In 2007, the AZ Board of Education adopted an SEI model that was proposed by the ELL Task Force. It requires that all districts implement 4-hour English Language Development (ELD) blocks in which ELL students are pulled out of the regular curriculum and placed in an SEI class with their ELL peers for this period of time each day. The goal set forth by Arizona’s model is for ELL students to become proficient or fluent in one year’s time (Rios-Aguilar, Canache, & Moll, 2012a).

for academic proficiency (Hakuta, Butler, & Witt, 2000), to up to ten years for full proficiency (Collier, 1987; Cummins, 1981).

Initial Interpretations

The studies discussed above share an interest in advocating for the education of ELL children in ways that are most realistically effective in helping them learn English. Therein, English skills become commensurate with student “success.” Many scholars’ interests in ELL students dovetail as they point to the conclusion that the use of SEI-style programs is reflective of uninformed or poorly-hatched policies that neither align with best practices nor are grounded in solid research. But, most importantly for this study, each of the arguments discussed above fails to consider what it means to focus on the right intervention in the spirit of yielding a desired product. In other words, this archive reflects an unquestioning advocacy of a thorough categorical transition from ELL to English speaking child, one who has proven measureable academic proficiency on standardized assessments.

In this way, the non-*Flores* scholarship reviewed above contributes to the formation of a certain kind of desirable, activated, prudent subject. Scholars writing in tension with questionable language policies may take-for-granted the belief that students in U.S. schools must learn English and learn it well in order to “succeed.” Whether or not this “truth” is valid is not the issue. Probing presumed consensus or validity brings rationalities of rule to the surface and opens scholarship up for further questioning. It behooves my exploration in this work to question a stratum of knowing and acting (Rose, 2000) that claims to know ELL students according to social and educational sciences and strives to develop technologies that make knowledge come to life in practice. What is

more, watching discourses unfold in academic textual spaces might help us to later interrogate, for example, how legislative policy interacts with truths about English language learners that are produced and accessible through alternative social, cultural, and political spheres (Fimyar, 2008), as well as in realms of *Flores* academic scholarship, an archive that I discuss below.

The review of general language policy scholarship above helps to illustrate some of the concerns that surround ELL students. I wanted to explore the stage set outside of the *Flores* case to begin to locate the student subject in the wider context of language policy concerns before watching the ELL subject appear across *Flores*-specific texts. The critical review of *Flores* scholarship that follows below shares some concerns with the general policy scholarship reviewed above, including best practices for teaching and researching ELLs, detrimental effects (social, emotional, academic) of certain policies and practices, a preoccupation with time, and closing or rectifying gaps and differences between students. These archives also reflect some new themes of interest.

Methods Used for Critical Review of *Flores* Scholarship

I collected the artifacts analyzed for the *Flores*-specific scholarship review by searching variations of *Horne v. Flores*, *Flores v. Arizona*, *Flores v. Huppenthal*, and *Speaker of the House of Representatives v. Flores* in scholarly manuscripts published between 1992 and 2014. I searched across multiple scholarly research databases available through Arizona State University's library system. The databases through which I conducted the searches include:

- Academic Search Premier
- Education Full Text (H.W. Wilson)

- EBSCOhost
- ERIC (Proquest)
- JSTOR
- LexisNexis Academic
- Project Muse
- PsychINFO
- SAGE Premier

I am certain that the results of my searches are not exhaustive and that there are certainly other scholarly discussions of and approaches to the *Flores* case that I've not yet seen or considered here. I can only hope that the main set of documents under discussion here, a corpus which currently consists of 43 articles and book chapters (See Appendix C for full list) that discuss the *Flores* case directly and in detail, provide insight into one brick in the rhetorical wall of rationalities of rule, as it were, that gives this case discernable contours and mass . . . that help it cast a shadow over all of us as it colors in discursive practices and helps us examine how it is possible to think about language policy, and how it is possible to conceptualize and know and govern students alongside research regarding the languages they speak.

I arrived at the final set of 43 by reading each first to ensure that it discussed the (correct) *Flores* case directly and in detail. After I identified suitable pieces of scholarship according to this initial criteria, I read each text again alongside my research questions:

- What rationalities of rule are embedded in the discourses surrounding *Flores* (1992-present)?

- What kinds of subjects do the discourses of/around *Flores* produce?

From this focused reading, I produced a condensed and attentive series of notes and direct quotes and was able to reduce the amount of text to analyze from over a thousand pages to 135 pages that evidence *Flores* discourses, the production of subjects around the case, and the movement of / moves made by these subjects. I completed the analysis by hand to draw some conclusions, which I first presented at the CA-NAME conference at the University of California, Fullerton, in January 2014.

In order to produce a more in-depth analysis for the study, and to help organize my own reading and reporting processes and possibly see the data differently, I decided to then code the data using Dedoose, a qualitative analysis software. I selected initial, general themes for the codes applied in analysis based on the theory that informs my questions—methods for the control and use of man (Foucault, 1977); rationalities of government (Gordon, 1991); governmentality and political reason (Barry, Osborne, & Rose, 1996; Burchell, Gordon, & Miller, 1991; Dean, 1991; 1994; 2010; Foucault, 1978/1991; Peters, 2009); advanced liberalism (Rose, 2000), technologies of citizenship (Cruikshank, 1999); dividing practices (Popkewitz, 2009); entrepreneurialism (Carlson, 2009; Popkewitz, 2009; Rose, 2000); New Prudentialism (Dean, 2010; Harvey, 2005; O'Malley, 1992; 1996b, 2002; Peters, 2005; 2009; Rose, 2000), and risk and insurance (Carlson, 2009; Castel, 1991; Ewald, 1991; Popkewitz, 2009). The code list expanded as I read the data and additional, relevant themes emerged. A list of the codes used to explore and analyze *Flores* academic scholarship and organize the content below is included in Appendix D. The discussion below narrates the corresponding analysis, followed by a discussion of notable exceptions and silences.

Re/telling *Flores*

The *Flores* story presented through scholarship often begins in a familiar way—with Miriam Flores the concerned mother, for whom the now twenty-two-year-old *Flores v. Arizona* class action suit is named (Asturias, 2012; Gándara & Orfield, 2012a; Gándara & Orfield, 2012b; Jiménez-Castellanos, Combs, Martínez, & Gómez, 2013; Martinez-Wenzl, Pérez, & Gándara, 2012; Mongiello, 2011; Rios-Aguilar & Gándara, 2012a; Secunda, 2008-2009; Welner, 2012). The tale opens in 1992 when Miriam and other parents whose ELL children attended school in Arizona’s Nogales Unified School District filed a lawsuit with the help of Southern Arizona Legal Aid in order to advocate for appropriate educational resources for their children. Various legislative and judicial responses to the case unfolded for the 22 years that followed. Remarkably, with the exception of a few (nine of 43) artifacts (Abedi, 2006; Calleros, 2006; First, 2007; Haas, 2005; Honeycutt & Castro, 2005; Hunter, 2005; Mahoney, MacSwan, & Thompson, 2005; Wright, 2005), the vast majority of the manuscripts under consideration in this review were published after a climatic moment in the *Flores* trajectory transpired—when the case was returned from the Supreme Court with a decision in 2009.

In fact, *Flores* seems largely off the scholarly radar before the mid-2000s, a conclusion based on the condition that I could not locate even one piece of academic scholarship that mentioned the *Flores* case and was published in the first thirteen years of its life. However, the 2009 *Horne v. Flores* Supreme Court hearing occurred after decades of legal and legislative pushback in Arizona, including to other points of notable crisis that texture the tensions of this tale—Proposition 203 (2000), which aggressively abolished bilingual programs (Mahoney, Thompson, & MacSwan, 2004) in Arizona, and

HB 2064 (March 2006) through which the state of Arizona’s ELL Task Force sanctioned the institution of Structured English Immersion (SEI) pull-out blocks for all classified ELL students. The influx of response suggests that the 2009 *Flores* decision in the Supreme Court brought an unsatisfactory denouement of sorts, as it determined that Arizona’s use of SEI is effective and that Arizona’s spending on ELL pupils is therefore sufficient. Since that decision, and Judge Collins’ 2013 District Court response (as discussed in Chapter 1), many educational and legal scholars are contributing to the next moves made in the state by raining down research-based battle in response to the courts’ decisions.

Talking Back to the Highest Court in the Land

A portion of *Flores* scholarship reviewed here acknowledges that it was written in direct response to the Supreme Court’s 2009 case ruling. For example, the UCLA’s *Civil Rights Project/Proyecto Derechos Civiles* published nine papers in 2010 as part of the Arizona Educational Equity Project (AEEP). In this project, twenty-one legal and educational scholars from UCLA, Stanford, Arizona State University, and the University of Arizona wrote back to the 2009 decision with the goal of producing studies to reassess the key issues of the case; illustrate the conditions of education for ELLs in Arizona, largely as a result of SEI, in ways that would be useful to the court; display existing data to make informed decisions; and determine what further research needs to be undertaken. Cecilia Rios-Aguilar and Patricia Gándara (2012a), who were key players in the production of the AEEP issue and the 2012 Special Issue of *Teachers College Record* (Volume 114, Issue 9) that republished all but three of the AEEP studies, write that the goal of the AEEP was to “conduct research that closed existing knowledge gaps . . . [and]

do research that could be useful to the court” (p. 4). They refer to the AEEP data as “the most comprehensive examination of the effects of a state’s educational program for ELs ever conducted” (p. 7).

Rios-Aguilar and Gándara (2012a) describe the coercion tactics used by Tom Horne’s legal team to intimidate, discredit, and threaten AEEP scholars by attempting to force them to reveal the identities of participants in their studies. While the scholars held their ground and experienced an ethical victory, the federal district court trial did not enter any of the AEEP studies into the record, nor did it make use of any expert witnesses therein. Of lessons learned from this experience, they write:

First, educational researchers must be better prepared to face these legal processes. Second, we learned that the debate about how to best educate EL students has more often been fueled by ideology and the political context than by actual research findings. Third, researchers must cooperate with lawyers and with policy-makers to make the evidence available and in a way that is understandable to the public and to the courts. Finally, researchers must make research on language policies a priority in their research agendas. More scholarship on the factors that affect EL students’ educational and occupational trajectories should be conducted regularly because it has the potential to shape future language policies. (p. 7-8)

What is notable is that these cautions suggest that there is a “best” way to educate this category of people called ELL students, and research promises an apolitical and non-ideological high road that will lead practitioners to this way. Further, the authors seem interested in producing mass knowledge/scholarship on EL students, to know their

“trajectories” in school and in life in order to help activate policy that will lead to some taken-for-granted improvement. In short, the pleas above can be read as an attempt for scholars, lawyers, and policy-makers to join forces in re/producing ELLs as a different category of people, people who will be “found”, as opposed to the “generation of English language learners lost” (Rios-Aguilar & Gándara, 2012a, p. 8) in the midst of *Flores*’ long life and the legislature’s failure to appropriately respond. We are to work together to study who ELL are currently able to become in the realms that matter most—education and career fields—if we are to develop policies that are most productive and fruitful in creating “better” subjects.

The Ghosts of Case Law Rationalities

The AEEP and *TCR* scholars are not the only ones writing back to the *Flores* decision or writing with concerns about who ELL students are or will become under current policies or educational practices. Other narrators of the *Flores* tale that tell it in the tomes of scholarship often cast their glances further back, back to more encouraging case law that preceded *Flores* in 1974 with the now infamous *Lau* decision (Asturias, 2012; Gándara & Orfield, 2012a; Honeycutt & Castro, 2005; Mongiello, 2011; Rios-Aguilar & Gándara, 2012a; Salomone, 2010), which resulted in the Equal Educational Opportunities Act (EEOA),¹⁶ that Act upheld as the promise and the standard to be met in the *Flores* case at hand. Scholarly narrators also look to *Plyler v. Doe* (1982) (Asturias, 2012; Mongiello, 2011; Gándara & Orfield, 2012b; Salomone, 2010; Welner, 2010),

¹⁶ Richard Nixon proposed legislation in 1972 to promote equal educational opportunity regardless of race, color, or national origin, yet the EEOA did not pass until 1974, as *Lau* renewed interest in Nixon’s proposal. In the *Lau* ruling, the Supreme Court decided that additional provisions, including instruction in Chinese and in English, needed to be taken for ELL students. The EEOA, passed thereafter, prohibits the denial for equal educational opportunity based on race, skin color, sex, and national origin, and it provides blanket legislation that has been used to address rights violations of ELL students (Bruner, 2010).

which legal scholar Michael Olivas (2005) referred to as the “Mexican American *Brown v. Board of Education*”¹⁷ (cited in Salomone, 2010, p. 176). Interestingly, in the *Plyler* case, which secured the right for immigrant children, documented or not, to access public education in this country, both Plyler, who was the superintendent/plaintiff that was ruled against, and Justice William Brennan, who spoke for the majority that ruled against him, eventually articulated a singular stark belief that inspires a critical look into how those who speak about ELL students rationalize where they stand and why.

The common perspective between Justice Brennan and Superintendent Plyler was that not educating *those* (immigrant/other) students in the mainstream would result in a “subclass of illiterates” that would not be prepared for self-reliance or self-sufficient participation in society. *Those* students would cost society far more in the long run with their unemployment, welfare, and crime (quoted in Salomone, 2010, p. 177).¹⁸ Strangely, in a recent scholarly report written to trouble the educational outcomes that have followed the implementation of SEI in Arizona, Jimenez-Castellanos, Combs, Martinez, & Gomez (2013) refer to the improved education of ELLs as “a wise policy investment and in the state's best interest” in reaching the goal of “rais[ing] overall educational attainment levels and support[ing] long-term economic growth and prosperity” (p. 3). How is it that what appears on the surface as opposing arguments retrospectively reach similar conclusions, or at least use the same rationalities to determine why we should

¹⁷ Olivas (2005) refers to *Plyler* as “a vehicle for consolidating attention to the various strands of social exclusions that kept Mexican-origin persons in subordinate status” (p. 201).

¹⁸ Speaking for the majority, Justice William Brennan used the rhetoric of refusal to provide education to the children of undocumented immigrants would result in a “subclass of illiterates within our boundaries, surely adding to the problems and costs of unemployment, welfare, and crime” (cited in Salomone, 2010, p. 177). Superintendent Plyler, in retrospect, said that denying immigrant children an education would have been “one of the worst things to happen to education—they’d cost more not being educated” (Salomone, 2010, p. 177).

protect and enforce the equal educational rights of children, and perhaps more importantly, who we think these children are and who they will become? This got me thinking—whether one considers the most recent conclusion to the *Flores* story to be a redeeming or a tragic tale seems to rely on who is regarded as the hero and who the villain . . . but what if hero and villain are kind of the same force, or at least rely on the same brand of rationalities to fuel their positions and their practices?

Who are we Writing About?—“The Population”

In ecological sciences, a population is a quantifiable group of organisms or species that live in a defined habitat or geographical area. The geographical area matters because it helps to project the prospects of interbreeding and future population numbers. Such counting and projecting allows biologists and ecologists to forecast other patterns, many of them related to the longevity, survival, and “success” of whatever species is under the microscope. In human sciences, a population is a quantifiable group of people that can be subcategorized according to supposedly meaningful demographic characteristics. The trends surrounding these characteristics promise to do some predicting of their own. If we measure the population of the U.S. or the world according to the languages spoken by its people, as *Flores* scholars habitually do, we can come to conclusions like “the rapid spread of English could present a substantial threat to the linguistic diversity of the world” (Harper, 2012), or, alternatively, “as migration has accelerated all over the world (Suarez-Orozco & Qin-Hilliard, 2004), the challenge of how to educate students who do not speak the language(s) of the land they are living in has grown” (Rios-Aguilar & Gándara, 2012b, p. 1). Yet, no matter the microscope, *Flores* scholars often conceptualize the ELL population as endangered or as dangerous

for one reason or another. This is germane because these patterns in discourse reveal the activity of thought, and “the activity of government is inextricably bound up with the activity of thought” (Rose, 2000, p. 8).

Much of the “population” data in this archive contains statistical warnings about the ELL population that have implications for how we read and inscribe this group of people. In his introduction to *The Taming of Chance*, Hacking (1990) discusses the inexorable and self-regulating social and personal laws that were a matter of statistical probabilities: “The systematic collection of data about people has affected not only the ways in which we conceive of a society, but also the ways in which we describe our neighbor” (p. 3). For one thing, there are a lot of “them”, and we can be sure there will be more. Most of the scholarship analyzed provided some count of the ELL population to create a sense of urgency, as seen in examples like: ELL students are the “fastest growing demographic in U.S. schools” and “[b]y 2025, one in four American students will be categorized as limited English proficient” (Mongiello, 2011, p. 211). The state of Arizona served “approximately 166,000 ELLs, in 2007-08, accounting for approximately 15 percent of all K-12 students in Arizona” (Jiménez-Castellanos, Combs, Martinez & Gomez, 2013, p. 3). The statistical data is often followed by a warning: “[it is therefore] imperative that Arizona meet the educational needs of ELLs, 90 percent of whom speak Spanish as their primary language, in order to raise overall educational attainment levels and support long-term economic growth and prosperity” (Jiménez-Castellanos, Combs, Martinez & Gomez, 2013, p. 3). In short, the scholarship analyzed comprehensively arrives at two conclusions: 1) the ELL population is growing rapidly, and 2) we should

heed or fear the growth of this population, *unless* we are willing to improve on the way they are educated.

Below, I've included a series of other examples from across the archive to further illustrate trends in how thinking about population is articulated and rationalized, which begins to shed light on how *Flores* subjects are counted and accounted for as they are made ready for government:

- “[A]lthough numbers are hard to pin down, in Arizona the percentage of U.S.-born ELLs has been estimated at approximately 80% (Capps et al., 2005; Gándara & Hopkins, 2010)). This makes them citizens of the United States” (Iddings, Combs, & Moll, 2012, p. 499).
- “Given that the great majority (over 80%) of Arizona’s English language learners are Spanish speakers, there is considerable overlap between ELL and Latino students” (Gándara & Orfield, 2010, p. 1).
- “Arizona is home to 922,180 pre-K students in 1,742 public schools; more than 48% of the students are minority, 16.1% are ELLs, and 19% live in poverty” (Wright & Pu, 2005, p. 127).
- “Districts that serve significant numbers of students from families living in poverty often have a higher proportion of ‘difficult to educate’ students. These difficult to educate students come to school with numerous needs [like language differences] that must be addressed in order for these students to meet various expectations such as reaching academic proficiency“ (Hoffman, Wiggall, Dereshiwsy, & Emanuel, 2013, p. 5).

- “(L)ess than 30% of ELL students in the eighth grade scored at or above the basic level in reading and math, while English-speaking students reached proficiency levels of 75% in reading and 71% in math. ELL students are also the fastest growing demographic in U.S. schools. By 2025, one in four American students will be categorized as limited English proficient” (Mongiello, 2011, p. 211).
- “Recent graduation rates in 2009 show that only 68.6% of Arizona’s Latino students graduate from high school compared to 83.2% of the state’s White student population” (Leckie, Kaplan, & Rubinstein-Ávila, 2013, p. 174).
- “In 2005-06, the ELL graduation rate was 44 percent. In 2010-11, it has decreased to 25 percent—compared to 85 percent for Caucasian students and 72 percent for Latino students, placing Arizona at the bottom of all 50 states” (Jiménez-Castellanos, Combs, Martinez & Gomez, 2013, p. 12-13).
- “Arizona’s policies, then, are creating a teacher workforce that is not adequately prepared to teach 15% of its students, or, in the case of the districts in the present study, 26-33% of their students” (Hopkins, 2012, p. 95).
- “Hispanic students, who make up the vast majority of the nation’s ELL student population, are, according to some statistics, four times as likely as white students, and nearly twice as likely as African-American students, to drop out of school” (Asturias, 2012, p. 615).

The use of statistics makes it possible to quantify specific phenomena to the ELL population. The repeated tethering of specific concerns to this population—legal status, income level, academic achievement, failure rate, drop out rate—is suggestive of ways in which the ELL population is characterized, regardless of the author’s purpose in writing

about them. Across the examples included above, the overall population is dichotomized in a few essentialized ways—ELL/non-ELL, minority/majority, Spanish-speaking/English-speaking/other-speaking, impoverished/not impoverished, not proficient/proficient, non-citizens/citizens, destined to drop out/destined to graduate. The statistics that float around categories that include and exclude, divide and totalize, promise to correlate regularities in rates of categorical ELL population growth to corresponding rates of ELL student failure. The successes, boons, or non-economic reasons to celebrate the state or nation's ELL population are *never* mentioned. Are these alternatives even thinkable? Instead, ELL subjects are consistently regarded according to deficits in taken-for-granted educational touchstones that code levels of perceived “success”—graduation rates, test scores, and English proficiency criteria (which are also test scores).

Notably, all of the writers cited in the list above are writing in support of ELL students and with the purpose of extending group advocacy and support. One conclusion apparent across their claims suggests that the faster the rate of ELL pupils grows, the more U.S. students and their schools will fail. In short, the aggregate effects of the ELL population, as their behavior or performance currently stands, are detrimental to other common “counts”—achievement, graduation, or “success” rates. What is more, the meanings of both population growth and language use are conceptualized along economic lines. As we will see with the analysis of “risk” rationalities in the archive discussed below, upward trends in the ELL population suggest adverse economic trends. The kind of reason that predicates the exercise of government over students, according to these discourses, is concerned with educating all members of the public according to the

principles of standardization and accountability because they promise positive economic returns to society in spoken and unspoken ways.

In problematizing the idea of the child “left behind”, in spite of research seemingly written to include, equalize, or aid, Popkewitz (2009) writes that:

The ‘dream’ of inclusive schooling [. . .] is assembled by particular principles generated to order, differentiate and divide the objects of reform as knowable components of reality. The partitioning of sensibilities is the political, shaping and fashioning what is known, to be done, and hoped for as the possibilities of schooling and professional education. That politics, however, is not only about what ‘we’ should be, but also processes of casting out and excluding what does not ‘fit’ into the normalized spaces (Popkewitz, 2008). The latter, I will argue, simultaneously enunciates fears of the dangers and dangerous populations that threaten the envisioned future. (p. 218)

In order to advocate a policy, reform-minded scholarship for the child “left behind” by legislative decisions surrounding *Flores*, first we must *identify* or sort out all the ELLs. Then, we count them. Then, we subdivide them and count again. Simultaneously, we must show why the category ELL is a problem to be solved. And yet, both the problem and the solution are demarcated by contemporary standards of achievement and success in schooling. Popkewitz’s discussion here helps us connect what scholars are able to say when carving out the ELL student body according to the claims that determine *why* this population must be tamed, aided, made competitive, or normalized through English, schooling, and improved or inclusive English language schooling. ELLs are perceived, by

and large, as risky. Below I will outline the appearance of risk / danger perceptions in the data. The exemplars are followed by analysis of the implications of discourses of population risk in *Flores* scholarship.

What is the Problem? — Risk / Danger

Perhaps it is apt that the courts and legislature named the group deployed to determine appropriate educational measures the “ELL Task Force”. The concept of the task force was extensively employed by the U.S. Navy during World War II to describe the assembling of different ships from different squadrons to effectively accomplish a single military activity. Such was the case with Carrier Striking Task Force Operations Order No. 1, dated November 23, 1941. This task force’s order reads: “In the event that, during this operation an enemy fleet attempts to intercept our force or a powerful enemy force is encountered and there is danger of attack, the Task Force will launch a counter attack” (quoted in Adams, 2008, p. 68). The goal of a task force, then, is to protect the state from enemies or potentially dangerous attacks by remaining steadfast and ready to execute a counter attack. In this military configuration, there is no doubt about who is protector and who is enemy, and the task force works in the service of protecting state power by exerting physical force.

While still a political entity intent on implementing strategy to protect state interests, the friends and foes of Arizona’s ELL Task Force are more difficult to determine. This Task Forces’ deployment is, in theory, supposed to determine appropriate educational interventions, desired outcomes and corresponding spending with the dual goals of court compliance and fiscal solvency. Yet, many scholars contend that Arizona’s ELL Task Force “knowingly continue(s) a long history of putting ELL students

academically at risk” (Leckie, Kaplan, & Rubinstein-Ávila, 2013, p. 160), and therefore fails on both counts. Based on the rhetoric of risk and danger used by scholars in the data analyzed, the Task Force’s moves are actually detrimental to state stability and security because they are detrimental to the ability for a growing population in the state to “succeed” in and after school.

The ELL population is consistently read as “risky”. Some populations within *the population* are presumed to be more risky than others. But risky or at risk in terms of what? In the realm of neoliberal logic, risk is predicated on the potential to need, to want, or to depend in ways that might threaten state stability (Carlson, 2009). That is, one’s level of risk might be determined based on how likely an individual is to seek welfare or supportive services from the state in the future. Individuals with seemingly less insurance (because they aren’t perceived to have safety nets through wealthy families, prestigious educations, job security, etc.) create more risk. Therein, insurance is “a ‘calculus of possibilities’ (Ewald, 1991, p. 200) or the ‘art of combinations’ (p. 197) that estimates the probability that certain events will occur with a certain population” (Carlson, 2009, p. 260). Voices in the data describe ELLs as “a population that is academically vulnerable” (Leckie, Kaplan, Rubinstein-Ávila, 2013, p. 159). If one does not account for the particularities and idiosyncrasies of what “academically” means in U.S. schooling, as a group, ELLs are presumed to be susceptible to intellectual challenges. Obviously, this judgment is flawed and this claim is impossible to support with the standardized assessment and graduation rates used to measure the academic potential of the group. And yet, risk claims about the ELL population are plentiful, extensive, and varied. Chief among there is the claim that ELL students are *likely* to drop out of school (Asturias,

2012, p. 632; Gándara & Orfield, 2012a, p. 1; Gándara & Orfield, 2012b, p. 18; Iddings, Combs, & Moll, 2012, p. 503; Jiménez-Castellanos, Combs, Martinez, & Gómez, 2013, p. 12; Rios-Aguilar & Gándara, 2012a, p. 8).

While concern for ELL's academic abilities and likelihood of graduation is apparent across the literature, their psychological stability when forced into SEI classes is also in question. Gándara and Orfield (2012a) believe that "the excessive segregation of Arizona's Latino and EL students is probably harmful to their achievement and social and emotional development" (p. 1). The scholarship includes descriptions of ELLs who "showed signs of trauma (e.g., depression, fear of school, crying, and acting out at school and at home)" (Honeycutt & Castro, 2005, p. 122) after beginning SEI classes. ELL students become increasingly isolated as they lose their ability to communicate with their own families in the native language (Harper, 2012, p. 526).

Sometimes, the insurance for ELL students is further reduced and their risk is exacerbated by compounding variables like a lack of English language skills, *as well as* meager access to health care, nutrition, safe home environments, early care and intervention (Barton & Coley, 2009; Berliner, 2009; Rothstein, 2004), and to social capital more generally (Fine, 1993; Lareau, 1989; Wells & Serna, 1996; all sources mentioned in Welner, 2010, p. 85). "Each of these factors—low income, low parent education, and ethnic/racial minority status—decreases group achievement averages across academic areas, leading to the relatively low performance of EL students" (García, Arias, Murri, & Serna, 2010, p. 134). They just have so many needs and are therefore difficult to educate (Hoffman et al, 2013, p. 5).

As ELL students grow in age, their risk grows with them: “Perhaps high schools kids are not as cute as elementary school kids. Their problems often grow in proportion to their age” (Asturias, 2012, p. 642). Perhaps this is because the detrimental effects of SEI are believed to be cumulative:

with the real consequences only becoming apparent as students move through the public school system hampered by their lack of literacy skills and content-area knowledge stemming back to the early grades. Students who fail one grade or more are more likely to drop out and be underachievers because they become academically disengaged from their own education (Halcón, 2001). (Mora, 2010, p. 19)

It seems that the chain of needs, which is only exacerbated by SEI, will last for a lifetime: “Latinos attend the schools most segregated by language, race and poverty. As a result, many, particularly young men, are not even finishing high school, which places them at very high risk of a lifetime of poverty and disadvantage” (Gándara & Orfield, 2012b, p. 18).

The effects of the ELL detriments and risk outlined throughout the scholarship are portrayed as cyclical and intergenerational as well. ELL’s parents are pathologized by scholars who assume that schools are the sole means to provide ELLs with the “English skills necessary to be competent in school and life” (Rios-Aguilar, González Canaché, & Sabetghadam, 2012, p. 47). Salome (2010) refers to the parents of English language learners as “poor immigrants who lack the political awareness, financial resources, and basic language skills to make their voices heard and whose presence in this country has met increasing hostility” (p. 180).

What becomes of these academically disengaged dropouts? Well, they “are at a severe disadvantage when they attempt to become productive members of society” (Mongiello, 2011, p. 216). The effects of disadvantage and unproductivity are both cast in economic terms that begins as problems of the self and become problems for society:

It has been shown that failure to graduate from high school reduces economic opportunity for the students themselves and increases costs on the larger society through increased need for government assistance and increased likelihood of entry into the criminal justice system. If 20% of any population is at an increased risk of failure, it would seem that the significance should be great. (Asturias, 2012, p. 632)

Therefore “[a] state cannot ignore the significant social costs created when certain groups are prevented from gaining the opportunity to develop the skills necessary to become valuable participants in society” (Mongiello, 2011, p. 216). We need to invest in the education of ELL students, the logic goes, if they are to have a chance to have the choice to improve their own welfare. SEI does not even given them a chance to unburden the state; it does not allow for the development of the kind of human capital that the state desires. Language education is cast as a kind of social and economic insurance that allegedly prevents this category of risky children from encumbering the state later in life and in future generations. If done correctly, and according to scientific research, language education will “activate” the ELL citizen’s productivity and industrial activities (Rose, 2000, p. 166), forming a more prudent producer/consumer that can enact his/her political responsibilities by staying away from government assistance and selling labor to the market.

How can we be Sure?—Research / Science / Experts

Scholarship represented in this data set finds consensus as it problematizes the untrialed, untested nature of the 4-hour SEI response to *Flores*. And this collective reaction makes a lot of sense, as the court tapped into the rationality of proof and scientific expertise when ruling on what kinds of language interventions ELL students should be entitled to and why. If untested validity is a problem, more scientific research might be the solution. Popkewitz (2009) writes:

Research is to identify the right set of procedures that will close the achievement gap between the advantaged and disadvantaged students. Design Research, a seemingly different ideological and methodological approach than ‘the gold standard’, maintains the purpose of research finding the right mixture of practices through a constant process of monitoring of classrooms so as to achieve ‘desired results’ (see discussion in Popkewitz, 2008, chapters 7-9). (Popkewitz, 2009, p. 220)

Achieving the “desired results” means using expertise and knowledge workers to design more suitable subjects. The data writes in search of information and professionals to more scientifically scout out and train against the ELL population’s problems.

The role of scientific expertise is to “provide the information that will allow the state, the consumer or other parties—such as regulatory agencies—to assess the performance of these quasi-autonomous agencies, and hence to govern them—evaluation, audit” (Rose, 2000, p. 147). The scholars writing take this responsibility very seriously and unquestionably argue for more rigorous science and more scientifically-aligned interventions. Scholars are to provide the risk assessments and to translate or make them

available for courts, policy makers, and teachers who are capable of intervening most directly on the ground.

First of all, scholars argue that “rigorous and scientifically designed evaluation” has already proven that SEI has negative effects on academic achievement (Mahoney, McSwan, & Thompson, 2005, p. 18). The Task Force’s SEI model “is not research based because the model does not meet the standards for supporting research evidence of program effectiveness recognized in the academic communities of language minority education experts” (Mora, 2010, p. 3). “[E]xisting evidence” to support the superiority of SEI is “weak”, and studies that support SEI and English-only instruction contain serious methodological flaws: “With the data and statistical tools utilized in these studies it is not possible to claim any effect of the program on students’ academic outcomes” (Rios-Aguilar, González Canaché, & Sabetghadam, 2012, p. 50). Furthermore, the one year timeline for SEI services before transition to the mainstream is harangued as “contradictory to research and literature that argues that ELs need five to seven years to become academically proficient in English” (Lillie et al 2010, p. 25). Yet, the legislature, which makes decisions in line with the “social and political struggles of the state” and based on the “power, authority and credibility of the actors involved in educational policy-making” (Rios-Aguilar, González Canaché, & Sabetghadam, 2012, p. 50), rather than the data of educational scholars, purportedly has the “best interests” of the ELL population in mind.

Then, there is the issue of how ELL students are measured for eligibility in the first place. Abedi (2006) argues that poor measurements lead to the misclassification of ELL students, “particularly misidentifying them as students with learning disabilities

[which] may have very serious consequences” (p. 2300). The validity of the Home Language Survey as a determinant of eligibility is questionable because parents might answer the survey questions dishonestly. Proficiency scores may be invalid because “reviewers of these tests found major differences between the content that these tests measure and the alignment of the content of these tests to English as a Second Language (ESL) standards (see Abedi, 2005; Zehler, Hopstock, Fleischman, & Greniuk, 1994)” (Abedi, 2006, p. 2296). Relatedly, there is concern for how ELL proficiency is measured after children have been classified and intervened upon. For example, a study by Garcia, Lawton and Figueiredo (2010) examines the predictive validity of the AZELLA to determine ELL redesignation for services. They document problems with the science of this assessment and argue that “[f]uture research must enrich the policy discussion concerning the academic achievement of ELLs by examining multiple years of state-wide, student-level achievement data disaggregated by the major sub-content areas of the state assessment” (Garcia, Lawton, & Figueiredo, 2010, p. 14-15). Likewise, Flores’ (2010) validation study found that the cut scores for the AZELLA are of “questionable validity” (p. 1) and are criticized by national measurement experts.

Unfortunately, the scholars suggest that the public does not know or appreciate real science, as “voter initiatives have led, instead, to educational programs that are not supported by scientifically based research or empirical evidence of effectiveness” (Yamagami, 2012, p. 157). Instead of science, the public voted for Prop 203 based on “[i]llusions of rationality [that] were created through the use of misleading statistics and other numbers and sound bites” (Wright & Pu, 2005, p. 690). The courts don’t know real science either, as the EEOA allows for a “loose standard [that] could leave programs

hostage to radical political theories and ideologies that may have little support in the wider scientific community” (Salome, 2010, p. 170). Welner (2012) argues that rigorous social science research can become a powerful factor in decision-making, yet, the reward systems for researchers and for policy advocates results in parallel conversations. If researchers are to become influential in the conversation that “changes what counts as common sense” (p. 21), then researchers must seek out their own ways to “direct their efforts toward delivering accessible, well-communicated, compelling messages to a broad audience” (Welner, 2012, p. 22). In short, “real” science deserves wide circulation, as it will guide our actions and interventions more purposefully. Morgan and Pullin (2010) echo the concern that “researchers must convince the more visible participants, such as legislators and judges and school officials, of the utility of their work . . . [by] cultivating a better understanding of how their research might be used by educators, policy makers, and judges” (Morgan & Pullin, 2010, p. 522).

Will science save these students? The answer does not matter when the question assumes an ahistorical view of scientific empiricism and a narrow view of salvation. The reliance on experts and SBR outlined above, to me, is relevant here because it illustrates how ELLs are known and governed across *Flores* scholarship. As Doherty (2009) shows, delegation of the fate of the subject to authoritative expertise is a feature of the “liberal ethos of government” (p. 154). The state need not work to count and measure and correct its ELL children to respond to claims about the effectiveness of instruction. Scholars have taken the reins, all the while strengthening the commonsense of SBR, sustaining a limited understanding of achievement, and supporting the embargo on all languages that are not English. In this configuration, “[r]eliance on the state switches to reliance on specific

experts to ‘advise on how communities and citizens might be governed in terms of their values, and how their values shape the ways they govern themselves’ (Rose, 2000, p. 189)” (Carlson, 2009, p. 262).

What Should we Do?—Individualizing / Will to Know

Scholarship in the archive counts and sorts the ELL population. It lays down statistics to make meaning of group qualities and needs and brings related problems to the attention of the audience. It mourns the lack of science in methods developed to examine and intervene on ELL students. It next evokes patterns in desired interventions that emerge in the data and comes to a conclusion—get to know each of the ELL students as individuals in order to treat them more effectively. This drive to individualize takes a few notable forms.

In spite of the scholars’ own attempts to totalize the ELL population via statistics and categories and dichotomies and needs assessments, a rejection of “one size fits all” policy appears across the data set. Wright and Pu (2005) argue for an acknowledgement of the social and educational contexts of second-language acquisition. Relatedly, other scholars argue that districts require “increased flexibility to differentiate instruction in order to meet the diverse needs of their ELL students” (Jiménez-Castellanos, Combs, Martinez, & Gómez, 2013, p. 3). Relatedly, they argue that while a streamlined policy might be easier to implement, it will not be as effective as one that accounts for individual students needs: “Differentiation of resources according to student needs is crucial for the funding apparatus to have the desired effect” (Hoffman et al, 2013, p. 5), which, I presume, is that more students can be made to “function effectively in the

mainstream” (Salome, 2010, p. 179) and therefore made productive in their post-school years.

Jiménez-Castellanos & Topper (2012) argue for a “fuller picture associated with the costs associated with educating ELLs” (p. 206). To achieve this, cost study researchers must “proactively account for the varied backgrounds, academic histories, and educational needs of ELL students” (p. 206). With all of the new knowledge about the connection between English language development and “identity and personal well-being”, we should be able to offer broad and suitable options for all children (Salome, 2010, p. 179). And since there are so many factors that could determine a student’s ability to acquire a second language “such as time, motivation, contextualization, age, first language development and prior schooling among others (Collier, 1987; Hakuta, 2000; Krashen, 1981, 1986)” (Leckie, Kaplan, & Rubinstein-Ávila, 2013, p. 173), the better we know our students, the more appropriately we will be able to educate them.

Teachers, who are allegedly unprepared to effectively teach ELL students (García, Arias, Murri, & Serna, 2010), need to be taught to individualize and correct their students as well. Teachers require “in-depth, specific training that attends to students’ diverse linguistic and academic needs, as this training seems to matter for the types of practices they employ in the classroom” (Hopkins, 2012, p. 96). Combs (2012) argues that a 15 hour SEI endorsement “could not possibly cover the pedagogical, theoretical, linguistic, socio-cultural, assessment or literacy issues involved in the education of English language learners” (p. 66). Relatedly, Lillie et al (2010) argue that teachers with an ESL or bilingual endorsement are more likely to know how to learn about and incorporate

students' "funds of knowledge" (p. 25), the individualizing answer to working with linguistic and cultural differences.

Scholars encourage that practitioners get to know ELL families, as in knowing their families, scholars and teachers can decide what is happening and what is lacking. For example, we need to know "whether their parents are educated and literate in the home language (and thus able to assist their children in first language literacy development)" (Combs, 2012, p. 73). Alternatively, to combat the issue that "ELLs are stripped from educational possibilities as they are often denied the right to draw on their own social, cultural, and linguistic resources and are thus left educationally stranded" (Iddings, Combs, & Moll, 2012, p. 507), we should know them to best know how to incorporate their funds of knowledge into instruction.

In our pasts, immigrants were either to be resocialized or farmed for cultural seeds to integrate in the production of a more exceptional United States. In contemporary contexts, the immigrant is symbolic of "change, contingency, and uncertainty in daily life" and must therefore be "tamed through the rules and standards that place the problem-solving child in diverse communities where the common good is formed" (Popkewitz, 2004b, p. 208). Teachers, who Popkewitz (2004b) argues are also now life-long learners, are implored to go into "the community" to better know the child, to fuse school/home values, to better manage themselves and their classrooms when they encounter difference. Researchers look on, holding the rules of science and the truths that it can tell about the order of conduct and corresponding recommended practices. And everyone works in concert to dispel fears of "socio-cultural disintegration and moral disorganization" raised alongside uncertain global shifts that threaten to denature national

and cultural identity. The “deviant” child—the poor, ELL, or disabled child—“is to be rescued through finer and finer distinctions that order and classify the wayward child; the child is one who does not yet have the ‘problem-solving skills’ and is not a flexible learner” (Popkewitz, 2004b, p. 211).

Implications/Conclusions

In *Discipline and Punish*, Michel Foucault (1977) writes of the classical age’s “discovery” of the body through techniques focused on its activity, economy,¹⁹ and modality. Later, in a 1978 lecture on the problem of government, he further clarifies economy to mean “the proper way of managing individuals, goods, and wealth, like the management of a family by a father who knows how to direct his wife, his children, and his servants, who knows how to make his family’s fortune prosper, and how to arrange suitable alliances for it” (p. 95) as such interact with political practices and the management of the state. Emerging procedures conditioned possibilities for the body’s operational control by shepherding its productivity and docility through a diffusion of corporeal knowledge and of corresponding practices. Foucault writes:

A meticulous observation of detail, and at the same time a political awareness of these small things, for the control and use of man, emerge

¹⁹ In *Discipline and Punish*, Foucault (1977) helps us to imagine literal and metaphorical bodies as forms of currency or as modes of discursive exchange on a battlefield of power relations. He writes: “But the body is also directly involved in a political field; power relations have an immediate hold upon it; they invest it, mark it, train it, torture it, force it to carry out tasks, to perform ceremonies, to emit signs. The political investment of the body is bound up, in accordance with complex reciprocal relations, with its economic use; it is largely as a force of production that the body is invested with relations of power and domination; but on the other hand, its constitution as labour power is possible only if it is caught up in a system of subjection . . . the body becomes a useful force only if it is both a productive body and a subjected body” (p. 25-26). Here, political power is invested in the movement and stasis of the body, and it uses the body as a form of political investment through its production of materials and of behaviors. And through the material manifestations of its behavior, it is also a site/sight of knowledge that is productive by way of its control, normalization, and corresponding technologies.

through the classical age bearing with them a whole set of techniques, a whole corpus of methods and knowledge, descriptions, plans, and data. And from such trifles, no doubt, the man of modern humanism was born. (Foucault, 1977, p. 141)

The modern student, or more specifically the category “ELL student”, appears through knowledge too, though perhaps we should say s/he is produced, not born. As age leads on to age, the corpus of disciplinary methods shifts and migrates to know and make different subjects. In a footnote to his quote above, Foucault explains that he selects his examples from “military, medical, educational and industrial institutions”, and notes that he might have taken other examples from “colonization, slavery or childrearing” (p. 314).²⁰ One site of the will to know and mold or another matters not, this note seems to imply, as it is through and across myriad disciplinary institutions that corporeal technologies move. Setting our sites/sights on one or another merely changes the landscape under investigation for a moment, but the making of a subject of knowledge and government is not a singular, one-sited/sighted task.

The conditions of Arizona’s political environment, concerns, and decisions are often cast in opposition to the goals, perspectives, and expertise of educational scholars. It would seem that Arizona’s legislative decisions are what the studies examined in this chapter are writing against or to change. Educational policy in the hands of a singular legislative regime seems dangerous, but perhaps what is more dangerous are prevailing

²⁰ As Mahon (1992) points out, Foucault notes a consistency between penal practices and general cultural practices: “Foucault is arguing that types of individuality, or characteristics of modern individuality, were produced by these practices” (p. 148). Since Foucault is focused on how power operates through discipline to normalize behavior, and since *Discipline and Punish* is a genealogy of the modern soul, there are numerous institutions that function with and without explicit correction and production as the aim, perhaps the selection of one example over another is beside the point.

logics that govern the rhetoric and decisions of folks speaking from different positions of power and with seemingly opposing agendas at heart. Maybe, at its core, what resides in these conclusions is a lesson about governmentality, how it may be operating, and what alternative spaces we might seek beyond the themes found across these artifacts. Why don't we ask how we can "ensure equity and adequacy for Arizona's youth?" (Lawton, 2012, p. 478) while immediately wondering how we are determining what equity and adequacy mean (and for whom, and why and to what end?). How might we define success beyond or outside of the status quo? Will we be willing and able to value trappings of individual success according to infinite definitions of what success might look like? Without scientific measurement? Without determining who this category of people called ELLs will be with and without what we're using fear, risk, and the promises of science to prove they need, and how they must get it?

Who or what were "English Language Learners" before Title 6 of the Civil Rights Act of 1964 or the Elementary and Secondary Education Act of 1968? Before *Lau v. Nichols* (1974)? Or was it *Flores* that brought this recent invention, this category of people, many of them children, into existence? Was the condition of the ELL lurking in the nation's classrooms, waiting to be discovered and treated, or is ELL a category that was merely created by a new, functional understanding of children who are learning to speak a language? Aren't *all* children in U.S. schools English Language Learners throughout their time in the classroom?

Ian Hacking (2002) makes much of the *curious* practice of counting and sorting individuals in his essay "Making Up People". His interest is "philosophical and abstract" (p. 100), as he remarks that categories "create new ways for people to be" (p, 100); that

is, distinctions between people bring new effective realities, new kinds of people into being. Naming them is but one element of their constitution as subjects. Language itself is an entity in its own right, independent of how we classify it (Hacking, 2002, p. 105). Who ELLs are is “not only what [they] did, do, and will do, but also what [they] might have done and may do. Making up people changes the space of possibilities for personhood” (p. 107), for who people might be when counted as individuals.

With the scholarly fictions I’ve collected and shared in this critical review, I must contend the story is always missing key pieces, as the subjects in question “form one spectrum among the many that may color our perception here” (Hacking, 2002, p. 110). What has become available to read, know, and think about ELLs cannot be the whole truth. There are innumerable complex social lives and histories in the making behind the scenes of science, or standards, of risk rhetoric, and when we try to number and name them, to type them and measure them according to status quo ideologies that work in the service of the state by discursively teaching us how to govern ourselves and our kids and our students and our colleagues and our neighbors by alignment or by contrast or by consent or in protest, we ossify a truth in that fiction, take a category for granted, and let it take us all for a ride.

One chapter in the tome of methods for knowing, describing, planning, and generating data on human subjects—academic scholarship—was the “institution” under investigation in this chapter. More specifically, this chapter reviewed academic scholarship that simultaneously narrates and contributes to the formation of ELL student subjects as they became knowable and governable alongside the emergences of the *Flores* case. While the conventions of a dissertation either welcome or mandate a formal

review of literature in order to build a series of sturdy frames around a study—theoretical or conceptual, methodological, in the service of tracing the terrain of related approaches and oversights or gaps—the purpose of this literature review extends beyond the ordinary, as it attempts a simultaneous exposition and analysis of subject formation through scholarship. That is, while this chapter offers a review of academic discussions surrounding *Flores*, it also provides an initial illustration of how critical tools can problematize the constitution and attempted reconstitution of ELL students. In an attempt to probe the rationalities of rule embedded in *Flores* discourses and the production of certain kinds of subjects therein, academic scholarship that utters *Flores* becomes but one vehicle for rationalities and therefore can be read as an archive that hints at one of many formations on the discursive landscape under investigation in this study as a whole.

Chapter 3

METHODOLOGICAL AVENUES

We should try to discover how it is that subjects are gradually, progressively, really, and materially constituted through a multiplicity of organisms, forces, engines, materials, desires, thoughts . . . (Foucault, 1976/1980, p. 97).

Review and Preview

In the last chapter, I explored the argument that academic scholarship has material effects as it positions and studies ELL students as objects of knowledge. In “academic conversations” engaged and in interventions sought, an archive of scholarship on ELL students can reveal rationalities of rule that name, categorize, measure, assume and assess risk, and come to conclusions that aim to constitute and attempt to reconstitute subjects. With that, Chapter 2 provided a general review of language policy scholarship, followed by a critical review of scholarship that speaks for or about ELL student subjects in light of *Flores*. The purpose of the critical review was to provide a reading of scholarship in ways that help to answer the research questions that linger in the folds of this project:

- What rationalities of rule are embedded in the discourses surrounding *Flores* (1992-present)?
- What kinds of subjects do the discourses of/around *Flores* produce?

Chapter 2 concludes with a push toward further examination of the discourses through which ELL students become knowable and governable as subjects.

Foucault positions the constitution of the subject he speaks of in the 1976 lecture quoted in the epigraph above as contrary to regulated, legitimate, sovereign power, but as no less effective or productive. When analyzing power, Foucault cautions, look not to the

epicenter but the corridor, not to the seat of a global decision-making but to the ground upon which moves made elsewhere are embodied, given shape and form and sense and material and motion. Some of these moves may seem aligned with the resolve of larger, legislative apparatuses. Some may seem to operate in tension, contradiction, opposition, and revolt. Herein lies a methodological precaution—look not to intention (which may or may not deliver what it promises) but to *practices*—the real, material effects that are manifest in relationships between rationalities and their targets. One site of rationalities is in incomplete discourses and the quasi-traceable systems of their formation.

As I move toward carving out methodological avenues through which to explore additional categorical archives—legislative (Chapter 4), judicial (Chapter 5), and public opinion (Chapter 6) rationalities of rule—each of which inscribes ways of knowing *Flores* and generating all sorts of knowledge around these subjects we call “ELLs”, I’d first like to review ways of knowing Foucault and governmentality studies in the field of education. Doing so allows exposition, illustration, and an acknowledgement of and appreciation for the work that makes my text conceivable—a phenomenon of possibility that I discuss in the following section of this chapter, “A Monument to Likelihood”. Next, I use this chapter to problematize the social sciences. That is, I question the curious act of producing writing that is supposed to be “data-driven” scientific documentation, and yet it attempts to question what “doing science” does to subjects while still relying on some of the vocabulary and conventions of social science research. This section is followed by what I’ve labeled conceptual tools for this study, though it is my hope that the use of these tools is apparent already in Chapters 1 and 2, throughout this entire chapter, and across the remainder of the text before you. Finally, the last section provides

a general overview of the collection and analysis processes undertaken in the chapters that follow and is to function as a preview of much more detailed discussion to come.

A Monument to Likelihood

Foucault-style “coagulations”.

Baker and Heyning’s (2004) introduction to the edited book *Dangerous Coagulations? The Uses of Foucault in the Study of Education* draws attention to the epistemological conflicts that proliferate around scholars as they attempt to “use” Foucault in a field like educational research. They write:

It is also noticeable that the heritage of positivistic research, of discourses of rescue, and of a general criticality that privileges terms such as agency and empowerment, without necessarily questioning their cultural specificity, tensions, or foreclosures, has obscured the historicity of criteria for judgment around Foucault’s name. (p. 2)

Questions of what research criteria, for whom, from whence, and to what end are most vital in undertaking an analytics of political rationality in the field of education.

Research methods are underwritten by ways of knowing. Corresponding logics and effects flow through politics, courtrooms, classrooms, newsrooms, universities, academic conferences, and professional development meetings. Traceable patterns in how we are able to know and govern students with those knowledges therefore merit careful attention.

As for the approaches to governmentality in education that fill Baker and Heyning’s (2004) text, the reader finds explorations of the constitution of school/ed subjects, including an argument for school uniforms as self-and-consumption-shaping

technologies of the body (Dussel, 2004), an approach to child game-play as an emerging form of biopolitical corporeal regulation (Kirk, 2004), and an examination of the epistemic instructions that constitute “good teacher” at different times and places (McWilliam, 2004). Relatedly, Weems (2004) looks at the historical constitution of an ideal teaching body (white, female, heterosexual) by examining the discourses of professionalism in the Progressive Era (1900-1930) alongside narratives of race, family, and nation.

Each of these contributions problematizes history with different methodological apparatuses. Yet, all of the authors mentioned above write with similar intent—to invite alternative ways of seeing and therefore being subjects. Kirk (2004) critically reads late 19th and early 20th century reports from Education Departments, headmasters, teaching manuals, and journalists to locate biopolitical shifts in exercise, play, and sport. Weems (2004) historicizes the topic of professionalism by seeking continuities and discontinuities across multiple sites of Progressive Era education, including public commentary on teacher preparation, documents from higher educational institutions for women (seminaries, normal schools, liberal arts colleges), and contemporary histories of American universities. Dussel (2004) blends the insights of educational scholars, cultural critics, and historians of the body and clothing, to trace what he calls “régimes of appearances” (p. 92). Meticulous descriptions of uniforms and dress codes over time form one archive for his analysis, and he opens these texts alongside alternative discourses that in/form the body. McWilliam (2004) provides a philosophical tour of ways of conceptualizing pre-modern pleasure ala Foucault (1985) and with the literary critic Peter Cryle (1994; 1997) in order to help re/fuse the pleasure/discipline dichotomy.

There is pleasure in discipline, and discipline in pleasure, and McWilliam troubles their seeming separateness in order to toy with mainstream, common sense, or comfortable prescriptions of the seemingly natural desires and conduct of a good teacher.

Into the archive.

What each of the scholars mentioned above is able to do is dwell in the realm of the document. That is, their “data” is archival. They resist analyses of human behaviors to form truths around who people are (or should be). They reject the will to know participants by observing, surveying, counting, measuring, or interviewing them. Not only do their questions drive their methods, their methods remain faithfully documentary. These writers search not for contemporary conceptual needs based on observations or experiences of subjects-in-the-making. Instead, they seek “the historical conditions which motivate our conceptualization” (Foucault, 1982, p. 209), that lend light to present circumstance according to narrations of their becoming.

In “The Subject and Power”, Foucault (1982) writes:

. . . power applies itself to immediate everyday life which categorizes the individual, marks him by his own individuality, attaches him to his own identity, imposes a law of truth on him which he must recognize and which others have to recognize in him. It is a form of power which makes individuals subjects. (p. 212)

Research on human subjects conducted in attempts to know them and intervene in their lives can be read as but another technique, a form of subject-forming power. The archive poses an alternative and a way of describing how myriad discourses contribute to subject formation.

Governmentality and pedagogy.

As the contents of the edited volume *Governmentality Studies in Education* (Peters, Besley, Olssen, Maurer, & Weber, 2009) illustrate, there are numerous generative research agendas that have connected analytics of governmentality to contemporary social and political worlds that are predicated on educational policies and practices. In the introduction, Peters (2009) first mentions the outpouring of governmentality studies in fields like the humanities, anthropology, politics, international studies, cultural studies, geography, environmental sciences, and education. The chapters that follow focus on the educational technologies and policies that interact with the production of citizens who are responsabilized through the market, entrepreneurialism, and self-government in Anglo-American and European contexts. To quote, the authors included in this volume focus on the field of education and educational policy to interrogate:

how neoliberal, third way and neoconservative policies rely on a set of practices that might be termed ‘government through the market’ to produce ‘responsibilized’ citizens who harness their own entrepreneurial and self-governing capabilities. (p. xlii)

Several essays in this volume, among others, served as most helpful guides as I endeavored to bridge theory and method across a very wide data set in my own study.

Doherty (2009), for example, examines the intersections of social capital theory and innovative policies in the context of New Labour with a conceptual framework that is grounded in the analytics of governmentality (Foucault, 2008; Rose, 2000). Following Rose’s idea of advanced liberalism, Doherty argues that Third Way politics intervene on

citizens/consumers by situating realms of health, welfare, and education as sites of modernization, realms of global competition to be maximized by a forced freedom to mobilize one's human capital, health, and culture in ways that sustain the potential of the information economy. Social capital theory, then, is attractive to Third Way. The theory sets the stage for new economic strategies; it highlights the need for information to flow; it demonstrates the importance of stitching policy across citizen, State, society, and economy (Doherty, 2009, p. 157). Doherty situates the logics of the Cabinet's Performance and Evaluation Unit (PIU) as one object of analysis to illustrate how the Third Way leverages social capital theory to frame policy. He therein locates an interest in "a particular energetic citizen who becomes the end of an active strategy of intervention and formation by government" (p. 161),

In the same volume, Besley (2009) poses the question: "How do understandings of governmentality play out in discourses of youth?" (p. 165), and she answers this question by taking a much longer and wider view than Doherty. She explores psychological and sociological paradigms that emerged in the early 20th century and throughout the 1970s. She then examines dominant "risk" discourses of youth and discusses the impact of the global market on the social fabric, on kid identity, on the making of an adolescent self. She argues that we need new tools to explain youth in this world, and she concludes that Foucault's notion of power/knowledge provides a platform for the inseparability of discourses, institutions, and practices and a passion for the insurrection of "little narratives" or subjugated knowledges. While both Doherty and Besley use very different data and methods in their studies, their application of conceptual tools in the realm of governmentality and neoliberalism provide touchstones

for my work in that their targets are the targeting of subjectivities through myriad discursive manifestations.

Doherty and Besley also locate a subject that is made to exist within neoliberal regimes of truth. Ball's (2009) examination of the discourses and rhetorics of the Lifelong Learning (LLL) policy industry takes subject formation one step further to encompass the making of a new kind of personhood and society as well. He draws from international LLL documents (published by DFEE, the Labour Party, the Swedish Ministry of Education, the EU, UNESCO), micro-technologies of power that produce a new kind of person as well as "a new 'ethic of personhood'" (p. 202) and a "pedagogisation of life" (Bernstein, 2001, p. 377). The lifelong learner is cast through these rhetorics as the European Learning Citizen (Kuhn & Sultana, 2006), an enterprising individual made by sensibility-shaping technologies of the self. Within his analysis, Ball mourns a full epistemological shift from moral to economic concerns for the subject. For Ball, this shift signals the production of a new citizen in relation to neoliberal forms of governance and the loss of authenticity in education and citizenship as a whole. To access the "world" of lifelong learning that he explores, Ball analyzes various documents that constitute the learner in relation to an imaginary knowledge economy, one that is created to support innovation, creativity, and enterprise in the service of economic politics that govern by way of compelling the subject to govern itself through skills and competencies that discipline, responsabilize, and promise economic success through the merits of enterprising. Institutions and governments need not take care of the lifelong educable subject—it will care for the self by making fiscally responsible investments in its own education. The range of approaches to governmentality across the essays in this volume is

tremendous. Osborne (2009) writes of “Foucault as Educator”, arguing that his lectures on governmentality allow for critique of the limits of one’s own thought and acts of resistance. Intellectual pursuits undertaken alongside Foucault become acts of freeing the self from governmental rationalities, and genealogical work is therein framed as an ethical care of the self.

Empowerment as Governance

Cruikshank’s (1992; 1999) work investigates the making of the modern citizen in a seemingly benign place—within discourses of empowerment. Self-governance is also a mode of subjectivity, so the encouragement of a subject’s freedom, democratic participation, and empowerment are also technologies of citizenship. Power / powerlessness, subjectivity / subjection, resistance / oppression—these seeming dichotomies are not necessarily in opposition. Redundant appeals to improve on a lack of citizenship or increase social capital are also strategies of government, she argues, that target the fabrication of the kinds of subjects that make democratic politics possible: “Political power is exercised both upon and through the citizen-subject at the level of small things, in the material, learned, and habitual ways we embody citizenship and the liberal arts of government” (p. 124). Cruikshank’s (1992) essay “The Will to Empower: Technologies of Citizenship and the War on Poverty” explores overlapping rhetorics of empowerment as strategies of governance and as “solutions” to poverty. She critically examines Community Action Program (CAP) empowerment rationalities to illustrate that relations of empowerment are governmental power relations.

Cruikshank (1992) provides the following reading of empowerment advocacy in various forms:

Technologies of citizenship—the organizer’s ‘issue campaign,’ the radical’s ‘revolutionary consciousness,’ the social worker’s ‘plan for self-sufficiency,’ the social scientist’s ‘theory of power,’ the feminist’s ‘self-esteem’—all seek to mobilize and maximize the subjectivities of those perceived to lack the power, hope, consciousness, and the initiative to act on their own interests. Understood as a means of combating exclusion and powerlessness, relations of empowerment are, in fact, akin to relations of government insofar as they both constitute and fundamentally transform the subject’s capacity to act; rather than merely increase that capacity, empowerment alters it as well. (p. 32)

She assumes that political subjectivity is the object and outcome of government intervention. It is a mechanism that achieves the conduct of conduct and does not exist prior to the transformation of political subjectivity into an instrument that government may work through. In tracing neo-conservative and neo-liberal empowerment rhetoric and in the rationalities of programs that target the transformation of the poor into the self-reliant, Cruikshank locates the will to empower within a variety of overlapping technologies—the will to know / show expertise on the subject, one-way empowerment strategies, demands for self-disclosure and self-description, and voluntary and coercive exercises of power. The short saga of power redistribution through Community Action Programs (CAP) is but one stage upon which her analysis might play out.

Cruikshank examines the rationalities for and against CAP legislation and programs circulated by reformers and revolutionaries alike. She finds that delinquent youth and poor people in general were presumably disinterested in their own

empowerment and therefore unwilling or afraid to participate in voluntary services, grant applications, community centers, educational programs, and radical political movements. In order to wage war on poverty, efforts had to be aimed at the political capacities and democratic reform of specific citizens. Helping the poor meant forcing them to help themselves by way of innovation in political rationality. They had to be “made available for government” (p. 41). Subjectivity had to be defined via categorization into an invention called the poor and dividing practices into subcategories like juvenile delinquents or the elderly or single parents. And the poor also needed to define themselves and their needs in order to solve their own problems alongside the government. CAP rationalities structured the possible field of action for the poor. While the full extent of CAPs was short-lived, Cruikshank argues that it did succeed “in creating a logic of empowerment and a model for overcoming or stretching the limits of democratic government” (p. 45). Importantly, Cruikshank discusses Foucault’s theory of power in a way that is most applicable to my approach to data analysis in Chapters 4, 5, and 6—“Foucault’s view of power allows us to see that subjectivity and subjection are never so clearly distinguished in liberal democratic societies. In fact, government works through its power to put others into action” (p. 47), and to put them into action at a distance to foster self-governance and appear uninvolved.

Subject production.

Cruikshank’s (1999) *Will to Empower* may appear to account for less physical forms of “correction” than the technologies that stud Foucault’s (1977) *Discipline and Punish*. Yet, in seeking out the conditional effects of strategies of governing and understanding that both the strategy and its effects will shift in search of targets to

govern, the theory of governmentality and its weight remain the same, regardless of the object or target under investigation and the methods through which a subject becomes knowable and able to be activated or acted upon. Perhaps what matters most is that insights into moves made and effects experienced may help to create the conditions for alternative places to go, people to become, and reasons to go there and become them.

Cruikshank is, of course, indebted to Foucault, who argues that these techniques, this “microphysics of power”, these little things that seem nonthreatening, even insignificant, move then from the physical body to the social body. Foucault gives name to “the conduct of conduct”—governmentality—“all endeavors to shape, guide, direct the conduct of others” (Rose, 2000, p. 3). The techniques that shape the movement of certain bodies into one space at one time or another discipline what we are able to think and know about those bodies, as well as about our own. That is, in learning to govern others, we also learn to govern ourselves.

Relatedly, Carlson’s (2009) “Producing Entrepreneurial Subjects: Neoliberal Rationalities and Portfolio Assessment” analyzes ways in which the turn from traditional exam-based assessment to portfolio assessment encapsulates a significant shift in the rationalities of rule that service the production of the student subject as well as its corresponding practices. Strategies that govern the student body at a distance—to ensure the security, economic prosperity, and well-being of the state and its people—arise in response to failures of the state government in Kentucky. Through portfolio assessment in Kentucky, students govern themselves and practice their freedom differently. They are ushered into taking responsibility and self-preservation. Their teachers also govern at a distance, as they move from the stage to the side to coach and view the *laissez-faire*

endeavor of selection and the entrepreneurial practices of self-invention through creation and execution. Carlson's chapter provides a lucid illustration of ways in which risk, insurance, and New Prudentialism, all characteristics of advanced liberal societies, play out in the assignment, production, and passage (or failure) of individualized Kentucky portfolios as social insurance calculated according to the totalizing rubrics of perceived self.

Popkewitz (2004b) writes his chapter "The Reason of Reason: Cosmopolitanism and the Governing of Schooling" in order to "historicize the universality and particularity of cosmopolitan reason by working through Foucault's (1978/1991) notion of governmentality in the study of schooling" (p. 189). He locates the creation of the cosmopolitan child at the intersections of normalizing and dividing practices in both the past and present. Popkewitz is not interested in arguing against "the reason of reason". On the contrary, he interrogates the field of cultural practices that constitute reason as such, because "[r]eason is a governing practice that stands as a salvation narrative in the administration of freedom and liberty in an indeterminate future" (p. 211). Reason also has corresponding practices that have histories, generate knowledges, develop into practices and have discursive and material traces.

Popkewitz (2004b) follows Foucault (1977) and Rose (1989) in referring to subject constitution through an individual's orientation to a liberty and freedom that make progress and salvation in this world possible as a method of "governing of the soul" (p. 190). He approaches his subject through cultural practices designed to imagine children as actors with agency. Popkewitz is careful to historicize the invention of both the notions of actor and of agency. He explores trappings of pedagogy and social science that make

possible a faith in the life-long learner and career-planner. This includes the leadership of Charles Eliot, who believed that education would proffer a power of reason that would make possible the “wise conduct” of one’s entire life (Eliot, 1892-1893, p. 418). “[S]mall adjustments between science and religion”, in the words of G. Stanley Hall (Hall quoted in Popkewitz, 2004b, p. 195), meld to form a secular/moral psychology of the developing child. Popkewitz shares a number of examples of this hybrid reasoning and articulates the place of the child within it in order to hone in the perspectives that make a child, in this case a child as cosmopolitan-in-the-making, into a subject/object of knowledge.

To reiterate—the child-type is made and is made out of the conditional possibilities of a moment. The conditional, too, has a conditioning effect. Popkewitz (2004b) continues:

Theories of the child, family, and community are inscriptions that govern agentive individuals who manage their lives and carry responsibilities that are not only for self-development and growth but also for standardized public virtues that enable the conferring of that agency. (p. 196)

Theories yield practices. In this case, practices develop through technologies of what Popkewitz (2004b) and Rose (2000) refer to as “responsibilization”—in this case manifest in a commingling of concerns for individual health and well being and the public objectives of social health and order. This makes the home/family the moral training ground of the soon-to-be-public child. Social science becomes an inscriber of normality wrought by the quest for ideals called “self-realization” and “community” and hardened into practice by forms of conduct engineered by pedagogical sciences and implemented by pedagogical practitioners. Parents too “under the guidance of new social

theories of health, would develop altruistic instincts that expressed self-obligation and self-responsibility in their children” (Popkewitz, 2004b, p. 202). Ethics and morals, the religious, scientific, and secular, all gel to form a convincing glob of gentle, righteous, humanistic science for the whole family’s betterment, and for the betterment of the nation state.

Popkewitz (2004b) is careful to locate the cosmopolitan along both particular and universal strands over time. That is, while he argues that globalization and the emergence of the global citizen as category is not something new, the rational and practical distinctions and methods for governing the citizen into a state of becoming mutate alongside the government’s needs. He artfully shows how power/knowledge moves through discursive fields—cultural practices, literature, pedagogical intent, beliefs about freedom, democracy, families, the self, and the other. The 19th century child who was to live out the social narrative spoken on behalf of the nation is no more. Today’s “life-long learner” is unfinished (p. 207), ever active, burdened with the freedom of choice, constantly reinventing, managing, responsabilizing, and producing for one’s own destiny.

To sum the compelling approaches to subject formation that inform my work, Popkewitz (2004b) traced the creation of cosmopolitan child / lifelong learner through responsabilization techniques. Cruikshank (1999) interrogated the fashioning and function of governable subjects through technologies purported to free and to empower. Carlson (2009) located the entrepreneurial subject in the development and dispersion of writing portfolio rationalities and technologies. Across these works, scholars pry open the seemingly kinder, gentler hands that sculpt subjects—those which take the subject by the hand, only to extract a fingerprint of sorts that allows for discussion, comparison,

diagnosis, corresponding treatment, and above all, the ability to alter and accumulate knowledge. I write these detailed looks into the works highlighted above in the hope that I can sap the spirit of the authors' care and intent in the methods I set forth, as I attempt to identify normalizing and dividing practices that service the creation of people that researchers refer to, so easily and carelessly, as English Language Learners.

The equity problematic.

I'd also like to draw more focused attention to Popkewitz's (2009) "Why the Desire for University-School Collaboration and the Promise of Pedagogical Content Knowledge May Not Matter as Much as We Think", as his approach to knowledge politics, contemporary research, and systems of reason that flow through standards-obsessed curriculum provides an exemplar of governmentality studies in education. He argues that the *equity problematic*, or "research directed to change the conditions of school to produce a more equitable society" (p. 219), embodies a system of reason for inclusion / exclusion, normalization, and threats brought by perceived danger based on difference. He writes, "[t]he analysis of the double gestures of inclusion/exclusion draws on Foucault's (1978/1991) governmentality. The study considers the limits of 'the reason' of contemporary reforms as instantiation of governing principles rather assumptions of inclusion and democratization (also see Popkewitz, 1991, 2008)" (p. 218).

As I show in Chapter 2, much of the scholarly contestation surrounding SEI relates to the exclusion, segregation, and curriculum gaps wrought by this model. Scholars work to make factors and mechanisms of inequity within this model apparent in order to argue for more fair and sound educational policy on behalf of ELL students. As Popkewitz points out, the implications of educational research cross ideological

boundaries that might otherwise divide positions of a need for effective classroom instruction and a need for a more democratic society in that the desired end-product and social purpose is the same—distinctions and differences will be erased. Research focused on reform attempts to better society by bettering people, which means changing them.

Popkewitz (2009) outlines the equity problematic to show its rational and practical limits in governing the student body across professional research and reform. To this he adds an analysis of the *reason* of reform as a power effect as well. He extends the cosmopolitanism (2004b) piece here by drawing from the emergence of adolescence as a category of being and the “civilizing mission” that follows anxieties about this category of people (and its subcategories):

These worries, anxieties and fears were inscribed in Hall’s studies as racialized and gendered distinctions about the threats of the uncivilized urban populations who did not fit in the space of the American Exceptionalism, its ‘American race’ and its citizens as ‘the Chosen People’ — women not in the home, immigrants from non-Protestant countries, Irish Catholic immigrants, African-American, and Chinese American. (p. 222)

The hopes and fears of the civilizing mission of the 19th and early 20th century is concerned with the making of subjects to participate in the global world. Educational reform targeted at equitable education for all children differentiates the lifelong multicultural learner, “the universal child who takes risks and respects others” (Popkewitz, 2009, p. 223) from the child “left behind”. The right reform recipe will change society by changing the people that compose it (Popkewitz, 2009). With

appropriate school reform, all children, even the most marginalized and risky and in need of rescue, will have the choice to think and act and be as “unfinished cosmopolitans” (p. 225) as they plan for the “ubiquitous future” (p. 226). Our humanness and desirability and capability are generated through discourses about who we are, are not, and should and shouldn’t be. Scholarship plays its part in using expertise to design people based on “what works” or according to “sound research practices”, two refrains that project the certainty that science will yield reproducible models (and that the reproduction of a model is desirable).

Doing Social Science > Doing Dissertation

Limits of intelligibility.

The methodology outlined in this chapter forms around and through discursive contexts for “doing social science” that command attention because these contexts and the methods of data collection and analysis used in this study are mutually illustrative of the limits of intelligibility, the boundaries “where thought stops what it cannot bear to know” (Britzman, 1995, p. 156) or is not (yet) able to know. As I’m learning to conceive of my research and even my ability to do that research in terms of theory (Fay, 1987) that I believe I cannot currently think *Flores* without, I must draw attention to grids of thinking and doing in order to “make the intelligible appear against a backdrop of emptiness and deny its necessity” (Foucault, 1997b, p. 39-40). That is, the methodology outlined in this chapter was made possible by inherited grids it cannot speak without. I can never fully speak outside of the known, and yet I also cannot fully grasp, detail, or explain, from this vantage point, what is intelligible, or possible, or how the intelligible

and possible emerged at the expense of other ways of doing social science, threading theory to method, or making *Flores* discourses mean and matter.

Likewise, I'm disposed to grasp that the "data" analyzed in the discursive analyses undertaken in Chapters 4, 5 and 6 are formations based on rationalities that were made, not born. And so, just as the "data" "analyzed" to "report" the "findings" for this original piece of scholarship, one that serves as a part of a qualifier for a doctoral degree, is sampled from discursive fields that have their own rationalities and conditions of possibility, these conditioning logics have made possible the collecting, writing, and rationalizing of information in certain ways and with a common purpose—to disseminate knowledge, nay, truths, in order to properly contribute to "the field", in a temporally clear and coherent voice.

And yet, all the while I write, I *never* do so in the service of solving or simplifying complex problems that do not have generalizable solutions (St. Pierre, 2000a). Rather, I'm working in the service of narrating the complexities of the terrain in which ways of knowing and constituting subjects through discourses occurs. This activity begins with an acknowledgement of tensions in the field, between a conditional, contextual "ideal to search for universal knowledge" (Popkewitz, 2004a, p. 65). Historically, such a search is a response to a yearning, a need produced to instrumentalize theoretical categories "into empirical realities to create the anthropological 'Other' in processes of social exclusion (Popkewitz & Lindblad, 2000)" (Popkewitz, 2004a, p. 67). In other words, I've chosen to acknowledge the productive and even violent capacity of subject creation through research, lest I lose sight of what I am seeking in *Flores* discourses, and why. I started this work by believing and still believe in abundant

possibilities for further thought and action. My hope is that this abundance begins with careful recognition of the space from which I work.

Among the engineers.

Educational scholars across ideological and theoretical camps are working in the shadows of an “engineering model” of inquiry (Freeman et al, 2007). In these shadows, federal agencies like the Institute of Education Sciences, as well as policy makers, funding organizations, and sources external to the educational research community, give credence and support, financial and otherwise, to research that adheres to the conventions of experimental design (Bryant, 2004; Lather, 2006). Postmodern and poststructural approaches to social science research are already available (Baker, 1999, 2002; Flyvbjerg, 2001; Lather, 2004, 2006, 2009b; St. Pierre, 2000a, 2000b 2002), but can be positioned as unsanctioned, less than, or unpopular. The scientific method is the law of the land, or at least the method most worthy of funding, respect, and high-ranking publication in the U.S. According to Lather (2004) and Cochran-Smith (2002), the Elementary and Secondary Education Act virtually mandated this trademark of narrow scientism. The No Child Left Behind Act (2001) and the specters that continue to haunt it effected an embargo on a range of approaches to educational research that have purposes, theories, methods, and interests that are epistemologically incommensurable with the evidence-based movement.

The 2002 National Research Counsel’s (NRC) report presumes that “it is possible to describe the physical and social world scientifically so that, for example, multiple observers can agree on what they see” (cited in St. Pierre, 2002, p. 25). Therein, the expectation is for “educational research to produce generalizable, unambiguous, and

immediately applicable solutions to complex educational problems” (Freeman et al, 2007, p. 30). The U.S. Congress upholds “objective, reliable research” (Castle, 2002, p. 28, cited in Lather, 2004, p. 16) in the form of Randomized Field Trials (RFTs) as bandages for the alleged brokenness of education research in the nation, much the way that common core curriculum and standards measurement is the alleged salve for crises of knowing in the classroom.

In her critique of the “evidence-based” governmental efforts to service one paradigm at the expense of all others, Lather (2004) questions how such legislative efforts might be read as a partisan tool and as “backlash” toward critical, feminist, environmental, ethnic, historiographical, and related approaches to science-as-knowledge. Lather continues, following Canclini (2001) that “in the guise of objectivity and good science, ‘colonial, Western, masculine, white and other biases’ are smuggled in” (Canclini, 2001, p. 12) (p. 16). Such sanctioning signals a disciplinary power (Foucault, 1977) that seats the production of “reason, science, knowledge, and researchers themselves” (St. Pierre, 2002, p. 26) as simultaneously governing and governed by a positivist approach to research that eclipses methods of inquiry that I argue we dare not ignore, lest we acquiesce to consensus, to sameness, to proliferating knowledges and practices without pause for their means, ends, inheritances, and conditions of possibility.

The NRC has predetermined both what can be called science and what can be considered evidence (The National Academies, Division of Behavioral and Social Sciences and Education, 2006). Likewise, the American Educational Research Association (2006) has also imposed standards for research methods in its publications.

Efforts to sustain the truth of science are more than ideological. They are epistemological. They are material. They are historical. They are self-sustaining. Evidentiary substantiation seems to be the difference between whether or not research is deemed worthwhile, whether or not it is funded, where it is allowed to be published. Who will have ears to hear and eyes to see the “results” of knowledges that spring from traditions deemed peculiar, unscientific, irresponsible, unreliable (Castle, 2002 in Lather, 2004), unintelligible, or idiosyncratic by some of the most visible and well-endowed players on the field?

Shaping the scholar~Playing the game.

The discourse that describes educational research in general as "historically and presently broken and in need of repair (e.g., Langemann, 2000; Kaestle, 1993)" (Freeman et al, 2007, p. 25) polices the work of scholars who conduct qualitative and quantitative studies alike. How are methods-makers to oblige and abide? They make it “science”, as in making science, they fabricate or replicate the truth. Cheek (2007) calls this the “quest on the part of governments to establish *certainty* with respect to measures and assurances of the quality and impact of research (the buzz words)” (p. 1052). The ultimate goal of educational research, it seems, is to generate and disseminate Knowledge by following a preset series of rules or truths, which reside in a whole regime of reality that Foucault (1976/1980) hypothesized as “a system of ordered procedures for the production, regulation, distribution, circulation and operation of statements” (p. 133). These statements ossify into the material of truth effects.

To participate in the necessary evil that is academic capitalism (Baez & Boyles, 2002) in the form of grant funding exchanged in the service of generalizable, replicable

results, researchers have to shape their work and themselves within realities that are always already organized as a knowledge hierarchy that sets positivism at the pinnacle. Cheek (2006, 2007) reminds that the government agenda is to ensure value for its money in terms of research investments and returns, and that, driven by neoliberal marketplace principles, active entrepreneurial and competitive conduct becomes possible, then normative. With that, the political climate surrounding all forms of qualitative research has been suspicious, combative, denunciatory (Lather, 2004; Lincoln & Cannella, 2004; St. Pierre, 2006) and lately somewhat obsessed with compiling criteria by which to measure methodological merit. Cannella and Lincoln (2004a) mourn, “rather than a language of equality and opportunity, the discourses of education have been repositioned to legitimate blame, punishment, and labeling (e.g. accountability, testing, measurement)” (p. 166).

Tracy (2010) published “Qualitative Quality: Eight ‘Big-Tent’ Criteria for Excellent Qualitative Research” in order to garner “respect for qualitative methods from power holders who know little about our work” (p. 837). *Power holder* is an operative phrase here. As Lather (2006) claims:

Naming, classifying and analyzing all work toward disciplining through normalizing. In terms of the recent governing mentality of educational research, the ‘privilege accorded to . . . ‘the sciences of man’ is based on political arithmetic’ (Foucault, 1998, p. 323) that makes particular kinds of discourse both possible and necessary. (p. 787)

Research is a political game, and the perpetuation of research criteria on a hierarchal value scale has governmental tendrils and effects. Criteria for quality, in other words, will

allegedly communicate (or proffer) value, in spite of the push to deny those who have political power in research any say in what are valuable and respected forms of inquiry (Hatch, 2006). Tracy's eight-point conceptualization includes: worthy topic, rich rigor, sincerity, credibility, resonance, significant contribution, ethics, and meaningful coherence. She reviews other standards—catalytic validity (Lather, 1986), empathetic validity (Dadds, 2008), crystallization (Richardson, 2000), tacit knowledge (Altheide & Johnson, 1994), transferability (Lincoln & Guba, 1985)—in order to acknowledge the dialogue that preceded her criteria and draw attention to the tensions within criteria-making.

When criteriologists speak, researchers listen. Gordon and Patterson (2013), for example, apply Tracy's criteria to their womanist caring framework for research to measure its appropriateness and conclude, “[w]hen writing qualitative studies for publication, the criteria provide a tool for scholars to monitor the quality of their own work and we believe that scholars will strengthen their work if they make their use of Tracy's criteria explicit” (p. 693). What qualitative researchers who subscribe to the push for clearly circumscribed data and evidence, even with Tracy's more open, gentle touch, are apt to find is a more bountiful cornucopia of valid research criteria, but a cornucopia (which is just a fancy container) no less. The poststructuralist's evidentiary bounty contains seemingly more exciting flavors of positivist science's four key ingredients—validity, reliability, generalizability, and objectivity (Winter, 2000)—because, as Lather (1993) suggests, poststructuralist epistemologies deal with the weight of validity through “open-ended and context sensitive approaches” (p. 674) to social research. Even with the necessary flexibility that follows certain theories or comes with comfort in one's field,

are we, as Schwandt (1996) suggests, too comfortable subscribing to a cult of criteriology? Or is criteria merely “shorthand about the core values of a certain craft” (p. 838), as Tracy (2010) suggests? Quasi-derogatory references to cult mentality aside, many qualitative researchers do their part to stave off the validity monsters by using the chosen vocabulary and mirroring their trappings.

Becoming less recognizable.

What become recognizable and comprehensible as appropriate research methods merely seem a matter of common sense because epistemologies of methodological explorations are limited by conditions of possibility that envelope us all. Relationships are “proven” by research reports or data archives because we agree that they are. The more places we check for confirmation and receive it, the more true a belief or claim becomes. More available, accessible material means more proof that the researcher is accountable. Somewhere along the way, qualitative scholars have also predetermined how well researchers and participants should know each other, what role a researcher should take to be “in the know” without knowing too much, and how do it all and then discuss it all ethically and professionally. This hope relies on a rather modernist belief about the subject—“the grounding of language, thought, and representation originates with a rational human being who is often referred to as the centered subject in a world that can be subjectively constructed” (Masny, 2013, p. 341).

But these predeterminations are not our own, nor are they the truth of truth. It is now standard practice for scholarly peers to read and at least mostly agree (and often not know who we are) in order for studies written by people based on what other people say, write, or do to be “valid”. It seems like “standards of practice” are predicated by the

suspicion that people are untrustworthy or incapable of producing the truth without abiding by certain criteria that is upheld as the truth of practice (and was also created by people who are, dare I say, just as fallible in their decision-making as the folks they are cautioning and protecting from “bad data”). Finally, a reader, another person, will decide whether or not to uphold the claims made as applicable and trustworthy. All of this is very troubling and confusing if you believe that it is all contingent, or as Alford (1998) remarks, that all forms of evidence “presuppose a society within which they are symbolically meaningful” (p. 36). I’d like to reverse this a tad and instead suggest that there is a governing production of truth in the belief that verifiable knowledge can and must be produced. This takes us one step further than “how the knower shapes the known” (Freeman et al, 2007, p. 29).

But this is my dissertation.

Maybe flexibility in methodology is always possible. Perhaps my self/science consciousness is only a matter of context—these are the research methods for a doctoral dissertation, after all. I could also position dis/comfort as a matter of time and practice. Freeman et al (2007) suggest that with more experience and refined judgment, novice researchers “come to rely less frequently on routine protocols than they did as newcomers (e.g. Benner, 2001; Flyvbjerg, 2001)” (p. 26). Indeed, there is a comfort and a certainty in research routines that I’ve rehearsed, and I’ve come to believe that performing what I’ve practiced will be well-received by the audience of this manuscript.

But a most important question remains—what’s an emerging, pre-professional researcher to do with the produced, ever-shifting, sociologically-contingent truths, as well as their effects and consequences, especially if the effects preordain worthwhile

knowledge and acceptable approaches to inquiry? To deepen the question, how is a graduate student to navigate the tensions that emerge from truth regimes under examination while she is, in effect, also under examination to meet degree requirements created and sanctioned by an institution that would be hard pressed to articulate interests that are not in its best interest? That is, truth “is linked in circular relation with systems of power which produce and sustain it, and to effects of power which it induces and which extend it” (Foucault, 1976/1980. p. 133). Of course, I cannot forget that, like ethics committees, review panels for journals, and government funding schemes, dissertation-examination panels are state technologies, are part of audit culture, and are apt to reflect their own interests in what they approve as research and research outcomes (Cheek, 2007). The university is not discharged from power/knowledge, nor is this dissertation. I acknowledge that I am operating in this space, that this dissertation is navigating its own discourses and engaged in its own power/knowledge games; my hope is simply to change the perspective from which the story of power/knowledge is told. Willing participant, known and knowledgeable subject, I acknowledge that this work requires a “certain change of viewpoint and attitude to be recognized and examined in itself” (Foucault, 1972, p. 110).

Freer than we feel (I hope).

I want to remark that we can never be outside of the “orders of things”, as it were, in research or otherwise, so maybe the task is to “use all available analyses and create new [orders] to make visible and then to deconstruct dominating formations so that different regularities in which power might circulate more freely can be thought and lived” (St. Pierre, 2011). Researchers too are “freer than they feel” (Foucault, 1988b, p.

10); it's time we act like it. So, rather than determine or judge the merit of a study's methodology in relation to an external and potentially unrelated set of criteria, we might value the creative, affective power of the unthought and previously unthinkable (Waterhouse, 2011) that Deleuzian metaphor makes available—a rhizomatic (Deleuze & Guattari, 1980/1987, p. 3) pathway, which is not a linear pathway at all. Instead, it is described by Lather (1996) as “rigorous confusion”, by Butler (1992) as close reading that follows looping citational trails, and by St. Pierre (2000a) as “fits and starts” that “produce different knowledge and produce knowledge differently” (p. 27), but makes no claim to universal knowledge or mastery.

Look not to the tree, but to the rhizome.

Masny's (2013) “Rhizoanalytic Pathways in Qualitative Research” brings the quest for data to bear with rhizomatic maps of analysis and reporting that are governed by transcendental empiricism, have no clear beginnings or ends, decenter the subject researching and researched. Data collected and analyzed through this lens is not *representative*; instead rhizoanalysis *presents* a way of working with transgressive data that is otherwise too narrowly counted or accounted for (Masny, 2013; St. Pierre, 1997). The received view of appropriate research methodology is incommensurable with rhizoanalysis, as approaches data as an assemblage that maintains no clear categories, beginnings, ends, limits, or criteria. The implications and possibilities for one's “findings” in this Deleuzian (1994) epistemology are remarkable. As “representation limits experience to the world as we know it, not as a world that could be” (Masny, 2013, p. 342), a refusal to demarcate according to perceived representation allows the

researcher to remain unfixed in his or her subjectivity and objectivity; it allows the relationality between artifacts and acts to unfold. In Masny's (2013) words:

rhizoanalysis proposes to deterritorialize methodologies, and in relation to transcendental empiricism, abandon the given and invent new ways of thinking about research through immanence, that is the virtual thought of what might happen when thinking data differently. (Masny, 2013, p. 345)

The promise here also helps us redefine experimental research. Baugh (2005) remarks, “[w]hen we experiment—we do not know what the result will be and have no preconceptions concerning what it should be” (p. 91). Through this work, I'd like to make possible the hope of thinking data differently, rejecting superimposition of meaning onto artifact, being uncomfortable, uncertain, undefinitive, and surprised.

Conceptual Tools

Something like archaeology

And so, I turn my descriptive and analytical efforts toward discourse as comprised of a field of objects that cannot be “separated from the formal frameworks through which we come to know [them] . . . a most precise and close description of a historical formation, stripped bare” (Veyne, 2010, p. 6). I will examine the said to see what unsaid remains implicit, invisible, the “unthought thought” that makes an event singular in its ability to exist (Veyne, 2010, p. 19). To begin undertaking this task, Veyne recommends a demystifying balance sheet that works as follows—enquire into the local and temporal of a phenomenon and look at the singularity and arbitrariness of what is noticeable across the phenomenon. He charges scholars with the task of “push[ing] the analysis of historical and sociological formations as far as possible, in order to strip bare their

singular strangeness” (p. 12). Before long, the basis for knowing and doing comes unglued. A critique of knowledge begs to be authored. The natural and reasonable, the common-sense and taken-for-granted become seemly targets that were otherwise hidden by their appearance on the surface of things.

Or, work with contemporary discourses.

Veyne (2010) suggests that the weight and novelty of Foucault’s work could be easily missed beneath his “extra effort to make explicit what [residue or expression] seems to imply” (p. 7). What general ideas do people successfully elaborate around? What seems incontestably real? What lurks behind saying, knowing, doing, and being? To begin to answer, we must turn into discourse with, again, Paul Veyne’s clear, memorable illustration:

In every age, contemporaries are thus trapped in ‘discourses’ as if in a deceptively transparent glass bowl, unaware of what those glass bowls are and even that they are there. False generalities and ‘discourses’ vary from age to age. But in every period they are taken to be true. In this way, truth is reduced to *telling the truth*, to saying whatever conforms with what is accepted as the truth, even though this will make people smile a century later. (p. 14)

Veyne argues that Foucault employs a unique branch of hermeneutics in which he at once plays an actor to understand what others mean, say, and do according to the way they actually would rationalize and act; then he also becomes a historian / dramatist to find the right words to make that actor’s action come to life. In *The Archaeology of Knowledge*, “Foucault thought that a process of rarefaction and regulation of serious discourse,

governed by changing systems of formation rules, was the correct level of analysis. The point was not to add more discourse, but to find the rules which determined or controlled the discourse that there was” (Dreyfus & Rabinow, 1983, p. 123).

Take as a starting point the practices of power, the instruments and procedures used, and the discourses that they presuppose and “pass these universals through the grid of these practices” and discover that “universals do not exist” (Foucault, 2008, p. 3). To put Foucault’s power/knowledge in the service of regimes of truth to an example, Baker (1999) historicizes the evolution-creation debates and is therein able to examine the funding and status positioning of science as a cure-all in the Cold War coupling of technology and patriotism, as well as the role of science in human management. She argues that we should frame the political problems of the intellectual not in terms of “science” or of “ideology”, but in terms of “truth” and “power” (p. 378). In asking “should the ‘prize’ of curriculum go to the richest fighter?” (p. 376), Baker draws attention to both the practical and material compartments of truth and power effects (prizes, riches), the role of curriculum in producing or denouncing truth, and the contestation or fight not for power/knowledge but through power/knowledge as they circulate. She concludes, “[u]nderstanding how the partiality of all reform efforts (and our responses to them) have been produced through historically specific regimes of truth and the relations of power/knowledge which constitute them helps us to understand our multiple positionings in and around a debate” (p. 378).

Discursive practices yield beliefs “in both ‘constructedness’ and ‘revelation’ as accounts of ‘truth’ at all” (Baker, 1999, p. 378). It is within these practices and their corresponding beliefs, truths, and systems of reasoning about human life that we govern

ourselves and others. It is within systems of limited intelligibility, too, that the methods for this dissertation were conceived of, formed, and executed by me, the writer of this text. I write of them believing that the conditions of possibility for the dissertation-as-qualifier could be positioned and interrogated historically. Likewise, why some theories, methods, data sets, and interpretive approaches to data became more or less en vogue or robust or proof positive could be historicized and therein seen in flux, as shifting and unstable, and less infallible as correct or desirable.

Lather (2009b) reminds us that “[t]here was, of course, a time when what is now called science was philosophy, until August Comte shaped sociology as science, separating it from philosophy [. . .] Philosophy went on its way, paying more attention to its relation to science than the other way around” (p. 343). In another piece, Baker (2002) draws from Morss (1995) to point out that “a two-hundred-year-old encyclopedia does not appear factual any more. If it is not true now, was it true then [. . .] why should we believe our modern encyclopedia?” (p. 99). Likewise, Veyne (2010) writes, “the ancient and recent past of humanity constitutes a vast cemetery of now dead great truths” (p. 14). This is not to say truths are not effective or powerful, that the encyclopedia and narratives about the cemetery are not worthwhile objects on the field. They very much are. But in the end, they are possible only to the extent that they are made and allowed to be upheld as right or common sense for this or that moment.

Analysis of power relations.

In the introduction to *The History of Sexuality, Volume 1*, Foucault (1978) writes that his target of exploration is the “regime of power-knowledge-pleasure that sustains the discourse on human sexuality” in a part of the world (p. 11). He bypasses the veneer

of Victorian sexual repression to offer a different analysis that is available in what was said about sexuality, why, what power effects sexuality discourses generate, and what knowledge is formed as a result of the connections between discourses, power effects, and pleasure. He writes:

I would like to disengage my analysis from the privileges generally accorded the economy of scarcity and the principles of rarefaction, to search instead for instances of discursive production (which also administer silences, to be sure), of the production of power (which sometimes have the function of prohibiting), of the propagation of knowledge (which often cause mistaken beliefs or systematic misconceptions to circulate) . . . the will to knowledge has not come to a halt in the face of a taboo that must not be lifted, but has persisted in constituting—despite many mistakes, of course—a science of sexuality.
(p. 12-13)

Foucault locates a “discursive explosion”(p. 17) surrounding sex that signaled its problematization, the desire to know it, track it down. Desire transformed into discourse (p. 21), and that discourse took the form of accounting through “analysis, stocktailing, classification, and specification, of quantitative or causal studies” (p. 24). Through discourse, sex would be managed, utilized, policed, deemed part of public welfare. To generate knowledge and discourse around sex is to regulate it via population data—birth rates, beliefs about and statistics on marriages, cautions about fertility, sterility and contraception, and the like. One’s private sexual behavior became a concern of public interest, indeed a public problem, and Foucault likens the corresponding webs of

discourse to “a kind of discursive orthopedics” (p. 29)—knowledges that bend and move and position the body.

Foucault provides a few methodological precautions to heed when examining discourses. First, think not of discursive growth in a linear sense but rather as discursive diversification and dispersal. Second, there is no single seat of discursive formation, nor is there a neat causal explanation that can place discourses into wider historical contexts. The will to know cannot be reduced to a single sphere. In “The Subject and Power” Foucault (1982) suggests that a historicized awareness of present circumstances provides a start. A reality check, he writes, is a good next step. Then, he advises the reader to isolate an experience—“madness, illness, death, crime, sexuality” (p. 329)—or education, and investigate the connections between specific rationalities surrounding that experience and power. He implores a move toward conceptualizing techniques of power that categorize, demarcate individuality, impose truth, hold up mirrors of self and other recognition, and make people into subjects.

Of subjectivity, Foucault writes, “There are two meanings of the word ‘subject’: subject to someone else by control and dependence, and/or tied to one’s own identity by a conscience or self-knowledge. Both meanings suggest a form of power that subjugates and makes subject to” (p. 331). State power, he argues, is invested in implementing techniques of individualization (made through, for example, “new” pastoral power) and totalization (the development of knowledge on man via globalizing and quantitative conclusions about populations). We can refuse to be what knowledge claims of us, he argues, but we have to refuse imposed individuality (p. 336). Such may begin with an analysis of power relations—those actions upon actions, that conduct of conduct (p. 341).

While governing and governmentality will be discussed in great detail later in this chapter, it is worth mention that in “The Subject and Power”, Foucault defines governing here as the structuring of the possible field upon which others are able to (always freely) act.

Foucault also provides some methodological precautions when examining the power relations of closed institutions. For one, institutional preservation yields self-sustaining functions, in power relations too. Secondly, he cautions against examining power relations from the standpoint of institutions, rather than the power relations outside of institutions that are leveraged therein. Finally, he advises that we not look toward law and coercion or lend an exaggerated privilege to one apparatus over another, as all power dynamics carry vast weight. With that, Foucault lists concrete “points” to guide an analysis of power relations. He encourages an examination of:

1. Systems of differentiation – ask: what differences are established in status, privilege, appropriation of goods, positions in production processes, languages and cultures, and competences and abilities? Foucault writes “every relationship of power puts into operation differences that are, at the same time, its conditions and its results” (p. 344).
2. Objectives – ask what is pursued by those who act upon others’ actions? How are privileges maintained? How are profits amassed? How is authority exercised?
3. Instruments – ask what are the means of enforcement? Possibilities include weapons, speech, economic disparities, various means of control, surveillance, and rules, among others.
4. Institutionalization – ask what conditions, structures, habits, and regulations interact to fashion possibly?

5. Rationalization – ask what is the field of possibility, its effective instruments, its desired results, its manner of measuring opportunity and cost? What thinking adjusts processes to help them match situations?

Power relations are woven through all social networks and relationships, including state institutions. They are detectable in the sites outlined above. Through these spaces, forces push and pull, strategies surface across a tumultuous, agonistic battle ground, and then, stability sets in, if only momentarily, to disperse a common sense that makes subjects of us too.

In *The Archaeology of Knowledge*, Foucault (1972) describes conditions of possibility that are constituted by discursive rules for making statements and consist of a complex network of relations between statements, governmental technologies, institutions, and social practices. I'm seeking ways in which objects of government—ELL students—emerge from governmental-epistemological spaces. The methodology undertaken in this dissertation upholds a multiple and contextual view of truth and therefore refuses a generalizable solution. Following St. Pierre (2000a), it makes little sense for any of us to expect that this “study” will be wholly comprehensible according to the structures that it gnaws on and inevitably attempts to simultaneously laugh at and fear.

Interpretive analytics.

Rather than patch an examination of power relations and subjectivity through the fantasy of scientific objectivity, we could instead examine how both science and objectivity appear in a space of possibility, become manifest in social practices and maneuvers and carry great consequences for all who are involved (Dreyfus & Rabinow,

1983, p. 109). Baker (2002) suggests the acknowledgment of truths as fictions as an alternative building site. Therein, rigid standards for research methods:

would not circulate as though it was a beneficial activity for all members of a given society or profession, Rather, it would appear as the enactment of a specific preference emanating from only some sectors of a given society or profession but with multifarious consequences for all. (p. 99)

With Baker, I work in the spirit of hoping that fictions present alternative building sites in abundance of the spaces in which researchers might be contained.

This work will therefore “take the world of serious discourse seriously because it is the one we are in” (Dreyfus & Rabinow, 1983, p. 105). Yet, it will refuse to take it too seriously first because I cannot bracket myself from its doings and concerns. Without privileging the interpretive position of sharing the actor’s involvement in the social world, but doing so at a distance, I uphold that self-consciously acknowledging this approach presents another way. Fictionalizing the findings available therein, or seeing them as one story among other stories, is an alternative building site. What is more, the interpretation of discourse will always be the interpretation of interpretation—the meanings we make “have been created and imposed by other people, not by the nature of things” (Dreyfus & Rabinow, 1983, p. 107). Dreyfus and Rabinow prefer to give a different name to Foucault’s “decipherment”, and they employ the phrase “interpretive analytics” to describe his unique blend of archaeology and genealogy to relationalize discursive formations and practices, to take the archaeological “step back that Foucault takes in order to see the meaninglessness of our society’s practices” (p. 125) while at the same time taking the problems of our culture seriously. At the time of their writing,

Dreyfus and Rabinow (1983) regarded this approach to be “currently the most powerful, plausible, and honest option available” (p. 125).

An analytics of productive power in discourse.

So, which artifacts should undergo consideration, and with what conceptual tools? To answer these questions, I return to Foucault’s (1978) *The History of Sexuality: An Introduction*, as he discusses the objective of his investigations and the importance of positive, productive, non-judicial power in conceptualizing his objects of analysis—sex and sexuality. Foucault argues for a break from the monarchic institution as the seat of top-down power, and he advocates instead for a concrete and historical outline of the manifold operations of power that do not give theoretical privilege to law and sovereignty. He seeks power that operates, “not by law but by normalization, not by punishment but by control, methods that are employed on all levels and in all forms that go beyond the state and its apparatus” (p. 89). Legislators and juridico-discursive characters have roles to play in the power/knowledge drama as well. Archives available in and around these sites are therefore also worthy of consideration, just no more and no less than other spaces in which power circulates through discourse and operates according to an order and an intelligibility that makes the ELL students, and all of us who speak of them, into subjects ready for government.

In other words, bygone are the days of pure juridical and coercive sovereign power. And so I must look around those sites to see what discursive technologies “know” and in knowing govern the ELL student body. This means abandoning law as “model” and “code” and “advancing little by little toward a different conception of power [. . .] without the king” (Foucault, 1978, p. 90-91), or, teaching and learning with and without

policy and power, with and without judicial and legislative determinations. Power is in all places at all times, and an analytics of power closely examines the domain formed by power relations and the instruments that make possible its analysis.

While Foucault's archive was comprised of historical material, the archives I sought and analyzed are contemporary manifestations and responses to the *Flores v. Arizona* case that reside in multiple spheres—in academic scholarship, in informal legislative discussions and formalized legal documents, in judicial decisions, and across the news and related more popular and accessible sources of information. In collecting data, I asked how and at what sites are these discourses proliferated, and to what end? In each and all of these spaces, I sought the constitution of the subject in relation to the *Flores* case. I read across my archive critically for articulated links between power, knowledge, subjects, and the English language. I sought the markers of a discourse on language surrounding ELL students. I continued wondering which discourses are possible (and impossible), and how and why and to what end. In Chapters 4, 5 and 6, I will rearticulate (through narration) how we are able (and unable) to discuss students' language abilities, including the rationalities and terms for those discussions. Inevitably, I argue that one can develop conceptual instruments that make possible the analysis of governmental power through the discursive production of students and subjects by emphasizing that power mechanisms of governmentality are made up, unstable, and historically situated.

Not to put too fine a point on it, or to fall into a categorization trap by identifying the epistemology that undergirds this work as “postmodern”, I remain, with St. Pierre's (2000a) suspicious of the master narrative of science and steadfastly call into question all

of “our assumptions about what constitutes everyday knowledge as well as academic knowledge, indeed the very possibility of knowing . . .” (p. 26). Different epistemologies weigh and measure the concept of validity differently. Following Popkewitz (2004a), “[t]here are no data without theory that orders and gives classification to the things of the world” (p. 72).

Many postmodern and poststructural approaches to educational research can’t help but position their methods of inquiry as critical of science, research, or scholarship that strives for or promises truth, knowledge, objectivity, and evidence that can or should be replicated according to rigid norms and standards. Freeman et al (2007) note just that—“such theories have their own logics that can be interrogated for implicit and explicit standards of practice” (p. 26). Questions emerge—should the reading audience believe what the writer has to say? What does it mean to produce valid work? To conduct and present a study that is of high quality? How to: isolate and access the setting? Select, collect, interpret, and analyze the data? Build the case? Make it meaningful?

My response for this work is to fabricate an alternative framework that pieces together fragments of a discursive network into a fable and all the while acknowledges the artifacts therein as merely that—a story among stories about other stories and made by an author that will serve the needs of different readers in different ways. But there is more—perhaps in the act of making scholarship, an act that is governed by discursive rules that leach from statements, metaphors, technologies, practices, institutions (Foucault, 1972), I can, as St. Pierre (2011) encourages, identify and sharpen new weapons for the battle to tumble with the governed, neoliberal subjects we are always already in the act of becoming. She writes, “There are, indeed, a thousand things to do,

and even a small, local act of resistance in a control society can be revolutionary— postrevolutionary” (p. 388). The ability to do “a thousand things” in response to power relations was what Foucault (1991) deemed his “postulate of absolute optimism” (p. 174). To follow Lather’s (2006) argument—“there is plenty of future for applied qualitative research in education that can engage strategically with the limits and the possibilities of the uses of research for social policy toward the improvement of practice” (p. 789). With these optimisms, my hope is that it is possible to look closely at a few objects of interest while acknowledging the limits of what they say and privileging none as more meaningful than others. Because I will never know, but in pretending as though I do, I am merely contributing to the cacophony of verifiable data analysis that I would like to play through, around, and in relation to rather than in accordance to. There are many ways to listen. There are many ways to represent. Both come from within what is already possible.

Working rhizomatically to think “data” differently.

Deleuze is a welcome companion on this ride. Drawing on a research agenda that Rajchman (2001) refers to as a “conceptual trip” that lacks itinerary or map, “a voyage for which one must leave one’s usual discourse behind and never be quite sure where one will land” (p. 41), I see no beginning or end to this work, only middles, potential attractions and distractions, illogical lines to trace and retrace and follow into other lines wherein alternative data sites may bubble about. In making sense of the data she collected for her dissertation, St. Pierre (1997) became encouraged by the different “assemblages” that became possible and thinkable, once she allowed herself to determine data differently and examine them. Later, she explains the way that it felt to come to

terms with not-knowing Deleuze and with him: ““there’s nothing to explain, nothing to understand, nothing to interpret’ (Deleuze, 1995, p. 9). Concepts like the fold, the nomad, and the rhizome were immediately useful and helped me try to think outside both the overcoded qualitative research process and the notions of the subject I had studied” (St. Pierre, 2004a, p. 288).

In inquiring into which methods produce data, and even what the term data is supposed to mean, St. Pierre (1997) troubles the language obstructions between observations, notes, transcripts, photographs, archives, etc., and the “textualization” (Van Mannen, 1988) or meaning-making translation that thinks data back into language. After describing the data cutting, coding, and categorization process in a way that sounds like the production method that Bill Burroughs (1959) might have used to author *The Naked Lunch*, St. Pierre writes that these are simply words and yet, “We are very concerned that we have pieces of data, words, to [ironically] support the knowledge we make” (p. 179). But language falls apart. And what about the data that escapes language? She embraces uncodable, excessive, uncategorizable data that “exploded” all over her study—emotions, dreams, sensuality—and argues that describing these data are part of redescribing the world and reconstituting the notion of data in that world. While she uses the humanist vocabulary, *data* included, she helps its meaning shift by rejecting “ruthlessly linear” (p. 180) methods of collection, production, coding, categorization, analysis, and interpretation to instead address the “disruptive, unplanned, uncontrollable, yet fruitful” folds in data and the “transgressions they enable” (p. 185).

To transgress is to abandon convention and think alternatively, even uncertainly, about ways of thinking, knowing, and being and to invent ways to invite alternatives and

differences to emerge. May (2005) writes that “[t]o read Deleuze is to be introduced into a world of proliferating beings and new forms of life. These beings and forms of life are not part of our everyday experience. Nevertheless they inhere in the fabric of our existence” (p. 15). Deleuze and Guattari’s (1987) metaphor of the rhizome is useful in understanding this proliferation and its possibilities in the alternative data-thinking that this project hopes to achieve. Unlike a tree, a rhizome (imagine kudzu, galangal, ginger, sunchoke, hops) is a-linear. It has no roots (beginnings), trunks (middles), or leaves (ends) (May, 2005). It can connect to anything, grow in any direction and from any origin point. Deleuze and Guattari (1987) write, “[t]he tree imposes the verb ‘to be,’ but the fabric of the rhizome is the conjunction, ‘and . . . and . . . and . . .’ This conjunction carries enough force to shake and uproot the verb ‘to be’” (p. 25). In the spirit of rhizomatic thinking, then, a few kinds of thinking and being become possible—that which is without clear origin, and that is within variety, multiplicity, unexpected growth, abundant assemblages that are beautifully woven together but not in accordance with a hierarchal chain that codified a linear process or values some of its artifacts, tools, or findings over others as more germane or fruitful.

A “method”.

While I knew that I had to, borrowing a phrase from Lather (2009b) “get [my] hand’s dirty with data” (p. 345), the purpose of doing so was not to “rescue empirical work” (p. 345) or, as she writes in an earlier work “improve the quality of practice” (Lather, 2006, p. 789). I found that I needed to start with additional, and this time discrete, tools to better/initially “operationalize” methods of data collection and analysis. Or, at least I needed to begin with systematic intentions so that I knew what I was drifting

from in process, and why, if needed. This does not mean that I stopped believing that epistemology is deeply linked to method (Harding & Hintikka, 1983; Lincoln, 2010; Reinharz, 1992; St. Pierre & Roulston, 2006), or that the work I undertake is always already drenched in theory (St. Pierre & Roulston, 2006).

Yet, in spite of the convictions about “science” that I express at length above and the ways in which the influences of philosophers like Deleuze and Guattari (1987) and Foucault (1972, 1978) more appropriately stage the object of analysis and research “process” undertaken in a research project designed to answer questions surrounding discursive rationalities as governing apparatus in the making of subjects (scholar, doctoral, ELL, et al.), I acknowledge and welcome the use of additional vocabulary and techniques that are not my own so that, like St. Pierre’s (1997) dance with “data”, I might experience how they forever shift in meaning for me as contexts, purposes, beliefs, and possibilities change for and all around my work. After all, Foucault’s methods are forever shifting and wholly un-prescriptive, and one of the purposes of this chapter is to demonstrate intentionality, to show that I can narrate what I am doing and why. The tension in doing so is narrated at length above.

Some of the qualitative options were, of course, a closer match for the theory and questions that guide this project than others. Furthermore, I found that methods with the same name and under the same banner are interpreted and used differently (as needed) across scholarship. While this finding might be a welcome counter to the “methodological reductionism that has radically flattened the methods into a single model” (Lather, 2006, p. 787), the process of selecting appropriate operational tools was puzzling and dizzying—none of the tried and true felt quite right. That is, I could follow a

cookbook approach to archival qualitative data collection and analysis, but this methodology is such a poor match for the theory it hinges on and the purpose of its inquiry. In short, I tried to have it both ways—the systematic, then the analytic/rhizomatic. I will further discuss and illustrate the process, outcomes, and implications in subsequent chapters.

While I delight in the way in which Foucault’s analytics drive his “method” and hope for the same in my own professional work, I am trying to walk the line that Lather (2006) describes as “the side of the messy” (p. 789) or Foucault’s (1998) “field of strategic possibilities” (p. 320) of “‘inexact knowledges’ [. . .] a ‘counterscience’ of ‘undisciplined’ policy analysis that troubles that we take for granted as the good in fostering understanding, reflection, and action” (Lather, 2004, p. 25). In getting messy, as it were, I was not surprised to find a systematic application of methodology via “discourse tracing” (as discussed in the next section) both more comforting to employ and yet more unsettling than a more rhizomatic approach to inquiry.

“Discourse Tracing”

After some immersion into the field of Critical Discourses Analysis, I found that I agree that across the literature, discourse means too many things (Alvesson & Kärreman, 2000; Grant et al., 1998; Keenoy et al., 1997) and that discourse analysis is “a field in which it is perfectly possible to have two books [on the matter] with no overlap in content at all” (Potter & Wetherell, 1987). Eventually, I located a specific method within the morass of CDA possibilities—“discourse tracing”—and examined its use value in light of my questions and theoretical and empirical convictions. I found it, as described by LeGreco and Tracy (2009), Cannella and Lincoln (2004a), with a few others (Alvesson &

Karreman, 2000; George, 1979a, 1979b; George & Bennett, 2005) to contain the trappings of some analytical tools I felt I needed to employ to begin to answer my questions.

Sometimes discourse tracing is described as inspired by Foucault's (1972; 1973; 1978) interpretations of discursive formations (Alvesson & Karreman, 2000; Davidson, 1986; LeGreco & Tracy, 2009; Miller, 1997). For example, in their interpretation of Foucault's (1972) approach to discourses in *Archaeology of Knowledge*, LaGreco and Tracy (2009) write:

he outlined specific conditions for concepts, statements, and ruptures that give form to discourse. Moreover, he encouraged researchers to examine the relationships between continuities and transformations. In other words, this work asks us to consider the ways that discourse makes a practice appear routine and how it gives rise to possibilities for change. (p. 1519)

With a focus on discourses as statements that constitute objects and subjects, arranging and naturalizing the social world and its practices, discourse tracing makes possible an examination of subject formation, management, and the rationalities for both. Foucault incorporated what he termed archaeologies "to isolate the level of discursive practices and formulate the rules of production and transformation for these practices" (Davidson, 1986, p. 227). He widened his analysis to include genealogies, which focus on power relations in practices and technologies connected to discursive practices.

Discourse tracing, when interpreted as a critical, poststructural epistemology that is concerned with the relationships between meaning making, discourses, power, and practices, is different from Critical Discourse Analysis and content analysis by moving

the object of inquiry from “the *what* to the *how*” (LaGreco & Tracy, 2009, p. 1522).

While discourse tracing is similar to Critical Discourse Analysis with its focus on language and/as power, discourse tracing seemed particularly well-matched for my work’s theoretical interests in the constitution of discursive practices while it prioritizes methodological transparency. I employ this method in a particular way, following Miller (1997) who notes that this approach to discourse studies involves treating the archive as “expressions of culturally standardized discourses” that are socially contextual (p. 34), and Clegg (1989) who highlights subject constitution through discursive practices.

Discourse tracing is a qualitative research method that invites a critical analysis of power relations while providing a more systematic approach that is accessible and transparent (Denzin & Lincoln, 2000; LaGreco & Tracy, 2009). The next step was to determine how systematic, accessible, and transparent my work needed to be, and how I would navigate the rift between systematic intentions and the realities of working in a real archive, with all of its branches and tendrils and ruptures. For example, discourse tracing asks questions regarding framing, presence, prevalence, interaction between discourses as rationalities of phenomena, policies, and practices emerge and shift. Though, rather than select artifacts and place them in a chronology to discover change over time, as LaGreco and Tracy suggest (p. 1522), I’m was more interested in looking at continuities and discontinuities across categories of artifacts, regardless of the temporal placement of their emergence, to examine how their rationalities emerge and to interpret their effects.

In tailoring a suitable method to match the need for a quasi-systematic, operational, or at least describable approach to collection and analysis, I had a few false

starts with related methodologies that I soon acknowledged are in tension with the rejection of positivistic approaches to social sciences that I am attempting to critique and keep at bay. For example, I found George and Bennett's (2005) "process tracing" too romanced with providing evidence to justify causality, too concerned with generating a science around focused comparison that there was no space left for unstructured critical interpretation.

Likewise, Altheide's (1996; 2000; 2010) method of "tracking discourse" in his "discourses of fear" projects is useful in that he seeks pervasive mass-mediated symbols and positions them as significant cultural contexts for the emergence of social action. As far as the artifacts examined are concerned, I agree that mediated discourses interact with public agendas, political rhetoric, and public perceptions of social problems and solutions (Altheide, 2000; Graber, 1984; Shaw & McCombs, 1977) and that news discourse is "one of the important means by which society comes to know itself" (Ericson et al., 1989, p. 15). Furthermore, his description of risk discourses is both useful and memorable, yet it seems an ironic contrast to the "tracing" methods he uses across his work. In 2010, he writes that when we, in doubt and despair about an unsustainable future, ask "what if":

The answer is not pursued, but instead we seek insurance, prevention, caution, warning and a million forms of monitoring and surveillance. Social control agents tell audiences about this; we communicate, ever so carefully and selectively, what there is to be concerned about—some pollution, nicotine, illegal drugs, crime, illegal immigrants, and terrorism. And we gather more information, more detailed data about nature, the body, always seeking to see more detail, as though 'more data' will

provide security, or at least the knowledge-tricks that will help us.

(Altheide, 2010, p. 155)

While Altheide argues that his approach is interpretive, he also contends that in its systematic approach it is empirical and that his findings are generalizable to a broader population (Altheide, 2000, p. 290).

By employing analytical techniques like emergent coding, theoretical sampling, protocol development for systematic analysis, and constant comparisons to clarify themes, frames, and discourses, Altheide (2000) outlines twelve rather scientific steps for his method. He refers to the categories of analysis as “variables”, drafts protocols on data collection sheets, tests his protocol on several documents to check for reliability and validity, and then revises and refines his protocol accordingly. Without downplaying Altheide’s contributions to understanding fear and risk in society, in contrast to the daft description of the *purpose* of his work in the passage cited above, an analysis and critique of how/why subjects are “always seeking to see more detail, as though ‘more data’” to “provide security, or at least the knowledge-tricks that will help us” (Altheide, 2010, p. 155), he describes his approach to discourse tracing as follows:

a protocol was constructed to obtain data about date, location, author, format, topic, sources, theme, emphasis, and grammatical use of fear (as noun, verb, adverb). However, materials may also be enumerated and charted. Once collected, the materials were placed in an information base and analyzed qualitatively using Word 7 and NUD*IST, a qualitative data analysis program, as well as quantitatively with a spreadsheet, Excel.

(Altheide, 2000, p. 292)

He promises that this approach to discourse will help applied researchers better understand cultural trends and “more adequately map the cultural contours of our lives” (p. 297). Should these contours also include the will to know for certain, across populations, and through counts and numbers? Like the approaches to data that St. Pierre (1997) mourns, Altheide is very concerned with the production of knowledge based on categories that are but words heaped upon more words.

LaGreco and Tracy (2009) offered some steps toward data collection and analysis that I found less epistemologically jarring and even somewhat useful. I’ve modified their phrasing here to more accurately reflect the methodology employed. The steps include 1) define a case; 2) locate ruptures and turning points; 3) review relevant literature; 4) gather data from as many primary sources as possible and across micro (everyday talk/practice), meso (organizational), and macro (mores and norms) levels; 5) order the data to position discourses historically; 6) read the data closely; 7) ask structured questions of the data to help patterns emerge; 8) “trace” the data and its patterns—follow the use of language and text across time and context; 9) write a “case study” narrative of the results.

Stake (2006) argues that the purpose of the “case study” is to tell a story based merely on choices made by the researcher, or possibly the participants, or a funding agency, or the conventions of a journal. It is *that* kind of acknowledgement of what data reporting *is* that gives me so much enthusiasm and hope for making a “case” of the “data” in this project, though for reasons discussed above, I portray the case and my treatment of it as a work of fiction or a fable. Relatedly, LaGreco and Tracy (2009) note that “discourse tracing emphasizes how the human instrument—as influenced by close readings of past literature, experiences gained during data collection, and the

chronological ordering of that data—is implicated in drawing out qualitative observation” (p. 1532).

LaGreco and Tracy (2009) note that a key limitation of the “discourse tracing” approach rests in the setting of parameters during step 1—case definition. I would argue that the case does not exist in a vacuum or stand alone. That is, in defining ELL debates surrounding *Flores*, or even just *Flores v. Arizona* as the “case”, the discourses available for examination are not necessarily limited to direct comments on the case, nor are they limited in genre or source. On the contrary, one might access the rationalities of *Flores* by looking at the landscape all around the case and before, during, and after its more major shifts and moves. Then, too, there are parts of this method that I will forgo or leave behind, if only in my positionality. One is transferability, or the hope that since “discourse tracing is interested in examining change, power, and transformation, the implications generated by case studies could be transferred to other participants who encounter similar phenomena” (LaGreco & Tracy, 2009, p.1536). Also, I reject the blind determinism in the hope for generative transformation and phronesis (Tracy, 2007). I fail to believe that this project should “clarify and deliberate about the problems and risks we face and to outline how things may be done differently” (Flyvbjerg, 2001, p. 140). In short, I will not provide concrete recommendations. I theoretically can’t.

My project’s application of discourse tracing does not unearth some deeper truth about the interplay of Arizona’s curriculum policy and its corresponding practices. Nor does it know or show more than any reader of the same archive could decipher upon undertaking his or her own analysis with CDA tools or others. Yet, it can attempt to read and interpret the discourses of *Flores* differently by placing carefully selected analytical

lenses on the landscape and reporting what they show in inventive ways. The data work described in Chapters 4, 5, and 6 could be accurately characterized alongside Lincoln's (2010) description of the results of interpretivist theories—inelegant, imprecise, “long to answer *why*” and endowed with stories, “stories that help listeners understand what the theory means to flesh and blood people . . . fat with the juice of human endeavor, human decision making, *zaftig* with human contradiction, human emotion, human frailty” (p. 6).

Following Dreyfus and Rabinow (1983), my hope is to use questions, methods, and corresponding “data sets” to engage in an “interpretive analytic” in order to create “neither a subjective invention nor an objective description” of *Flores*' rationalities of rule, but rather to undertake “an act of imagination, analysis, and commitment” (p. 253)—commitment to narrating contemporary problems articulated by and through the case and to critically casting paradigmatic dangers surrounding the invention and dispersal of truths about student subjects as layered with governing rationalities, techniques, and effects that have consequences outside of those already under discussion.

Rationalities of Rule

Several essays in Barry, Osborne, and Rose's (1996) edited book *Foucault and Political Reason: Liberalism, Neo-Liberalism and Rationalities of Government* ignite approaches to rationalities of rule that open direct theoretical connections to discourse tracing, as described above. Barry, Osborne, and Rose's purpose in the introduction to the book is to loosely define liberalism and neo-liberalism according to the ways in which the edited books' essays analyze political reason. They discuss the task of histories of the present as drawing “attention to the intellectual and practical techniques and inventions via which civil society is brought into being as both distinct from political intervention

and yet potentially alignable with political aspirations” (p. 9). In short, the myriad discourses surrounding the *Flores* case can be read in line with the thrust of state political reason itself. Simply stated, political reason does not have to emerge from the seat of politics to reflect or impact political rationalities or technologies. The art of government and governing extends beyond legislative chambers, and governmentality can be examined as “an inventive and constructive alignment of interests, powers, objects, institutions and persons” (Barry, Osborne, & Rose, 1996, p. 11) that can be accessed with an eye toward ethical and technical discourses and effects.

In the book’s introduction, Barry, Osborne, and Rose discuss the theme of expertise and the relationship between expertise and politics as worthy of our attention. Habermas (1971), they note, examines the transformation of the political into the technical. Contributors to the edited book “highlight the variable ways in which expertise plays a part in translating society into an object of government” (p. 13). This tethers an examination of techniques of conduct to wider governmental concerns. They argue that an examination of exercises of power at the “molecular” level (schools, hospitals, prisons, etc.) alongside programmatic power at the “molar” level (e.g. Cabinet and War Offices) enables an analysis of the shifting boundaries of the technical and political to unfold. The purpose of opening analysis of the political and the technological in this way is to make intelligible moves made, including, for example, the introduction of emerging policy, organizational shifts, the deployment of certain rhetorics, or variations of what politics is or should be as articulated across discursive landscapes. They refer to this work as the act of “denaturalizing politics” (p. 14). Once denaturalized, perhaps we can imagine moves made, reactions, and consequences differently.

Dean's (1996) "Foucault, Government and the Unfolding of Authority" describes a critical ontology of the self after Foucault in relation to where we might turn to locate concerns about conduct and specific forms of truth about the self. He argues that State concerns are decentralized by a "multiplicity of authorities and agencies" (p. 210), and therefore "we need to analyze all the ways in which the conduct of government [is] linked to the government of conduct" (p. 212). Even the most seemingly mundane or disconnected policies, including those that outline funding for language education in Arizona or its permitted scope of practice in classrooms, has a stake in the soul of the citizen (Minson, 1985). The governing rationalities and effects of mundane educational policies carry and are carried by discourses outside of the ELL student subjects they seem to most directly govern. Dean notes that studies of governmentality are concerned with "more or less explicit attempts to problematize our lives, our forms of conduct and our selves found in a variety of pronouncements and texts, employed in a variety of locales, using particular techniques, and addressed to different social sectors and groups" (p. 217). While legislative discussions and their reconceptualization in mediated texts are not exactly the same as the "how to" texts that Dean lists as sites of raw material for the problematization of the subject, such discourses capture the formation of the subject in response to the *Flores* case via forms of truth that they uphold, disseminate, and take-for-granted nonetheless. These types of texts problematize our lives as well.

Elsewhere, Dean (2010) explains that while we think of government as acts of a sovereign body that rules and exerts force via law, governmentality is a theory of rule that is concerned with the conduct of conduct and "any attempt to shape with some degree of deliberation aspects of our behavior according to particular sets of norms and for a

variety of ends” (p. 10). Forces that govern are not self-evident, they are not “from the top”; agents of governmentality direct, regulate, and shape through, for example, undertaking calculation, amassing knowledges, exerting expertise, and implementing techniques that govern and encourage practices of the self that serve as self-government. The governed are free to act according to a series of possibilities—studies of governmentality, Dean suggests, are concerned with “how thought operated within our organized ways of doing things, our *regimes of practices*, and with its ambitions and effects (Foucault, 1991b)” (p. 17-18). A move I make is to analyze thought made practical, technical truth via discursive social, cultural, and political practices.

Available discourses beg critical analysis in terms of their strategies, rationalities, and assumptions for reasons that outstretch an insulated need to trace forms of truth merely for the sake of understanding it. As Dean (1996) remarks, “[i]t is the relation between forms of truth by which we have come to know ourselves and the forms of practice by which we seek to shape the conduct of ourselves and others” (Dean, 1996, p. 220). “Truth” in discourse and conduct are mutually informing. What is more, individual conduct interacts with political, civil, and social conduct. Truths and their rationalities take tangible shape in multiple technologies and have real consequences. Discourses position language around a problematization that becomes what Donzelot (1979) calls a “practicable object”—something to understand and then to change, manipulate, repair or transform—including the language spoken by a student or the “truths” about what becomes of that student if s/he builds skill in a language in this way or that way or not at all. Corresponding technologies—recipes for corrective intervention (Donzelot, 1979;

O'Malley, 1996) that are mixed and baked in actual practices—swarm, follow, precede, and inform discourses.

Advanced liberalism.

In *Powers of Freedom: Reframing Political Thought*, Rose (2000) argues throughout that government is a work of thought and not the work of brute reality. For example, in 1979, Prime Minister Margaret Thatcher thought aloud an antagonism between state power and personal responsibility that positioned their relation differently. The government, she wrote, would replace “cradle to grave” welfare for the people with a revived sense of individual responsibility—“It is to reinvigorate not just the economy and industry but the whole body of voluntary associations, loyalties and activities which give society its richness and diversity, and hence its real strength” (Thatcher, 1980, p. 10-11, as cited in Rose, 2000, p. 138). The state would thereafter maintain “the infrastructure of law and order” and the people would “promote individual and national well-being by their responsibility and enterprise” (p. 139). Rose argues that such thinking, and not in isolation, begins to shift the logics of political rationality and social government.

As the twentieth century drew to a close, the premises of neoliberalism flourished to create a schema of government that Rose refers to as “advanced liberal”:

It entails a new concept of the inherent rationality of the different domains to which government must address itself—the market, the family, the community, the individual—and new ways of allocating the tasks of government between the political apparatus, ‘intermediate associations’, professionals, economic actors, communities and private citizens . . .
(Rose, 2000, p. 139-140)

The purpose of advanced liberalism is to usher subjects into the business of generating their own human capital, to organize systems and subjects according to enterprise, to activate individuals to act as entrepreneurs who have choices and the shared dream of self-realization through their productivity. Rose is careful to note that advanced liberalism did not succeed or replace other forms of governmentality. Instead, he points to a “complexification, the opening up of new lines of power and truth, the invention of a hybridization of techniques” (p. 142). Some of these techniques include a combination of neo-liberal and neo-social logics of global competition, new Prudentialism, risk assessment and prevention, audit, self-improvement and self-esteem, perpetual training, and a redefined sense of freedom that equates to self-realization through individual economic activity.

In advanced liberal governance, the subject is transformed into an entrepreneur who is to conduct life as enterprise, investing and enhancing capital, taking nothing and producing everything. Participation in advanced liberalism is ensured by consenting to one’s desire to be free; it is accompanied by the threats of risk, the science of audits and evaluation, the behavior necessary to be prudent and to insure or otherwise care for the self. Advanced liberalism is political reason that is justified by our thinking and rethinking it into discourses that permeate the landscape so much so that its logics are simply the way things are. It is with the conceptual heritage outlined above that I “traced” the discourses that surround the *Flores* case.

Accessing the Discourses

Archive sets.

To begin this study, I first collected artifacts that pertained to the *Flores* case between the 1980s (before *Flores* emerged in 1992) and the present. This legislative data set, discussed in Chapter 4, includes artifacts like Arizona House and Senate bills, as well as audio, video and transcript data from legislative floor discussions surrounding the case, related bill proposals, and ELL Task Force discussions and documents. Chapter 5's archive includes core judicial documents like the Circuit Court, District Court, and Supreme Court hearings, opinions, and decisions. Finally, to access discursive formations that are accessible outside of these seemingly more official government spaces, I also collected public, mediated artifacts like newspaper articles and press released that discuss all sides of the *Flores* case. The public opinion archive is discussed in Chapter 6. In the introductions to Chapters 4, 5, and 6, I outline, in detail, the specific search criteria, and collection, selection, and analytical tools used to gather, read, choose, code, analyze, and write about each specific archive. I provide a truncated version of these chapter-specific expositions below as well.

Legislative rationalities of rule—Chapter 4.

In order to compile the legislative data set used in this study, I first accessed English language policy bills proposed in Arizona through the *Arizona Advanced Legislative Service (AALS)* through LexisNexis. I searched according to the following keywords: *Flores*; *Flores v. Arizona*; *Flores v. Horne*, *Flores v. Huppenthal*; English; Bilingual; Limited English Proficient; LEP; English Language Learner; ELL; EL; Structured English Immersion; SEI. I limited the dates to all years between 1985 and

February of 2014. *Flores* first appeared in 1992. I wanted to peek a bit into rationalities of rule and the positionings of ELLs available before *Flores* emerged. I conducted subsequent searches through the Arizona Legislature’s website (<http://www.azleg.gov/>) and discussions with clerks in the Arizona House and Senate to fill in gaps as needed as well. In February 2014, my collection phase ended and my coding and analysis phase began.

I accessed the most recent or most final versions of all legislation. I also compiled all corresponding House and Senate summaries, “Fact Sheets”, and related documents (e.g. “Fiscal Notes”), when available. For all archives used, I read, annotated, coded, analyzed and then developed the analysis section that follows in Chapter 4. It was during the coding and analysis of the House and Senate bill documents and fact sheets that I determined which floor debate audio and video to access, transcribe and analyze. For relevant and available audio and video of legislative floor debates, I listened and transcribed the data by hand and then coded the data based on a combination of concepts and theories relevant to my research questions and recurring themes of interest of my analysis. It was at this point in the research process that I began to use MAXDQA, version 11, to organize and code my data. The software helped me identify the core themes therein that corresponded with my research questions and aligned with my conceptual framework. The codes used to cull relevant themes from this data set are discussed in Chapter 4, as is a detailed narrative of the archive’s contents.

Judicial rationalities of rule—Chapter 5.

In order to access the rationalities of rule that flow through judicial archives surrounding *Flores*, I first consulted with ASU research librarians, who led me to all of

the major legal databases available to ASU students, as well as to the Ross Blakley Law Library. Those databases included the LexisNexis Academic Legal Case Finder, HeinOnline, United States Courts Opinions (USCOURTS), FindLaw, United States Courts for the Ninth Circuit, and PACER. I limited the search dates to *Flores*' timeframe (1992-2014). I used slightly different keywords to locate this research, given the nature of how legal documents are named and catalogued. The keywords used included: *Horne v. Flores*, *Flores v. Arizona*, *Flores v. Huppenthal*, *Speaker of the House of Representatives v. Flores*, No. 92-596, No. 08-289, and No. 08-294.

Once I compiled a comprehensive a document set, I then conducted archival research in the Ross Blakely Library with the help of a research librarian to crosscheck digital database sources with hard copy documents and ensure my judicial archive was not missing key texts. Convinced I had a comprehensive corpus of judicial decisions surrounding *Flores*, I then used MAXQDA 11 to load, organize, and code the judicial archive. As discussed above, this analysis software helped me identify the core themes that corresponded with my research questions and aligned with my conceptual framework. The codes used to cull relevant themes from this data set are discussed in Chapter 5, as is a detailed narrative of the archive's contents.

Public opinion rationalities of rule—Chapter 6.

Some of the data collection for this Chapter pre-dates the existence of this manuscript. As discussed in Chapters 1 and 2, this project began as a collaborative research project undertaken by myself and Dinny Risri Aletheiani, David Lee Carlson, and Ann Dutton Ewbank. Our initial findings were published in a *Policy Futures* journal article entitled “‘Keeping Up the Good Fight’: The Said and Unsaid in *Flores v. Arizona*”

(Thomas, Aletheiani, Carlson, and Ewbank, 2014). In the paper, we examine rationalities that appear across pro-*Flores* public opinion data—press content written in support of the *Flores* Plaintiffs’ argument for additional and adequate funding for ELL students. Our data set included pro-*Flores* press publications that appeared between 1992 and 2009 in such databases as Academic Search Premier, Access World News, Ethnic Newswatch, LexisNexis Academic, Proquest, and the Education Resources Information Center.

To construct the chapter, I expanded the search and extended the archive set considerably. I searched 31 databases (listed in Chapter 6) for keywords *Miriam Flores*, *Horne v. Flores*, *Flores v. Arizona*, *Flores v. Huppenthal*, and *Speaker of the House of Representatives v. Flores* in public opinion documents published between 1992 and 2014. I did not categorize the archive as pro-*Horne* or pro-*Flores*. Instead, I included all public opinion texts, including newspaper articles, opinion letters, newspaper op-ed columns, policy institute websites, blogs, and similar genres of texts written for a wider audience and largely accessible in print and online at no cost.

I read each piece with my questions in mind and then loaded them into MAXQDA for coding. I coded this set last, after working with *Flores* scholarship, then the legislative archive, then the judicial archive. Since public opinion documents were the artifact genre that I knew first and best before I ever tried to write a study of this scale, I thought it best to create some distance with subsequent data before returning to a comfortable place. As with Chapters 4 and 5, detailed collection, analysis, and description of this archive, as it relates to my research questions, is featured in Chapter 6 of this book.

To sum, the chapters to follow will interrogate rationalities of rule embedded in discourses surrounding *Flores* (1992-present), the subjects produced by these discourses, and the movement of subjects in and through the power dynamics produced. Using the conceptual tools outlined early in this chapter—rhizomatic inquiry, analytics of productive power in discourse, “discourse tracing,” interpretive analytics, rationalities of rule, and advanced liberalism—I next begin to present a narrative of my findings with the legislative archive.

Chapter 4

LEGISLATIVE RATIONALITIES OF RULE

The Exposition

In order to select, compile and analyze the legislative data set used in this study, I first accessed the *Arizona Advanced Legislative Service (AALS)* through LexisNexis (made available by the Arizona State University library system) to search for all House and Senate Bills related to English language policy. I searched according to the following keywords: Flores; *Flores v. Arizona*; *Flores v. Huppenthal*; English; Bilingual; Limited English Proficient; LEP; English Language Learner; ELL; EL; Structured English Immersion; SEI. I limited the dates to all years between 1985 and February of 2014. *Flores* materialized in 1992, and I wanted to peek a bit into rationalities of rule available before *Flores* unfolded. My search generated over 275 Senate and House documents, which amounted to nearly 9,000 pages of legislation in Arizona related to English language policy. Some of this legislation passed into law, and, of course, much of it did not. Some of it would prove relevant to my research questions, and some of it would not. Further, I discerned that the findings from this search did not comprise a full data set on English language policy surrounding *Flores*, and so I conducted subsequent searches through the Arizona Legislature's website (<http://www.azleg.gov/>) to fill in gaps as needed as well (see discussion below).

I reviewed the *AALS* returns and organized and collapsed the more relevant bills into a table that can be found in Appendix E. In reading and summarizing key pieces of the legislation found through this search, I began to determine which legislation was most relevant to my research questions and therefore merited full pursuit and analysis of the

bill and all of its surrounding texts (e.g. drafts, amendments, summaries, floor debates). This small, initial set included only 14 bills of interest.

For each of the Senate and House bills I identified through the initial *AALS* search's rendering and reading, I located all versions and corresponding errata in the Arizona legislative database. I also applied the same keyword searches I used in the *AALS* database (Keywords: Flores; *Flores v. Arizona*; *Flores v. Huppenthal*; English; Bilingual; Limited English Proficient; LEP; English Language Learner; ELL; EL; Structured English Immersion; SEI) to search the archives the database for any and all artifacts not returned during the original *AALS* search. I searched every legislative session in the House and the Senate between 1997 and 2014²¹ with each of these keywords to locate additional bills, amendments, and corresponding legislative discussions and debates.

I also contacted Senate and House archivists to request all relevant English language legislation that surfaced between 1985 and 1997, as such is not available online. When post-1997 content was listed but not available on the AZLeg site, I contacted the Bills Status / History Clerks at the Office of the Chief Clerk to request it. Their staff sent the text-based artifacts to me by email, and I picked up the audio files on cassette, CD and minidisc (depending on the year) at the House and Senate clerks' offices. The legislation I opted to pursue in detail that resulted from this second search includes all of the legislation highlighted in the table in Appendix F. There are 54 bills listed therein. Appendix G reflects the entire audio and video-based data set (discussed in more detail below). I was able to access audio and/or video of floor debates and votes for 17 of the 54

²¹ 1997-2014 is all that is currently available on azleg.gov

proposed bills. Figure A1 provides a simplified flowchart to illustrate the research process described above at a glance.

Learning to read.

As I began the process of locating and organizing the data, I soon realized that the legislative documents would be more unwieldy and vast in number than I imagined. For example, Senate Bill 1001 (1999) has fifteen different versions, including amendments, summaries, Fact Sheets, and the like connected to it, and this was just one of dozens of bills to analyze, not to mention the floor debates surrounding just one bill. Luckily, the Arizona Legislature's website (azleg.gov) provided a most helpful series of illustrations that helped me to select the most appropriate versions of the legislation to download, organize, read, code, and analyze in my study. Figs. A2 and A3 illustrate my rationale for seeking legislative content according to the following hierarchy:

1. Version Sent to / Signed by Governor / Corresponding Fact Sheet
2. Conference Committee / Corresponding Fact Sheet
3. Senate Engrossed / Corresponding Fact Sheet
4. House Engrossed / Corresponding Fact Sheet
5. Introduced Version / Corresponding Fact Sheet

That is, if a bill in question made it to the Governor of Arizona at the time, that is the main document I analyzed. If only an "Introduced Version" was available, that is the main document I analyzed. In short, I accessed the most recent or most final versions of all legislation as data for analysis in this study (including amendments, where applicable).

I also analyzed all corresponding House and Senate summaries, "Fact Sheets", and related documents (e.g. "Fiscal Notes"), when available.

Archival resources and analytical software tools.

Appendix F features a chart that illustrates which resource types I was able to locate for each bill in question, based on the hierarchy described and illustrated above. For all archives listed in Appendix F, I read, annotated, coded, and analyzed and then wrote the analysis section that follows in this chapter. For relevant and available audio and video of legislative floor debates, I listened and transcribed the data by hand (see Appendix G for full list of audio / video artifacts analyzed), and then coded the data based on a combination of concepts and theories relevant to my research questions and open coding. The discussion and findings from audio and video of floor debates is included in this chapter as well.

It was at this point in my research process that I shifted from Dedoose (which I used to analyze scholarship for the critical review of literature in Chapter 2) to MAXQDA, version 11, as I had been anticipating the release of the latter for Macintosh for several months. Originally, I felt compelled to use Dedoose in place of MAXQDA, as it is compatible with the computer that stored all of my data, and that I could use in the comfort of my office. Alas, MAXQDA 11 was released in February 2014, just in time for me to conduct coding and analysis in this section of the text.

I analyzed 130 Senate and House documents (earliest: 1969; most recent: 2014) to identify the core themes therein that corresponded with my research questions and aligned with my conceptual framework. The code list used to analyze this data set is included as Appendix H.

From text to audio / video.

It was during the coding and analysis of the House and Senate bills and fact sheets that I determined which floor debate audio and video to access, transcribe and analyze (when available). While I worked through the text-based documents (Bills, Fiscal Sheets, Senate Summaries, etc.) in chronological order from earliest to most recent (1960s-2014), I worked through the audio and video available from most recent to oldest (2014-1990s). My rationale for doing so was based upon access and timing. Requesting and retrieving earlier audio files from the House and Senate archivists proved extremely challenging. Some of the artifacts I hoped to find took time to process, or came up as missing or simply “undocumented” because they were never recorded or were lost. The earlier in chronological time the artifacts in question, the less likely I was to receive what I requested quickly and without multiple requests or following the chain of command to finally reach the right person.

But I felt that I should analyze what I had at my fingertips (e.g. linked in AZLeg’s online database of audio and video) first, as I was compelled to prepare and share a fresh set of data for the AERA conference in April of 2014. By February 2014, I felt that I was running out of time to properly analyze the audio and video of all the floor debates I had identified as of interest for this study. And so, I began with audio and video from 2014 and worked backward in time from there. As I did with the House and Senate bills and fact sheets, I analyzed the House and Senate floor debate audio and video in MAXQDA 11, using a codebook generated through a combination of key conceptual themes and open coding. In the discussion below, I weave together analysis of artifacts for legislative rationalities of rule available through both legislative document and legislative floor audio/video.

The Analysis

In *Powers of Freedom: Reframing Political Thought*, Nikolas Rose (2000)²² argues that government is the product of thought and not the work of brute reality. I argue in agreement, and add that the legislature in the state of Arizona governs the people and is also governed by the work of thought that becomes part of our reality when thought is disseminated, repeated, hardened into common sense, and allowed to eclipse other ways to think about our policies, our languages, our students and ourselves.²³ Even the most (seemingly) benign policies, or actions against the most (seemingly) dangerous policies, including those that support appropriate funding for language education in Arizona or the permitted scope of language practices in classrooms, have a stake in the soul of the citizen (Minson, 1985). To recapitulate, the research questions I aim to explore are:

- What rationalities of rule are embedded in the discourses surrounding *Flores* (1992-present)?
- What kinds of subjects do the discourses of/around *Flores* produce?

With that, I hope to narrate some discursive rationalities found in legislative discourses that emerged alongside *Flores v. Arizona* in terms of their productive and governing effects. The discussion below narrates the corresponding analysis, specifically the

²² Rose, N. (2000). *Powers of freedom: Reframing political thought*. Cambridge, UK: Cambridge University Press. See also Mitchell Dean (1996), who argues that state concerns are decentralized by a “multiplicity of authorities and agencies” (p. 210) and therefore “we need to analyze *all* the ways in which the conduct of government [is] linked to the government of conduct” (p. 212, italics added). Dean, M. (1996) Foucault, government and the unfolding of authority. In A. Barry, T. Osborne & N. Rose (Eds.), *Foucault and Political Reason: Liberalism, Neoliberalism and Rationalities of Government* (pp. 209-229). London: UCL Press.

²³ In “The Political Technology of Individuals”, Michel Foucault (1994/2000b) argues, “the problem of a permanent intervention of the state in social processes, even without the form of the law, is . . . characteristic of our modern politics and of political problematics” (p. 415). In legislative discourses, we see the physical and economic concerns that create “an environment on which population depends and which, conversely, depends on population” (Foucault, 1994/2000b, p. 415).

archive's preoccupation with competition on corporate, district, and individual levels; risk; measurement; and the desired formation of responsible, contributing, prudent students and parents.

Across the legislative archive, I found whispers of Ventura's (2012) elegant argument about neoliberal culture as a structure of feeling. That is, everywhere I looked and listened, I recognized the comingling of economic ideology, perspective, and rationality that:

impels us to extend the market, its technologies, approaches and mindsets into all spheres of human life, to move the ideology of consumer choice to the center of individual existence, and to look to ourselves rather than larger social-welfare structures or society as the source of our success or the blame for our failure—indeed, to define 'success' and 'failure' in market terms. In short, to become entrepreneurs of ourselves as Foucault terms it. (Ventura, 2012, p. 2)

Indeed, "the power of economics lies in an economy of power" (Donzelot, 2009, p. 18). For example, the data set reflected the theme of competition in a variety of forms—competition between corporations that sell educational materials, between teachers and other educational "providers", between districts for funding, between ELL students and their non-ELL peers, and between Arizona's students and imagined or data-created students in other states and nations. The analysis below narrates how those who contribute to the formation of educational policy in the state of Arizona rationalize their roles in the lives of the others they serve, and, in turn, who those others become in thought and in reality. To summarize the common-sense of competition described

through the data in detail below—in an open market, the best curriculum, instructional vehicles, and economically savvy districts will produce the most competitive student body and transform ELLs into prudent, post-ELL subjects that can take care of themselves and secure the future of the state, and the nation, through their ability to secure employment in an English-speaking workforce.

Corporate Competition

The most recent or youngest data in the set (hearings for HB 2485 in the spring of 2014) allude to rationalities of a competition in the effort to provide educational software and other resources as solutions to ELL needs. For example, Jeremy Cowdrey, the Regional Partnership Director at Imagine Learning, a company equipped to compete for a grant to pilot ELL technology programs across the state of Arizona, said the following at a hearing on HB 2485:

Our teachers are tremendous. Nobody wants to replace teachers . . . In order to solve the achievement gap, you first have to solve the language gap. And technology can do that. So Imagine Learning, and other software programs like it, would love the opportunity to work with the state of Arizona and bid on this. It is a competitive RFP. It is not earmarked. No single provider. We can opt in. And that’s the way it happened in Utah.

(HB 2485, House Education floor debate, February 17, 2014)

As technology-based reading interventions for ELLs swoop in just after the plaintiffs in *Flores* are dealt a critical blow by the District Court (with *Flores v. Arizona*, 2013, No. 13-15805) and the ELL Task Force conveniently disbands (HB 2425, 2013), Cowdrey’s statement embodies several forms of competition and the anxieties they epitomize. He

speaks of replacing teachers, albeit to negate the possibility, but such replacement is thinkable here, just as teacher ability and liability is placed under legislative scrutiny elsewhere in the legislative rationalities examined (demonstrated further below). The excerpt above also highlights corporate competition for state funding in the form of competitive RFPs that, with this bill, will result in grants for pilot programs and eventually in state-wide implementation.

Some of the legislators involved in the HB 2485 (2014) debate, most vocally representative Meyers, take issue with the lack of clarity on the bidding process and the amount of money that will be allocated, as well as the lack of controlled studies on Imagine Learning's success when implemented in Utah. Likewise, several secondary sources argue that the competitive RFP is a lark and that the bill will provide Imagine Learning with what one author deems "essentially a no-bid contract to supply ELL learning software to Arizona schools" (Safier, 2014, March 14). The reason—while HB 2485 makes no direct reference to Imagine Learning the company, "the language in the bill is so specific to the Imagine Learning product, no other company could compete successfully" (Safier, 2014, March 8). Importantly, several legislators speak in this debate of a recent trip to Utah (arranged and expensed by none other than Imagine Learning) in which they were wowed by the success of the company's product. What is more, several sources argue that Imagine Learning actually wrote the specifications in HB 2485 (Fischer, March 8, 2014; Safier, 2014, March 8).

Bill sponsor Rick Gray attempts to alleviate some concern regarding a corporate monopoly on assistive ELL technology from his peers when asked directly whether or not there would be a competitive bidding process:

Even though we talked to a company about this, and will probably have a person from that company speak on it, if you look at the actual language of the bill, it does not articulate a specific company. We've already talked to other people, lobbyists that have other vendors. We're willing to tweak the language to make sure that it maintains the standards but does not isolate to one company. (HB 2485, House Education floor debate, February 17, 2014)

HB 2485 is not the first attempted bill of its kind. SB 1239 (2013) proposed a "technology-based reading intervention" without mentioning ELL students (and attempted to set aside \$30 million for an unnamed educational technology provider), and SB 1319 (2010) proposed educational technology programs for English language learners as well (and attempted to set aside \$12 million for an unnamed educational technology provider).

HB 2485 is also not the first bill that Arizona legislators have drafted in recent years alongside the American Legislative Exchange Council [ALEC] (Watters, 2012, October 8; Wilce, 2013, December 2). David Safier (2014, March 14), of *Tucson Weekly*, placed excerpts from HB 2485 (2014) next to ALEC Model legislation drafted in January 2014 for "K-12 Technology-Based Reading Intervention for English Learners Act" to show that the former is taken nearly word-for-word from the latter. What is more, he notes that Imagine Learning is ALEC's second largest financial sponsor. Perhaps the alleged competition was fixed from the start, but the comfortable illusion of competition merely underscores the value of competition-based ideologies used to think about ELL students from within the chambers of the Arizona legislature.

This is also, of course, not the first time an outside vendor has had a literally vested stake in Arizona’s English Language Learners. Back in 2008, representative Garcia stated that “The superintendent of education is going to transfer the duties of determining what will be the passing scores of who is ELL and who is not ELL from whatever educational bodies to the vendor, so that, it’s the vendor that is determining who is ELL and who is not” (SB 1096, Senate Final Reading Floor Debate, April 10, 2008). In 2006, Horne claimed that the reason for passing the responsibility for examining and categorizing ELL students to an education corporation is because:

we were under tight guidelines from the federal government, and we did not have the money to develop our own test. We did an RFP and five publishers submitted. The only publisher that was close to our standards was Harcourt, and the federal government was requiring us to align the test with our standards. (SB 1198, 2006)

In 2006, the vendor was Harcourt, which was acquired by Pearson in January 2008.²⁴ As of 2014, the AZELLA vendor is still Pearson, and Pearson sells both the test and its cut scores to the state of Arizona.²⁵ Almost ten years have passed since Horne remarked on the circumstantial use of corporate vendors to examine and classify ELL students, yet Harcourt (Pearson) is still the winner of state funds to determine who is and who is not categorized as ELL.

Harcourt also comes up in a 2005 Joint Legislative Committee on English Language Acquisition Programs discussion (April 14, 2005). In his description of

²⁴ <http://www.azed.gov/standards-development-assessment/files/2012/02/azellaformaz-2technicalreport-february2011.pdf>

²⁵ <http://www.azed.gov/standards-development-assessment/files/2013/05/report-use-1-2-14-2revised.pdf>

considerable improvement in his district, then-Nogales Unified School District superintendent Kelt Cooper discusses the anecdotal successes of his district, all made possible without additional funding, and he credits Voyager (sold by Cambium), Reading First (mandated by NCLB in 2002 and scrutinized for conflicts of interest and corruption in 2006-2008)²⁶ and the Harcourt series as successful curricula. In the same discussion, an ELL coordinator from Humbolt Unified School district speaks of adopting curriculum called High Point (sold by Cengage) and Avenues (also Cengage) to ensure the district has “a good curriculum so we can fill in those [‘huge cultural’] gaps as we’re teaching English as a second language” (JLCEALP, April 14, 2005).

Corporate involvement in curriculum and corporate competition for district or state contracts in public education are but some of the many market forces at work in the education of ELLs. All of the curriculum products discussed above come with both literal and figurative costs. In *Teaching by Numbers*, Taubman (2009) memorably writes:

Whether it’s textbooks, supplementary educational services, tests, testing programs and testing guides, packaged curriculum, data aggregation systems, scripted programs for teachers [. . .] whether it’s the student loan scandal or the scandal over Reading First, or it’s the privatization of schools in New Orleans and Chicago, there is overwhelming evidence of the intrusion into education of for-profit corporations. Most teachers and educators know this, but, in their daily life in school, they are aware of it

²⁶ For more information on Reading First and governmental financial corruption, see <http://www.washingtonpost.com/wpdyn/content/article/2006/09/29/AR2006092901333.html>
<http://www.fairtest.org/reading-first-financial-corruption>
<http://www.trelease-on-reading.com/reading-first-p1.html>

as something outside themselves, something done to them or imposed on them or their schools. Teachers, teacher educators, and administrators know that corporations are slowly gobbling up the very market in education those corporations have created. And yet there seems little resistance. (p. 105)

As with the collateral damage that followed No Child Left Behind, corporate interests are almost always involved in education reform, but they are not always explicit (Taubman, 2009). While Taubman writes of a lack of resistance among educators who work on the ground, data from the Arizona legislature points to something perhaps more dangerous than a lack of resistance; it suggests that corporate partnerships with public schools are an unquestionable part of their reality. The concern is not *that* private, moneyed interests have a seat at the ELL funding banquet but that the banquet itself is advertised as a competitive market.

Representative Otondo expresses his concern that “all too often we purchase one program followed by another” and votes for the technology bill anyway because districts will be able to gather data on what works from the pilot (HB 2485, 2014). Representative Miranda expresses that in her district “our ELL population needs the resources so that our performance funding bill can be a little bit more fair” (HB 2485, 2014). She enthusiastically votes yes without acknowledging that the resources her district is competing for and trying to obtain through this bill will merely be sunk into one type of software sold by one company that has back door relationships with Arizona legislators. As Rose (2000) so poignantly points out, “the culture of risk is characterized by uncertainty, plurality and anxiety, and is thus continually open to the construction of new

problems and the marketing of new solutions” (p. 160). Miranda fears that students in her district are unable to “perform” without fair resources. In order for her students to compete, her district must compete. Miranda’s vote in favor of what she describes as “fairness in funding” is a vote for something rather than nothing. Unfortunately, funding for language technology pilot programs might serve as a lark that never corresponds with the “performance funding” she seeks but still presents as a solution to recurring funding and equity problems.

At their core, such purchase agreements serve the economic interests of stakeholders, not the real or imagined educational benefits of students. They also solidify competitive ideologies likewise present in the way the educational marketplace, Arizona’s districts, and its ELL students are regarded in this data. All parties become either willing conduits (Taylor, Rizvi, Lingard, & Henry, 1997) or inadvertent participants in the competitive educational marketplace that unfolds upon and outside the legislative floor. Corporate competition to be considered “good curriculum” by lawmakers in the state of Arizona places the state’s legislators in a contradictory position. As they attempt to preserve the state’s economic capital, which is most often rationalized from a distantly pastoral perspective of “protecting the taxpayer” (e.g. HB 2387, 1999 – Representative Nichols; HB 1096, 2008 – Representative Pearce; HB 2283, 2013 – Representative Smith), legislators deliberately spend in certain (corporate) areas (software, testing, classifying, packaged curriculum) and withhold in others, namely by guarding allocations on the district level.

District Competition

Indeed, the House Committee of the Whole debate surrounding SB 1096 (2008) unleashed the rationalities surrounding district needs as articulated by districts themselves, but through the mouthpieces of the legislators that represent those districts.

Representative Lujan speaks of the arrival of school superintendents to the capital in order to seek policy to assuage the overwhelming cost of the models adopted by the ELL task force. When asked to evaluate the needs of ELLs in their districts to implement the models, Lujan says: “They put that cost at close to \$300 million, and yet here we are only wanting to appropriate \$40 million” (SB 1096, House Committee of the Whole #3, April 9, 2008). *Flores*, he argues, was never about adopting Task Force models—it was and remains a matter of providing sufficient funding for districts to educate English language learners.

Across the data, legislators celebrate Arizona’s success as a “local control state” (HB 2485, 2014; HB 2425, 2013; SB 1033, 2012; SB 1409, 2011; SB 1096, 2008; JLCELAPA, April 14, 2005; Prop 203 For and Against, 2000; HB 2387, 1999). In a debate surrounding HB 2425 (2013), the replacement of the ELL Task Force, Representative Townsend captures the sentiment of local control articulated by his peers across the data rather well:

as a Republican, I vow to promote local control . . . this is not local control . . . if we can’t even do it on a local or state level . . . as we move forward and dissolve and just give up in Arizona and put it in the hands of the federal government and put our teachers in the position to take orders about what they are going to teach rather than teach according to the needs

of their local districts . . . (HB 2425, House Floor Session Part 2-Final Reading #1, March 26, 2013)

Indeed, legislative rationalities are rife with talk of the desire for local control for school districts to manage and educate their student populations on their own terms. The contexts for district decision-making seem to be minimally regulated. Yet, the romance of local control breaks down when each and all are forced to adopt the same model, and funding is not allocated according to district need. Local dysfunction might be a more accurate way to describe what seems to transpire in the mid-to-late-2000s as SEI is implemented without the resources to support its mandates.

These desperate times of hierarchal, streamlined models, disparate district needs and uneven funding formulas abandon the districts, with their elected officials, leaving them to fight for funding to provide services that are required by the state's own statutes. Representative Rios captures district competition for funding as follows:

The distribution formula . . . the funding goes to school districts that don't need the money. It's going to go to those school districts that probably have 100 or 200 ELL students and they get something like \$4000, \$5000 dollars. . . We've got a school district out here, Cartwright that has 9000 ELL students, guess what they get? Zero. (SB 1096, House Committee of the Whole #3, April 9, 2008)

Representative Robson responds, in turn, by suggesting that educators aren't in any position to say what they need because they do such a poor job of educating children and districts cannot be responsible for applying for funds because they lie about the funding they need.

As representatives of specific districts in the state, members of the House of Representatives use the rationality of competition to discuss their constituent's needs against policy's shortcomings. Representative Chevront, for example, articulates competition between school/voting districts as follows:

The way this bill is construed, you are asking my homeowners and my business owners to pay for the ELL programs while other school districts are going to have the state pay for their portion . . . this is an inherently unfair bill that takes my schools, does not given them any money from the state, but requires that taxpayers pay for their program. (SB 1096, Senate Final Reading Floor Debate, April 10, 2008)

Representative Garcia utilizes similar logic in response to the same bill: "The districts that have the largest numbers of English language learners will not receive a penny. Those who have a lesser number will receive a great financial benefit using the model-based financial approach" (SB 1096, Senate Final Reading Floor Debate, April 10, 2008). This way of pinning the benefits of policies as "our" schools vs. "their" schools is thinkable only in a competitive system, and perhaps mostly in a system that places the burden of care for the education of citizenry on individual school districts rather than on the state, not to mention the nation, as a whole.

Harrison and Kachur (1999) identify aspects of corporatism that seem most potent here—"relations of dominance and subordination, authoritarianism, and anti-democratic values, where 'the state becomes the facilitator of policies, and 'stakeholder' consultations displace the legislative process'" (p. 74, cited in Eyre, 2002, p. 68). Legislators control knowledge by surveying the "success" of programs touted in these

discussions, by providing anecdotal rhetoric to discredit opponents, by making decisions a priori and behind closed doors, by suppressing or dismissing perspectives that conflict with their own interests, and by valuing a corporate agenda while seeming unconcerned with the lived experiences of teachers and students under the curricula they purchase and corresponding policies they adopt. As mentioned above, representative Robson argues that in attempts to fund districts for ELL Task Force models at the level they assess and request, “we're claiming that educators know better, which they really don't, that's why we're having kids that aren't really being educated” (SB 1096, House Committee of the Whole #3, April 9, 2008). Tom Horne also makes this rationality quite clear when he argues in favor of time limits for bilingual education as follows: “Whether or not they are capable of performing at that next level is not important to us. The student is not necessarily an important part of our education program, as I see it” (HB 2387, Floor Debate, 1999). At the same time, the rationalities of rule in this data set reflect that the specter of the risky student is an *extremely* important consideration, as risk, personal responsibility, active citizenship and the ability for students to compete now and later were major themes I found in the data.

Risky Student Bodies

In *Security, Territory, Population*, Foucault (2004) discusses dispositifs of security that illustrate traits of the space of or possibility for security to operate—“the chancy, the risky, and the contingent; normalization as mechanism of security; and the relation between technologies of security and population, as the moment of the emergence of the question of population” (Elden, 2007, p. 30). Security and risk are obliged to commerce and to competition in this space of political action.

In the realm of risk rhetoric, in the HB 2485 (2014) floor debate, discussed at the beginning of the data analysis, representative Carter's rationalities cascade from competing district needs to the need to equip Arizona's students to compete:

What this bill does is picks winners and losers between competing academic needs that we have in Arizona. While I agree that the bid process is competitive, it is not a competitive process for all the other unmet academic needs, to go and compete for state dollars. So, for example, where is there an appropriation bill to address dropout prevention? This is one of the most important things that we in Arizona needs to address, to make sure that our kids in Arizona are ready for career and college. (HB 2485, House Education floor debate, February 17, 2014)

While Carter speaks of wider district needs in general, with and without the ELL population, she harkens practicable objects of risk—dropout rates and failure to prepare for the job market—that commonly surround the way that ELL students are imagined by her peers and predecessors in the Arizona legislature. With these objects come political programs or more abstract strategies to intervene and to correct, to insure and protect.

ELL student risk is conceptualized as pathology that may be interpreted as the fault of internal or external issues. For example, representative Gray refers to the ELL as a population that “needs help” and “motivation” (HB 2485, House Floor Session Third Reading, March 6, 2014), whereas representative Gallardo speaks of a population of students “who have proven to have struggled, who have had a hard time in many of our districts and try to pass many of the tests that are provided to them” (HB 2425, Senate Floor Committee of the Whole Part 1, March 21, 2013). Haver, who is on the ELL Task

Force, speaks of LEP kids who are “quite lost” and “wasted time” in the mainstream classroom, a place where “it is quite painful for them to have to sit in a situation where they don’t understand most of what’s going on” (SB 1033, Senate Education, January 23, 2012). While Gray argues the ELL kids themselves need more direct intervention and correction to motivate, Gallardo’s rationality pins struggle more to the tests than the children, and Haver combines their alleged feelings of loss with contexts that are beyond their control.

In an attempt to preserve bilingual education, representative Nichols tells a story about his daughter’s success learning Spanish in the GATE program so that she could go on to help “Spanish-speaking dropouts” that were not offered such great programs (HB 2387, 1999). Margaret Cerna, a parent and bilingual director in an Arizona school district who rises to speak at the same hearing, also warns that ELL frustration causes them to drop out of school (HB 2387, 1999). Using segregated ELL children as one population that can be helped to improve state educational rankings as a whole, Greg Riccio, Superintendent of Nadaburg Unified School District, offers that “Arizona is fourth from the bottom in terms of ‘chance to succeed’” (SB 1033, Senate Education, January 23, 2012).

The language of the Proposition 203 (2000) ballot initiative participates in this kind of risky thinking as well. The “for” side argues that:

The public schools of Arizona currently do an inadequate job of educating immigrant children, wasting financial resources on costly experimental language programs whose failure over the past two decades is

demonstrated by the current high drop-out rates and low English literacy levels of many immigrant children.

Prop 203 also forecasts a future of “economically handicapped” children, hamstrung by their inability to wield English, “a key to success.” In his attempt to argue in favor of more bilingual education for Arizona’s students, representative McLendon rationalizes with, “I don't think these are students where you can say ‘you’re on your own’ . . . “ (HB 2387, 1999). And beyond their risk as individuals now and especially in the future, there is also the threat of what representative Huppenthal calls “these enclaves in all major cities now where you can go in and observe everyone speaking in a foreign language . . . this is not a helpful thing” (HCR 2030, Senate Appropriations, April 7, 2005).

Related to discourses of ELL student risk are articulated beliefs that ELL students are, have been, or will be “lost” without appropriate intervention. Representative Rios speaks emotionally of how in the 16 years since *Flores* arose (at the time of the debate) “We’ve lost a generation of students that never got the benefit of a fully funded ELL program” (SB 1096, House Appropriations, April 9, 2008). Likewise, representative Miranda mourns the loss in another discussion on the same bill:

It’s important to keep that in mind because whenever this body decides they don't want to live with the rule, the rules they set up, you do away with them, and in the meantime we’ve lost a generation of kids. I’ve been in this body for 5-6 years, and that’s almost half of the timespan of a generation of kids that we're losing . . . (SB 1096, House Committee of the Whole #3, April 9, 2008)

Representative Lujan uses nearly these exact words to make his point: “I’m surprised that this is the only court order we are looking at . . . we’ve already lost multiple generations of students because we have not provided the proper funding . . .” (SB 1096, House Committee of the Whole #3, April 9, 2008).

As what seems positioned as an antidote to the “lost generation” arguments that swept the House floor in response to SB 1096 (2008) representative McClure rises to remind members:

that the original subject of this lawsuit, Miriam Flores, has completed her education and is now working as a nurse. I don’t believe she, her parents, or anyone else would agree that she’s been lost. That’s an anecdotal story, but I’m sure there are many, many other students who have completed the ELL program through the school by whatever method was used and have gone on to become successful students. (SB 1096, House Committee of the Whole #3, April 9, 2008)

Her anecdotal logic suggests that any child who completes his or her education and gets a job is not “lost”; they are a success story.

In “Risk and Responsibility”, O’Malley (1996) critically examines actuarialism and finds that “the relative prominence and roles of different social technologies depends rather on the political rationalities ascendant in any social setting” (p. 190). Such technologies include actuarialism (or insurance technologies, if you prefer), which is conjured through rationalities of risk. Drawing from Simon (1988) and Cohen (1985), O’Malley’s discussion of the efficacy of insurance-as-social technology helps us to

imagine the rationalities of risk used to describe English language learners above as a technology:

First, unlike the disciplines, they act by manipulating the environment or the effects of problem behaviours, rather than by attempting to correct errant individuals. Secondly, they act on categories derived from risk analysis that need not overlap with the categories of everyday experience, and which thus are less likely to be recognized and resisted. Thirdly, they act *in situ* rather than by separation or exclusion of deviant cases, and as a by-product have less need to be coercive . . . overall, then, actuarialism appears as incorporative rather than exclusionary, meliorative rather than coercive, statistical and technical rather than moral and individualized, tolerant of variation rather than rigidly normalizing, covert rather than overt and so on. (p. 191)

With ELL rationalities of risk, we find an efficient economy of regulation that, as O'Malley argues further, is totalized to permeate all social fields. The risks the ELL population allegedly carry are targeted through a series of “practicable objects” that these rationalities purport to operate on through positive political programmatic action that determine time needed, the appropriate contents of curriculum, the most helpful spaces in which learning takes place, and the most productive people involved in said learning.

Measurement

In order to fully conceptualize the level of risk, the population must be measured. Measurement is a key way we determine or produce a problem. As Rose (2000) states, “risk thinking brought the future into the present and made it calculable” (p, 246-247). In

order to prevent that risk from hemorrhaging into the full fledged social threat of separatism or inability or refusal to participate in the classroom, graduation, careers, and competitive society, everyone must be convinced of the social importance and even supremacy of the English language so that all can participate in the intervention and normalization of non-English tongues. Since English language ability becomes, in the scope of these legislative debates, the measure of risk par excellence, measures and statistical techniques, with corresponding categories of who students are and then should be becoming or emerging into, and their appropriate interventions, are developed and implemented.

In short, to govern a population we now categorize as ELL, policy invents possible ways, via social and human sciences, to count and account for its problems and to make up ideal solutions according to thinkable value systems. Children in the legislative discourses examined become the object of sciences that strive to determine:

- normal rates of second language acquisition
- appropriate forms of socialization
- reliable metrics for measuring, counting, and classifying
- appropriate categories for classification, complete with corresponding interventions
- more metrics for reassessing and reclassifying

To illustrate by a few examples, the rationality of Arizona's HB 2387 (1999) at first appears to hinge on a three year limit for bilingual education and increased parental consent because the program is not working. Yet, the bill's sponsor, representative Knaperek eventually articulates that the purpose of the bill is to "gather, interpret and

disseminate data” about ELL students, something that she believes can only be done if the timeframe for bilingual programming is determined by the state and the same for every child. Knaperek says:

I think it’s detrimental to the state of Arizona and to this society, especially for children, that we just let them linger in programs that are not successful . . . If we can start looking at what is going on out there and start gathering that data, we can be more helpful to the school districts . . .
(Floor debate on HB 2387, 1999)

Not only does this rationality directly link the success of state, society, and student, it also suggests that knowledge of success (and failure) begets productive movement. The lack of success she mentions is based on conflicting score reporting that purports to show the effectiveness of bilingual education programs by showing student scores over time. Her logic illustrates that the real goal is for us to know more about these students and how they respond to these interventions over a controlled period of time.

Many years later, in the English Language Task Force replacement discussion with HB 2425 (2013) representative Allen, (Republican, District 15) seems concerned not with students but with measurement that is reflective of “excellence” and that provides proof that “we are getting what we pay for from our schools”. He then argues, “We cannot operate our education system without the ability to measure the outcomes . . . If we start up another state test all alone, we will not be able to get the measurements we want . . .” (HB 2425, 2013). Among the many technologies that strive to activate and manage the ELL population (Donzelot, 1979), outcome measurement is surely one.

Finally, in his argument for program funding commensurate with district needs, representative Lopez says:

we went through all these cost studies . . . the legislature didn't like those cost studies so they got tossed out and continue to delay funding the needs of kids who at some point in the future will be contributing citizens in our state. Not educating them to their maximum capability we're depriving the state . . . I believe it is within the purview of local school districts to determine the best way of educating English language learners. (Floor Debate, SB 1096, 2008)

This excerpt collapses all of the themes above into one illustrative bundle. Representative Lopez mourns the legislature's control of knowledge and of time as both contribute to the ever-increasing risk of a population that needs to be known to be maximized educationally, and finally to be able to contribute to the state. There is a best way, he argues, to insure these students, and that way should be determined by the local districts that have the most direct access to their productivity. The drive for better metrics or more valid statistics was evident across all sides of the data. Most recently, the post-*Flores* Task Force disbands, and the only concern that remains is true evaluation and the ability to convert tax money into statics by way of children's' performance on competency exams. The state of Arizona has a vested interest in counting, measuring and categorizing students to determine if they constitute state money well spent. What is more, legislative discourses stress that ELL students become significantly useful for the world according to a narrow criteria of usefulness. The Arizona legislature is concerned with determining the productive aspects of students' lives and their aptitudes, as well as the negative aspects of

life—those that require unaccounted for funds, solutions to gaps in eventual global participation, and insurance for the most risky.

Forming Responsible, Contributing Citizens

In *Governing the Soul*, Rose (1989) writes of an “ethicalization of existence” which has characterized the final decade of the twentieth century and “intensified the demands that citizens do not devolve the responsibilities for health, welfare, security and mutual care upon ‘the state’, but take responsibility for their own conduct and its consequences in the name of their own self-realization” (p. 263-264). The data suggests that responsible student conduct means obtaining required skills, graduating, getting a job, paying taxes, becoming economically viable, voting for elections in an informed way, and, more generally, becoming “productive”. Responsibility opens the door to desired social contributions and to ways of being an ELL student and parent. The rationalities seen and heard in the legislature convert self-made responsibility into a need, a virtue, or an obvious effect of participation in society.

The rationality of personal responsibility comes in several forms. The most overt connection between personal responsibility as insurance to counter the cost of state care is evidenced in representative Pearce’s contention that:

If people come to this country, it is their job to learn English, not our job to teach them. Enough is enough with this making the taxpayers responsible for everything in the world. There’s a personal responsibility here . . . we just have to wake up. There is enough money to do everything we have to do. We have a huge deficit here, and spending is part of the problem. We have to wake up here to set some real priorities and set some

personal responsibility for folks to have them meet their responsibility so we can take care and protect the taxpayer from excessive spending. (Joint Legislative Budget Committee, October 2, 2008)

Seth Apfel of Arizona's ACLU demonstrates a slightly different rhetorical approach to a similar way of knowing responsibility when he contends that "[m]ost people who come to this country, the vast majority, perhaps even all, want to learn English. I think it's a myth that people come here with no expectation to learn English" (HCR 2030, Senate Appropriations, April 7, 2005). While Pearce argues of the absence of personal responsibility and Apfel argues of its presence, both are, in effect, arguing for the importance of *taking upon the self* (Rose, 2000, p. 247) the will, desire and responsibility to speak English and therefore do their job as citizens.

Parental Participation

As social insurance "incarnates social solidarity in collectivizing the management of the individual . . . and the corporeal riskiness of a body subject to sickness and injury, under the stewardship of a 'social' State" (Rose, 1996, p. 48), legislative rationalities make their way into knowing the private conduct of families. Parents become actualized as a big part of the responsabilization of ELL children. They become able to better monitor and address child progress through the use of advanced computer technology (HB 2485, House Floor Session, March 6, 2014); they become required to have knowledge of ELL classifications, SEI alternatives, and access to waivers (SB 1160, House Education, March 29, 2010); and to ensure their "participation" in the language learning process (HB 2387, February 23, 1999).

Assumed parental behavior and preference is censured as lacking the appropriate mechanisms to support language acquisition strategies in the home. For example, representative McClure says:

taking the chance of being called a racist or bigot, I would suggest that the solution to our ELL problem is to suggest to parents who don't speak English in the home that when their children are present, they turn off the 'other' language TV and radio, turn it to an English station, and let their children absorb that while they are in the home. That would go a long way to help them absorb whatever is being taught in school. (SB 1096, House Committee of the Whole, April 9, 2008)

Representative Pearce also speaks of television and home language preferences and practices of families as impediments to their duties as members of the nation state:

If you come here, it is your job to learn the language. I appreciate the work the task force has done. Children pick things up quickly. They have to be immersed. One year is plenty. There are folks who refuse to immerse. They turn on the Spanish TV. Speaking Spanish at home is another challenge. We need to move it quickly to not waste taxpayer money. (Joint Legislative Budget Committee Meeting, July 19, 2007)

According to these rationalities, family responsibility is defined by adherence and allegiance to English only in home and at school, as linguistic assimilation and the erasure of difference will allegedly satisfy state needs and cut the financial and figurative costs of a multilingual population.

Similarly, speaking in support of corporate tax breaks for private school vouchers for ELL students, representative Burns, when asked how ELL program quality will be ensured, responds, “I think the responsibility then falls back on the parent. If they want their children to speak English, they are going to put them in a school that gets the job done” (SB 1198, January 23, 2006). In an very different kind of argument against aggressive immigration technologies, a worker at a local Catholic church argues that immigrant families should do what they need to do, as “I think that it is bedrock American values that parents take care of kids” (HB 2030, Appropriations Committee, March 2, 2005), just as the text of Proposition 203 (2000) declares that “Immigrant parents are eager to have their children acquire a good knowledge of English, thereby allowing them to fully participate in the American Dream of economic and social advancement.”

In *Powers of Freedom*, Rose (2000) writes that “the collectivization of risk in the social state is being displaced: individuals, families, firms, organizations, communities are, once again, being urged by politicians and others to *take upon themselves* the responsibility for the security of their property and their persons, and that of their own families” (p. 247). In the discourses cited above, the speakers clearly use the family as an instrument in the economy and the art of managing ELL students. Through these discourses, ELL families are constituted as desirable or undesirable according to their alignment with state interests and the behaviors that allegedly reflect their values. While authority for what children do in and out of the classroom with their language practices *seems* to be placed on parents, the authority to define what good ELL parenting looks like is dispersed through legislative discourses. An element of desirable parental discipline is

assumed under the banner of linguistic assimilation as a brand of American Dreaming that is not rationally disputed in the archive.

Rationalities of responsibility for ELL children and parents come to fruition in their relevance to desired ends—the making of contributing and then competitive citizens. Risk is, in part, managed by responsibility; but actuarialism for that risk is more effectively accomplished by the creation of a population that fends for the state by fending for the self. O’Malley (1996) argues that opposition to social insurance:

takes on the form of the moral crusade against the coils of the Welfare State that is sapping the energy and enterprise of individuals (Gamble, 1988). Moreover, the moral banner under which it carries forward this fight is that of the free market—the free market that reinstates the morally-responsible individual and sets it against the collectivization and social delinquency said to be inherent in socialized risk-management techniques.
(p. 194)

Rather than think along the lines of a the socialized actuarialism of Donzelot (1979), Simon (1988), and Ewald (1991), O’Malley encourages an understanding of Prudentialism, as such captures the removal of responsibility and regulation from the collective and places it with the individual as a kind of privatized actuarialism. Funding for ELL education is downscaled and services are narrowed to SEI “not to exceed one year”. Qualifying conditions are made more rigorous through alterations in assessment processes, cut scores, and home language surveys, and the services themselves (segregated SEI classrooms staffed by minimally endorsed teachers) become less appealing. The classification ELL carries a stigma that has suggestive corresponding

categories that are aligned with level of risk—pre-emergent, emergent, basic, intermediate, and proficient. There is an implied immorality that some taxpayers have to pay for the education of other people’s children. With this comes the promotion of privatized (and deregulated) education that welcomes corporate sponsorship and educational products that promise to adjust children to get the right scores or at their own pace. All the while, the children and their parents are responsible to care for their own language learning at home and at school through self-discipline, desire, and prudent choices.

If all goes as planned, if all these technologies are taken far enough, the responsible ELL children will become “successful and graduate and become contributing taxpayers in our state” (HB 2425, Senate Floor Committee of the Whole Part 1, March 21, 2013—Representative Lopez). As such, they will “grow up to be economically viable members of society” (SB 1096, Senate Final Reading #1, April 10, 2008—Representative McCune Davis) who have graduated from schools that taxpayers have expensed with “the skills they need to go on any further . . .” (Joint Legislative Committee on English Language Acquisition Programs in Arizona, April 14, 2005—Kelt Cooper). They will also become part of a “common” culture that speaks a common language that allows taxpayers to “do business in here, in Arizona, and in the United States in general,” as “it’s important that we all have a common language so that we can all be informed citizens, so we can take in all information to vote and elect our officials” (HCR 2030, Senate Appropriations, April 7, 2005—Representative Gould).

Competitive Citizens

And then, legislative rhetoric suggests that making subjects responsible and contributory is but half the battle. The rhetoric also rationalizes the need to make students competitive in a variety of ways and against a variety of nebulous opponents. Alan Maguire, economist and chairman of the ELL Task Force illustrates the rationalities behind SEI as follows:

I subscribe to an intellectual journal called *City Magazine*. It's published every month. It's really about urban planning, the lead article in the most recent journal is: 'Vocabulary: The Key to Upward Mobility.' And that is the key to language and that's the key to our models . . . helping our students have access to language and ultimately to the marketplace and employment. (HB 2425, Senate Education floor debate, March 7, 2013)

While Maguire's Task Force's purpose is, in ways, to develop models under statute presented by the voter initiative in Prop 203, many parties who wrote in opposition to English only used the same rationality to articulate their perspectives—in short, that bilingual education “is a highly marketable skill to possess in this age of global marketing and technology” (Mexican American Political Association, Arguments Against Proposition 203, PROP 203 Ballot Initiative, 2000), or that multiple languages are “necessary to provide our children with the skills necessary to compete with the ever-growing global economy” (Lorraine Lee, Chair of English Plus More, Arguments Against Proposition 203, PROP 203 Ballot Initiative, 2000).

And in floor debates that occurred in anticipation of Prop 203 with HB 2387 (1999), representative Ramon Valadez conjures the rationality of competition and

participation for the sake of bilingual education, which is really for the sake of participation in commerce, as well when he says:

In an era of global communication and global commerce that we are moving to, it doesn't even make any sense, in any way you look at it, to limit a child's bilingual education for three years or to change this kind of policy. This is a program, in fact, that we need to look at expanding, [to] expand the opportunities that we allot our children. (HB 2387, Floor Debate, 1999)

Likewise, representative Avelar says:

Bilingual education is not about being un-American. It is not about being anti-English. It's about making sure that our children are competitive with other children throughout the world. Making sure they have the same opportunity to learn other languages. Making sure that the businesses, which many of us profess to support, have the workers that are competent not only in the English language but in other languages as well, whether that be English or Navajo or Japanese or Italian. (HB 2387, Floor Debate, 1999)

Representative Nichols visits the same way of knowing what matters when it comes to reasons he believes "foreign" language should legally become one of the core subjects in Arizona public schools:

not only are we educating our students in English so they become proficient in English; we're taking our other students who are basic English speaking students and giving them a capability in a foreign

language. In other words, it cuts two ways. We think that's extremely important, especially if we are going to be competitive in a global environment . . . I repeat, if we are going to become competitive in the world of business and the world of professions, we're going to need foreign languages (HB 2387, Floor Debate, 1999)

Representative Gonzalez agrees that "our students need to be globally aware of their surroundings and compete in this global economy . . ." (HB 2387, Floor Debate, 1999).

And representative Wong declares that:

I find it more and more critical that the state move forward and encourage our students to learn multiple languages because we have trade offices all around the world, at least a half dozen or so, and the debate included that this is a global economy . . . that's just going to broaden the exposure of our students to all the aspects of different cultures of the world . . . (HB 2387, Floor Debate, 1999)

Alan Maguire is also interested in touting the importance of competition between ELL and non-ELL students:

The students that come out of our ELL programs, especially in lower or middle grades, perform as well or better than native speakers after their transition. That's an amazing thing to say. English Language Learners, after they complete our curriculum in the lower grades, outperform their native speakers, and that's because of the rigor of their language training. That's the best we could possibly hope for, and we are quite proud of that. (HB 2425, Senate Education floor debate, March 7, 2013)

Students who obtain the key to success through their measureable and myriad language abilities will purportedly become entrepreneurs of the self. They will double down on their educational investments and invest wisely again. They will enterprise on behalf of the self and the state. They will be equipped with the language of currency, and the most global of them will also be equipped with other languages that are used not to threaten the cultural coherence of the state but to advertise its worldly educational assets. Like O'Malley (1996), Rose (2000) argues that social governance experiences tensions—it does not provide adequate security; it drains taxpayers' provisions and state budgets; it displaces personal and familial responsibility; it creates the possibility for undue risk; it promotes dependency. Rationalities of self-governance therein become essential strategies. The coherent, unified, safe society is the one that promotes the (ironically) global importance of knowing the right language by thrusting upon the self the responsibility for learning, and learning quickly, that which will allow the self to actively participate and compete.

Conclusions

In the scope of this chapter, I was most interested in narrating themes from the discursive rationalities used by individuals who spoke on behalf of or against a variety of post-*Flores* language policy bills on the legislative floor. I also examined how those rationalities constitute English language learners as subjects of knowledge and of government. I analyzed the data by joining a theoretical interest in governmentality and the process of “discourse tracing” with a focus on legislative discourses as statements that constitute objects and subjects, arranging and naturalizing the social world and its

practices. Discourse tracing made possible an examination of subject formation, management, and the rationalities for both.²⁷

The rationalities that support the necessary creation of productive, employable, active, competitive global citizens out of this category we've named "ELL students" appears across the archives, on all sides of all debates, and helps to illustrate what the legislature aims for in language policy and why.²⁸ Here we see a concern for children as workers and contenders in the service of the state and the globally competitive nation state. These discourses function to foster the development of an equipped, competitive self in the service of a state that needs to be equipped to compete now with other states and nations. Language-based interventions focused on the knowledge and behaviors of individuals produces something new and therein governs through a seemingly positive and productive force rather than a restrictive, oppressive law. Furthermore, as Popkewitz (2004b) points out, the implications of language policy may blur ideological boundaries that might otherwise seem to divide positions on the need for effective classroom instruction and the need for a more democratic society in that the desired end-product and social purpose is the same—the threat of difference will be erased. Discourses focused on

²⁷ Discourse tracing, when interpreted as a critical, poststructural epistemology that is concerned with the relationships between meaning making, discourses, power, and practices, is different from Critical Discourse Analysis and content analysis by moving the object of inquiry from "the *what* to the *how*" (LaGreco & Tracy, 2009, p. 1522). LeGreco, M. & Tracy, S. J. (2009). Discourse tracing as qualitative practice. *Qualitative Inquiry*, 15, 1516-1543.

²⁸ As the twentieth century drew to a close, the premises of neoliberalism flourished to create a schema of government that Rose refers to as "advanced liberal". The purpose of advanced liberalism is to usher subjects into the business of generating their own human capital, to organize systems and subjects according to enterprise, to activate individuals to act as entrepreneurs who have choices and the shared dream of self-realization through their productivity.²⁸ Some of these techniques include a combination of neo-liberal and neo-social logics of global competition, new Prudentialism, risk assessment and prevention, audit, self-improvement and self-esteem, perpetual training, and a redefined sense of freedom that equates to self-realization through individual economic activity.

positive reform attempts to better society by bettering children, which means changing who they are.

In 1981, Michel Foucault delivered a speech entitled “Confronting Governments: Human Rights” at the UN in Geneva, an address to “all members of the community of the governed” (p. 474). In it, he said:

I think we need to be aware that very often it is those who govern who talk, are capable only of talking, and want only to talk. Experience shows that one can and must refuse the theoretical role of pure and simple indignation that is proposed to us . . . The will of individuals must make a place for itself in a reality of which governments have attempted to reserve a monopoly for themselves, that monopoly which we need to wrest from them little by little and day by day. (Foucault, 1994/2000a, p. 475)

Perhaps this goes for the work of the Arizona government as well as for the rationalities that govern its discourses, and our own. Perhaps our rights to speak and act can be envisioned in ways that extend beyond our ability to become more competitive, more high ranking, more prudent, more measured and measurable, more insured, more globally astute in our civic participation so that we can better serve state interests. These little acts of wresting a monopoly on thought and practice might begin as the work of “strip[ping] bare [the] singular strangeness” (Veyne, 2010, p. 12) of who we believe ELL students, or any students, are supposed to become. Before long, the basis for knowing and doing may come unglued and feel knowable as something very different to fight for. A critique of knowledge begs to be authored. The natural and reasonable, the common-sense and taken-for-granted should become seemly targets that were otherwise hidden by their

appearance on the surface of things. Perhaps our wresting may then continue as we imagine ourselves as different kinds of subjects with purposes and goals that are as boundless as our capacity to be, to unknow what we think we are supposed to value about the meaning of speaking a language or participating in a human society together.

Chapter 5

JUDICIAL RATIONALITIES OF RULE

Review and Preview

The goal of this work as a whole is to explore the rationalities of rule that are embedded in discourses surrounding the *Flores* case, to problematize the productive power surrounding *Flores* discursive rationalities, and to ponder how subjects move in and through the power dynamics produced by *Flores* discourses. The previous chapter, Chapter 4, includes a description and analysis of one of three core archives discussed across this study, four archives, really, if one counts the critical analysis of *Flores* scholarship detailed in Chapter 2 as a “data set” as well. Chapter 4—the legislative archive—features a discussion of policy documents and legislative floor debate audio and video.

I began the legislative analysis by describing government as the work of thought (Rose, 2000), and I put forth the argument that thought begins to act like reality when it scripts and guides common sense beliefs and corresponding practices, when it shapes who we believe people are or ought to be and how subjects form themselves based on these knowledges. Key themes that emerged in my analysis of the legislative archive include competition between education corporations that vend ELL software products, between districts, between teachers and other providers of curriculum, and between students. Statistical measurement is used, discursively and in practice, to conceptualize students’ English language skills as a problem for the state. ELL students are imagined and created in the discursive rationalities examined in the last chapter as risky and in need of intervention. Rationalities of student, parent and teacher responsibility, freedom

and desire to learn English as social insurance for student and state “success” follow this chain of thinking. Likewise, prudent ELL students who learn English quickly are mainstreamed and hopefully able to be deemed successful by their ability to revise recurring problem-posing statistics that demarcate the ELL student body by competing among themselves and with another category of peers—students who learned English as their first language.

In sum, rationalities that support the desired creation of productive, employable, active, competitive global citizens out of this category we’ve named “ELL students” appear across the legislative data set. Through legislative discourses, children are imagined as formidable future workers and contenders in the service of the state and the globally competitive nation state. Legislative discourses function to foster the development of an equipped, competitive student body in the service of a state that needs to be equipped to compete now with other states and nations. Language-based interventions focused on the knowledge and behaviors of individuals to produce something new and therein govern through a seemingly positive productivity of English-speaking subject formation rather than a restrictive law. The present chapter, Chapter 5, will lead us through another archive, an alternative but overlapping site of knowing and producing ELL student subjects—judicial rationalities of rule. This chapter explores the same questions as the last and draws likewise from these questions’ corresponding conceptual inroads.

The Exposition

The exposition process I underwent to compile the judicial archive was more streamlined and direct than the process I underwent to collect the legislative archive

discussed in Chapter 4. I found that the judicial documents were more fastidiously categorized and organized than legislative documents and recordings were. It was much easier for me to navigate the ASU library system and its databases than the Arizona House and Senate databases or clerks' offices. Further, having at this point in the exploration process read so much more about the *Flores* case, I was able to use my notes to pinpoint when and where different iterations of the case were filed with different courts, so I had some idea of how to search and at least some sketch of what I should expect to find. As I explain in Chapter 4, such was not at all the case with the legislative archive, for which I had to revise the collection process and make unexpected choices along the way.

In order to access the rationalities of rule that flow through judicial archives surrounding *Flores*, I first consulted with ASU research librarians, who led me to all of the major legal databases available to ASU students, as well as to the Ross Blakley Law Library. The databases I searched included:

- LexisNexis Academic Legal Case Finder:
 - AZ Court of Appeals Unpublished Cases
 - AZ Court of Appeals Published Cases from 1965
 - US District Court Cases, Combined
 - AZ Supreme Court Published Cases from 1866
 - U.S. Courts of Appeals Cases, Combined
 - U.S. Supreme Court Cases, Lawyers' Edition
- HeinOnline
- United States Courts Opinions (USCOURTS)

- FindLaw
- United States Courts for the Ninth Circuit
- PACER

I used slightly different keywords to locate this research, given the nature of how legal documents are named and catalogued. The keywords used included:

- *Horne v. Flores*
- *Flores v. Arizona*
- *Flores v. Huppenthal*
- *Speaker of the House of Representatives v. Flores*
- Case No. 92-596
- Case No. 08-289
- Case No. 08-294

I limited the search dates to *Flores*' timeframe (1992-2013). There are no judicial documents available for *Flores* before 1992, as 1992 was the year the class action suit emerged. I also found that the first judicial document available is dated 1999, not 1992 when the case emerged. I learned that this is because pretrial proceedings unfolded for seven years before initial claims were settled in terms of the "structure of Nogales' ELL curriculum, the evaluation and monitoring of Nogales' students, and the provision of tutoring and other compensatory instruction"²⁹ In short, it took seven years of discovery before the case was brought to trial at the U.S. District Court. Further, I didn't search after 2013 for two reasons. First, the Ninth Circuit Court of Appeals responded to the

²⁹ *Flores v. State of Arizona*, CV 92-596 TUC RCC (Order, 9th Cir. June 25, 2009).

remanded Supreme Court *Flores* decision in March 2013, thereby closing that iteration of *Flores*, at least until action is taken by the plaintiffs again. Second, while Tim Hogan and the Center for Law in the Public Interest reported that they appealed the Ninth Circuit's decision in August 2013, no documentation was available at the time. I stopped collecting and began analysis and writing for this chapter in February of 2014, so any *Flores* judicial documents that emerge after this time will remain unexamined in this study.

Once I compiled a comprehensive document set based on all keyword searches and across all the databases listed above, I then conducted archival research in the Ross Blakely Library with the help of a research librarian to crosscheck digital database sources with hard copy documents and ensure my judicial archive was not missing key texts. The data set, which is listed and cited in full in Appendix I, contains 40 judicial artifacts, including case histories, consent orders, oral arguments, transcripts and court opinions and decisions from the Circuit Court, Ninth District Court, Court of Appeals, and Supreme Court, as well as amicus briefs written in light of the Supreme Court hearing in 2009. With the belief that I had collected a broad corpus of judicial rationalities surrounding *Flores*, I then used MAXQDA 11 to load, organize, and code the judicial archive. This analysis software helped me identify the core themes that corresponded with my research questions and aligned with my conceptual framework. The codes used to cull relevant themes from this data set are included in Appendix J. Because of their length, citations from the archive are embedded as footnotes throughout this chapter to increase readability.

The Analysis

Penny wise and pound foolish.

In the youngest, final, most recent document in the judicial archive, federal Judge Raner C. Collins, once champion of *Flores* plaintiffs and ELL children across the state of Arizona who sought adequate funding for their education under EEOA, closed the books on the case, at least for the time being, by issuing the following order:

Education in this state is under enormous pressure because of lack of funding at all levels. It appears that the state has made a choice in how it wants to spend funds on teaching students the English language. It may turn out to be penny wise and pound foolish, as at the end of the day, speaking English, and not having other educational gains in science, math, etc. will still leave some children behind. However, this lawsuit is no longer the vehicle to pursue the myriad of educational issues in this state.³⁰

Interpretation: There's just not enough money for education in Arizona. The state has to make choices; it has to choose how to educate ELLs within its limited means. While the decision to carry out SEI and therefore preclude ELL student learning in STEM subjects may be “penny wise and pound foolish”, there is nothing more this lawsuit can do for them. As for the metaphor Judge Collins uses here—to be penny wise and pound foolish is to be prudent and frugal with small sums of money while being wasteful and squander large sums. It is a premonition of sorts—if the state doesn't spend a little on ELL students now, they are going to cost the state a lot more later, after we see how “left behind” children function in the economy. It's as though we are supposed to assume that they will

³⁰ *Flores v. State of Arizona*, 92-596 TUC RCC (Order, District Court, March 28, 2013).

fail, and in failing cost the state in social services and its inability to compete for high tech STEM jobs.

In theory, all sides of *Flores* judicial discourses seem to be seeking a solution to an opportunity divide in the U.S. schools. Discursively, anyone who isn't arguing that ELL students do not belong in Arizona at all because of their presumed citizenship³¹ indeed wants Arizona's ELL students to learn English, to produce good test scores, to graduate from high school, to pursue higher education, to become competitive for the job market, and to get the jobs that will help the state and the nation excel in the future. In short, we all somehow agree that no one wants an additional burden on the state, and we also agree, at least in part, on what a non-burdensome, self-sufficient subject looks like. Ideal subjects speaks English, they score well on standardized exams, they earn diplomas by finishing high school, they learn job-friendly skills, and they get placed in good jobs. This, in a nutshell, is our version of success for those subjects, and the payoff for their success is our security as a state and nation.

But these now common sense ends raise questions about the means, questions that have implications for the ways we govern ourselves and our ELL students. A central question asked in this archive, in many different types of ways is: which comes first, inadequate resources or risky children? Alternatively, do inadequate resources create risky children? Finally, do risky children warrant the investment of adequate resources?

³¹ Anti-immigrant sentiments and assumptions about the citizenship status of ELL students were also apparent in this data set but were not as predominant as seen in the legislative archive (discussed in Chapter 4). Examples of such appear in *Horne v. Flores*, 08-289 & 08-294 (Brief for the Petitioner Superintendent, 9th Cir. February 19, 2009); *Horne v. Flores*, 08-289 & 08-294 (Brief Amicus Curiae of Eagle Forum Education & Legal Defense Fund, Inc., in Support of Petitioners, 9th Cir. February 25, 2009); *Flores v. State of Arizona*, 92-596 TUC RCC (Order, District Court, March 28, 2013).

The analysis that follows will narrate different ways in which the data answers these questions.

In ways, attempts to root out the problem or the logical relationship between fiscal resources and student capacity feel like a chicken or egg situation. Do high-poverty schools / students yield poor academic outcomes, or does the structure of the academic outcome > reward system ensure that high-poverty schools / students will never have a chance to gain those rewards? The data reflects various versions of the claim “[t]here is scant evidence that past judicial actions concerning school finance have any beneficial effect of student performance.”³² So if money doesn’t matter, a claim made again and again around *Flores*, then what conclusions can we draw about the academic achievement of our ELL students? While critique is most often lodged at the district or school level, we cannot forget that students are parts of that whole. Adopted programs and curriculum do not fail on their own; students perform to produce the data that we read as failure or success.

Financial resources for public education are conceptualized as scarce yet in high demand. So, in a democratic society, who should have access to scarce resources? Those who prove they need them the most? Those who will reap the most havoc on society without them? Those who will use them to best meet institutional goals? Those who will invest and make choices in the best interest of our society in the future? While the answers to these questions vary, one constant is the focus on who or what governing body should decide, and what the balance of power suggests about democracy in the U.S.

³² *Horne v. Flores*, 08-294 & 08-289 (Brief of Education-Policy Scholars as Amici Curiae in Support of Petitioners, 9th Cir. March 25, 2009).

Federalism

Far and away, the archival discourses reflected concerns surrounding what *Flores* decisions mean for federalism and what federalism means for democracy. Arguments to uphold or protect federalism, in the realm of education, most often embrace state and local authority over education and argue for a restricted or hands off federal role (Robinson, 2013). Unfortunately, “the reality of local control of education for many communities means the ability to control inadequate resources that provide many students substandard educational opportunities” (Robinson, 2013, p. 2). This tension is apparent in the judicial discourses. Robinson (2013) discusses how the current manifestation of education federalism has undermined advances in equal educational opportunities, equitable school finance, and the merits of NCLB. She argues that federalism impedes school desegregation efforts, it has hamstrung school finance litigation, and it has undermined the potential effectiveness of education policy drafted to level the learning field. To quote:

The disparities in educational opportunity that relegate many poor and minority students to substandard schooling have hindered the ability of schools to serve these functions. Indeed, rather than solve these challenges, low graduation rates and substandard schools cost the United States billions of dollars each year in lost tax and income revenues, higher health care costs, food stamps, and welfare and housing assistance, to name a few of the costs (Robinson, 2013, p. 2).

Penny wise and pound foolish arguments abound! What is remarkable about Robinson’s claim, as with Judge Collins’ claim above, is that, in spite of aims that smack of concerns

for social justice, both create a very clear dichotomy between an idealized school educated subject and the subject that is a waste on the state in the future. While benign in intention, as both Robinson and Collins argue on behalf of better educational opportunities for children, the rationalities they provide in these passages constitute certain children as broken and in need of immediate repair or educational insurance—or else not only will they not be able to take care of themselves, they will never be able to help the state thrive through their economic successes. These discourses collectively reinforce the desired creation of neoliberal subjects who are enterprising, competitive, entrepreneurial, and safe (Peters, et. al, 2008).

So, what does all of this have to do with the theme of federalism in the data? Oddly, perspectives like Robinson’s and Collins’, those that problematize the court’s inability to protect children from state policy, are rather rare. Instead, voices in the data raise the theme of federalism by asking questions like:

- How much latitude should the state have in determining how to meet EEOA?
- Will federal consent decrees rob future officials from their legislative and executive power?
- Is the court imposing unreasonable restrictions on the state in terms of its ability to set budget priorities?
- Does the court order require more than is stated for compliance under federal law?
- Is the court’s decision to enjoin the AIMS test a case of equitable relief?
- What influence should the court have in ensuring equity and protecting the vulnerable?

- Who is the best expert on ELL students—judges or elected state officials?
- How much court power is too much court power?
- Who is equipped to measure the adequacy of Arizona’s LEP program?
- Is the state won’t take care of students, mustn’t the courts?

There’s evidence of a real fear of power and role usurpation and with that the belief that overt exercise of court power signals the end of U.S. democracy as we know it. As court actions attempt to moderate legislative functions, and legislators refuse to defer to non-elected officials, ELL students swing in the balance but materialize as subjects through these federalism concerns. They become the bodies at stake in a larger political battle; they are residents on Arizona’s proving ground as the rest of the nation looks on to see what *Flores* teaches us about who is really in charge and what the protective role of the courts over “vulnerable populations” should be.

The court’s “behavior” is characterized as overly sympathetic to ELL students and therefore enormously damaging to democratic institutions,³³ inappropriately concerned with school finances and management,³⁴ essential in correcting denials of equal educational opportunities for ELL students,³⁵ or as remarkably restrained given the negligent behavior of the Arizona legislature.³⁶ In a claim that really bottom lines the productive power of legislative and judicial relationships, education policy scholars writing on behalf of Horne characterize the education system as a systems of inputs and

³³ Horne v. Flores, 08-289 & 08-294 (Washington Legal Foundation as Amicus Curiae, Petition for a Writ of Certiorari, 9th Cir. October 6, 2008).

³⁴ Horne v. Flores, 08-289 & 08-294 (Brief of the American Unity Legal Defense Fund, English Language Political Action Committee, ProEnglish and the Center for Equal Opportunity, as Amici Curiae Supporting Petitioners, 9th Cir. February 25, 2009).

³⁵ Horne v. Flores, 08-289 (Amicus Curiae Brief of Mountain States Legal Foundation Support of Petitioner, 9th Cir. February 26, 2009).

³⁶ Horne v. Flores, 08-289 & 08-294 (Counsel for Respondents State of Arizona and the Arizona State Board of Education, Respondents’ Brief in Opposition, 9th Cir. December 1, 2008).

outputs, and no one thinks desired outcomes differently, or what it means that states should do as little as possible to attain those outputs. The authors of this amicus brief state, “[c]ourt-ordered remedies should afford states the flexibility to make decisions about inputs as long as they are obtaining the desired outcomes.”³⁷ In this rhetorical equation, inputs come in the form of state dollars or programs, and outcomes are likened to student productivity via exam scores.

In their discussion of governmentality via neoliberal “risk” perspectives, Kaščák and Pupala (2011) write that “The fact that the neoliberal mentality is both ever-present and hegemonic means that what may at first seem to be a mosaic of different discourses is now starting to form a complete and coherent whole that seeks common aims” (p. 151). The ELL student subject materializes amidst economic motives and political bickering that use federalism as their starting point. What all sides agree upon is this need for social and economic prosperity—that the goal of making the ELL child is to make him/her in the state’s image, and the state’s concerns for its people are economic in nature. The organization, control and litigation processes and decisions surrounding the ELL student body tells us a lot about the kind of body the state strives to form. Effective neoliberal governmentality in Arizona makes us all think toward the goal of becoming penny wise *and* pound wise—it creates a productive subject at a distance by passing around discourses that strengthen state sovereignty through pro-federalism rhetoric while all sides position ELL success as a matter of economics and social stability.

³⁷ *Horne v. Flores*, 08-294 & 08-289 (Brief of Education-Policy Scholars as Amici Curiae in Support of Petitioners, 9th Cir. March 25, 2009).

Institutional reform litigation.

Statements that problematize institutional reform litigation also arose throughout the archive. When they did, they often harkened to the judicial archive's most resounding echo—federalism. Institutional reform litigation is a phrase used to describe large-scale public interest lawsuits that result in federal court involvement in the administration of government agencies. Upon an institutional reform case's decision, federal courts direct or intervene so that state or local governments must comply with the constitutional rights guaranteed to all individuals in the U.S. Such cases often involve major public institutions like schools, prisons and mental hospitals that fail to uphold constitutional or federal statutory requirements.

There is some debate in the archive as to whether or not *Flores* fits the institutional reform label. Some argue that since *Flores* involves a statutory rather than constitutional claim, it is not technically an institutional reform case. Others try to debate the twin questions: Is *Flores* a case of the courts running the government, or does the District Court's decision micromanage the day-to-day operation of schools? Those who side with the superintendent plaintiff / state often argue that this is the case, and they cite judicial activism as the main issue with *Flores*' long life. Others argue that some state officials have welcomed federal court involvement to achieve appropriations objectives outside of ordinary democratic processes.³⁸ Regardless of the terminology used to describe the sources of conflict and attempts at resolution, *Flores* signifies both the need and the ability to circumvent ordinary democratic processes, at least in theory, and it raises the dual questions— who is ultimately responsible for the education of ELL

³⁸ (Horne v. Flores. 557 U.S. 433 Syllabus and Court Opinions, April 20, 2009).

children in the state of Arizona, and what are the rights and responsibilities of the court system in the U.S.?

In “The Mechanics of Institutional Reform Litigation,” Reynolds (1979) argues that the emergence of institutional reform cases in the 1970s signaled an emerging variety of litigation that impacted the administration of many public institutions, including schools. Reynolds notes that this “new activism” in the courts is a source of debate, as:

Critics argue that too much judicial involvement in the operation of government is constitutionally inappropriate, threatens the health of our democratic institutions, and brings the judiciary into disrepute. Defenders note that judicial action is made necessary only because the target institution has failed in its legal obligations and that these suits are generally aimed at protecting the rights of minorities and other politically impotent groups who do not have effective recourse to other branches of government. (p. 696)

In short, when states and localities fail to serve all people, members of federal judicial bodies, who are not elected in democratic elections, may attempt to use institutional reform litigation to enforce the law and uphold the Constitution. The courts are sometimes a place of last resort to resolve major local problems that plague the populace. Class action lawsuits, like *Flores*, may behave like and yet be in conflict with democratic, legislative processes because the courts step in to represent the needs and desires of a class of people that is capable of being effectively represented via the judiciary while, unfortunately, they are otherwise underrepresented in the legislature or other democratic decision-making bodies.

Institutional reform litigation is portrayed in the *Flores* judicial archive as a risk to democracy, a threat to state power, in conflict with the virtues of local knowledge and direct local control and as antithetical to a competitive, meritocratic rationality. To clarify and yet condense a large body of data into a manageable overview, major claims in the data surrounding the *Flores* as an institutional reform case include the following arguments:

1. Injunctions issued in institutional reform cases often remain in effect long enough for circumstances to rectify the underlying problem. Such renders the original judgment inapplicable.³⁹
2. Court-ordered funding remedies historically do not have positive effects on student achievement.⁴⁰
3. The District Courts' decisions usher in the federal micromanagement of state and district schools.⁴¹
4. Court intrusion threatens democracy.⁴²

³⁹ *Horne v. Flores*. 557 U.S. 433 (Syllabus and Court Opinions, April 20, 2009); *Horne v. Flores*, 08-289 & 08-294 (Washington Legal Foundation as Amicus Curiae, Petition for a Writ of Certiorari, 9th Cir. October 6, 2008); *Horne v. Flores*, 08-289 & 08-294 (Combined Brief in Opposition by Respondents, 9th Cir. December 1, 2008); *Horne v. Flores*, 08-294 (Reply Brief for Petitioners, 9th Cir. December 11, 2008); *Horne v. Flores*, 08-289 & 08-294 (Brief for the Petitioner Superintendent, 9th Cir. February 19, 2009); *Horne v. Flores*, 08-289 & 08-294 (Brief of the American Unity Legal Defense Fund, English Language Political Action Committee, ProEnglish and the Center for Equal Opportunity, as Amici Curiae Supporting Petitioners, 9th Cir. February 25, 2009); *Horne v. Flores*, 08-289 & 08-294 (Brief Amicus Curiae of Eagle Forum Education & Legal Defense Fund, Inc., in Support of Petitioners, 9th Cir. February 25, 2009); *Horne v. Flores*, 08-294 & 08-289 (Brief on Behalf of the American Legislative Exchange Counsel and Certain Individual State Legislators as Amicus Curiae in Support of Petitioners, 9th Cir. February 26, 2009).

⁴⁰ *Horne v. Flores*, 08-294 & 08-289 (Brief of Education-Policy Scholars as Amici Curiae in Support of Petitioners, 9th Cir. March 25, 2009).

⁴¹ *Horne v. Flores*. 557 U.S. 433 (Syllabus and Court Opinions, April 20, 2009); *Horne v. Flores*, 08-294 & 08-289 (Brief on Behalf of the American Legislative Exchange Counsel and Certain Individual State Legislators as Amicus Curiae in Support of Petitioners, 9th Cir. February 26, 2009).

⁴² *Horne v. Flores*. 557 U.S. 433 (Syllabus and Court Opinions, April 20, 2009).; *Horne v. Flores*, 08-289 & 08-294 (*Horne*, Petition for Writ of Certiorari, 9th Cir. August 29, 2008); *Horne v. Flores*, 08-289 & 08-294 (Washington Legal Foundation as Amicus Curiae, Petition for a Writ of Certiorari, 9th Cir. October 6, 2008); *Horne v. Flores*, 08-294 (Reply Brief for Petitioners, 9th Cir. December 11, 2008); *Horne v. Flores*,

5. Consent decrees in institutional reform cases merely shift the battlefield of rivaling political interests to a new setting—from the public to the courthouse.⁴³
6. Institutional reform injunctions allow office holders that are favored by the courts to bypass legislation (and therefore the will of the people) in passing their agendas.⁴⁴
7. Compliance with institutional reform mandates costs too much money.⁴⁵
8. Institutional reform channels money unnaturally by not requiring legislators and institutions to compete for it.⁴⁶
9. Judicial decrees protect institutions from having to compete for public finances.⁴⁷

I will discuss some of these subthemes in detail below by connecting the research questions to the data with a governmentality framework.

Two particularly poignant claims emerge from briefs written to the Ninth Circuit and Supreme Courts on behalf of the Petitioner, Tom Horne, and provide illustrative

08-289 & 08-294 (Brief for the Petitioner Superintendent, 9th Cir. February 19, 2009); *Horne v. Flores*, 08-289 (Amicus Curiae Brief of Mountain States Legal Foundation Support of Petitioner, 9th Cir. February 26, 2009); *Horne v. Flores*, 08-289 & 08-294 (Brief for the Washington Legal Foundation as Amicus Curiae in Support of Petitioners, 9th Cir. February 26, 2009).

⁴³ *Horne v. Flores*, 557 U.S. 433 (Syllabus and Court Opinions, April 20, 2009); *Horne v. Flores*, 08-294 & 08-289 (Brief on Behalf of the American Legislative Exchange Counsel and Certain Individual State Legislators as Amicus Curiae in Support of Petitioners, 9th Cir. February 26, 2009).

⁴⁴ *Horne v. Flores*, 08-294 & 08-289 (Brief on Behalf of the American Legislative Exchange Counsel and Certain Individual State Legislators as Amicus Curiae in Support of Petitioners, 9th Cir. February 26, 2009); *Horne v. Flores*, 08-289 & 08-294 (Brief for the Washington Legal Foundation as Amicus Curiae in Support of Petitioners, 9th Cir. February 26, 2009).

⁴⁵ *Horne v. Flores*, 08-289 & 08-294 (Brief for the Petitioner Superintendent, 9th Cir. February 19, 2009); *Horne v. Flores*, 08-289 (Amicus Curiae Brief of Mountain States Legal Foundation Support of Petitioner, 9th Cir. February 26, 2009); *Horne v. Flores*, 08-294 & 08-289 (Brief on Behalf of the American Legislative Exchange Counsel and Certain Individual State Legislators as Amicus Curiae in Support of Petitioners, 9th Cir. February 26, 2009).

⁴⁶ *Horne v. Flores*, 557 U.S. 433 (Syllabus and Court Opinions, April 20, 2009); *Horne v. Flores*, 08-294 & 08-289 (Brief on Behalf of the American Legislative Exchange Counsel and Certain Individual State Legislators as Amicus Curiae in Support of Petitioners, 9th Cir. February 26, 2009).

⁴⁷ *Horne v. Flores*, 08-294 & 08-289 (Brief on Behalf of the American Legislative Exchange Counsel and Certain Individual State Legislators as Amicus Curiae in Support of Petitioners, 9th Cir. February 26, 2009).

starting points for the discussion that follows. The first, a “Reply Brief for Petitioners” written to the Ninth Circuit Court on Horne’s behalf states that:

The lower court’s intrusion into the prerogatives of Arizona’s elected officials poses a threat to any State or Territory within the Ninth Circuit seeking to improve educational opportunities by providing incentives for schools to maintain quality programs while reducing costs and avoiding unnecessary waste.⁴⁸

This excerpt provides insight into how the role of state is imagined—as the bastion of incentives, the grantor of rewards and punishments to schools based on their merit. The school as institution is imagined as a wastrel that must be properly motivated with the right message, because “If courts ignore the structural problems in favor of more funding, the message states and school districts receive is that they can always get more money.”⁴⁹ According to this logic, the legislative prerogative—to maintain quality while reducing cost and avoiding waste—is to find a way to reflect achievement or advancement on population-measuring metrics while spending as little state money as possible. A good and deserving school is financially shrewd; it places value on standardized measurements and is able to deliver high scores, regardless of the challenges it faces or the finances it lacks. The schools that do something with nothing, or bring their own something by taking care of themselves are the schools to reward. In this discursive equation, elected officials are likened to bankers who need the fiscal freedom to invest state money wisely. Why would we gamble our investment on schools that statistically do not return desirable

⁴⁸ Horne v. Flores, 08-294 (Reply Brief for Petitioners, 9th Cir. December 11, 2008).

⁴⁹ Horne v. Flores, 08-294 & 08-289 (Brief of Education-Policy Scholars as Amici Curiae in Support of Petitioners, 9th Cir. March 25, 2009).

scores? Why would we allow federal regulation to infringe on or endanger our ability to regulate spending and performance through an open educational marketplace that selects its winners and losers through the rationality of standardized assessment-based competition?

This type of rationality shapes human conduct in several ways. First, it suggests that the logic of the market constitutes ideal human performance. It argues that the legislature should exercise authority by rewarding schools that do a lot with a little or that always already achieve. Admirable school conduct is that which directs its behavior toward the attainment of incentives, which in this case are financial and rewarded according to how many students they can get to learn English as quickly and cheaply as possible, as reflected by an classifying examination so that more ELL students will be equipped to compete on behalf of the school in terms of mainstream metrics like AIMS.

In terms of government in theoretical, then technical, terms, the rationalities steeped in the claim above, and other claims in the archive like them, are indicative of liberal modes of government, which “are distinguished by trying to work through the freedom or capacities of the governed” (Dean, 2010, p. 15). They allege that schools (and their ELL students) are free to compete equally, and compete they must if they want to prove their worth and win additional funding. The selection and implementation of an educational program is envisioned as a rational choice among many in a larger marketplace of ideas; the more successful programs will excel and raise the schools and students who participate to a level of success. The unsuccessful will not be incentivized or bailed out. Instead, it will be used as a case-in-point of irresponsible school / student failure.

Drawing from Foucault's 1978 governmentality lecture, Dean (2010) writes, "To govern properly, to ensure the happiness and prosperity of the population, it is necessary to govern through a particular register, that of the *economy*. Moreover, government itself must be economical, both fiscally and in the use of power" (p. 19). The "court's intrusion" is discursively positioned as a safety net that allows students to continue to fail and that rewards schools for supporting that failure. The population becomes optimized educationally in terms of the perspective that failure is an unwise *choice* that prudent schools and their students will not make if they want to be rewarded.

This uncritically discursive penchant to encourage competitive student bodies to achieve in pursuit of the carrots and sticks that their elected officials carve out of the state budget reflects an insight provided by Davies and Bansel (2007). They write, "neoliberalism both competes with other discourses and also cannibalizes them in such a way that neoliberalism itself appears more desirable, or more innocent than it is" (p. 258). Government support or services for the nation's people for their education is considered a form of welfare, and welfare has somehow become a derogatory taboo. Schools need to earn what is coming to them, the rationality above suggests, which means that children need to produce the right scores. This common sense desirability of successful and prudent schools and subjects also appears in the second extended example I'd like to use to highlight perspectives on institutional reform. An Amicus Curiae credited to the Washington Legal Foundation states:

Institutional reform injunctions – judicial decrees mandating the funding of government institutions – insulate the institutions they cover from being forced to compete for limited public dollars with other spending programs.

And they allow the office holders favoring the covered institutions to bypass the often unsuccessful and always painstakingly slow process of legislative compromise with other elected officials seeking to use the same funds for their own competing priorities.⁵⁰

Here, not just competition but “forced” competition is a virtue. Everyone must participate in this neoliberal fantasy where nothing is safe from cancellation or eradication if it can’t perform better than alternatives. According to Judge Alito’s majority opinion:

“Federalism concerns are heightened when, as in these cases, a federal-court decree has the effect of dictating state or local budget priorities. States and local governments have limited funds. When a federal court orders that money be appropriated for one program, the effect is often to take funds away from other important programs.”⁵¹ Oddly, “program” alternatives aren’t really aligned or related in any way, except for under a general “services” rubric. While there is an apparent division between social and human services (like education and health care) and infrastructural services (like transportation and public buildings), it is not clear how a body of ELL students can show their worth or achievement or success as compared to a Medicare policy or highway system. But what this claim argues is that there is but one pot of limited money, and may the best (or most profitable) institutions and legislative attempts win.

Responsibilizing the Districts

Donzelot’s (1988) “The Promotion of the Social” undertakes a genealogy of the welfare state and shows “how the reduction of sovereignty in politics calls for an equal

⁵⁰ Horne v. Flores, 08-289 & 08-294 (Brief for the Washington Legal Foundation as Amicus Curiae in Support of Petitioners, 9th Cir. February 26, 2009).

⁵¹ Horne v. Flores. 557 U.S. 433 (Syllabus and Court Opinions, April 20, 2009).

reduction of responsibility on the civil level” (p. 397). As leaders begin to seem more inadequate in meeting the requirements to conduct civil and private relations, or when its affirmed responsibilities serve “as an alibi for maintaining personal dependency and for individual shortcomings as harmful to individual happiness as to the smooth running of society” (p. 396), public power increasingly intervenes as a social right. Society is no longer responsible for its people, and yet it maintains a Svengalic sway over activity by knowing and conditioning possibilities for their freedom to think and act in their own lives.

Autonomization and responsabilization are some technologies that govern at a distance (Rose, O’Malley, & Valverde, 2006). The data reflects a penchant for responsabilizing on the district level to relieve the state from having to finance failed programs. In spite of the inherent risk that *Flores* discourses assume of ELL students—a theme covered through the analysis in Chapter 4 and which I will discuss through judicial rationalities in detail a bit further below—the districts, before the state, are expected to be responsible for the success of all of their ELL students in order to prove that they know how to manage their funds by returning the desired product.

In the following example from the data, the author of a reply brief for petitioners discursively converts Arizona’s risky school districts into responsabilized entrepreneurial projects that must make savvy economic choices to succeed:

If courts ignore structural problems in favor of more funding, the message States and school districts receive is that they can always get more money no matter how they manage their schools. This is a perverse result.

Without any incentive to take effective measures to improve student

performance, most school systems do not make any meaningful changes—
or worse, funnel money away from the problems that need to be
remedied.⁵²

The districts are conceptualized as free to act and succeed or fail as they wish. State and Federal responsibility for the education of the nation’s children is transferred to district responsibility and charged with the task of proving prudence and solvency by way of good financial management and good management of student subjects. This appears to serve as a zero-sum blame game that releases the state of Arizona of its responsibility for its students, all the way narrating the value of conservative and entrepreneurial district behavior and therefore individual student behavior.

A claim made in another petitioner brief helps to add another dimension to the purported responsibility of school districts:

Arizona’s elected officials recognize that school districts must have proper incentives to reduce costs, increase efficiency, and improve overall student performance. Let there be no mistake: the beneficiaries of the district court’s injunction are not Arizona’s schoolchildren, but entrenched interests seeking to implement funding policies rejected by educational experts and Arizona’s democratically elected officials.⁵³

Here, the “entrenched interests” of districts, their desired funding policies, are to blame for ELL student risk. The conclusion— withhold state funds from the districts, as such will incentivize them to perform better by improving student outcomes without wasting

⁵² *Horne v. Flores*, 08-294 & 08-289 (Brief of Education-Policy Scholars as Amici Curiae in Support of Petitioners, 9th Cir. March 25, 2009).

⁵³ *Horne v. Flores*, 08-294 (Reply Brief for Petitioners, 9th Cir. December 11, 2008).

unnecessary money. The non-entrepreneurial district will not survive, and it does not deserve to. District-level punishments trickle down to students, who are really responsible for “performing” on the micro level to compose the macro results.

Davies and Bansel (2010) write: “Within neoliberal mentalities of government ‘welfare,’ or government responsibility for the well-being of the people, is constituted as a degraded mentality, and competitive market mentalities are elevated and given monolithic status” (p. 5). Responsible districts will compete on their own accord. In order to fruitfully compete, they must convey this same mentality to their schools, teachers and students. The appropriate incentive is mere obligation to care for one’s own through self-sustained competitive activities. Compete or perish—the educational marketplace will direct the fate of these districts and their students. In Arizona, that marketplace remains open to private interests that purport to get the job done as rationalities like the one above service the defunding of Arizona’s public schools.

In another piece, Davies & Bansel (2007) write “The belief that the market should direct the fate of human beings (rather than that human beings should direct the economy) has come to seem, through the installation and operationalization of neoliberal discourses and practices, a natural, normal and desirable condition of humankind” (p. 253). Education in Arizona remains under tremendous financial pressure. Rather than increase the funds in the pot to allow the appropriation of state funds as needed, or as requested by districts now deemed always potentially unproductive and untrustworthy, discourses in the judicial archive reflect the rationality of competition for their just deserts. Additional funding for ELL programs reads as a form of social welfare, and welfare is presumed to be “costly, overburdened, inefficient, incapable of eliminating

poverty, overly oriented to cash entitlements rather than empowerment” (Jessop, 2002, p. 465). Districts, schools and students are to be set loose in the market to make the best of themselves, prove their worth, gain their reward, or be cast asunder by their more effective, productive, successful counterparts.

Robbing Peter to pay Pedro.

The mobilization of educational funds is an institutional practice, a part of the analytics of government that provides insight into a routine and coherent understanding of who gets allocated what, when, why, and to what end. Where federal, state, local and other funds go is part of the ritual of educational financial administration in the U.S., and it’s also a meaningful point of contention in *Flores* judicial archives. Dean (2010) writes that institutional practices also foretell the different ways in which “practices can be thought, made into objects of knowledge, and made subject to problematizations” (p. 21). Rather than take for granted the routine channeling of funds, the judicial archive helps us question how funds allocations further define ELL students as a subject class and how that class is governed by judicial discourses and practices

The archive is riddled with narratives of schools and districts competing for funds, students competing for the status of successful, competing educational theories, competing ELL experts, competing branches of government, competition within branches (e.g. fights between governor and attorney general) for who speaks and who is beholden to the speaker.⁵⁴ As discussed above, the archive also reflects ongoing debate about

⁵⁴ *Horne v. Flores*, 08-289 & 08-294 (Supreme Court Hearing Transcript, April 20, 2009). Specifically, this is in reference to, “Justice Souter: What is the district court supposed to do? The attorney general for the State comes in and says, do it this way. It seems to me that the State has no standing later on to say: Oh, gee, the district court should have said: Sorry, Mr. Attorney General; you don’t know anything

funding sources and recipients, and this debate interweaves with the competitive rationalities. One major issue is whether or not HB 2064 violates the “supplement not supplant” provisions of federal education funding statutes. Such provisions “ensure that federal funds are truly additional to state funds by providing the federal efforts are to add to state programs, rather than simply replacing state funds with federal money without actually increasing existing efforts.”⁵⁵

The data entertains very detailed calculations that break down how much money is allocated per pupil and how much of that is drawn from NUSD’s maintenance and operations account (a fund that includes ELL Group B funds and base level support funds). If this amount exceeds Group B weights, then there is proof that the NUSD, for example, is “robbing Peter to pay Pedro”, or taking mainstream or “basic” student money and funneling it into funding for ELL programs. Then, there are federal funds, which in 2008 was close to \$500 per student,⁵⁶ but these funds are “earmarked for at-risk, low-income students, rather than ELL students (although the two groups overlap).”⁵⁷ The rest of the money (about \$218) comes from a variety of miscellaneous federal, state, and local funding sources, including grants.

Data surrounding the same hearing states that:

If NUSD had no ELL students, [base level funds] would be spent on math, reading, writing, and other basic subjects. That funds for *both* basic educational support and ELL costs have increased does not indicate that

about your State law; we won’t do it this way . . . So the district court is supposed to referee a fight between the governor and the attorney general at this point? Is that what’s going on?”

⁵⁵ Flores v. State of Arizona, 516 F.3d 1140 (9th Cir. App. February 22, 2008).

⁵⁶ Flores v. State of Arizona, 516 F.3d 1140 (9th Cir. App. February 22, 2008).

⁵⁷ Flores v. State of Arizona, 516 F.3d 1140 (9th Cir. App. February 22, 2008).

the fundamental pattern has changed. In 2000, as today, ELL incremental costs *could* be covered by diverting basic educational support, hampering the state’s ability to provide a basic education to all Arizona students. So, by underfunding ELL programs and forcing NUSD to dip into those base level funds, Arizona still forces it to choose between base level needs and ELL programs – which the district court refused to view as an answer to ELL funding in 2000, when the option was as available as it is now.⁵⁸

ELLs and non-ELLs are set up as opposing forces here, with ELL students as the burden, the identified and classified population that saps needed funds from “basic” programs and “hampers” the state’s education system as a whole. The blame appears to be multidirectional—the state can’t use allocated federal funds for “other” purposes; the state itself is imposing impossible funding expectations on the districts by failing to allocate enough money for both categories of students; and the courts refuse to allow the re-allocation of basic to ELL anyway, the districts are stuck with the burden of ELL education but with no financial resolution that adds value to education for all children. A hindrance ELL students must be.

HB 2064 requires Arizona school districts to offset desegregation funds from their ELL budget requests. Yet, desegregation funds are set aside to remedy “alleged or proven racial discrimination.” “District schools cannot transfer or offset funds as the Act requires because it would hamper their duty to comply with Court-ordered desegregation mandates and requirements in their OCR [Office of Civil Rights] agreements.”⁵⁹ So, the schools explain, under HB 2064, they will continue to receive inadequate ELL funding

⁵⁸ Flores v. State of Arizona, 516 F.3d 1140 (9th Cir. App. February 22, 2008).

⁵⁹ Flores v. State of Arizona, CIV 92-596 TUC RCC (U.S. Dist. April 25, 2006).

from the state, as the act eliminates state obligation to fund ELL programs. Further, in Tucson, for example, it would require the subtraction of 13% of its desegregation dollars from the state's program obligation because that was the percentage of the population categorized as ELL at the time of bill passage. The districts would have to make Title I, IIA, III and Impact aid offsets as well. In the data, districts argue that HB 2064 makes it impossible for schools to receive needed funds and to fulfill their court-ordered obligations.⁶⁰ ELL students are subjected to and subjects of these doings, thoughts, and writings. They become governable in their percentages, in their performance under microscopes that are tempered by a discursive obsession with funding concerns. They must be measurable by their attributes, accountable for these sums and able to internalize the kinds of subjects they are supposed to be, which is clearly something different than the children they already are.

Constituting a Risky Class

Rationalities of rule targeted at student subjects directly, as opposed to the districts or institutions that serve them (and them too, by proxy) flow from the archive as well. Dean (2010) writes that “[n]ational government in contemporary states is unthinkable without some conception of the economy – whether that is conceived as a national or global economy – and the attempt to govern economies leads to the production of knowledge about employment, inflation, trade and so on” (p. 18). ELL students are made governable through their constitution as a class of subjects and in relation to how that class purportedly interacts with the economy of schools, districts, the state, the nation, and even the rest of the world. ELLs are bound as a category to become

⁶⁰ Flores v. State of Arizona, CIV 92-596 TUC RCC (U.S. Dist. April 25, 2006).

a population governed via an identity that corresponds with the knowledges and practices of language-caused pathologies and remedies. English language education, in theory, functions as an apparatus of security (Dean, 2010), set to defend the nation from linguistic separation or the inability to conduct business in the future by training students to “overcom[e] barriers that threaten to divide us.”⁶¹

Flores is a class action lawsuit. The “class” of students and families involved is defined in writing on August 28, 1997⁶² and thereafter described in several court documents by the repeated class/ification: “all minority ‘at risk’ and limited English proficient children (LEP), now or hereafter, enrolled in Nogales Unified School District (NUSD), as well as their parents and guardians.”⁶³ The classification of students as LEP (Limited English Proficient) is later revised to become “ELL” (English Language Learner).⁶⁴ In 2000, LEP determination criteria was set by Arizona’s Superintendent of public instruction according to “the test vendors’ cut scores for each test included on [a] list” that the Superintendent approves as applicable to measure student language ability.⁶⁵ In short, an LEP, then ELL, student is first identifiable by his/her status as a student who does not make whatever a test company decides the cut score on a standardized examination will be. Students are initially identified for testing by their families’

⁶¹ *Horne v. Flores*, 557 U.S. 433 (Syllabus and Court Opinions, April 20, 2009).

⁶² According to the case summary for an early 9th District decision (1999) “Over renewed objections from Defendants, the Court certified the class, defined as follows ‘all minority ‘at risk’ and limited English proficient (LEP) children now or hereafter enrolled in Nogales Unified School as well as their parents and guardians’ (Order filed August 28, 1997)” (*Flores v. State of Arizona*, 48 F. Supp. 2d 937 U.S. Dist. April 13, 1999).

⁶³ *Flores v. State of Arizona*, 48 F. Supp. 2d 937 U.S. Dist. April 13, 1999; *Flores v. State of Arizona*, 172 F. Supp. 2d 1225 U.S. Dist. January 24, 2000; *Flores v. State of Arizona*, 516 F.3d 1140 9th Cir. App. February 22, 2008; *Horne v. Flores*, 557 U.S. 433 Syllabus and Court Opinions, April 20, 2009.

⁶⁴ In later documents, we find the definition as follows: “The class was identified as all minority at risk and ELL students ‘now or hereafter enrolled in the Nogales Unified School District (‘NUSD’) as well as their parents and guardians” *Horne v. Flores*, 08-289 & 08-294 (*Horne*, Petition for Writ of Certiorari, 9th Cir. August 29, 2008).

⁶⁵ *Flores v. State of Arizona*, CIV 92-596 TUC ACM (U.S. Dist. June 30, 2000).

responses to a “home language survey”. What, or how many, questions asked, and of who, will determine which and how many students are examined and potentially classified as ELL.⁶⁶

The phrase “low-income minority” also appears again and again in the archive in ways that make student income classifications related to or caused by student languages spoken.⁶⁷ For example:

It is an unfortunate fact that students from an impoverished background start school behind their peers academically. Educating students with a language barrier who are also from an impoverished background is a daunting challenge.⁶⁸

That phrase—low-income minority—often appears alongside one argument at the center of the *Flores* case. Some districts, Nogales in particular, enroll mostly this category of children, and the state of Arizona allows these children’s schools to provide fewer “educational benefits and opportunities than those provided to students who attend predominantly anglo-schools.”⁶⁹ In this amalgamation of terminology used to classify students—low/middle/high income, minority/majority, risky/secure, proficient/LEP—race is classed and class is raced and students’ likeliness of being classified as risky

⁶⁶ The contents of Arizona’s home language survey became a major source of academic debate several years ago. According to Goldenberg and Quach (2010), Arizona’s sharp reduction in the home language survey questions (from three to just one) led to failure to identify students who are entitled to ELL services: “as many as 11 to 18% of students who are eligible for ELL designation could be denied services to which they are entitled if a single home language survey question is used to identify potential ELLs” (p. 3).

⁶⁷ Judge Berzon’s (2008) Circuit Court decision discusses how most federal funds “are earmarked for at-risk, low-income students, rather than ELL students (although the two groups overlap)” (*Flores v. State of Arizona*, 516 F.3d 1140 (9th Cir. App. February 22, 2008).

References to a population known as “low-income minority” children also appear in: *Flores v. State of Arizona*, 48 F. Supp. 2d 937 (U.S. Dist. April 13, 1999) and *Flores v. State of Arizona*, 172 F. Supp. 2d 1225 (U.S. Dist. January 24, 2000).

⁶⁸ *Flores v. State of Arizona*, 92-596 TUC RCC (Order, District Court, March 28, 2013).

⁶⁹ *Flores v. State of Arizona*, 172 F. Supp. 2d 1225 (U.S. Dist. January 24, 2000).

becomes implicated and compounded by subcategorical factors like parents' income, student ethnicity, minority status, language spoken at home and exam scores.

There are other examples in the judicial data in which LEP status and assumptions about student capacity are packed into the same sentence and treated linguistically as parts of a predictable whole. For example, a "finding of fact" in Judge Alfredo Marquez's (2000) District Court decision provides a definition of "risk" as it is used to classify children according to parents' income:

An 'at risk' student is a student who usually has some socioeconomic type of impact that would cause them to be 'at risk' of not learning . . . The most common accepted measurement in education of determining 'at risk' students is the number of students that qualify for free or reduced lunches, which is primarily an economic measurement.⁷⁰

The "fact" that follows concludes this line of thought by suggesting, "districts with high enrollments of LEP students also tend to have a high percentage of reduced lunch programs."⁷¹ And a later "fact" in the same brief suggests that, "[t]here is a direct correlation between the LEP student population and 'at risk' students in NUSD."⁷² The documents do not challenge or even draw attention to the existence of these trends or their implications. Why might we find that race, English exam scores, socioeconomic status, and assumptions about ability to learn all correlate somehow under the general rubric of "risk"? How does "risk" as a class or category govern ELL students?

⁷⁰ Finding of Fact #21, Flores v. State of Arizona, 172 F. Supp. 2d 1225 (U.S. Dist. January 24, 2000)

⁷¹ Finding of Fact #22, Flores v. State of Arizona, 172 F. Supp. 2d 1225 (U.S. Dist. January 24, 2000)

⁷² Finding of Fact #60, Flores v. State of Arizona, 172 F. Supp. 2d 1225 (U.S. Dist. January 24, 2000)

Governmentality studies endeavor to explore the knowledges, active technologies and practices of the self that shape who we are and should be. Foucault (1991a) suggests that “[s]tudies of governmentality . . . are more concerned with how thought operated within our organized ways of doing things, our *regimes of practices*, and with its ambitions and effects (p. 17-18). To this, Dean (2010) adds that these studies help us examine who people are regarded as—victims, linguistically or educationally excluded, unemployable, risky, in need of counseling, possessed with low self-esteem—in the interest of rectifying national problem by fixing subjects who lack the capacities of “enterprise and entrepreneurship required to be internationally competitive” (Dean, 2010, p. 12), often by discursively encouraging them to fix, or at least learn to equip, themselves. In different historical moments, distinct problems with populations emerge—hysteria, unemployment, reproductive tendencies, self-esteem, and languages spoken are but a few examples. The category “at risk” student is likewise a historically contingent fiction, a problem to be identified and measured by experts and solved through governance. The emergence of the “at risk” student brings with it the deployment of forms of knowledge and expertise and a calculated set of activities that aim to reduce student riskiness through their freedom to act in their own best interest, rather than by forcing them to act (Dean, 2010), or correcting / punishing them if they don’t. The judicial archive narrates the collective activity of thinking risk together; its authors reveal a condition of forms of thought about ELL students. Risk rationalities clearly operate within organized ways of thinking and acting on language policy and practice in and through the courts.

To synthesize and simplify, thinking student risk precipitates acting on that risk or procuring insurance to protect against it. Truth about risk is further reproduced in practices that shape students socially, culturally, and politically. The action hinges on a demarcation of the risky ones. For example, there are “traditional indicators of student achievement—high school graduation rates, grade promotion . . .”⁷³ In *Flores* judicial rationalities, the determination of who carries risk is a consideration under scrutiny and in flux. For example, as the case unfolds, the plaintiff class grows to encompass a new category of people—LEP and later ELL students and their families. But which ones? The data illustrates agonistic attempts to identify which student bodies are protectable by *Flores* legal recourse. Drawing from purported violations of the Equal Educational Opportunities Act of 1974 (EEOA), a requirement that states take “appropriate action to overcome language barriers” in schools,⁷⁴ legal action taken on behalf of the adequate education of LEP students in Nogales is later reworded in subsequent orders and injunctions to encompass “LEP students and other ‘at risk’ students attending public school systems in districts *like* Nogales.”⁷⁵

Whether or not statewide relief should apply to the larger, statewide category of risky students was a major point of debate in the *Flores* Supreme Court hearing. For example, the following exchange occurs in the Supreme Court oral argument transcript:

Mr. Starr (speaking on behalf of the Arizona’s defense) – “What was entered here in this order, which makes it so extraordinary, is that the

⁷³ *Flores v. State of Arizona*, CIV 92-596 TUC RCC (Findings of Fact and Conclusions of Law, District Court of Arizona, March 18, 2011).

⁷⁴ Equal Educational Opportunities Act, 20 U.S.C. § 1701 et seq.

⁷⁵ *Flores v. State of Arizona*, 48 F. Supp. 2d 937 (U.S. Dist. April 13, 1999), emphasis added.

entire State funding mechanism has been interfered with by the order. The case started out in Nogales . . .”

Justice Scalia – “Well, I--I agree with that. I think it was a vast mistake to extend a lawsuit that applied only to Nogales to the whole State, but the State attorney general wanted that done.”⁷⁶

Regarding the statewide injunction, the Supreme Court stated:

The record contains no factual findings or evidence that any school district other than Nogales failed (much less continues to fail) to provide equal educational opportunities to ELL students. Nor have respondents explained how the EEOA could justify a statewide injunction when the only violation claimed or proven was limited to a single district. It is not even clear that the District Court had jurisdiction when it is not apparent that plaintiffs – a class of Nogales students and their parents – had standing to seek such relief.⁷⁷

In his dissent opinion, Supreme Court Justice Breyer writes against the Court’s order to vacate the injunction that extends *Flores* to “at risk” students outside of NUSD because the state itself pointed to the need for statewide educational uniformity: “A statewide program harmed Nogales’ students, and the State wanted statewide relief.”⁷⁸ For the court’s purposes, determining the “class” in this class action suit, in this case by identifying who the at risk students are, is a matter of extreme importance yet ongoing observation and discussion.

⁷⁶ *Horne v. Flores*, 08-289 & 08-294 (Supreme Court Hearing Transcript, April 20, 2009).

⁷⁷ *Horne v. Flores*. 556 U.S. 116 (Opinion, April 3, 2009).

⁷⁸ *Horne v. Flores*. 557 U.S. 433 (Syllabus and Court Opinions, April 20, 2009).

Justice Kennedy shrewdly notes during the hearing that it would actually be in the Plaintiff's / Horne's favor if the order of the court applies to every district, for when the case for appropriate funding is shot down under "changed circumstances" afforded by NCLB provisions, HB 2064, SEI, Task Forces, and the like, then no district beyond NUSD could make a case for additional ELL expenditures. The constitution of a class for class action maybe depends less on inherent subject characteristics and more on institutional power relationships.

Rose, O'Malley, and Valverde (2006) describe Foucault's colleagues'⁷⁹ focus on risk as an analytic of government that is:

not regarded as intrinsically real, but as a particular way in which problems are viewed or imagined and dealt with. What is specific to risk, in their view, is that it is a probabilistic technique, whereby large numbers of events are sorted into a distribution, and the distribution in turn is used as a means of making predictions to reduce harm. As such it is highly abstract, giving rise to a very wide array of specific forms and ensembles of government. (p. 95)

Indeed, with ELL students, risk-based probabilities and even determining what is identified as "harmful" unwraps via categorical and numerical discursive variables. For example, students who perform below the vendors' cut scores are categorized as LEP and are therefore risky.⁸⁰ According to one amicus brief, native language learning and

⁷⁹ They mention Ewald, Donzelot, and Defert, specifically (p. 95).

⁸⁰ On a separate note, the problems and arbitrariness of the cut scores comes to light in the judicial data when one sees the mandate that "If, after consultation with the testing company that prepared the test at issue, the Superintendent determined that a test for reading and writing assessment selected by the Superintendent . . . may also be used for reassessment of exited students, such test may be used for

bilingual education programs that use LEP students' first languages in the classroom is "a dead-end cocoon of instruction,"⁸¹ a haunting metaphor which suggests that use of languages other than English in classrooms are dangerously insulating and prevent students from metamorphosing into fully-functional, English-speaking adults. Another text describes bilingual education as "isolating kids [on] a train track that took them to their language and left them there."⁸² According to these metaphors, languages other than English signify both arrested student development and educational abandonment. ELL students are reassessed after an agreed-upon amount of time⁸³ and then compared to non-ELL students to see if their performance is "satisfactory". Those who score above the cut are mainstreamed. Those who do not are "re-enrolled in a *Lau* program and/or given compensatory instruction aimed at *curing* the skill or knowledge *deficits* revealed by the reassessment results" (italics mine).⁸⁴

Examining and subcategorizing the subject class.

Foucault (1984a) argues that examination makes subjects visible. Drawing from Foucault, Graham and Neu's (2004) genealogy of the constitution of governable persons

reassessment of a student. If such tests are used for reassessment, the test scores used to determine a student's current English proficiency shall not be lower than the test scores used to initially determine whether the child was LEP" Flores v. State of Arizona, CIV 92-596 TUC ACM (U.S. Dist. June 30, 2000). The data problematizes shifts in the classified population that are based in shifts in testing protocol: "During the 1999-2000 school year, there were 5,104 ELL students. The next year saw similar numbers, but between the 2001-02 and the 2003-04 school years, the number of such students hovered around 3800. Then, when Arizona implemented a new testing protocol (which was later concluded to be reclassifying too many students and replaced), the ELL population declined to about 3200 students in the 2004-05 school year and to 2474 the next year. In 2006-07 a new, reputedly more accurate and more difficult to pass test came into use, and Dr. Zamudio [then Superintendent of NUSD] testified that he expects ELL student numbers to increase again" Flores v. State of Arizona, 516 F.3d 1140 (9th Cir. App. February 22, 2008).

⁸¹ Horne v. Flores, 08-289 & 08-294 (Washington Legal Foundation as Amicus Curiae, Petition for a Writ of Certiorari, 9th Cir. October 6, 2008).

⁸² Horne v. Flores, 08-289 & 08-294 (Brief for Petitioners, 9th Cir. February 19, 2009).

⁸³ Before HB 2064, the time before reassessment and classification is two years, after HB 2064, it is one year.

⁸⁴ Flores v. State of Arizona, CIV 92-596 TUC ACM (U.S. Dist. June 30, 2000), italics added.

through standardized tests in Alberta, Canada, argues that the outcomes of testing programs serve as opportunities to “sort, sift, and classify students, thereby enrolling students, teachers, and other participants into a specific set of power relations (Foucault 1984a, p. 204)” (p. 309). ELL students are examined and reexamined for classification purposes, and the rates of reclassification appear in the judicial archive. For example, the 2013 District Order displays reclassification data for Arizona next to such for Nogales as follows:⁸⁵

197. Statewide reclassification rates for the last five years are shown below:

<u>2005-06</u>	<u>2006-07</u>	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>
15%	12%	22%	29%	30%

Exhibit 752; Day 15 at 121.

203. In the Nogales Unified School District, the reclassification rates for ELL students for the last five years were as follows:

<u>2005-06</u>	<u>2006-07</u>	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>
34%	15%	35%	39%	36%

Exhibit 771; Day 16 at 88.

The archive also explains that different exams yield different reclassification results. The 2003-2005 scores are the result of an exam called the SELP (“Stanford English Language Proficiency”). The 2006-2009 scores are the result of the AZELLA1. The 2009-2010 scores are the result of AZELLA2. Oddly, when the exam changes, so does the population it is designated to classify. Students who were not proficient under one exam, and therefore ELL, one might become ELL under another. These figures are purportedly

⁸⁵ These are screenshots from Flores v. State of Arizona, 92-596 TUC RCC (Order, District Court, March 28, 2013).

used to compare Nogales students to the students across the state and to illustrate reclassification rates before and after the four-hour model SEI to evidence its effectiveness in reclassifying and mainstreaming children.⁸⁶

To prove the success of measures taken to improve the quality of educational opportunity for ELL students after *Flores*, additional subcategories of student proficiency, aligned under different score umbrellas, began to emerge. The simple distinction ELL splits into deeper categories of knowing how (not) proficient, including pre-emergent, emergent, basic, intermediate, and proficient. The creation of these sublevels of English skills / scores functions as “the techniques of an observing hierarchy . . . a normalizing judgment. [Examination] is a normalizing gaze, a surveillance that makes it possible to quantify, to classify, and to punish” (Foucault, 1984a, p. 197). Student differentiation into more advanced subcategories after examination opens ELL students to more robust description, measurement, and comparison, to be followed by corresponding correction, normalization, omission, or immersion techniques.

Language examinations interact with categorical classifications of ELL students. The desire for standardization of knowledge and a corresponding hierarchy of scores make populations visible and reachable according to their categorical visibility. Via test scores, information on the constitution of the subcategories of the ELL population is derived, generated, aggregated and calculated. Foucault (1978/1991) offers that statistics serve as part of the discursive and generative nature of government. Statistical data

⁸⁶ One calculation that the court desired but could not obtain was a Department of Education estimate regarding the average time to English proficiency: “The Department of Education was unable to provide the Court with information regarding the average length of time it takes for ELL students to test proficient on the language assessment test. Ms. Santa Cruz was uncertain whether ADE’s data system is capable of calculating the average length of time it takes for an ELL student to reclassify” *Flores v. State of Arizona*, 92-596 TUC RCC (Order, District Court, March 28, 2013).

“changes the aspect into something communicable, renders it as a potential and actual subjects of discourse, and thereby creates the means by which the aspect can be subjected to administrative programs” (Graham & Neu, 2004, p. 299). The “relative and homogeneous language of statistics” (Donzelot, 1988, p. 404) when applied to ELL students is both reductive and productive.

Every year after 2006, the federal government required that 12% of each school district’s ELL population advance from one of these levels—pre-emergent, emergent, basic, intermediate, proficient—to the next, to attain proficiency, and to pass the AIMS. Many writing and speaking in support of SEI and the “changed circumstances” argument contend that “upon exiting the Task Force Model, FEPs (i.e., ‘fluent English proficient’ students) are passing AIMS . . . at rates that meet or exceed their non-FEP peers.”⁸⁷ Eager to demonstrate Nogales’ strides with their ELL population since *Flores*, briefs on behalf of the Superintendent report that in 2006:

the percentage of NUSD’s ELL students achieving progress by advancing one level varied from 70% to 88% . . . The percentage of NUSD’s students who became proficient in English so as to be reclassified as non-ELL students ranged from 29% to 38% . . . Finally, at every grade level, NUSD’s ELL students are vastly exceeding federally approved standards, overcoming language barriers, and able to participate in their school’s English instruction programs⁸⁸

⁸⁷ *Flores v. State of Arizona*, CIV 92-596 TUC RCC (Findings of Fact and Conclusions of Law, District Court of Arizona, March 18, 2011).

⁸⁸ *Horne v. Flores*, 08-289 & 08-294 (Brief for Petitioners, 9th Cir. February 19, 2009).

Populations that generate statistically low AIMS scores or reflect poor graduation rates are deemed harmful to the school, district and state. Programs that have low success rates are considered poor insurance and weak investments. Programs that allow ELLs to “outdo” native English speakers in test performance or pass college-prep courses are deemed “remarkable.”⁸⁹ Miriam Flores’ personal experiences are not of interest here. ELL students are not individuals at all; they are “factors, statistical correlations of heterogeneous elements. They deconstruct the concrete subject of intervention, and reconstruct a combination of factors liable to produce risk” (Castel, 1991, p. 288). Further, these statistics are reflective of an NUSD program audit that is poised to reflect its advancements: “Audit technologies standardize and regularize expert knowledges so that they can be used to classify and diagnose” populations of students and the “potential risks in managing them” (Davies & Bansel, 2010, p. 7).

Calculating risk.

Data collection and harvesting on ELL students provides a form of government at a distance. Shoshana (2011) writes that through disciplines like psychology and statistics, “experts and ordinary people employ the kind of language, classification, and practices ‘which render reality into calculable form’ (Rose & Miller, 1992, p. 185)” (p. 771). With that, the judicial archives reveal a population that is:

- Sometimes affiliated with NUSD, “which has six elementary schools, two middle schools, one high school, and an alternative high school. The student population

⁸⁹ *Horne v. Flores*, 08-289 & 08-294 (Brief of the American Unity Legal Defense Fund, English Language Political Action Committee, ProEnglish and the Center for Equal Opportunity, as Amici Curiae Supporting Petitioners, 9th Cir. February 25, 2009).

of approximately 5,889 students is approximately 95% Hispanic. Approximately, 60% of the student body is LEP and 63% receive free and reduced lunches.”⁹⁰

- Composed of 134,000 ELL students (in NUSD) who “continue to lag behind statewide average test results for all students.”⁹¹
- Performing poorly on Arizona’s standardized exams (82% of ELL students continue to fail the AIMS test in reading and 81% ELL students continue to fail in writing)⁹² and with only a 59% change of graduating from high school (compared to 75% for non-ELLs).⁹³
- 88% capable of raising their scores by one achievement level in at least one subject area, if offered appropriate tutoring programs (as compared to 92% of their non-ELL peers).⁹⁴
- In NUSD (before SEI), spending approximately 4.6 years as ELL before being reclassified as proficient.⁹⁵
- More likely to obtain desirable scores on standardized assessments in earlier grades, as “ELL students in lower grades are doing substantially better than ELL students in higher grades. In 2005-06, for instance, while only 27% of ELL third graders failed math, 76% of ELL tenth graders failed. ELL third graders failed reading 37% of the time; 78% of ELL tenth graders failed. And 35% of ELL third graders failed writing, while 76% of ELL tenth graders failed.”⁹⁶

⁹⁰ Flores v. State of Arizona, 172 F. Supp. 2d 1225 (U.S. Dist. January 24, 2000).

⁹¹ Flores v. State of Arizona, 516 F.3d 1140 (9th Cir. App. February 22, 2008).

⁹² Flores v. State of Arizona, 405 F. Supp. 2d 1112 (U.S. Dist. December 15, 2005).

⁹³ Flores v. State of Arizona, CV 92-596 TUC RCC (Order, 9th Cir. June 25, 2009).

⁹⁴ Flores v. State of Arizona, 516 F.3d 1140 (9th Cir. App. February 22, 2008).

⁹⁵ Flores v. State of Arizona, 480 F. Supp. 2d 1157 (U.S. Dist. March 22, 2007).

⁹⁶ Flores v. State of Arizona, 516 F.3d 1140 (9th Cir. App. February 22, 2008).

- Still too little known or understood by data, as a “general lack of longitudinal data on individual ELL students” precludes the ability to know which programs succeed, “that is, whether children pass through them rapidly and ultimately perform as well as non-ELL students.”⁹⁷

Statistics and their counter statistics sniff out trends that are interpreted as dangerous, and so the primary aim of these statistics is to calculate and intervene. Castel (1991) writes that:

Their primary aim is not to confront a concrete dangerous situation, but to anticipate all the possible forms of irruption of danger. ‘Prevention’ in effect promotes suspicion to the dignified scientific rank of a calculus of probabilities. To be suspected, it is no longer necessary to manifest symptoms of dangerousness or abnormality, it is enough to display whatever characteristics the specialists responsible for the definition of preventative policy have constituted as risk factors. (p. 288)

The purpose of allotting additional federal and state education funds for student populations identified as risky is to reduce their risk, to help them succeed. In this case, the success of those tax investments in programs is measured by students’ AIMS scores and their “achievement” with respect to what is “normal” for student grade level. AIMS and risk rhetoric conjoin in the data in several ways. First of all, judicial discursive rationalities offer that students who are equipped to compete via AIMS are not risky. Furthermore, according to the Plaintiff’s argument, risky students who are not appropriately supported via state or federal finances to compete on AIMS should not be

⁹⁷ Flores v. State of Arizona, 516 F.3d 1140 (9th Cir. App. February 22, 2008).

made to do so in order to graduate from high school. Judge Marquez's (1999) issue statement for the Plaintiff's motions for partial summary judgment states:

Plaintiffs argue that minority children from low-income households and LEP students are burdened with pronounced disadvantages in learning academic skills and content-area knowledge comprising a curriculum that fulfills the high academic standards States are setting in order to qualify for various kinds of federal financial assistance. Without instructional interventions, such as those designed and funded by Title I, these at-risk children cannot be expected to attain proficiency in academic skills and content areas, as measured by required assessment tests like the AIMS.⁹⁸

A bit later in the *Flores* saga, Judge Raner Collins' (2005) District Court opinion argues similarly for a "meaningful opportunity to achieve the academic standards that are assessed by the AIMS test"⁹⁹ before forcing AIMS as a graduation requirement of all children, including those already at risk, in this case because their first language is not English.

Expert testimony.

Interestingly, another "fact" found in the 2000 District Court decision includes the findings from plaintiff's expert testimony provided by Dr. Gene Glass. Glass' research showed that, according to the wording of the case opinion, "minority students fail standardized tests such as AIMS and Sanford 9 in dramatically larger proportions than Anglo students."¹⁰⁰ Yet, support for the defense merely uses this data point to mark a

⁹⁸ (Flores v. State of Arizona, 48 F. Supp. 2d 937 U.S. Dist. April 13, 1999)

⁹⁹ (Flores v. State of Arizona, 405 F. Supp. 2d 1112 U.S. Dist. December 15, 2005)

¹⁰⁰ (Finding of Fact #64, Flores v. State of Arizona, 172 F. Supp. 2d 1225 U.S. Dist. January 24, 2000).

distinction between two categories of “at risk” students. The “fact” concludes that a racially diverse student body comprised of Anglo, Black and Hispanic students from a high assessed valuation district (Phoenix Union High School District) is different from a student body that is 95% Mexican American and in a low assessed valuation district (Nogales Unified School District). It states that Glass’ research on PUSD is therefore irrelevant because “This [comparative] approach made his testimony of little use to the Court for the purpose of establishing whether minority students fail standardized tests because of their race, national origin, limited English proficiency, because they attend schools in low valuation districts, for some other socio-economic reason, or for some combination of all these factors”.¹⁰¹ The conclusions of law to this decision state:

the evidence fails to establish the necessary causal link between the disparate impact of the [AIMS] tests and the Plaintiffs’ minority status. The correlation that exists in NUSD between ‘at risk’ students and LEP students destroys any race-based inferences that might otherwise be drawn. Based on the evidence presented at trial, the students in NUSD might very well fail the tests because they are low-income ‘at risk’ students. Members in this group are not protected from discriminatory treatment.¹⁰²

Likewise, the Defendant’s counsel issued the following petition for a writ of certiorari:

It is self-evident that ELL students would not do well on AIMS and certainly would significantly lag behind those who are literate in English.

Further, using such test scores as a touchstone for success can be quite

¹⁰¹ (Finding of Fact #64, Flores v. State of Arizona, 172 F. Supp. 2d 1225 U.S. Dist. January 24, 2000).

¹⁰² (Conclusions of law #2, Flores v. State of Arizona, 172 F. Supp. 2d 1225 U.S. Dist. January 24, 2000)

misleading. The District Court, in its original 2000 order, acknowledged that low test scores for ELL students could be due to socio-economic and other factors . . . This court, in *Missouri v. Jenkins*, rejected the notion that scoring below ‘national norms’ on tests should be a factor in deciding whether a school district achieved partial unitary status unless the constitutional violation caused low test scores . . . Here, there has never been a showing that money had any connection with low ELL scores on AIMS tests.¹⁰³

Applicable finances are contingent on evidence that some categories of students carry risk that makes it impossible for them to compete, or that money is a factor in student chances and in their potential for score-based success. But what matters most in the realm of this discussion is the requirement that forms of knowledge and expertise are deployed in order to evaluate and reevaluate who seems risky as opposed to who has most proven the need for a legal obligation to services through funding. While the ends, the funding itself, certainly means a great deal to students, their schools, their districts, and their state for all sorts of reasons, the means to make this determination is an aggressive accounting of who, how many, what else, and what we presume it all means. The calculations and coordination of ELL programs, services and behavior is a form of government (Dean, 2010). ELL students and their institutional counterparts can certainly act outside their constitution as subjects through these discourses. Within the supersaturation of the judicial rationalities glimpsed above, we might imagine who else these students are and who else we want them to become.

¹⁰³ *Horne v. Flores*, 08-289 & 08-294 (Horne, Petition for Writ of Certiorari, 9th Cir. August 29, 2008).

Conclusions

Away with pounds and pennies.

I'd like to conclude this narrative close to where we began this part of the story, with Raner C. Collins' final say on *Flores*. To refresh, he ruled on the case in 2013 with the following rationality:

Education in this state is under enormous pressure because of lack of funding at all levels. It appears that the state has made a choice in how it wants to spend funds on teaching students the English language. It may turn out to be penny wise and pound foolish, as at the end of the day, speaking English, and not having other educational gains in science, math, etc. will still leave some children behind. However, this lawsuit is no longer the vehicle to pursue the myriad of educational issues in this state.¹⁰⁴

Indeed, economic pressure is profound in Arizona's schools. State economics, who controls them, and how and why they are accounted for this way are all visible in the judicial archive. So, must economic rationalities be so ever-present in how we think about and act upon our students and ourselves? Federalism concerns in the archive contend that the courts in general may be an inappropriate weapon to wield in education funding battles. The current conclusions to *Flores* seems to support this belief as well. Maybe it's not over. Maybe there is a chance that *Flores* will return with a vengeance and garner appropriate funds for ELLs in the state.

¹⁰⁴ *Flores v. State of Arizona*, 92-596 TUC RCC (Order, District Court, March 28, 2013).

But if not through the judiciary, then where or how else might ELL students be “served”? This is, perhaps, the wrong question, or at least the wrong definition of service. Is it possible that rethinking, reknowing the idea of service itself might clear another path to who or what we make of our students and ourselves when we impart discursive ways of being? If thinking critically about thought helps to bend the frame that constitutes a population, then everything that made that frame hold shape in the first place comes into question, and the image contained therein becomes distorted. The student body enframed therein, that object of observation, measurement, calculation, might look different framed in different contexts, and seeing and knowing that difference is possible may open us to examine the impact of the frame on the supposed contents.

To put it another way, what if the court was able to make the state act “penny foolish and pound wise,” or invest the ELL funds now to insure the population later? While I don’t have that outcome in an archive to narrate, because it never fully happened, I believe that while measurable outcomes might fluctuate, the issues at the core of this discussion would remain the same. When subject-centered rationalities hinge on the economy or on economic thinking, then subjects will be problematized according to their perceived relationship with the economy. We take economic~educational thinking for granted as the rational way to decide what is right or wrong on all sides of the *Flores* debate, regardless of our intent for students. When the life trajectories of ELL students hinge on their supposed or projected economic production and little else, when we are “responsible” for them in some ways and not others, and when they, in turn, are made responsible for themselves according to these paradigms, we preclude becoming. We govern by thought.

We could pay more attention to what or “who whisper(s) in our ears and advise us how to act and who to be” (Rabinow & Rose, 2003, p. 5) so that the whispers appear as external, functional, potentially governing, but not the only possibility for us. In doing so, we might, as Rabinow and Rose (2003) hope, “recognize that the precepts, norms and values disseminated in these practices of government have made us the kinds of persons we take ourselves to be” (p. 5). Perhaps service could mean not pennies allocated based on measurements to calculate risks on investments or returns in pounds but instead springboards for other ways of knowing, being and acting in the world.

Chapter 6

PUBLIC OPINION RATIONALITIES OF RULE

Review and Preview

This chapter traces the final archive under examination in this study—public opinion discourses. The previous chapter, Chapter 5, explored the judicial archive surrounding *Flores*. The analytical narrative in Chapter 5 focused on several major themes that emerged in the documents—federalism, institutional reform litigation, rhetoric of responsibility surrounding district-level decisions, categorizing students to allocate funds, the constitution and reconstitution of ELL students as a risky class, the examination and calculation of that class’ risk via statistics, and the use of expert testimony. Using an analytics of government, I traced judicial discourses through court documents, amicus briefs and transcripts in order to answer the questions:

- What rationalities of rule are embedded in the discourses surrounding *Flores* (1992-present)?
- What kinds of subjects do the discourses of/around *Flores* produce?

My exploration found that Arizona’s enormous financial constraints appeared as a key issue that sparked resounding debate regarding the legislature’s need to make tough choices in farming out the low budgetary yield and the court’s attempts at sanctioning legislative spending for ELL students to uphold the EEOA. The ELL student emerges amidst largely economic debates and is therefore subject to economic logic. Consensus surrounding *Flores* occurs on the grounds of a desire for future social and economic security and prosperity in the state. Judicial discourses create a productive subject at a

distance by concurring that wherever self-sufficient, metrically successful students are, state sovereignty will be there too.

The discursive push for social and economic security and prosperity is manifest in competitive free market mentalities that identify ideal student and district performance via success in assessment metrics. Desirable school conduct is that which directs its behavior toward the attainment of district funding earned through getting students to test out of ELL programs (and therefore “learn English”) as quickly and inexpensively as possible. ELL students are ideally recategorized and able to begin to compete with other students in terms of mainstream metrics like the AIMS. The logic continues—the ability to compete on AIMS signifies the ability to compete for jobs after school.

State and Federal responsibility for the education of Arizona’s ELL children is transferred to the district level. Districts are charged with the task of proving their prudence and solvency by way of good financial management via program implementation that yields reclassification results, which equates to good management of student subjects. This appears to serve as a zero-sum blame game that releases the state of Arizona of its responsibility for its students, all the way narrating the value of conservative and entrepreneurial district behavior, and therefore individual student behavior. Non-entrepreneurial districts will not survive if they cannot compete for funding, nor they do not deserve to. District-level punishments trickle down to students, who are really responsible for “performing” on the micro level to compose the macro results. Districts, schools and students are set loose in the market to make the best of themselves, prove their worth, gain their reward, or be cast asunder by their more effective, productive, successful counterparts.

ELL students are subjected to and subjects of these doings, thoughts, and writings. They become governable in their percentages, in their performance under microscopes that are tempered by this discursive obsession with funding concerns. They are made measurable by their examinable attributes, are accountable for these sums, and are held to internalize the kinds of subjects they are classified and subclassified as, which is clearly something different than the children they already are. But what matters most in the realm of the discourses traced is the requirement that forms of knowledge and expertise are deployed in order to evaluate and reevaluate who seems risky as opposed to who has most proven the need for a legal obligation to services through funding. While the ends, the funding itself, certainly mean a great deal to students, their schools, their districts, and their state for all sorts of reasons, the means to make this determination is an aggressive accounting of who, how many, what else, and what we presume it all means. The calculations and coordination of ELL programs, services and behavior is therein a form of government. ELL students and their institutional counterparts can certainly act outside their constitution as subjects through these discourses. Within the supersaturation of the judicial rationalities detailed in Chapter 5 and glimpsed above, we too might imagine who else these students are and who else they could possibly become.

The chapter that follows below has the same intent as Chapters 4 and 5, as well as the critical analysis section of Chapter 2. And, like these previous chapters, it draws from a distinct archive that provides access to rationalities of rule that may not be available in discursive contexts like academic scholarship (Chapter 2), legislative documents and debates (Chapter 4) and judicial hearings, briefs, and transcripts (Chapter 5). Instead, this chapter enters the realm of public opinion or popular press discourses to examine the

research questions. The conceptual framework remains consistent, and the narrative below therefore locates several parallels across the discursive terrain.

The Exposition

On the hunt.

A bit of the data collection for this chapter pre-dates the existence of this project. As discussed in prior chapters, namely Chapters 1 and 3, this work is rooted in a collaborative research project I undertook with Dinny Risri Aletheiani, David Lee Carlson, and Ann Dutton Ewbank between 2012 and 2013. Our initial findings were published in the spring of 2014 in a *Policy Futures* journal article entitled “‘Keeping Up the Good Fight’: The Said and Unsaid in *Flores v. Arizona*” (Thomas, Aletheiani, Ewbank & Carlson, 2014). In the paper, my co-authors and I examine rationalities that appear across pro-*Flores* public opinion data, or, in other words, press content written in support of the *Flores* Plaintiffs’ argument for additional and adequate funding for ELL students and ELL students’ rights to education. Our data set in that study included pro-*Flores* press publications that appeared between 1992 and 2009 in such databases as Academic Search Premier, Access World News, Ethnic Newswatch, LexisNexis Academic, Proquest, and the Education Resources Information Center.

Thirty-two public opinion texts met our selection criteria and served as the artifacts under consideration in the realm of the article. With these artifacts and a conceptual framework informed by discursive rationalities of rule, we found that neo-liberal rationalities such as commodification, competition, risk, security, insurance and entrepreneurialism dominated the discursive landscape surrounding *Flores* and eclipsed

alternative ways of knowing students or their relationships to language, education or society.

For this chapter, which is a continuation of that study, I expanded the search and extended the archive set considerably.

First of all, my keyword searches included:

- *Miriam Flores*
- *Horne v. Flores*
- *Flores v. Arizona*
- *Flores v. Huppenthal*
- *Speaker of the House of Representatives v. Flores*

Secondly, the databases used to compile the archive included everything listed in Appendix K. Third, I extended the dates on the search to encompass 1992-2014. Finally, I did not categorize texts as pro-*Horne* or pro-*Flores* to consider the author's perspective on the case as selection criteria. Instead, I included all public opinion texts available on all sides, including newspaper articles, opinion letters, op-ed columns, policy institute websites, blogs, and similar genres of texts written for a wider audience and largely accessible in print and online at little or no cost to the public. The public opinion data set analyzed in this chapter includes 204 documents, which are all cited for ease of reference in Appendix L.

I read each piece in accordance with my research questions and conceptual framework in mind and then loaded them into MAXQDA for coding. The codebook used for the public opinion data set is featured in Appendix M. I coded this set last, after working with *Flores* scholarship, then the legislative archive, then the judicial archive.

Since public opinion documents were the artifact genre that I knew first and best before I ever tried to write a study of this scale, I thought it best to create some distance with subsequent data before returning to a somewhat familiar place.

The Analysis

This final chapter of archival narrative and exposition opens and closes upon Nikolas Rose's (2000) discussion of advanced liberalism in his book *Powers of Freedom: Reframing Political Thought*. The concept of advanced liberalism artfully encapsulates the culmination and collusion of so many of the rationalities of rule evident across all parts of the *Flores* discourses I examined, including the public opinion archive discussed below. Rose's writing more generally does a wonderful job operationalizing the very idea of rationalities of rule and illustrating how discourses operate in the production of subjects and of analyzing subjects' subsequent movement therein. Further, his intention in this text is to illuminate the cracks and fissures in "what we take to be solid and inevitable" (p. 284) in order to encourage alternative approaches to knowing, being, and researching based on the openness and impossibility. Since my goal is to encourage *Flores* data to live and breathe through such a lens, I thought Rose to be an appropriate bookend for my final analytical chapter.

Rose (2000) portrays the rise of what he calls "advanced liberalism"—a reduction of state responsibility and encouragement of individual, familial, and organizational responsibility—as not a linear succession but as a complexification: "the opening of new lines of power and truth, the invention and hybridization of techniques" (p. 142). Some factors in this complexification include the emergence of a global economy that ushered in a need for a unified, strong, and competitive national economy. Among other factors

and somewhere in the mix, the social and the economic became decoupled and acrimonious and soon “economic government is to be desocialized in the name of maximizing the entrepreneurial comportment of the individual” (p. 144). More active economies summon the conditions for subjects to act as entrepreneurs, which means an opening of markets, an installment of a continuous and productive workforce, and a denationalization of public enterprise. Away with economic indifference and state dependence; this would be the dawn of self-motivated entrepreneurs, incited with “the will to self-actualize through labor through exhortation on the one hand and sanctions on the other” (p. 144).

As I’ve suggested in prior chapters, thought, not reality, made the culmination of social welfare and government possible (Rose, 2000). We first had to think and then believe that the state owes little to its people in terms of their welfare or that we need productive labor markets to survive, or both. This thinkability was made possible too by a multitude of forces and possibilities. There is nothing linear or natural about our arrival at certain forms of governance, nor do past forms ever diminish entirely. We have to continue to believe that the state is not supposed to offer unconditional security against risks and that with proper training and self-esteem, we are capable of doing better for ourselves by ourselves than we can under the care of the state anyway. The state will provide a little in exchange for everyone’s active civic participation in laboring and consuming. To sustain advanced liberal governance, we must also believe that successful, responsible economic subjects and good citizens are parts of the same whole. We must believe that in order to fulfill our patriotic obligations, we must realize ourselves through our own productive freedoms and that by serving the workforce, we serve the state and

the self simultaneously. And if we or our family members or our students are identified as currently unable to conduct themselves accordingly, we need to either train them how to self-govern or we need to intervene and “manage their exclusion” (Rose, 2000, p. 147) with technologies designed to correspond with their productive deficits.

The public opinion data sketches the constitution of advanced liberal ELL subjects. With no state or court to effectively intervene and fully support their linguistic and social welfare, ELL students, who are deemed in need of language and cultural training in order to become productive and responsible citizens, are classified, cordoned off, examined, audited, and, with any luck, reexamined and reclassified at the close of a specific time period of intervention. They are part of a competitive market of state funding while in school just as they are expected to compete for their own survival and “betterment” during and after school. Quasi-autonomous agencies and sub-governed units like the ELL Task Force and Arizona’s school districts are charged with carrying out the state’s mandates and are authorized and positioned to intervene and normalize. Even if these agencies fail in the task of producing an English-speaking and therefore productive workforce, ELL students are expected to become good citizens through seeking economic success and actively participating and competing in the economy. The state is no longer responsible for the people; students are responsible for themselves.

Flores as Federalism Battlefield

The legislative and especially the judicial archives discussed in Chapter 5 revealed the theme of federalism as a site of discursive focus. The theme of federalism is relevant not only in how federalism functions in upholding the primacy of state power but also in how the discursive primacy of state power via federalism ideologies is an

analytical resource that questions the legitimacy and responsibility of government through other means, like the courts. Governmentality studies are not invested in examining state legislatures as sovereign bodies that maintain monopolies on state power and policy. Contrary to a “self-evident” focus on hierarchal state power and authority, an analysis of discursivities that are manifest in a multitude of practices that emerge from many spaces reveals a directing and shaping of ELL subjects through their activity, their choices, and their freedoms. Perhaps in seeking the problem of how ELL students are to form themselves in “the presence of a plurality of codes, and with a multiplicity of means” (Dean, 1994, p. 216) made material in public opinion articulations of legislative and judicial moves made and not made, we can locate a piece of who ELL subjects should rationally become in light of *Flores* in order to challenge this invention and move into the realm of reinvention.

Federalism themes run through the public opinion archive as well, but with an added dimension. Many documents in the public opinion archive discussed the magnitude of *Flores* beyond the case itself and marveled at the kind of precedent it seemed to set, especially in class action, institutional reform cases emerging concurrent to the 2009 *Flores* Supreme Court decision. This *Flores* decision ultimately resolved that the consent decree would be overturned and that the state would have to reevaluate the changed circumstances that emerged in Arizona between the late 1990s and the 2009 hearing. In other words, the plaintiffs would have to go back to the drawing board and find new cause for their argument that without adequately funded programs, ELL students would remain in jeopardy for subsequent generations.

One source from the public opinion archive narrates the Supreme Court outcome as follows:

Yesterday's Supreme Court decision in *Horne v. Flores* rejected lower court verdicts holding Arizona in violation of the Equal Educational Opportunities Act of 1974 (EEOA). These prior rulings had deemed Arizona's programs for English learners to be 'inappropriate actions' solely on the basis of funding levels. Justice Alito, writing for the Court, ruled that the prior rulings misinterpreted the EEOA. His decision insisted that other considerations, such as educational or programmatic improvements, are essential to evaluating whether equal educational opportunities are being offered. Yesterday's verdict also noted examples demonstrating that a growing number of structured English immersion programs have achieved success where bilingual education has failed. Specifically referenced were studies of some California school districts that abandoned ineffective bilingual education classes in favor of new approaches emphasizing teaching English in the early primary grades.¹⁰⁵

Through this public opinion narration, we see some major points of interest in *Flores* across all data sets re-materialize in public opinion:

- The court's verdicts were wrongfully too focused on funding;
- Circumstances for ELLs have changed for the better;
- Program success needs to be reevaluated to provide empirical proof of EEOA

¹⁰⁵ Supreme court's Arizona ruling emphasizes results. (2009, June 26). *State News Service*. Retrieved from www.lexisnexis.com

violation;

- Bilingual programs have failed, and
- The earlier children learn English, the better off they will be.

These contentions, like many before them, might make us question the relationship between quality educational programming and funding and govern ourselves according to the belief that money does not matter and that we should instead entertain alternative causes and effects of ELL student performance. We also learn here that circumstances can be deemed as “improved” if they simply change, and that success is definable and measurable by audits. Likewise, SEI is upheld for its promises of future success while bilingual programs are degraded for their failure. Finally, if children are immersed in English as early as possible, they allegedly have higher chances of “success”.

The subtext of the narrated Supreme Court outcome above matters a great deal too. This ruling reads like a rhetorical blow to federal court oversight as a check on the legislative branch and a way to tip the balance of state funding decisions in favor of specific groups of people. This display governs our thinking about federal oversight and future actions that we are free to take when seeking the protection of rights theoretically promised by but not necessarily protected by a confluence of authorities. It is possible, that is, to file a suit against the state for failure to uphold the educational rights of all children, but federalism arguments make some programmatic resolutions thinkable and possible and others not.

While *Flores* seems to have a discursive future in cases that follow it (discussed below), it is also understood in terms of institutional reform cases of the past. Another document in the public opinion archive harkens to:

political turf battles [that] often end up in the courts, and can lead to decades of federal oversight, such as the fight over school desegregation beginning in the 1950s. Against that backdrop is the continuing fight over immigration and the responsibility of states to fund the education of illegal immigrants and their children.¹⁰⁶

While *Flores* did bring forth federal oversight in theory in terms of consent decrees that were ignored by the Arizona legislature and inevitably overturned by the federal court system, what changed in practice was mostly the result of Prop 202 (a voter-approved English-only initiative) and the legislature's HB 2064 (the SEI task force initiative). In the two decades that the *Flores* case unfolded, federal oversight was only the legislature's bad dream—it haunted their reality but never possessed a hand powerful enough to actually come to life and reach into the states' coffers. The public learned this lesson well through various media outlets. A practical and technical result of this kind of thinking teaches that ELL students must be shaped to fend for themselves and secure their own futures, as no legislative or judicial body is standing by to realistically act on their behalf.

Yet, the lack of action is not for lack of trying or of champions aligned with the ELL funding cause. Judge Raner Collins, plaintiff attorney Tim Hogan, and several of Arizona's legislators appear in the public opinion data with regard to their attempts to fight against the grains and bring forth a meaningful and Constitutional resolution. Yet the discursive rationalities also portray the volatility of state and federal relations when public opinion reduces *Flores*, and cases like it, to long-standing state and federal feuds

¹⁰⁶ Mears, B. (2009, June 25). High court dismisses English-deficient students' case. *CNN.com*. Retrieved from www.lexisnexis.com

or pandering for power. Sanders (2013, March 18) reports attorney and professor Paul Bender's words as follows in the *Arizona Republic*:

The Arizona Legislature's attitude is one of almost hostility, of war, with the federal government. So, if that's your approach to life, you're going to generate a lot of litigation . . . It's an attitude of many people here, which is very pervasive in the Legislature. We want to take issue with a lot of stuff the rest of the country accepts.¹⁰⁷

The state of Arizona provides a template of litigiousness for the entire nation state. As seen with *LaShawn A. v. Fenty*, a case that is linked to *Flores* many times in the public opinion archive, legislative refusal to comply and federalism as the main point of contention, has discursive consequences in how we think about and act on institutional reform and why. As with *Flores*, the *LaShawn A.* verdict is related to the trappings or proof of abiding just enough to keep federal oversight at bay while still maintaining the status quo and spending as little extra state money on "vulnerable" children as possible.

LaShawn A. et al.

The public opinion archive disclosed concern in 2009-2010 for whether or not *Flores* findings and rulings would be contagious in other cases and states. For example, several sources pinpoint the most recent *Flores* court decisions as fodder for local governments to ignore the demands of class-action cases, or at least terminate longstanding consent decrees issued by federal courts to reform dysfunctional government agencies. Much of the data specifically cites a child welfare case in

¹⁰⁷ Sanders, R. L. (2013, March 18). Arizona high-court record: Many cases, many wins. *Arizona Republic*, p. A1. Retrieved from www.proquest.com

Baltimore and the District of Columbia known as *LaShawn A. v. Fenty* (or *LaShawn A. v. Gray*). This class action case arose on behalf of children in the foster care system that raised charges of abuse and neglect while under the care of the Department of Human Services (DHS). Like *Flores*, this case arose in the late 1980s and early 1990s and is still largely unresolved after more than 20 years of legislative and judicial volleying. In 2010, the *LaShawn A.* ruling inevitably rejected the *Flores* Supreme Court outcomes as support for the termination of a 1991 consent decree directed at DHS. This decree required the development of policies and procedures in child protective services, family preservation and preventive services, child placement, case reviews, adoption, staffing, resource development, contracts with private providers, and a uniform computerized system.¹⁰⁸

As the *LaShawn A.* case approached its 2010 hearing date, just after *Flores v. Horne* went to the Supreme Court in 2009, journalists began narrating the connections between the two cases for the public, if only to promote federalism concerns quelled by the Court in *Flores*. One artifact states, “Since the *Horne* decision in June, local governments have been citing the opinion in their efforts to end big class-action cases.”¹⁰⁹ Indeed, the public opinion archive narrates similar points when using *Flores* to dictate or foretell the outcomes of future cases. Other artifacts state that:

- The *Flores* ruling calls into question the U.S. District Court’s power to enforce consent decrees.¹¹⁰

¹⁰⁸ “*LaShawn A. v. Fenty*.” 89-CV-1754 (D.D.C., June 20, 1989). *National Center for Youth Law*. http://www.youthlaw.org/publications/fc_docket/alpha/lashawnnavwilliams/

¹⁰⁹ Cauvin, H. E. (2010, April 6). Overseer of suit faults district: Duty to children unmet, judge says Nickles to appeal in class-action case. *The Washington Post*, p. B01. Retrieved from www.lexisnexis.com

¹¹⁰ Tamber, C. (2009, August 6). Judge urges both sides to resolve foster-care dispute in Baltimore. *The Daily Record*. Retrieved from www.newsbank.com

- Significant changes in circumstances or the law prevent federal courts from enforcing consent decrees.¹¹¹
- Courts are prohibited from requiring state agencies to “do anything above and beyond what is spelled out in the law.”¹¹²
- The court should have limited jurisdiction in matters in which federal laws do not provide a private right to act.¹¹³
- Federal courts should not oversee state educational systems.¹¹⁴

When ruling on another case surrounding Maine’s protections for adults and children residing in mental institutions, U.S. District Judge George Singal ruled that the state had complied with the terms of a consent decree, and he cited *Flores* as legal precedent, stating that it “teaches that federal courts must take a flexible approach to such decrees to ensure that responsibility for discharging the State's obligations is returned promptly to the state and its officials' when circumstances warrant.”¹¹⁵

In these rationalities, the courts are to rule in some areas (via decrees based on audits of state practices) and the states are to rule in others (via policies, programs, and commensurate spending). The regime of practice or coherent organization of action here has a dual effect. In practice, whatever inevitably happens is based on the maneuverings of legislative bureaucracies, possibly but not likely under the force or recommendations

¹¹¹ Bishop, T. (2009, October 10). Bid to end foster care edict fails – city, state dispute extension of 1988 oversight agreement. *The Baltimore Sun*, p. 1A. Retrieved from www.newsbank.com

¹¹² Bykowicz, J. (2009, August 5). Foster care pact in doubt – State cites high court ruling in seeking end to federal oversight. *The Baltimore Sun*, p. 1A. Retrieved from www.newsbank.com

¹¹³ Jacobs, D. (2010, October 25). 4th Circuit poised to hear Baltimore foster-care case. *The Daily Record*. Retrieved from www.newsbank.com

¹¹⁴ Tamber, C. (2009, October 9). Fight over foster care in Baltimore heads back to court. *The Daily Record*. Retrieved from www.newsbank.com

¹¹⁵ Singal is cited in Haskell, M. (2010, March 20). U.S. judge ends Pineland decree maintaining compliance a key to decision. *Bangor Daily News*, p. 1. Retrieved from www.newsbank.com

of courts. Yet, “these regimes also include . . . the different ways in which these institutional practices can be thought, made into objects of knowledge, and made subject to problematizations” (Dean, 2010, p. 21). When federalism arises as a discursive concern, it draws attention to a glorious tension between the way things are and how they could be thought differently. For example, Singal’s statement above may feel taken-for-granted, yet, his utterance of state vs. court responsibility in itself indicates that this balance of power is a practice to defend rather than a truth about government that is natural or omnipotent. While Singal’s statement, as well as all of the rationalities in the bullet list above, provide sources of the elements that constitute our understanding about the limited roles of courts and the less limited roles of the state and its officials, as an argument or point of defense for the state, when articulated in public opinion documents, these discourses, as well as the *LaShawn* outcome, also draw attention to the potential instability of thinking about ELL students as forever in the hands of Arizona’s state legislators. *Flores* discourses are but one element that simultaneously naturalize and denaturalize state power.

So, not only can *Flores* be read as a blow to ELL funding, EEOA compliance, and institutional reform in the state of Arizona; *Flores* also is treated as a soothsayer of and precedent for future federalism cases, as evidenced in *LaShawn A.* and several other emerging cases. The discursive lessons embedded on the surface of these iterations is that program change is the equivalent of legal compliance and that courts should really have no power to propel the institutional reform of state agencies that fail to protect and educate children. Seth Cooper, Task Force director at ALEC, is cited in the public opinion archive, stating:

Under the separation of powers, appropriations are a legislative function . . . the job of courts [is] to uphold individual rights, but not to assume legislative powers to do so. Appropriations involve the balancing and prioritizing of competing interests and policy choices through the legislative process.¹¹⁶

A question remains unanswered—how are courts to uphold individual rights if their checks on and mandates for states have little realistic influence on the balance of competing interests? This entire discussion—about *Flores*, federalism, precedents and future cases—remains slightly removed from the educational floor upon which ELL students are actually being educated. Neoliberal mentalities of government, as glimpsed by the “competing interests” in Cooper’s statement, rise to shape the only way these discourses seem to imagine institutional reform—as one interest that competes with all other interests but that originates in a branch of government that has no players in the game. Davies and Bansel (2010) state that:

government responsibility for the well-being of the people is constituted as a degraded mentality, and competitive market mentalities are elevated and given monolithic status. The market becomes the singular discourse through which individual and institutional acceptability will be recognized (Bok, 2003; Marginson & Considine, 2000)” (p. 5).

Federalism is therefore an easy rhetorical out because the court is not recognized as a legitimate part of the competitive legislative marketplace of ideas. Within a neoliberal discursive reality, the court cannot compete for protection of ELL students from the

¹¹⁶ Supreme Court urged to uphold states’ powers of appropriations and education policymaking. (2008, October 7). *Targeted News Service*. Retrieved from www.lexisnexis.com

inside by inserting a reform addendum into the legislative agenda to see if it will compete. This is governmentality of ELLs by an ideology of liberalism—“not so much a substantive doctrine of how to govern . . . it is an art of governing that arises as a critique of excessive government—a search for a technology of government that can address the recurrent complaint that authorities are governing too much” (Rose, O’Malley, & Valverde, 2006, p. 84). The court is always already on the outside, threatening in theory but immobilized in kind. Again, this teaches us that ELL students will be made responsible for reducing their own risks by testing out of SEI, reclassifying, and going on to compete with non-ELLs in scores, graduation rates, and job placement without the support of well-funded English-language programs.

Money Doesn’t Matter

In the press, Superintendent Shawn A. McCollough referred to *Flores* as little more than “political volleyball”, but he follows this claim with another: “Nogales gets adequate funding from the state, because I don’t believe that funding is critical for the success of a student.”¹¹⁷ The prize of the political volleyball match seems to be state money, and yet the argument that money shouldn’t matter arises again and again. For example, Kelt Cooper, once Superintendent of NUSD, is quoted as stating: “more funding for ELL students isn’t necessarily a silver bullet . . . success really comes down to good governance, good administrative leadership and excellent teaching in the classroom.”¹¹⁸ Some public opinion voices provide balance to this perspective in the archive as well. Walsh (2009, April 13) cites a brief signed by educational scholars that

¹¹⁷ McCollough cited in Zehr, M. A. (2009, April 8). Roots of federal ELL case run deep. *Education Week*, 28(28), 1-11. Retrieved from www.ebscohost.com

¹¹⁸ Cooper cited in Mattix, A. (2007, April 18). Hangin with Mr. Cooper. *Goldwater Institute Today’s News*. www.goldwaterinstitute.org

contends that there is little evidence that increased funding is the answer and that judicial actions in school finance have not benefitted student performance. He then remarks that this brief “prompted a retort from 23 more left-leaning researchers . . . [stating] ‘A significant and growing body of empirical research . . . recognizes that, although funding alone will not guarantee students’ success, inadequate funding ensures their failure.’”¹¹⁹ While the “left-leaning” scholars mentioned here wrangle discourses that uphold empirical science as the way to know ELL students’ needs,¹²⁰ and while they still key into a success/failure dichotomy that inscribes the ELL student body as less than or as unable to perform without intervention, Walsh’s inclusion of their stance reifies ELL competition for funds as a major issue in *Flores*.

Chapter 5 of this text contained a section entitled “Robbing Peter to Pay Pedro”, which problematized apparent funds competitions on the program level for different categories of students. In the data explored therein, ELL compliance is conceptualized as that which squeezes funding from general education programs and from federal funds set aside for other purposes, like desegregation mandates or subsidized school lunch programs. Similar concerns arise in the public opinion archive. For example, Embrey (2009, March 25) cites Francisco M. Negron, Jr., General Counsel for the National School Boards Association (NSBA), who remarked: “School districts should not be forced to cut general education programs in order to provide meaningful education to

¹¹⁹ Walsh, M. (2009, April 13). Supreme Court preview: *Horne v. Flores*. *Education Week*. Retrieved from www.edweek.org

¹²⁰ The quest to know ELL students’ projected successes and failures on an empirical basis is, as discussed previously, a strategy that makes them visible and knowable as a category of people. As Gordon (1980) notes, “if certain knowledges of ‘Man’ are able to serve a technological function in the domination of people, this is not so much thanks to their capacity to establish a reign of ideological mystification as to their ability to define a certain field of empirical truth. And the history of their utilization in this field is perfectly compatible with their authentic espousal of the humanist values of self-emancipation, self-improvement and self-realization” (p. 237).

ELL students. That is not what the EEOA means by ‘appropriate action.’¹²¹ Likewise, Grado (2011, July 19) cites Lela Alston, of the Phoenix Union High School District governing board as follows: “Taking money away doesn’t seem to make sense to me, because we still have to do the job . . . So, it’s going to come from our other kids.”¹²² Likewise, in a statement that seems to raise issues of funding gaps, ELL needs, and immigrant welfare concerns simultaneously, Lowy (2009, April 19) reports that:

Attorneys for the Nogales families said that isn't enough since education studies show it costs around \$1,600 extra per pupil to meet the education needs of non-English speaking students. They said Nogales, on the Mexican border about 60 miles south of Tucson, now spends nearly that much, taking money away from other education programs to make up for the gap in state funding for non-English speaking students.¹²³

ELL students are herein governed through an economics of scarcity and limitation. Unbeknownst to them, children are being de-socialized through what seem to be unfillable gaps in funding. Through performance metrics, state politics “actively intervene in order to create the organizational and subjective conditions for entrepreneurship” (Rose, 2000, p. 144). As we will see in the examination of discourses of ELL “success” below, educational service provisions vanish as risk rationalities heighten, and responsabilized, self-sufficient subjects emerge to “fulfill their obligation to the nation/state by pursuing economic well-being for themselves and their family”

¹²¹ Cited in Embrey, L. (2009, March 25). NSBA asks Supreme Court to support funding for English language learners. *Targeted News Service*. Retrieved from www.lexisnexis.com

¹²² Cited in Grado, G. (2011, July 19). Time is out: Arizona school districts out of ELL compliance face losing money. *Arizona Capitol Times*. Retrieved from www.proquest.com

¹²³ Lowy, J. (2009, April 19). Court weighs state’s duty to English learners. *The Associated Press & Local Wire*. Retrieved from www.lexisnexis.com

(Davies & Bansel, 2007, p. 252) by improving themselves and sustaining their own entrepreneurial activities without needing to depend on the “nanny state.”

It is important to note that students and districts are not competing for diminishing funds in a vacuum. State educational needs are but one bucket the state legislature must fill with their limited, ever-protected resources and tax dollars. With that, students are also competing with all other state-funded services. L’ecuyer (2006, January 24), Napolitano’s spokeswoman, reports the governor’s response to HB 2064:

If this bill is allowed to go into law, it means no teacher pay raise, no ability for the state of Arizona to pay back its debts, no health insurance credit for small businesses, no money for border security. All it means is that the legislature, yet again, has failed to fully and fairly address the issue of English language instruction.¹²⁴

This bill sets proposed ELL funding against state interests as vast as teacher salaries, the state deficit, health insurance, and border security. Tom Horne specifically draws attention to federal failure to provide adequate resources to secure the border in public opinion discourses and uses federal cause of new ELL program needs as the reason the state should not have to provide the solution. One source cites Horne as stating: “The federal government created this problem. It should be paying the \$700 million a year basic cost of educating these students. Today’s order states that, even the small amount that the federal government is providing does not count and that the Arizona taxpayer must bear the entire burden. This is unjust.”¹²⁵ Finally, Tim Hogan criticizes legislative

¹²⁴ L’ecuyer, J. (2006, January 24). Gov. Napolitano calls ELL special session. *US State News*. Retrieved from www.lexisnexis.com

¹²⁵ Cited in Rezzonico, A. (2006, April 26). Statement by state superintendent Tom Horne regarding the

spending on legal representation to used to fight *Flores*: “Some people are more willing to spend money on high-priced lawyers than on kids.”¹²⁶

A paradox and a lesson abounds – money doesn’t matter when it comes to the education of ELL students, but it matters a lot when it comes to the programs and services that are in competition for the dollars that could potentially fund ELL programs. Money matters to taxpayers who would rather not pay more for their taxes. Money matters when it comes to border control infrastructure and to federal funding allocations across the board. Money also matters when it is time to pay for private services, like attorneys to represent Tom Horne in the *Flores* case.

Visions of Success and of Risk

Money also really, really matters when public opinion articulates the un/productive power of ELL students in the future. This future is marked by a success/risk dichotomy found in the public opinion archive. The discursive hopes for ELL students manifest across the public opinion (and legislative and judicial) rationalities disseminate a very specific and monofocal definition of success that delineates desired performance in Arizona’s political and social economy. The primary concern for ELL student risk is also economic in nature. ELL students and their families are regarded as active in making choices to invest (or fail to invest) in their own interests, and “the powers of the state are thus directed at empowering entrepreneurial subjects in their quest for self-expression, freedom and prosperity. Freedom, then, is an economics shaped by what the state desires, demands and enables” (Davies & Bansel, 2007, p. 249-250). As

trial court order in the *Flores* case. *Arizona Department of Education News*. Retrieved from www.azed.gov
¹²⁶ Cited in Montini, E. J. (2009, Jan 15). Kids still losers in English-learner suit. *Arizona Republic*. Retrieved from www.azcentral.com

the state desires to allocate few funds for ELL social welfare, it requires that ELLs take responsibility for their own language learning or at least fill the gaps that public education will not. If the state continually enables little financial support for ELL programming, then ELL students and their families are forced to be free to try to compete in the educational and careers marketplaces to prove risk assessments wrong. Citing Foucault, Joseph (2010) writes: “government ‘has to intervene on society so that competitive mechanisms can play a regulatory role at every moment.’ The aim is to produce a society subject to the dynamic of competition” (p. 43). The competition is an economic one, and so success is cast in terms of visions of future economic prosperity based on the ability for the student, and therefore the state, to compete.

Success.

In the data, when asked to comment on Judge Collins’ rulings on the *Flores* fines imposition, Governor Napolitano said, “I am pleased with the judge’s decision to allow the fines to be used solely for the education of ELL students. Our children need to be highly educated and able to read, write and speak in English, so they can become a strong and viable workforce for the future.”¹²⁷ Speaking in response to the same ruling, assistant House minority leader Linda Lopez responded: "It's easy to say, the Governor wins this round, you know, Legislature loses. I think that miscasts this problem . . . This problem is about how we get 160,000 Arizona children who don't speak English to be able to read, write and speak English and be academically successful and economically competitive."¹²⁸ Likewise, Tom Horne reports that when Collins’ ruling passed, that he

¹²⁷ Napolitano cited in L’ecuyer, J. (2006, January 26). Gov. Napolitano issues statement on judge’s ruling on Flores, fines. *US States News*. Retrieved from www.lexisnexis.com

¹²⁸ Small, J. (2006, April 28). A funding plan passed by a federal judge to teach students English violates

personally “encouraged ELL students to keep studying, because the decision might be reversed, and because they would need those skills to succeed in the economy.” Horne also argues that the judge’s order “would rob these students of the motivation to acquire skills that they would need to succeed in the current economy in which muscle power is no longer adequate, and academic skills are needed to obtain decent jobs.”¹²⁹

The public opinion data disseminates other, similar rationalities about ELL student success. Here are some other, related definitions of success found in the public opinion archive:

- One source quotes Miriam Flores, *Flores’s* mother, stating that ELL students won’t be obtain careers without the resources to learn English well.¹³⁰
- Mother Miriam Flores is quoted in another archive stating “I want the schools to be better for all the children, so more of them can go on to the university like Miriam.”¹³¹
- Still another source quotes mother Miriam Flores stating “I’m not going to consider this a victory until we see our children pursuing university careers.”¹³²
- A blogger reminisces on his high school experiences with: “I graduated from a high school where Hispanics were in the majority, but the ones who really succeeded all

federal law. *Arizona Capitol Times*. Retrieved from www.lexisnexis.com

¹²⁹ Nick, D. (2006, April 6). Horne announces U.S. Court of appeals stays judge’s order until completion of appeal. *Arizona Department of Education News*. Retrieved from www.azed.gov

¹³⁰ Trevizo, E. & Kossan, P. (2009, June 26). Mom at head of suit still worried about Arizona’s English learners. *Arizona Republic*. Retrieved from www.azcentral.com

¹³¹ Lewin, T. (2009, May 20). End is near in a fight on teaching of English. *The New York Times*, p. A16. Retrieved from www.lexisnexis.com

¹³² Lowy, J. (2009, April 19). Court weighs state’s duty to English learners. *The Associated Press & Local Wire*. Retrieved from www.lexisnexis.com

spoke good English. The students who went to the best colleges and universities spoke English that was indistinguishable from that spoken by the ‘Anglos.’”¹³³

- Another source writes of the “disastrous” consequences of bilingual, multicultural approaches to education, programs that were allegedly spearheaded by “white liberals” and “fully assimilated Hispanic activists” and that consigned Hispanic youngsters to “a second-class education in Spanish, which would not lead to college or economic success.”¹³⁴
- The same writer upholds Dr. Rosalie Pedalino Porter’s¹³⁵ arguments against bilingual and multicultural education and rhetorically asks, “Who better to understand that English is the gateway to opportunity in America?”¹³⁶
- Superintendent of the Antelope schools, Bob Klee, is cited stating “The ultimate damage is to these kids. If we want these kids to become successful, contributing members of our community, we’ve got to provide them with the tools that are going to do that.”¹³⁷

¹³³ Benson, M. (2009, June 28). Supreme Court goes with English immersion. *Prairie Pundit*. Retrieved from www.lexisnexis.com

¹³⁴ Chavez, L. (2011, May 12). English for immigrants. *Creators Syndicate*. Retrieved from www.lexisnexis.com

¹³⁵ Dr. Porter is a Hispanic woman and is a former Spanish Bilingual teacher and bilingual education director who became a Chairwoman of ProEnglish in 2011 and spoke against bilingual programming thereafter.

¹³⁶ Chavez, L. (2011, May 12). English for immigrants. *Creators Syndicate*. Retrieved from www.lexisnexis.com

¹³⁷ Krikorian, T. (2006, January 27). Yuma educators support governor’s vetoes. *Knight-Ridder Tribune Business News*. Retrieved from www.lexisnexis.com

- Assistant Principal of Nogales High School, Claudia Welden, is quoted saying: “I hate that they’re not getting other electives, and that they’re segregated from other kids for so much of the day, but without the English, they won’t be successful.”¹³⁸
- Another source states that “The success of these kids will help determine Arizona’s future.”¹³⁹
- Finally, arguing that student needs should be assessed on an individual basis and that individualized instruction is the key to improvement, a journalist remarks, “Every Arizona student deserves the opportunity to master English – especially since English language literacy is increasingly a passport to success.”¹⁴⁰

Success is ultimately equated with ELL students’ assumed ability to contribute to or participate in society in their adult lives as English-speaking, career-oriented subjects. Success also means the ability to compete, now and in the future. It is not enough to learn for the sake of learning—“it is necessary to compare oneself with others and to ask whether one has a better portfolio” (Simons, 2006, p. 537) in this case of scores, rates, and potential career opportunities. The ultimate goal—speaking “English that [is] indistinguishable from that spoken by the ‘Anglos’” (Benson, 2009, June 28)—is tethered to the capacity to engage in higher education and in jobs of the mind rather than of the body. Success is defined singularly on economic terms. These discourses display the value of the ELL child that would contribute to a prosperous and orderly Arizona.

¹³⁸ Lewin, T. (2009, May 20). End is near in a fight on teaching of English. *The New York Times*, p. A16. Retrieved from www.lexisnexis.com

¹³⁹ Plainly speaking; Our stand: Lousy plan to teach English deserves a veto. (2005, May 18). *Arizona Republic*, p. B.8. Retrieved from www.proquest.com

¹⁴⁰ Murray, V. (2005, July 10). Learning English involves more than money. *Arizona Daily Starr*. Retrieved from www.goldwaterinstitute.org

The last point in the bulleted list above also reflects a profiling of ELL students as a “marginalized” population that Castel (1991) describes as a organized, homogenized space composed of who individuals are encouraged to become within the larger social space, including appropriate or desired directions for those who cannot follow the most competitive paths. ELL students are not disciplined into becoming less risky so much as they are cast into desired roles of efficiency and productivity. Castel offers the role of “chief artisan” of the formation of this subject to “the administrator who plans out trajectories and sees to it that human profiles match up to them” (p. 296). The most effective placement systems scientifically evaluate the individual abilities of subjects to “forward-plan” their appropriate social trajectory (p. 296) and reduce their risk with the most practical, comfortable, individualized measures.

Risk.

Mitchell Dean’s (1998) “Risk, Calculable and Incalculable” opens with a brilliant epigraph, courtesy of the thought of François Ewald (1991). He writes:

Nothing is a risk in itself; there is no risk in reality. But on the other hand, anything can be a risk; it all depends on how one analyses the danger, considers the event. (Ewald 1991, cited in Dean, 1998, p. 199)

A risk is an invention of one significant factor on a field of endless possible other factors. At this moment, dropping out of public school, for example, is deemed an act of wasted education and portends a future of economic struggle. Going to college is regarded as future career insurance, especially in certain subjects. We don’t have to imagine the impact of ELL students’ future choices this way, but we do. If we will risk and believe risk and write risk into reality, there risk shall be. Beneath widely broadcast risk trends

and statistics, we know that dropping out and going to college can lead to all sorts of other futures and that economic risk is reversed when the dropout makes money while the college graduate struggles to pay off student loans or to get a job throughout the rest of his or her life. And while assumptions about risk order reality and constitute the meaning of good job / bad job, successful / unsuccessful, risk ratios cannot encapsulate every possible human experience or desire or put a cost on the exchange value of opting for one future over another. There is simply more to human life than fiscal calculations.

Dean (1998) continues that risk is a way to make reality calculable, events representable, and individuals governable via particular techniques that are imposed to yield ideal results. Risk is “a component of diverse forms of calculative rationality for governing the conduct of individuals, collectivities and populations” (p. 25). When we tell children that becoming fluent in English and getting good grades and test scores will increase their chances of going to college by a certain percent, which will increase their career opportunities by another percent, which will secure their future salaries by an desirable amount, and when we pass along that truth amongst ourselves, we govern ourselves and others with practices, techniques, and rationalities designed to reduce future risk by increasing these chances.

Accounting for Risk

Dean (1998) also argues that the “critique of risk will investigate the different modes of calculation of risk and the moral and political technologies within which such calculations are to be found . . . [as well as] the ‘regimes of government’ in which risk is imbricated and political programmes and social imaginaries that deploy risk and its techniques and draw their inspiration from it” (p. 25). As seen in every other archive set

examined and narrated in previous chapters, public opinion too is fraught with statistics that are meant to measure and broadcast ELL student risk. The archive features discourses that count the ELL population in order to highlight the vastness of “the problem” in different ways. Note too that one risky population, ELL students, is sometimes conflated with another, illegal immigrants.

So, first, the discourses assign some numbers to the population in order to actualize the size of the group or problem we have to “deal with”:

- “An estimated 140,000 students in Arizona aren’t fluent in English,”¹⁴¹ or “[t]here are an estimated 138,000 Arizona school children classified as deficient in English,”¹⁴² or “at the moment in Arizona there are 143,000 students registered in English's programs as second language.”¹⁴³
- “Arizona still must deal with a group of more than 100,000 children who are in our public schools but don’t have the English language skills they need. Most of these children are U.S. citizens and, even if they aren’t, it behooves out communities to ensure that each child can succeed in school because students don’t learn in isolation of each other.”¹⁴⁴
- “Plaintiff lawyers claim to represent an estimated 160,000 children of illegal immigrants attending Arizona public schools.”¹⁴⁵

¹⁴¹ \$8.8M for language instruction adequate. (2009, February 13). *The Associated Press & Local Wire*. Retrieved from www.lexisnexis.com

¹⁴² Pitzl, M. J. (2008, April 15). Governor declines to sign English-learner bill. *Arizona Republic*. Retrieved from www.azbilingualed.org

¹⁴³ Inmigrante impulse programas de ingles. (2010, January 4). *El Diario La Prensa*, p. 25. Retrieved from www.proquest.com

¹⁴⁴ Gassen, S. G. (2009, April 19). Does Arizona’s system serve? *Arizona Daily Star*. Retrieved from www.azstar.net

¹⁴⁵ High cost of illegal aliens. (2006, February 20). *Chattanooga Times Free Press*, p. B9. Retrieved from www.lexisnexis.com

The data also addresses the future danger of managing this population in some ways and not others (e.g. without appropriate funding, in segregated classroom environments):

- “With five million school-age children nationwide who do not speak proficient English — one in 10 of the nation’s students — the Supreme Court’s ruling could affect spending on English language learners in many states.”¹⁴⁶
- “ELL students’ efforts to learn English are further impeded by the fact that a high proportion of ELL K-12 students attend linguistically segregated schools.

Although ELL students represent a relatively small share of the total student population (approximately 10 percent), more than 53 percent of ELL students are concentrated in schools where more than 30 percent of their peers are also ELL. By contrast, only 4 percent of non-ELL students attend schools where more than 30 percent of the students are ELL.”¹⁴⁷

The data also includes population counts that warn of future population growth:

- “Nationally, growth in English-language learners jumped 57 percent between the 1995-96 and 2005-06 school years.”¹⁴⁸
- “45,000 students were inscribed then in English's programs as second language in the whole state. When the demand was begun in 1992, the number had increased to 75,000 students.”¹⁴⁹

¹⁴⁶ Lewin, T. (2009, May 20). End is near in a fight on teaching of English. *The New York Times*, p. A16. Retrieved from www.lexisnexis.com

¹⁴⁷ Trasvina, J. (2006, July 26). Border security and immigration issues. *CQ Congressional Testimony*. Retrieved from www.lexisnexis.com

¹⁴⁸ McNeil, M. (2009, January 8). Funding disparities squeezes ELL efforts: States vary widely in how much of their own money—if any—they allot to English0language-learner programs to supplement federal funding. *Education Week*, 28(17), 41. Retrieved from www.lexisnexis.com

¹⁴⁹ Inmigrante impulse programas de ingles. (2010, January 4). *El Diario La Prensa*, p. 25. Retrieved from www.proquest.com

- “In West Virginia, while the overall student population has been declining, the number of ELL students had almost doubled by the 2005-06 school year from the eight years prior, according to the national clearinghouse.”¹⁵⁰
- “A new study shows the number of children of illegal immigrants now attending K through 12 schools in the U.S. is growing. Those children now make up 6.8 percent of all students, up from 5.4 in 2003, and in five states, the number is now 10 percent or higher.”¹⁵¹
- “One of the demographers behind the new study told me this group of students will only continue to skyrocket. He estimates that next year alone, 300,000 children of illegal immigrants will enter the U.S. school system.”¹⁵²

The archive also provides warnings about ELL academic failure or their failure to learn English:

- “Among public school 4th graders in Arizona, only 37% of Hispanic students demonstrate basic or better literacy skills despite current ELL programs. Hardly an impressive success rate.”¹⁵³
- “What startled me was to see data on the test scores of many English-learners and to realize how poorly many of them are performing in school.”¹⁵⁴
- “In 2008, 77 percent of the English learners in Nogales failed the tests, as

¹⁵⁰ McNeil, M. (2009, January 8). Funding disparities squeezes ELL efforts: States vary widely in how much of their own money—if any—they allot to English0language-learner programs to supplement federal funding. *Education Week*, 28(17), 41. Retrieved from www.lexisnexis.com

¹⁵¹ Political headlines. (2009, April 20). Fox News Special Report with Bret Baier 6:00pm. *inewsnetwork*. Retrieved from www.lexisnexis.com

¹⁵² Political headlines. (2009, April 20). Fox News Special Report with Bret Baier 6:00pm. *inewsnetwork*. Retrieved from www.lexisnexis.com

¹⁵³ Ladner, M. (2006, January 25). Estudiantes de ELL Necesitan Opciones. *Goldwater Institute Today's News*. Retrieved from www.goldwaterinstitute.org

¹⁵⁴ At the center of ELL debate is a youngster named Flores. (2006, March 5). *Arizona Republic*. Retrieved from www.azbilingualed.org/news

compared to 32 percent statewide. Now I'm sure progress has been made, but it doesn't seem to me that you could say the objectives are achieved.”¹⁵⁵

- “The state’s reclassification rate of 29 percent undermines the rationale for the four-hour program.”¹⁵⁶

And finally, the archive shows that with appropriate interventions on the population, ideal objectives are achieved and student risk is therefore reduced:

- “Basic strategies lead to spectacular results in Nogales. I recently ran a study that identified all schools that had at least 200 English-language learners in 2003 to see what percentage of those students passed all three AIMS tests (in English) two years later, in 2005. The range was instructive: from a low of 9 percent, to a high of 84 percent. The 84 percent was achieved by Gallegos ‘Basic’ Elementary School in the Sunnyside Unified District in Tucson, a back-to-basic school with uniforms, significant homework, etc.”¹⁵⁷
- “In the 2006-07 school year, when students who were still learning English averaged 30 to 60 minutes of language instruction a day, 17,813 students passed the exam, or 12 percent of all English learners in the state. This past year [after 4-hour SEI was implemented], 29 percent of English learners passed the exam, most of them in kindergarten through sixth grade.”¹⁵⁸

¹⁵⁵ Siegel, R. (2009, April 20). Justices hear Arizona case on teaching English. *All Things Considered: National Public Radio*. Retrieved from www.lexisnexis.com

¹⁵⁶ Zehr, M. A. (2010, September 15). Ariz. ELL programs found to violate civil-rights law. *Education Week*, 30(3), 10-11. Retrieved from www.lexisnexis.com

¹⁵⁷ Horne, T. (2006, March 23). 7 Steps to better learning: Basic strategies lead to spectacular results in Nogales. *Arizona Republic*. Retrieved from www.azbilingualed.org

¹⁵⁸ Kossan, P. (2009, June 23). Twice as many advance out of language class. *Arizona Republic*, p. A.1. www.proquest.com

- “Arizona’s 143,000 English-learning students, or 13.2 percent of the state’s total enrollment, follow four-hour daily classes in English that were implemented a year ago under a 2006 law. The state Department of Education, which is overseen by Horne, announced Wednesday that 28.6 percent of the program’s students passed a proficiency test, up from 12 percent two years ago.”¹⁵⁹
- “Improvement in English-learner achievement in Arizona provides an essential lesson for school districts across the country. English learners number 5 million and constitute the fastest-growing group of students in U.S. public schools. English learners in Nogales and other districts learn English in an average of two years, not the three to six years that these children would have spent in bilingual classrooms.”¹⁶⁰
- “To show how dramatic the change was in the number of students passing the test, consider what happened in the Phoenix Union High School District. Two years ago, 638 students, or 14 percent, of the students who had been in English-learners programs passed the test. Last year, taking the new Stanford test, 1,143, or 26 percent, of English-learners passed.”¹⁶¹
- “State officials contend that the English programs are effective. They say most students leave the program within three years. They also note the rate of students

¹⁵⁹ Davenport, P. (2009, June 25). Court orders new look at Arizona’s English program. *The Associated Press*. Retrieved from www.lexisnexis.com

¹⁶⁰ Porter, R. (2013, May 2). Arizona gets English out of the courtroom and into the classroom: Long-running lawsuit over language instruction comes to an end. *The Washington Times*, p. B3. Retrieved from www.lexisnexis.com

¹⁶¹ Ryman, A. (2006, March 2). Teachers, state at odds over whether test should pass or fail. *Arizona Republic*, p. A12. Retrieved from www.proquest.com

who reclassify annually out of English-learner programs has risen over the years to 31 percent in 2012.”¹⁶²

- Brewer: ““Although I am very pleased to learn of the State of Arizona’s victory in the courtroom, I am even more pleased that we are winning this effort in the classroom. A recent report from the Arizona Department of Education reflects very positive progress with the state’s new models that include actual English language development – Arizona students that have gained proficiency in English have more than doubled over the last two years to nearly 40,000 students.”¹⁶³
- “The rates of reclassification to English proficiency have improved dramatically, and the statewide average of 31 percent for 2009 and 2010 is among the nation’s highest (although states use different tests and standards). But the program’s rigid structure seems to be proving particularly problematic for students who do not reach the program’s goal of proficiency in their first year.”¹⁶⁴

These rationalities of rule target ELLs as a population that requires intervention and risk management. The public opinion documents cited above have extracted calculations that speak of ELL risk in order to raise the educative and preventative needs they carry as a population and to assess how well those needs are being serviced from above by state policy and from below in implementation, as evidenced by metrics of performance and reclassification.

¹⁶² Ryman, A. (2013, March 29). Judge upholds Arizona program for English language learner classes. *Arizona Central*. Retrieved from www.azcentral.com

¹⁶³ Senseman, P. (2009, June 25). U.S. Supreme Court rules on English language learner case, *Horne v. Flores*. *State of Arizona Press Release*. Retrieved from www.azleg.gov

¹⁶⁴ Soifer, D. (2012, June 3). In Arizona, Segregation for the children? *State News Service*. Retrieved from www.lexisnexis.com

In more qualitative ELL risk assessments that add corresponding flesh to the statistical bones bulleted above, additional public opinion archives state that, for example, supporters of the “English for the Children” ballot initiative were concerned with low reclassification rates because, “a student entering Arizona public schools in kindergarten with poor English skills was seen as more likely to drop out of school than to learn English.”¹⁶⁵ The author continues, “There can hardly be a student population more crucial to the state’s future, educationally or economically. It makes sense that the programs to bring them to English proficiency continue to improve accordingly.”¹⁶⁶ Another statement rues a future of non-English proficient people based on unsuccessful interventions of the past:

a majority of English learners in U.S. schools are not immigrants, but second or even third generation Americans. Until improving these poor success rates becomes an educational priority, such cycles of linguistic isolation will continue to imperil the real educational and economic opportunities for this crucial segment of our nation’s population.¹⁶⁷

In an argument launched against English-only and Official English policies, interim President and General Counsel of the Mexican American Legal Defense and Education Fund (MALDEF), John Trasviña states that:

learning English is critical to participating in, contributing to and succeeding in American society . . . such laws carry with them the

¹⁶⁵ Soifer, D. (2012, June 3). In Arizona, Segregation for the children? *State News Service*. Retrieved from www.lexisnexis.com

¹⁶⁶ Soifer, D. (2012, June 3). In Arizona, Segregation for the children? *State News Service*. Retrieved from www.lexisnexis.com

¹⁶⁷ Supreme court’s Arizona ruling emphasizes results. (2009, June 26). *State News Service*. Retrieved from www.lexisnexis.com

potential to jeopardize the health, safety, and well-being not only of English Language Learners (ELLs) but of our communities as a whole . . . Such laws fuel divisiveness and discrimination, and leave all of us more vulnerable to danger.¹⁶⁸

And he concludes by remarking that English-only proposals threaten ELLs, erode public health and safety while all the while “they do nothing to advance the important goal of English proficiency for all ELLs – a goal that they themselves view as paramount to success and full participation in American society,” as well as their full contribution to “America’s economic social fabric.”¹⁶⁹

Arguments for intervention are based on actuarial assumptions about the productive power of the growing population of ELL students if they do not gain “needed” English skills. Like mandatory sentencing guidelines, an actuarial technique that imprisons people on the basis of their statistical likelihood of committing more crime (Castel, 1991; Defert, 1991; Ewald, 1991; Howe, 2002; O’Malley, 1996), actuarial techniques positioned around ELL students—home language surveys, language examinations, pull-out programs, SEI, reclassification, competitive and comparative testing—follows the logic of statistics and risk and hinges on insecurities that authorize appropriate actions. In order to discursively bridge the risk~productivity gap, ELLs are sent, for a short while, to participate in normalizing, English-training methods that will actualize their performance in schools to ensure their participation in society.

¹⁶⁸ Trasvina, J. (2006, July 26). Border security and immigration issues. *CQ Congressional Testimony*. Retrieved from www.lexisnexis.com

¹⁶⁹ Trasvina, J. (2006, July 26). Border security and immigration issues. *CQ Congressional Testimony*. Retrieved from www.lexisnexis.com

All ELL students in the population counts outlined above are deemed risky, but some are more so than others. Statistically, the ELL population as a whole benefits discursively from association with enhanced program interventions, yet each ELL student is free to score well or reclassify on his or her own. As Dean (1998) writes, “In insurance, risk is a characteristic of the population, a form of regularity that no one can escape but which each individual bears differently. Individuals are thus both members of the population and distinguished by the probability of risk that is their share” (Dean, 1998, p. 30). By identifying ELLs as a risky population and sharing the burden of their risk with the population at large by discussing the importance and charting the successes of certain programmatic interventions, in this case one example is the technology of 4-hour SEI, the data presents a social solution to the capitalist need for productive, working ELLs. In discourses discussed below, I narrate how ELL students are subject to discursive “technologies of agency” (Dean, 1998, p. 36) that discursively aim to transform their status from risky to contributing and productive. The insurance of interventions is poised to provide a “technical realization of social rights” (Dean, 1998, p. 31) in a field in which English abilities are deemed the insecure parts of the insurance calculus. It does not matter, really, if the programs “fail” to teach English because the governmental effects of knowing ELLs remain potent—the problematic ELL population is counted and measured, their risk is assumed, and interventions are placed and replaced as needed.

Furthermore, risk management is also imparted by way of a multiple responsabilization that renders ELL students and their families capable of making choices to minimize their own risk. Discursively, electing to learn English and reclassify is what the rational ELL student can, wants to, and will do. Dean (1998) reminds that it is

important to realize that risk assessment and insurance policies are not just about marking a population by its risks and intervening from above accordingly. We must also consider “how groups of various kinds have come to understand themselves, their future, and their needs in terms of risks with the assistance of a range of specialists and tutors in the identification and management of risk” (p. 37). If society can rely on the proliferation of risk rationalities that surround being classified as ELL as an iron in the fire that tempers the prudent English-speaking subject, Arizona can govern in English language supremacy in ways that are deeper, easier, and more lasting than pro-English educational policy carried by the state alone. ELL students will simply govern themselves.

Responsibility

Governmentality studies are invested in deciphering how subjects are authorized to conduct thought and action. Multiple parties are made discursively responsible for the conduct of ELL conduct. ELLs are governed, for example, by way of the state budgets that are allocated to shape their programs. They are governed too by the audits that measure their learning and determine their classifications. They are also governed by their own senses of responsibility and in their beliefs in what they are supposed to have, to be, and to do in school and in the world beyond it.

Pat O’Malley (1992, 2009) developed an influential analysis of a new prudentialism, a blending of risk rationalities and rationalities of rule through which we can see the “responsibilization” of subjects according to their own risks by way of self-monitoring to render the choices to lead a certain kind of life, or “a construct of governance that removes the key conception of regulating individuals by collectivist risk management, and throws back upon the individual the responsibility for managing their

own risk” (O’Malley, 1992, p. 261; cited in Hannah-Moffat, 2001, p. 172). O’Malley argues that we cannot understand the shift of risk from a social problem to an individual problem without paying attention to the rise of neoliberal rationalities of rule. He draws from examples in crime control policy and practice to illustrate an emphasis on the individual responsibility of offenders, “truth in sentencing” models, self-reflective methods to foster the devolution of crime prevention, and rationalities of cost effectiveness and consumer protections to advance risk-based prevention. More recently, measures like “anti-social behavior orders” and Megan’s Laws, which collect and disseminate data on sex offenders in the U.S., reflect a continued relationship between individual responsibility and risk-based punitive interventions.

As for *Flores* data, discourses that take issue with responsibility for ELL student risk can be illuminated through tenants of neoliberalism as well. Rhetorics of responsibility are manifold in that they challenge the potential responsibility of the state while reinforcing the responsibility of the self. As Davies and Bansel (2007) remark,

The emergence of neoliberal states has been characterized by the transformation of the administrative state, one previously responsible for human well-being, as well as for the economy, into a state that gives power to global corporations and installs apparatuses and knowledges through which people are reconfigured as productive economic entrepreneurs of their own lives. (p. 248)

Public opinion discourses help to reconfigure ELL subjects as economic entrepreneurs. The state cannot afford to sponsor much of their social insurance while they are in school, and so they must learn to survive first as ELL students and later as productive workers.

There are multiple layers to the theme of responsibility in the data. The public opinion archive raises questions like: what is the state's responsibility?, only to provide the inevitable answer—very little. It is not the state but each individual student that is made morally responsible for exercising the rational freedom to work hard, learn English, and choose the correct mode of productivity that is aligned with success. Speaking fluent English and actively competing in capitalist U.S. society is discursively naturalized and curiously couched in rhetorics of desire and choice.

State responsibility.

Of interest in this discussion is “how practices of individuality become invested by relations of power such that individuals and families come to enact socially prescribed duties as their own concern” (Howe, 2002, p. 55). Citing data on ELL student failure, a source in the archive remarks: “One report said that half the students were getting no English instruction and that two-thirds weren't making any progress at all. But isn't that their families' problem? Why should the rest of us care?”¹⁷⁰ The tone and content of this remark suggests that ELL students are not, nor should they be, anyone's burden, including “us”, the state. Another source reported that the education of ELL students should not be made a problem for “Scottsdalians” (or people who live in Scottsdale, Arizona) because there are few Spanish-speaking students in the Scottsdale Unified School District. The writer complains that “all Scottsdalians will pay for U.S. District judge Raner Collins deciding that Arizona doesn't spend enough to teach English to Spanish-speaking students and to otherwise help them succeed in school.”¹⁷¹ The writer

¹⁷⁰ Montini, E. J. (2009, Jan 15). Kids still losers in English-learner suit. *Arizona Republic*. Retrieved from www.azcentral.com

¹⁷¹ Cantoni, C. J. (2006, February 1). A nutty judicial diktat. *Arizona Republic*, p. 13. Retrieved from

continues: “if Juan crosses the border and enters first grade in a district school, he will receive an education benefit of \$156,000 over the next 12 years, although his parents will contribute little or nothing toward the cost of that education.”¹⁷²

The *Flores* case at large raises the issue of state responsibility in the realm of public education for all students. One source suggests that *Flores* provides a lesson in “what responsibility Arizona has toward educating English-language learners,” while keeping in mind that “ELL students include both students born here, who are citizens, and those here illegally.”¹⁷³ If ELL student services indeed “symbolize the immigration debate on the state level,”¹⁷⁴ then readers may conclude, as these writers do, that the state is not responsible for ELL education at all. As ELLs are often conflated with the children of undocumented people, they are not regarded as members of the state and therefore are not the state’s problem. Even if ELLs are counted as part of “us”, the data makes clear that the state has shirked acting as the responsible party, and so we need to seek alternatives.

The National School Board Association’s Executive Director Anne L. Bryant is quoted as saying: “It’s critical that states not shirk their responsibilities to fund programs mandated by law . . . This case emphasizes the need to provide all of our students, including English Language Learners, with a high quality public education.”¹⁷⁵ Another source suggests that it is not the state but rather the school districts that are ultimately

www.proquest.com

¹⁷² Cantoni, C. J. (2006, February 1). A nutty judicial diktat. *Arizona Republic*, p. 13. Retrieved from www.proquest.com

¹⁷³ Wells, D. No joking: Schools need to explore immigration issues. *Arizona Republic*, p. 42. Retrieved from www.proquest.com

¹⁷⁴ Wells, D. No joking: Schools need to explore immigration issues. *Arizona Republic*, p. 42. Retrieved from www.proquest.com

¹⁷⁵ Quoted in Embrey, L. (2009, March 25). NSBA asks Supreme Court to support funding for English language learners. *Targeted News Service*. Retrieved from www.lexisnexis.com

made responsible for ELL education through their compliance with state policy. And yet, the policy is difficult to carry out with too little funding. Tim Hogan is quoted suggesting such: "There are other ways to get at sanctioning a school district or individual officials responsible for non-compliance. I don't know why you punish all kids within the school district, which is what you're doing by withholding funds."¹⁷⁶ But the ability to be made responsible ultimately hinges on who holds the purse, an issue that Hogan articulates in a subsequent statement: "The overall significance here is whether states are going to be held responsible for ensuring that school districts have resources to provide for English language learner programs."¹⁷⁷ The 2009 *Flores* ruling suggests that they are not.

Additional artifacts discuss state responsibility in terms of funding, as well as their responsibility with regard to the allocation of federal funds. For example, one source quotes attorney Jose Cardenas:

States are prohibited from committing federal funds to pay for state responsibilities . . . It would be the height of irresponsibility for the state to ignore the fact that this bill would violate federal law . . . School districts will be forced to make some very tough decisions on whether they violate federal law or underfund English-language-learner programs.¹⁷⁸

Once again, responsibility trickles down from the state to the district which, as we've seen in other data, is expected to allocate extremely limited funds to competing programs while competing with other districts for their future fiscal survival. Education in this

¹⁷⁶ Grado, G. (2011, July 19). Time is out: Arizona school districts out of ELL compliance face losing money. *Arizona Capitol Times*. Retrieved from www.proquest.com

¹⁷⁷ Lowy, J. (2009, April 19). Court weighs state's duty to English learners. *The Associated Press & Local Wire*. Retrieved from www.lexisnexis.com

¹⁷⁸ Quoted in Sherwood, R. (2006, April 4). English-learner law challenged. *Arizona Republic*, p. B.1. Retrieved from www.proquest.com

system is not deemed a obvious part of social or collective well-being; it is part of a marketplace to be managed, insured, held accountable, measured according to performance goals, and rewarded or punished. The “tough decisions” render public schools vulnerable to decentralization and privatization. The fiscal abandonment of the public school is part of a larger neoliberal strategy that moves children’s schooling from the realm of state socialism to a capitalist social formation (Jessop, 2002).

Inevitably, one discursive reality is that the state does not seem to be responsible for anything or to anyone except the marketplace of tax dollars and competing political interests that may have less interest in ELL educational funding than other uses of finances. One source captures this as follows: “Unbelievably, the state has been served with several court orders from federal judges setting deadlines for resolution. Those orders have been largely ignored with no consequence to the state or to the legislative leaders responsible . . .”¹⁷⁹ That is, unless we count the interests of wealthy constituents, a group who many public opinion documents note would have been the primary beneficiaries of tax cuts for private school contributions if the governor had signed HB 2718, SB 1198, or HB 2002 in the 2006 legislative session. In this vein, another source quotes John Wright, President of the Arizona Education Association, saying: “funding meaningful and successful ELL programs will be difficult for Arizona this year . . . Irresponsible tax cuts for big business and top income earners in Arizona have cost the state funding that would offset current inadequacies in Arizona’s current investment in K-12 students.”¹⁸⁰ And yet another source states: “This bill puts the interests of corporate

¹⁷⁹ Our opinion: Mediation in Flores case is unlikely to resolve fracas. (2007, December 19). *Tucson Citizen*. Retrieved from www.tucsoncitizen.com

¹⁸⁰ Flores order. (2007, October 10). *Arizona Education Association*. Retrieved from www.arizonaea.org

taxpayers above the well-being of Arizona's children and threatens to cost Arizona taxpayers millions in compliance fines for the court order of *Flores v. The State of Arizona*.¹⁸¹ As we saw with the federalism narrative at the beginning of this chapter's analysis, and as we learned when the Supreme Court overturned the *Flores* consent decree, neoliberal solutions rein supreme and social welfare loses big time. The state, like the court, is poised as potentially responsible for ELL students in theory, but in reality, the discursive tensions in this archive reflect a social restructuring that has already dismissed state responsibility for ELL children in favor of private initiatives, corporate taxpayers, district competition, and promoting market enterprise by liberating ELLs to be responsible for themselves.

Responsible for the Self

The final theme discussed in this chapter brings us full circle to *Powers of Freedom*. Rose (2000) articulates the relationship between advanced liberalism and governmentality as such: "To govern better, the state must govern less; to optimize the economy, one must govern through the entrepreneurship of autonomous actors—individuals and families, firms and corporations. Once responsabilized and entrepreneurialized, they would govern themselves within a state-secured framework of law and order" (p. 139). Through a delicate balance of available information on rational judgments in light of potential risks, desirable and undesirable ways to order one's conduct, increasing choices in the free market, and the liberty to choose, social subjects transform into economic actors.

¹⁸¹ Diverde, P. (2006, February 8). Governor is right. *Arizona Republic*, p. 22. Retrieved from www.proquest.com

Discourses of student responsibility often materialized alongside rhetoric of the ability to compete and “contributions” to and “participation” in “society.” As seen in the other two core archives drawn from in this work, there is an interest in shaping the ELL student into a competitive subject. Tom Horne argues that four hours of SEI will “effect results” in ways that “enables them [ELLs] to compete with other students on an equal basis.”¹⁸² The author of this source raises a question that challenges the effects of SEI, but in the same vein as Horne’s concerns: “Will the newly proficient students have the language skills and academic knowledge to catch up and keep up with their peers in math, science and history? The answer won’t emerge until today’s elementary students reach middle school, when one-time English learners historically began to let their average AIMS and reading scores slip.”¹⁸³ Those who argue in favor of performance-based funding are essentially arguing for everyone to compete for financial rewards. One version of this argument is articulated as follows:

The solution we need lies in performance-based funding: a system of integrated education policies and funding mechanisms designed to drive and reward better performance by teachers, administrators, students, and other involved in the education process. Such a system will ensure more effective use of education dollars through better decision making, will eliminate perverse incentives that reward mediocrity or failure, and most

¹⁸² Kossan, P. (2009, June 23). Twice as many advance out of language class. *Arizona Republic*, p. A.1. www.proquest.com

¹⁸³ Kossan, P. (2009, June 23). Twice as many advance out of language class. *Arizona Republic*, p. A.1. www.proquest.com

important, energize and will motivate those involved in the education of our young people.¹⁸⁴

This same author argues that:

The path to such reform will not be an easy one. While elements such as state standards, accountability measures, and value added measures are gaining acceptance, other important components, especially performance-based pay and increased choice options, are opposed by powerful forces—such as the politically connected teachers unions—with vested interests in the current system.¹⁸⁵

The good news is, surveys are gathering data on whether or not the population wants to contribute. Another source reports:

In reality, Latinos, both native-born and newly-arrived, embrace English and place tremendous importance and value upon attaining English-language fluency. By wide margins, Latinos believe that learning English is essential for participation and success in American society. A recent survey by the Pew Hispanic Center found that an overwhelming majority of Latinos – 92 percent – believes that teaching English to the children of immigrants is very important . . .¹⁸⁶

ELL students are positioned here as having a kernel or natural desire to engage in self-investment but not necessarily the capital to start. The state has to make an initial contract

¹⁸⁴ Offley, C. (2009, July 2). New education next forum: Is there a connection between school spending and student achievement? Should courts decide? *Business Wire*. Retrieved from www.lexisnexis.com

¹⁸⁵ Offley, C. (2009, July 2). New education next forum: Is there a connection between school spending and student achievement? Should courts decide? *Business Wire*. Retrieved from www.lexisnexis.com

¹⁸⁶ Trasvina, J. (2006, July 26). Border security and immigration issues. *CQ Congressional Testimony*. Retrieved from www.lexisnexis.com

with those incapable or unable to start self-investing on their own. English language acquisition is assumed to function as a productive student capacity . . . a generative burst of productive capital that makes for a more productive society.

The argument follows that poor instruction denies ELL children the tools they need to “gain the language skills necessary to participate fully in the American economy and society.”¹⁸⁷ John Huppenthal stated that the Arizona Department of Education is “committed to ensure that all non-English speaking students learn English as quickly as possible so they can participate fully in their education.”¹⁸⁸ As discussed above, according to Janet Napolitano, Arizona’s ELL children “need to be highly educated and able to read, write and speak in English, so they can become a strong and viable workforce for the future.”¹⁸⁹

With a slightly different focus, John Wright, President of the Arizona Education Association remarked that “Arizona’s students should be honored for their differences in culture, history, language, religion, physical condition, ethnicity, and learning styles. These differences enrich our society.”¹⁹⁰ This harkens to Justice Breyer’s dissenting opinion in the Supreme Court case, which is circulated in public opinion discourses. He wrote:

¹⁸⁷ Trasvina, J. (2006, July 26). Border security and immigration issues. *CQ Congressional Testimony*. Retrieved from www.lexisnexis.com

¹⁸⁸ Marshall, M. (2013, March 29). Court rules in favor of Superintendent in *Flores* case. Arizona Department of Education Office of Superintendent of Public Instruction John Huppenthal. Retrieved from <http://www.azed.gov/public-relations/files/2013/04/press-release-court-rules-in-favor-of-superintendent-in-flores-case.pdf>

¹⁸⁹ Quoted in L’ecuyer, J. (2006, January 26). Gov. Napolitano issues statement on judge’s ruling on Flores, fines. *US States News*. Retrieved from www.lexisnexis.com

¹⁹⁰ Quoted in Flores order. (2007, October 10). *Arizona Education Association*. Retrieved from www.arizonaaea.org

‘In a Nation where nearly 47 million people (18% of the population) speak a language other than English at home . . . it is important to ensure that those children, without losing the cultural heritage embodied in the language of their birth, nonetheless receive the English language tools they need to participate in a society where that second language ‘serves as the fundamental medium of social interaction’ and democratic participation . . . In that way linguistic diversity can complement and support, rather than undermine, our democratic institutions . . . I fear that the Court’s decision will increase the difficulty of overcoming barriers that threaten to divide us.’¹⁹¹

Another source reported Breyer’s further remarks that the court’s decision “risks denying schoolchildren the English-language instruction necessary to overcome language barriers that impede their equal participation.”¹⁹² Public opinion socializes ELL security by focusing on the importance of making them able to participate. As we’ve seen, this capacity will not be authorized by the states or the court—such would only drain state resources, denaturalize state authority, and make ELLs less responsible and more dependent. ELLs must seek choices to insure their own security. They must maximize a productivity that instills equal participation and compliments to rather than the antithesis of democratic participation.

¹⁹¹ Chen, M. (2009, June 25). *Horne v. Flores*: Lessons in equality. *RaceWire: The Colorlines Blog*. Retrieved from www.racewire.org

¹⁹² Davenport, P. (2009, June 25). Court orders new look at Arizona’s English program. *The Associated Press*. Retrieved from www.lexisnexis.com

Conclusions

Differences in language are cast as a problematic sector in U.S. schools and society. *Flores* outcomes and discourses warn that in Arizona, the economic risks inherent in this problem population are dangerous for society yet should and will be overlooked by state security policies. Federalism discourses suggest that it is up to the Arizona legislature, and not the federal courts, to apply additional funds to population correction as it sees fit. Those who can overcome their language barriers and deficiencies through outside efforts are encouraged to do so in order to protect themselves against any threat to their future freedom from “all the psychologically deleterious and financially inadequate consequences of benefit culture” (Rose, 2000, p. 159) and to “reclassify” as individuals with that are prepared to insure against their own risks. Once risk of unemployment due to language deficiency is reduced, the ELL’s life is to become “a continuous economic capitalization of the self” (p. 161).

Public opinion discourses solicit ELL students as potential allies of Arizona’s economic success while simultaneously suggesting that they are not Arizona’s economic responsibility. Instead, they are encouraged to “‘capitalize’ themselves, to invest in the management, presentation, promotion and enhancement of their own economic capital as a capacity of their selves and as a lifelong project” (p. 162). Should “foreign” language skills present themselves as congruent with the cradle to grave training required to continually capitalize in the economy and compete with other knowledge workers, then the importance of the SEI of their youth might be reversed. But that’s their problem later. For now, their duty is to focus on the language of their economic future rather than that of their cultural past.

ELL students are governed according to an ethics of the subject that is economic, productive, and that rationalizes good use of the English language as constitutive of subject responsibility. The discourses examined here regard English language skills as an obvious requirement to compete in Arizona schools and therefore in the state and U.S. economy. Each discourse featured throughout this study reflects tenants of the constitution of advanced liberal subjects—ELLs are children who should be activated by their own motivation to become responsible and successful, because no one is responsible for them and their success is otherwise not guaranteed. In order to fulfill themselves, ELLs are therefore made free to maximize their life choices through enterprising theoretically English only state, which means learning English during or after school in order to partake.

While the ELL subject is framed as in need of English skills to be accumulated without the support of the state, the rationalities of rule examined through these discourses are not monocentric, nor are they static or absolute. As Rose (2000) suggests, “political discourse does not have the systemic and closed character of disciplined knowledges” (p. 275). By surveying *Flores* artifacts from disparate realms—educational scholarship, legislative debates, judicial hearings, and public opinion discourses—I’ve tried to showcase a diversity of rationalizing voices while connecting the crux of their overlapping “truths”. But these samples are means to a discussion and not the end of the conversation. While the *Flores* verdict is out, at least for the time being, the rationalities of rule that constitute ELLs are forever in process. Further, a perpetual reframing, reconstitution, and reimagining of alternatives is possible. Just as ELL rationalities and practices were thought into the reality in which they now play out in discourses,

classroom practices, audits, policies, and the like, different rationalities are always already on the horizon. Perhaps the best hope for this text is that it will serve as a glance at what was thought in order to dream that we could think anew.

In the conclusion of *Governmentality: Power and Rule in Modern Society*, Mitchell Dean (2010) predicts that:

Neo-liberalism is naïve because it imagines that it is no longer necessary to provide solutions to social questions, that they too will be dissolved as well as the division between the private spheres of the market and the sphere of public authority. Advanced liberal democracies will have to face up to the problems of the forms of inequality and poverty generated by these contrived markets and the absence of those capacities required to exercise choice within these markets by certain sectors of the population. (p. 259-260)

To apply this claim to my work—if we read the rationalities of rule in *Flores* merely as neoliberal attempts to slice the educational welfare of ELL students while attempting to reform subject, program, and district conduct to conduct itself as more efficient, prudent, and competitive, Dean argues that we can rest assured that there will be collateral consequences, and, ultimately, that neoliberal rationalities will not hold. The social is not dead but rather metamorphosing and reconfiguring in response to some of the neoliberal and advanced liberal rationalities and practices narrated in this work. Dean argues that the next moves we see, reinventions of the social rather than its burial, will underscore commitments between people, their communities, and assorted associations and groups. *If* we fail to operationalize the capacities of the new social in a form of reflexive

government, Dean warns that potentially dangerous alternatives *to* social government will emerge. Anything is possible. We won't know until we know, and we can never really know.

Anti-neoliberal counterattacks are always already occurring in both theoretical and material formations. In a postscript to the second edition of the text, which was published eleven years after the first, Dean (2010) discusses the critical treatment of neoliberal governance as a “bogeyman for those who saw it as the ideology of the dismantling of social protection and the free rein of markets” (p. 261). He claims that financial crises in the early 21st century ushered along anti-neoliberal practices that signal thoughts and deeds that signify that perhaps the *government was not directly involved enough* in overseeing the institutions that steered the financial mothership into the ground. These shifts, he claims, should continually activate the methodological import of an analytics of government, as “much intelligibility can be derived from its analyses of specific programmes, rationalities, technologies, identities and regimes of government with the provisos . . .” (p. 262). Governmentality is at work whether or not “the social” or state intervention in the welfare of its people is alive and well.

Insight into governing through freedom, economic analyses, and an eye on the art of government as a balancing act—in these analytical strategies, it becomes clear that the goal is not to define or categorize a form of government to see how it plays out. Dean writes “governmentality studies will have plenty to examine even if ‘neo-liberalism’ has moved on from an art of government to being the focus of critique, and therefore a kind of nub of ‘problematizations’” (p. 264). New techniques will be born and old techniques will be revived, regardless of how we categorize them or, importantly, regard them as

good or bad for the social welfare of the people. Such value judgments are a lark. Instead, the task of an analytics of government is to remain always on the lookout for the techniques and rationalities of governing—liberal, neoliberal, advanced liberal, or none of the above—and narrate their strategic operation. In this study, I’ve attempted to do just that by examining discursive rationalities of rule that take shape in multiple spaces and foster to shape ELLs as subjects of knowledge and government. With Dean’s words, I’d like to encourage that others take on the methodological task of governmental analytics, as there is much to be discovered, including the limits of what we are able to know and what we might be, dare I see free, to do with these limits.

Chapter 7

CONCLUSIONS

A Hall of Mirrors

The District Court's (2013) final ruling on *Flores* is on the books, Arizona's ELL Task Force has disbanded (per HB 2425, 2013), and it seems to be business-as-usual in the state, the courts, and the press. Perhaps the "Imagine Learning" contract (discussed in Chapter 4) will pass and Arizona will try its hand at educating ELLs with computer software rather than with teachers. Maybe someday SEI practices will fall out of fashion and bilingual classroom practices will rise again. Maybe ELL programs will be granted funding that is commensurate with district needs. The long battle that commenced with *Flores* and plays out in intersecting discourses will close and different moments of problematization will emerge. The rationalities of rule explored in this text will morph and shift across time and space, ceaselessly seeking opportunities to shape us by helping us make sense of how we should be shaping ourselves and others.

That is, *Flores*' potential or seeming closure with the District Court decision does not mean that the discursive war surrounding *Flores* is over. So long as the ELL student is constituted as a subject of knowledge and subjected to productive technologies as a certain kind of subject, there's no beginning and no real end to *Flores*. The case is but a drop of rain in the monsoon, a single battle in discursive wars that are waged to govern us all through rationalities and their corresponding practices. The "ensemble formed by the institutions, procedures, analyses and reflections, the calculations and tactics" (Foucault, 1978/1991, p. 102) that permits the exercise of governmental rationalities of rule on ELLs as a target population remains at work. The *Flores* case is merely a touchstone for

some governmental rationalities of rule that subjugates ELLs (and *all* of us) “by defining for them the legitimate answers to questions about what counts as a person” (Hoy, 2005, p. 88). The discursive fable that I’ve told in this text has encouraged the ELL subject-as-constituted to appear and cast a shadow so we can shine our own lights on it to change its contours.

The consequences of this shadowy appearance may feel worse than they have to be. I cannot argue that there is not something unfavorable, limited, or peculiar about the desired creation of competitive, productive, self-sufficient, prudent, career-bound, economically motivated subjects out of the post-ELL student. Indeed, the entrepreneurial subject abounds as the hopeful heroic redeemer of the state in the story that I tell. This subject is forced to be free to capitalize on knowledge and productivity in the work force. The English language is poised as a commodity to acquire in order to achieve a responsible and successful future life. The competition for improved English skills, the test scores to prove it, and the future success promised by these scores fosters inequality and serves as a formal mechanism of “equal inequality” (Donzelot, 2009, p. 24) in neoliberal states that promote “anything that shares the spirit of the enterprise and relies on men as entrepreneurs of economic activities as well as of themselves . . . as members of a collective regarded like an enterprise of co-owners taking care of maintaining and increasing the value of their goods” (Donzelot, 2009, p. 25). Therein, social policy to enhance ELL abilities and offset performance gaps amidst these rationalities will not cure social inequalities; they merely bolster the rationalities of competition.

What does the redundancy of this discursive subject formation disqualify or omit? As we answer this question, the silences apparent in this book may become overwhelmed

with sound. I've endured an adventure through discursive labyrinths and have attempted to put them to work to share an alternative story about what we seem to hold to be true without telling the truth about who *Flores* subjects were or are or should become. It is still my hope that this work has taken some initial steps to disturb what Dr. David Lee Carlson eloquently referred to as a chamber of echoes surrounding the ELL subject—a discursive space in which we may be bouncing the same ideas and beliefs around in a stream of ceaseless repetition (D. L. Carlson, personal communication, October 15, 2014). Walking through this chamber, I've wondered how we develop ears to hear much else. And so, something that this work proposes is another figurative sense through which to explore our subjectivity. I believe that governmentality studies implore us to move through the echo chamber and recast what we find there into a hall of mirrors. Rather than locate a corroboration of our certain, steadfast subject-types, another echo of the echoes, in the hall of mirrors we find obstacles, distortion, places we can't get to, people we aren't quite like at all. The hall of mirrors presents a version of reality that is all at once confusing, bizarre, humorous, and terrifying.

By recasting discursive echoes as a hall of mirrors and knowing that what we see has been fabricated for us to see ourselves a certain way, we may begin to imagine that there are too many other possible ways to live and to be in this world for us to believe that this fiction is better than other stories yet untold. And that is why I told this story this way. I wanted to better see the emerging curriculum of subject formation as a hall of mirrors, if you will, in order to make it feel strange and potentially antithetical to other ways that I and my readers might imagine living and being and interacting with others as they live too. I constructed this work not with the goal of providing a specific alternative

but with the hope that it might “[dissolve] your sense of who you are and [disrupt] your sense of what the right thing to do is” (Hoy, 2005, p. 89). But the question always remains—what are we supposed to *do* with this kind of scholarship?

Things Fall Apart

At this initial point of pause, this conclusion, I’ve been charged with the task of facing how this work and my hopes for it may have fallen apart in the process of research and writing. In many ways, the work *seems to* unravel in both its form and its function. In terms of the former, I’ve endeavored to rebel against form by questioning tenants of humanistic research and attempting to deal with data differently. Simultaneously, I admit that there are many limits to this approach and to my writing style here as well. This book feels like, to borrow Henry James’ (1908) description of the Victorian novel, a large, loose, baggy monster of a text. It was not written for all audiences. In terms of the latter, the work seems to press against the humanistic intentions and extraordinarily noble work that is happening in text and on ground as scholars and practitioners interact with the ELL subject, while offering no easy recipe for intervention or clear recommendation for change.

Luckily, this kind of analytical endeavor can and must take shape in more contexts than the scope of this work allows. It is work to do (with care and dedication) *and* to share (with everyone). And share we can—in subsequent texts that take on forms yet unseen and unknown, in conversations, in our teaching, in our practices, and in the ways in which we fashion our own lives. Rather than assume to understand the palpable tensions endured by people I do not know, I’ve tried to narrate what is made available in order to encourage alternative ways of knowing. To foster the proliferation of alternative

discursive rationalities, we might carry out more work that takes seriously the consequences of discursive formations and that moves toward defusing them by way of governmental analytics. With that, this text is an invitation to dream anew.

Unlike a Rosetta Stone®

In 2012, Rosetta Stone®, a language learning software that claims it will help the user to “learn a new language today” so that one can “start living,”¹⁹³ produced a commercial that features consumer testimonials delivered in a variety of languages with subtitles to assist an English-speaking consumer base. For example, a user of the product testifies, “j’adore quand je rêve en français”, while the subtitle “I love when I dream in French” appears across the bottom of the screen. These are memorable selling points indeed, so much so that they stuck with me throughout the process of developing this text. Not only is learning to speak and interpret the desired language the target, here. Rosetta Stone® wants to convey that it will help us learn new languages so well that our subconscious minds will transform us into not just people who can speak another language but those who cannot help but do so, even when we are asleep.

On the belief about dreaming in another language, Francois Grosjean writes, “A question bilinguals are often asked is what language they think in. If they choose just one of their languages in their reply . . . then the reaction is often ‘Ah, then it must be your stronger language’ or even, ‘It must be the language of your inner being.’”¹⁹⁴ Grosjean soon argues that such is not necessarily the case. I would add that the truth of what

¹⁹³ Rosetta Stone. (2014). Rosetta Stone® is the world's most trusted language-learning software. Retrieved September 3, 2014, from <http://www.rosettastone.com>

¹⁹⁴ Grosjean, F. (2011, March 16). Thinking and dreaming in two (or more) languages: The language(s) of thoughts and dreams. *Psychology Today*. Accessed from <http://www.psychologytoday.com/blog/life-bilingual/201103/thinking-and-dreaming-in-two-or-more-languages>

dreaming in another language *really* means about the dreamer or their linguistic acumen or true self is beside the point. Rosetta Stone® selected this approach to their advertising because it keys into our understanding of what is desirable about acquiring another language (so we can dream anew, tap into our better, undiscovered selves and “start living”, as the company claims) and what the emotional or fantastic significance of that acquisition might be. The languages we speak are part of our material lives and embodied selves (Hoy, 2005, p. 78). Dreaming in another language, a new language, is a way of seeing ourselves think and imagine and *become* in another language. This work has argued that around *Flores*, we’ve discursively fostered a desirable constitution of post-ELL students who doubly dream of the self in another language—as true English-speaking selves who have suppressed the “other” language to the point of literally being able to dream in English (while also testing well in English, of course) and of selves who figuratively dream of the productive and successful future promised by English—the language that provides the keys to start living according to the rationalities of rule that swarm *Flores* so that the state won’t have to finance one’s poor life decisions or inadequacies.

Se Déprendre de Soi-Même

Perhaps we can reject the fantasy of dreaming in the language that will allow us to start living. We are always already becoming ourselves; we are what we are not yet (Greene, 2001, quoted in “Flunking Retirement: A Chat with Maxine Green”, January 1, 2001). There is so much hope in what else we can dream. The power that flows through *Flores* discourses is constant and relational. ELL subjects have many options through

which to react and respond, as do we. Speaking of power *means also, always* speaking of freedom, as well as of resistance. Foucault (1997c) writes:

. . . in order for power relations to come into play, there must be at least a certain degree of freedom on both sides . . . This means that in power relations there is necessarily the possibility of resistance because if there were no possibility of resistance (of violent resistance, flight, deception, strategies capable of reversing the situation), because if there were no possibility of resistance there would be no power relations at all. (p. 292)

The discourses heard in the *Flores* archives I discussed in this study constitute a pervasive fiction, and this fiction is not benign: “A real subjection is born mechanically from a fictitious relation” (Foucault, 1977, p. 202). But, these discourses still remain but a kernel of the possibilities of what is happening now and what will happen next with regard to the infinite and yet-unknown moves we are able to make in response.

Hoy (2005) and Rabinow (1997) both write of Foucault’s use of the phrase *se déprendre de soi-même*, interpreting it as untaking, freeing, distancing, detaching, or dissolving oneself from oneself. Foucault (1984b) also writes of *égarement*, a straying from oneself, of which Rabinow (1997) writes “what would the value of the passion for knowledge be if it resulted only in a certain amount of knowledgability and not, in one way or another, and to the extent possible, in the knower straying afield from himself?” (p. xxxix). As we engage in academic research, especially research that is more often targeted at the other rather than the self, we should continually ponder who or what we might be constituting through our knowledges and why. We must also keep asking who we are and who we’ve been made to become. Perhaps then we can invite ourselves to

wander astray from the normalization of our bodies, our tongues, our thoughts, and our dreams and openly encourage the same of others. Yet, this wandering and the encouragement of others to wander too will not necessarily take us into comfortable or known territory.

Into Ignorance

Much is still absent in this work and even in the hopes I've begun to express above. But perhaps in acknowledging loss and absence, this study welcomes a different kind of knowledge pursuit, not for the sake of knowing ELL subjects but for the sake of troubling how and why subjects are known, and to what end. In seeking discursive continuities, discontinuities, and spots of blindness in *Flores* archives, the vision I offer is “not separate from the ignorance that makes such visions possible” (Malewski & Jaramillo, 2011, p. 2). In their edited book, *Epistemologies of Ignorance in Education*, Erik Malewski and Nathalia Jaramillo (2011) open and close the text by calling attention to multiple manifestations of ignorance in educational research, policy, and practice. I can only hope that my work in the *Flores* archive is an epistemology of ignorance too in that it attempts to display some of the limits of what is said and known in order to try to recenter what is still to be discovered as just that—a lasting, lifelong experience of ignorance.

Malewski and Jaramillo evoke multiple ways of attending to ignorance; in so doing, they reclaim the term's seemingly derogatory connotation. Ignorance is positioned as “the very product of our efforts to know” (p. 12), and it exists in excess of what we are able to know. Epistemologies of ignorance examine what is sayable and knowable so that we are able to “name and direct our attention to the gaps, omissions, and exclusions that

our students and communities confront within dominant institutional settings, such as schools” (p. 5) as well as recenter the subject “not as objects of knowledge production, but as sensuous beings who affectively live out the contradictions embedded within ignorance” (p. 5). There are alternatives. They involve another kind of ignorance—a forgetting of the truth of who we have been constituted to conduct ourselves as and entertaining the unknown excesses of who else we might be.

And I don't know who that someone else is or what might be better or best for any of us. I have no research-based implications or concrete steps to take to improve practices or make up better people. While the goals of educational research are often aligned with knowledge production for the sake of intervention or mass applicability, with the target of improvement, “At its best, the unknown as a way of knowing illuminates how knowledge production tends toward concealments and omissions in spite of our best efforts toward clarity and transparency” (Malewski & Jaramillo, 2011, p. 24). This, to me, the act of celebrating the unknown while questioning the magnitude of knowledge production in subject formation might make this work different, but it should not be diminished in terms of what it might offer to the field of curriculum studies.

Rethinking *Flores*' Synoptic Textuality

So, if it does not provide an intervention or a treatment, what does this study mean, and why does it matter? In order to begin to answer these questions, I conclude by folding this study's “findings” and its limitations back into the curriculum studies conversation. It reasons that *Flores* discourses provide but one example of the curriculum of subject-formation that is instructive in how we govern ourselves and others and how

we might alternatively pursue academic research both with a governmentality framework and with attention to how we come to know and to conduct our studies.

So much of the *Flores* case intersects with multiple curriculums and layers of curriculum. Perhaps most obviously, the foundation of the *Flores* case began with a fight for funding in order to make educational programming for ELLs equitable. Without the funding, the plaintiffs argued that curriculum suffered and students suffered in turn. SEI, the practice that overwhelms approaches to language instruction in the state of Arizona today, is but a curriculum of English only and a curriculum of inclusion and exclusion. SEI as a literal and figurative program of study teaches students that learning English skills is more valuable in terms of time spent in school than learning anything else. The curricular knowledge that is deemed most worthwhile is knowledge of English. Those who test and show that they have the knowledge get to learn other things; those who do not are educated separately, together, until they do. The physical separation of students is a curriculum of exclusion and inclusion in certain spaces and contents afforded.

The less apparent curriculum, the one that I narrate throughout this text, is a curriculum of subject formation of rationalities of rule. Who we are supposed to become is a program of study and a course of practice in which we elect to engage or not. The rationalities I've displayed through forays into academic, legislative, judicial, and public opinion discourses—all of them archival—is instructional content from which we can and do learn. Through the discursive curriculum, we discover how to constitute and become subjects; we learn how to govern ourselves and others in thought and practice; and, hopefully, we can also learn something else from seeing these rationalities as a curriculum of fabricated realities that invite a curriculum of excess if we are willing to

pursue alternative ways of being and knowing. My work on *Flores* here tries to create a synoptic view of these *Flores* discourses in order to decontextualize discursive intersections by placing them alongside others that would seem to have different instructional objectives. An alternative curriculum emerges.

In an significant curriculum studies essay, “The Synoptic Text Today”, William Pinar (2004a) discusses the role and movement of synoptic texts in the advancement of curriculum studies in the United States. Synoptic texts, in the world of Pinar’s thought, are likened to canons, to summary texts that once focused on the social efficiency manuals he argues have evolved through Progressivism and into a present in which he argues that professionals in the field of curriculum studies have interdisciplinary, non-school work to do. He writes:

What I am proposing is that curriculum studies scholars research ‘throughlines’ along which subjectivity, society, and intellectual content in and across the academic disciplines run. Such ‘content’ (itself an old-fashioned and synoptic curriculum term) becomes not simply derivative from—a ‘bad copy’ of—the academic disciplines, but, rather, a conceptual montage enabling teachers to complicate the conversations they themselves will lead in their own classrooms, I am suggesting, a new form of contemporary curriculum studies research. (p. 8)

There are alternative ways of asking the foundational curriculum studies question—what knowledge is of most worth?—in ways that move beyond the creation of “competent individuals for the workplace and for higher education” (Pinar, 2004a, p. 8). Pinar wants teachers to know more and about more interdisciplinary subjects, including what they

mean for the self and society so that we are all encouraged to play a part in its restructuring and reconstruction.

This work, in ways, engages in what Pinar (2004a, 2006) encourages in his synoptic call, which is the development of conceptual or curricular montages (Pinar, 2006, p. 2-5) or scholarly summaries to help teachers and students glimpse and become involved in a variety of meaningful and interdisciplinary topics that intersect with their social experiences and subjective reenactment. As a synoptic text, a text that attempts to form a single, coherent story from *Flores*' seemingly disparate, compartmentalized discursive parts, this text "create[s] complex and novel interdisciplinary configurations never before constructed" (p. 5) out of its taken-for-granted parts. And yet, I think *Flores* rationalities-as-curriculum step outside of Pinar's synoptic hopes too. While I share his interest in speaking to students' subjectivity (Pinar, 2006, p. 13), Pinar speaks reverently of the capacity of study as a practice to offset it from the practice of assessment in ways that indicate an important difference between the intentions of study made possible by synoptic texts.

For example, Pinar (2006) draws from Block (2004), who states that prayer "sacralizes the mundane. So, too, does study" (p. 3). When the plight and constitution of the subject (ELL or otherwise) shifts from mundane to sacrilized, we might begin to see it as not the way things are but as worthy of our intense focus and care because this is not the way things *really* are or have to be. We might see ourselves in the act of becoming as awesome and filled with the freedom of capacity and possibility we implore rather than fall victim to being made into subjects by some other accord. While Block is drawing from Jewish, faith-based traditions and foci, his argument that "study is central . . . but it

must be practical as well, and its practice must lead only to ethical living” (p. 83) applies to secular approaches to educational theory and research as well.

Pinar argues that in studying the intellectual and political “traps” (p. 120) that are set for teachers through instrumental rationalities that students and teachers are responsible for performing and becoming certain kinds of subjects, we may find some resolve, as well as a future for the field of curriculum studies. He writes:

Study is the site of education . . . While one’s truths—academic knowledge grounded in lived, that is, subjective and social experience—cannot be taught, McClintock (see 1971, 169) underscores they can be acquired through the struggle of study, for which every individual has the capacity, but not necessarily the will (or the circumstances, I might add). That is the truth that parents, and those politicians who exploit their anxieties over their children’s future, cannot bear to face or, at least, acknowledge. It is the truth we must face and acknowledge. The first step in doing so is forcing the teaching genie back into the bottle. If we have a future, it will come to us through study. (p. 120)

I argue that one’s truths can be and are taught too, but through a curriculum of discursive formations and can therefore be relearned over the course of further study—study of the self in relation to the wide world of all that attempts to make it up. We all struggle with our subjective and social experiences in some ways, don’t we? We all have the will and the capacity to live and to be, to make ourselves up as we go along, to reject the categories of being that have been presented to us, to revel in not yet knowing what else is possible for us, and to proceed into the future accordingly. This is what an analytics of

governmentality offers too—a study of rationalities and practices of selves that are made to be true but are so open to fiction when we examine the gaps between what we think we know and are not yet able to. In studying much of what has been said surrounding *Flores*, a curriculum of excess possibilities unfolds for each of us, inviting us to decategorize ourselves, determine alternative visions of success or reject the notion entirely, study ourselves not to know more and become better but to know differently and become elsewhere. To me, there is much optimism sandwiched between an examination of rationalities of rule and critique of governmentality and the next moments we embark on together.

REFERENCES

- Abedi, J. (2006). Psychometric issues in ELL assessment and special education eligibility. *Teachers College Record*, 108(11), 2282-2303.
- Adams, J. A. (2008). *If Manhan ran the Great Pacific War: An analysis of World War II Naval strategy*. Bloomington, Indiana: Indiana University Press.
- Alford, R. R. (1998). *The craft of inquiry: Theories, methods, evidence*. New York: Oxford University Press.
- Altheide, D. L. (1996). *Qualitative media analysis*. Thousand Oaks, CA: Sage.
- Altheide, D. L. (2000). Tracking discourse and qualitative document analysis. *Poetics*, 27, 287-299.
- Altheide, D. L. (2010). Risk communication and the discourse of fear. *Catalan Journal of Communication & Cultural Studies*, 2(2), 145-158.
- Altheide, D. L., & Johnson, J. M. (1994). Criteria for assessing interpretive validity in qualitative research. In N. K. Denzin & Y. S. Lincoln (Eds.), *Handbook of qualitative research* (2nd ed., pp. 485-499). Newbury Park, CA: Sage.
- Altheide, D. L., & Johnson, J. M. (2011). Living in Arizona: Reflections on life in the tumultuous sunbelt. *Cultural Studies & Critical Methodologies*, 11(4), 346-358.
- Alvesson, M. & Kärreman, D. (2000). Varieties of discourse: On the study of organizations through discourse analysis. *Human Relations*, 53, 1125-1149.
- American Educational Research Association. (2006). Standards for reporting on empirical social science research in AERA publications. Retrieved from http://www.aera.net/uploadedFiles/Opportunities/StandardsforReportingEmpiricalSocialScience_PDF.pdf
- Arizona Center for Law in the Public Interest (2013). *Flores v. Huppenthal et al.* Retrieved from <http://aclpi.org/case/flores-v-huppenthal-et-al>
- Arizona English Language Learners Task Force (2007). Research summary and bibliography for structured English immersion program models. Arizona Department of Education. Retrieved from <http://www.azed.gov/wp-content/uploads/PDF/modelcomponentresearch.pdf>

- Arizona Senate Research Staff. (2008). *Flores v. Arizona* [Arizona State Senate Issue Paper]. Retrieved from: <http://www.azleg.gov/briefs/Senate/FLORES%20V.%20ARIZONA.pdf>
- Asher, N. (2010). Decolonizing curriculum. In E. Malewski, (Ed.), *Curriculum Studies Handbook: The Next Moment* (pp. 393-402). New York: Routledge.
- Asturias, M. D. (2012). Burden shifting and faulty assumptions: The impact of *Horne v. Flores* on state obligations to adolescent ELLs under the EEOA. *Howard Law Journal*, 55, 607-642.
- Baez, B., & Boyles, D. R. (2002, October). *Are we selling out? Grants, entrepreneurship, and the future of the profession*. Paper presented at the annual meeting of the American Educational Studies Association, Pittsburgh, PA.
- Baker, B. (1999). Making history, making humans. *Discourse: Studies in the cultural politics of education*, 20(3), 357-380.
- Baker, B. (2002). Evaluation, standards, normalization: Historico-philosophical formations and the conditions of possibility for checklist thought. *Philosophy of Music Education Review*, 10(2), 92-101.
- Baker, B. M. & Heyning, K. E. (2004). Introduction. In B. M. Baker and K. E. Heyning (Ed.), *Dangerous Coagulations? The Uses of Foucault in the Study of Education* (pp. 1-79). New York: Peter Lang.
- Baker, K. (1998). Structured English immersion: Breakthrough in teaching limited-English-proficient students. *The Phi Delta Kappan*, 80(3), 199-204.
- Balfanz, R. and Legters, N. (2004). Locating the dropout crisis: Which high schools produce the nation's dropouts. In G. Orfield, (Ed.), *Dropouts in America: Confronting the graduation rate crisis* (pp. 57-84). Cambridge, MA: Harvard Education Press.
- Ball, S. J. (2009). Lifelong learning, subjectivity and the totally pedagogised society. In M.A. Peters, A. C. Besley, M. Olssen, S. Maurer, & S. Weber (Eds.). *Governmentality Studies in Education* (pp. 201-216). Rotterdam: Sense.
- Barry, A., Osborne, T. & Rose, N. (Eds.). (1996). *Foucault and political reason: Liberalism, neo-liberalism, and rationalities of government*. Chicago: University of Chicago Press.
- Barton, P., & Coley, R. (2009). *Parsing the achievement gap II*. Princeton: New Jersey:

- Educational Testing Service.
- Batalova, J. & McHugh, M. (2010, August). Number and growth of students in U.S. schools in need of English instruction. *Migration Policy Institute*. Retrieved from <http://www.migrationpolicy.org/research/number-and-growth-students-us-schools-need-english-instruction>
- Berends, M. and Peñaloza, R. (2010). Increasing racial isolation and test score gaps in mathematics: A 30-year perspective. *Teachers College Record*, 112(4): 978-1007.
- Berliner, D. C. (2009). *The effects of out-of-school factors on student behavior and academic achievement*. Boulder, CO, and Tempe, AZ: Education and the Public Interest Center and Educational Policy Research Unit. Retrieved from <http://nepc.colorado.edu/publication/effects-of-out-of-school-factors>
- Bernstein, B. (2000). *Pedagogy, symbolic control and identity: Theory, research critique*. Bristol, PA: Taylor & Francis.
- Besley, A. C. (2009). Governmentality of youth: Beyond cultural studies. In M.A. Peters, A. C. Besley, M. Olssen, S. Maurer, & S. Weber (Eds.). *Governmentality Studies in Education* (pp. 165-199). Rotterdam: Sense.
- Biggers, J. (2012, January 17). Breaking: The “Madness” of the Tucson book ban: Interview with Mexican American studies teacher Curtis Acosta on The Tempest. *The Huffington Post*. Retrieved from http://www.huffingtonpost.com/jeff-biggers/tucson-ethnic-studies-_b_1210393.html
- Block, A. (2004). *Talmud, curriculum, and the practical: Joseph Schwab and the Rabbis*. New York: Peter Lang.
- Borman, G. & Dowling, M. (2010). Schools and inequality: A multilevel analysis of Coleman’s Equality of Educational Opportunity Data. *Teachers College Record*, 112(5): 1201–1246.
- Britzman, D. P. (1995). Is there a queer pedagogy? Or, stop reading straight. *Educational Theory*, 45(2), 151-165.
- Bruner, D. Y. (2010). Equal Educational Opportunities Act (EEOA). *Law and Higher Education*. Retrieved from <http://lawhighereducation.org/52-equal-educational-opportunities-act-eeoa.html>
- Bryant, M. (2004). Forcing change in educational research. TEA/SIG, Division A, *AERA*, 11(2), 5.

- Burchell, G. Gordon, C., & Miller, P. (Eds.). (1991). *The Foucault effect: Studies in governmentality*. Chicago: University of Chicago Press.
- Burroughs, W. S. (1959). *The Naked Lunch*. New York: Grove Press.
- Butler, J. (1992). Contingent foundations: Feminism and the question of 'postmodernism.' In J. Butler & J. W. Scott (Eds.), *Feminists theorize the political* (pp. 3-21). New York: Routledge.
- Calleros, C. R. (2006). Patching leaks in the diversity pipeline to law school and the bar. *California Western Law Review*, 43, 131-150.
- Canclini, N. G. (2001). The North-South dialogue on cultural studies. In N. G. Canclini (Ed.), *Consumers and Citizens: Globalization and Multicultural Conflicts* (pp. 3-13). Minneapolis: University of Minnesota Press.
- Cannella, G. S. & Lincoln, Y. S. (2004). Dangerous discourses II: Comprehending and countering the redeployment of discourses (and resources) in the generation of liberatory inquiry. *Qualitative Inquiry*, 10, 165-174.
- Capps, R., Fix, M., Murray, J., Ost, J., Passel, J., & Herwanto, S. (2005). *The new demography of America's schools: Immigration and the No Child Left Behind Act*. Washington, DC: Urban Institute.
- Carlson, D. L. (2009). Producing entrepreneurial subjects: Neoliberal rationalities and portfolio assessment. In M. A. Peters, A. C. Besley, M. Olssen, S. Maurer, and S. Weber (Eds.), *Governmentality Studies in Education* (pp. 257-269). Rotterdam: Sense Publishers.
- Castañeda v. Pickard, 648 F.2d 989 (5th Cir. 1981).
- Castel, R. (1991). From dangerousness to risk. In G. Burchell, C. Gordon, & P. Miller (Eds.) *The Foucault Effect: Studies in Governmentality* (pp. 281-298). Chicago: University of Chicago Press.
- Chavez, L. (1991). *Out of the barrio: Toward a new politics of Hispanic assimilation*. New York: Basic Books.
- Cheek, J. (2006). The challenge of tailor made research quality: The RQF in Australia. In N. K. Denzin & M. D. Giardina (Eds.), *Qualitative Inquiry and the Conservative Challenge: Contesting Methodological Fundamentalism* (pp. 109-126). Walnut Creek, CA: Left Coast Press.

- Cheek, J. (2007). Qualitative inquiry, ethics, and politics of evidence: Working within these spaces rather than being worked over by them. *Qualitative Inquiry*, 13, 1051-1059.
- Clark, K. (2000). The design and implementation of an English immersion program. In K. Clark (Ed.). *The ABC's of English Immersion: A Teacher's Guide* (pp. 24-30). Washington, DC: Center for Equal Opportunity.
- Clegg, S. R. (1989). *Frameworks of power*. London: Sage.
- Cochran-Smith, M. (2002). What a difference a definition makes: Highly qualified teachers, scientific researchers, and teacher education. *Journal of Teacher Education*, 53(3), 187-189.
- Cohen, S. (1985). *Visions of social control: Crime, punishment, and classification*. Cambridge, UK: Polity Press.
- Collier, V. (1987). Age and rate of acquisition of second language for academic purposes. *TESOL Quarterly*, 21, 617-641.
- Collier, V. (1995). *Promoting academic success for ESD students: Understanding second language acquisition for school*. Elizabeth: New Jersey Teachers of English to Speakers of Other Languages-Bilingual Educators.
- Combs, M. C. (2012). Everything on its head: How Arizona's Structured English Immersion policy re-invents theory and practice. In M. B. Arias & C. Faltis (Eds.), *Implementing Educational Language Policy in Arizona: Legal, Historical and Current Practices in SEI* (pp. 59-85). Bristol: Multilingual Matters.
- Combs, M. C., Evands, C., Fletcher, T., Parra, E. & Jiménez, A. (2005). Bilingualism for the children: Implementing a dual language program in an English only state. *Educational Policy*, 19, 701-728.
- Cruikshank, B. (1992). The will to empower: Technologies of citizenship and the war on poverty. *Socialist Review*, 23(4): 29-55.
- Cruikshank, B. (1999). *The will to empower: Democratic citizens and other subjects*. Ithaca: Cornell University Press.
- Cryle, P. (1994). *Geometry in the boudoir: Configurations of a French erotic narrative*. Ithaca, NY: Cornell University Press.

- Cryle, P. (1997). Kama Sutra and curriculum. Invited paper presented at the Pedagogy and the Body Conference, Queensland University of Technology, Brisbane, Australia, 29 November.
- Cummins, J. (1981). *Bilingualism and language minority children*. Toronto, Ontario: Ontario Institute for Studies in Education.
- Cummins, J. (1991). Interdependence of first- and second- language proficiency in bilingual children. In E. Bialystok (Ed.), *Language Processing in Bilingual Children* (pp. 70-89). Cambridge: Cambridge University Press.
- Cummins, J. (1992). Bilingual education and English immersion: The Ramírez Report in theoretical perspective. *Bilingual Research Journal*, 16, 91-104.
- Cummins, J., & Swain, M. (1986). *Bilingualism in education: Aspects of theory, research, and practice*. London: Longman.
- Dadds, M. (2008). Empathetic validity in practitioner research. *Educational Action Research*, 16, 279-290.
- Davidson, A. I. (1986). Archaeology, genealogy, ethics. In D. Couzens Hoy (Ed.), *Foucault: A Critical Reader* (pp. 221-33). Oxford: Blackwell.
- Davies, B. & Bansel, P. (2007). Neoliberalism and education. *International Journal of Qualitative Studies in Education*, 20(3): 247-259.
- Davies, B. & Bansel, P. (2010). Governmentality and academic work: Shaping the hearts and minds of academic workers. *Journal of Curriculum Theorizing*, 26(3): 5-20.
- Dean, M. (1991). *The constitution of poverty: Towards a genealogy of liberal governance*. Oxford: Routledge.
- Dean, M. (1994). *Critical and effective histories: Foucault's methods and historical sociology*. Oxford: Routledge.
- Dean, M. (1996). Foucault, government and the unfolding of authority. In A. Barry, T. Osborne, & N. Rose (Eds.), *Foucault and Political Reason: Liberalism, Neo-liberalism and Rationalities of Government* (pp. 209-230). Chicago: University of Chicago Press.
- Dean, M. (1998). Risk, Calculable and Incalculable. *Soziale Welt* 49: 25-42.

- Dean, M. (2010). *Governmentality: Power and rule in modern society*, 2nd ed. London: Sage.
- Defert, D. (1991). "Popular life' and insurance technology. In G. Burchell, C. Gordon, & P. Miller (Eds.) *The Foucault Effect: Studies in Governmentality* (pp. 211-234). Chicago: University of Chicago Press.
- Deleuze, G. (1994). *Difference and repetition*. (P. Patton, Trans.). New York, NY: Columbia University Press. (Original work published 1968).
- Deleuze, G. (1995). *Negotiations: 1972-1990* (M. Joughin, Trans.). New York: NY: Columbia University Press. (Original work published 1990).
- Deleuze, G. & Guattari, F. (1987). *A thousand plateaus: Capitalism and schizophrenia*. (B. Massumi, Trans.). Minneapolis: University of Minnesota Press. (Original work published 1980).
- Denzin, N. K., & Lincoln, Y. S. (2000). Introduction: The discipline and practice of qualitative research. In N. K. Denzin & Y. S. Lincoln (Eds.), *Handbook of Qualitative Research* (2nd ed., pp. 1-29). Thousand Oaks, CA: Sage.
- Doherty, R. (2009). Social capital: Governing the social nexus. In M.A. Peters, A. C. Besley, M. Olssen, S. Maurer, and S. Weber (Eds), *Governmentality Studies in Education* (pp. 151-163). Rotterdam: Sense Publishers.
- Donzelot, J. (1979). The poverty of political culture. *Ideology and Consciousness*, 5, 71-86.
- Donzelot, J. (1988). The promotion of the social. *Economy and Society*, 17(3): 395-427.
- Donzelot, J. (2009). Michel Foucault's understanding of liberal politics. In M.A. Peters, A. C. Besley, M. Olssen, S. Maurer, and S. Weber (Eds.), *Governmentality Studies in Education* (pp. 17-34). Rotterdam: Sense Publishers.
- Dreyfus, R. & Rabinow, P. (1983). *Michel Foucault: Beyond structuralism and Hermeneutics*. Chicago: Chicago University Press.
- Dussel, I. (2004). Fashioning the schooled self through uniforms: A Foucauldian approach to contemporary school policies. In B. M. Baker & K. E. Heyning (Eds). *Dangerous Coagulations? The Uses of Foucault in the Study of Education* (pp. 85-116). New York: Peter Lang.

- Elden, S. (2007). Rethinking governmentality. *Political Geography*, 26, 29-33.
- Eliot, C. (1892-1893). Wherein popular education has failed. *The Forum* 14, 411-428.
- Epstein, N. (1977). *Language, ethnicity, and the schools: Policy alternatives for bilingual-bicultural education*. Washington, DC: Institute for Educational Leadership.
- Ericson, R. V., Baranek, P. M., & Chan, J. B. L. (1989). *Negotiating control: A study of news sources*. Toronto: University of Toronto Press.
- Escamilla, K., Chávez, L. & Vigil, P. (2005). Rethinking the ‘gap’: High stakes testing and Spanish speaking students in Colorado. *Journal of Teacher Education*, 56(2), 1-13.
- Ewald, F. (1991). Insurance and risk. In G. Burchell, C. Gordon, & P. Miller (Eds.) *The Foucault Effect: Studies in Governmentality* (pp. 197-210). Chicago: University of Chicago Press.
- Eyre, L. (2002). ‘No strings attached’? Corporate involvement in curriculum. *Canadian Journal of Education*, 27(1), 61-80.
- Fay, B. (1987). *Critical social science: Liberation and its limits*. Ithaca, NY: Cornell University Press.
- Fimyar, O. (2008, March). Using governmentality as a conceptual tool in education policy research. *Educate: The Journal of Doctoral Research in Education*, Kaleidoscope. Special Issue. 1-16.
- Fine, M. (1993). (Ap)parent involvement: Reflections on parents, power, and urban schools. *Teachers College Record*, 94(4), 26–43.
- First, P. F. (2007). Financing Arizona’s schools: Faltering steps toward the ‘good society’. *Journal of Education Finance*, 32(3), 373-381.
- Fischer, H. (2014, March 8). Education software law written by software vendor raises questions. *Arizona Daily Star*, Retrieved from http://tucson.com/news/local/education/education-software-law-written-by-software-vendor-raises-questions/article_17264c2d-200f-5455-aa30-d24f02d8972c.html
- Flores, N. (2014). Creating republican machines: Language governmentality in the United States. *Linguistics and Education*, 25, 1-11.

Flunking retirement: A chat with Maxine Greene. (2001, January 1). *TC Media Center: From the Office of External Affairs*. Retrieved from <http://www.tc.columbia.edu/news.htm?articleId=2931>

Flyvbjerg, B. (2001). *Making social science matter: Why social inquiry fails and how it can succeed again*. Cambridge, UK: Cambridge University Press.

Foucault, M. (1972). *The archaeology of knowledge*. London: Routledge.

Foucault, M. (1973). *The birth of the clinic*. New York: Pantheon.

Foucault, M. (1976/1980). *Power/knowledge: Selected interviews and other writings 1972-1977*. New York: Pantheon Books.

Foucault, M. (1977). *Discipline and punish*. New York: Random House.

Foucault, M. (1978). *The history of sexuality: An introduction* (vol. 1). New York: Vintage.

Foucault, M. (1978/1991). Governmentality. In G. Burchell, C. Gordon, & P. Miller. (Eds.), *The Foucault Effect: Studies in Governmentality* (pp. 87-104). Chicago: The University of Chicago Press.

Foucault, M. (1979). Truth and power: An interview with Michel Foucault. *Critique of Anthropology*, 4(13-14), 131-137.

Foucault, M. (1980). *Power/Knowledge: Selected interviews & other writings*. C. Gordon (Ed.). (C. Gordon, L. Marshal, J. Mephram, & K. Sober, Trans.). New York: Pantheon.

Foucault, M. (1982). The subject and power. In H. L. Dreyfus & P. Rabinow (Eds.), *Michel Foucault: Beyond Structuralism and Hermeneutics*. (pp. 208-226). Chicago: University of Chicago Press.

Foucault, M. (1984a). Nietzsche, Genealogy, History. In P. Rabinow (ed.), *The Foucault Reader* (pp. 75-100). New York: Pantheon Books.

Foucault, M. (1984b). On the genealogy of ethics: An overview of work in progress, In P. Rabinow (ed.), *The Foucault Reader* (pp. 340-372). New York: Pantheon Books.

Foucault, M. (1985). *The history of sexuality, vol 2, The use of pleasure*. (R. Hurley, Trans.). New York: Vintage Books.

- Foucault, M. (1988a). An aesthetics of existence (A. Fontana, Interviewer; A. Sheridan, Trans.). In L. D. Kritzman (Ed.), *Politics, philosophy, culture: Interviews and other writings 1977-1984* (pp. 47-53). (Reprinted from *Panorama*, April 25, 1984).
- Foucault, M. (1988b). Truth, power, self: An interview with Michele Foucault (R. Martin, Interviewer). In L. H. Martin, H. Gutman, & P. H. Hutton (Eds.), *Technologies of the self: A seminar with Michele Foucault* (pp. 9-15). Amherst: The University of Massachusetts Press.
- Foucault, M. (1991a). Questions of method, In G. Burchell, C. Gordon, & P. Miller (Eds.). *The Foucault Effect: Studies in Governmentality* (pp. 73-86). Harvester Wheatsheaf.
- Foucault, M. (1991b). *Remarks on Marx: Conversations with Duccio Trombadori* (R. J. Goldstein & J. Cascaito, Trans.). New York, NY: Semiotext(e).
- Foucault, M. (1994/2000a). Confronting governments: Human rights. In J. D. Faubion (Ed.). *Power* (pp. 474-476). New York: New Press.
- Foucault, M. (1994/2000b). The political technology of individuals. In J. D. Faubion (Ed.). *Power* (pp. 403-418). New York: New Press.
- Foucault, M. (1997a). *Ethics, subjectivity and truth*, ed. P. Rabinow, trans. R. Hurley. Et al. New York: New Press.
- Foucault, M. (1997b). Friendship as a way of life. (R. de Ceccaty, J. Danet, & J. Le Bitoux, Interviewers; J. Johnston, Trans.). In P. Rabinow, (Ed.). *Ethics: Subjectivity and Truth* (pp. 135-140). New York: New Press.
- Foucault, M. (1997c). The ethics of the concern of the self as a practice of freedom. In P. Rabinow, (Ed.). *Ethics: Subjectivity and Truth* (pp. 281-301). New York: New Press.
- Foucault, M. (1998). On the archaeology of the sciences: Response to the epistemology circle. In J. Faubion (Ed.). *Michel Foucault: Aesthetics, method, and epistemology* (Vol. 2, pp. 297-333). New York: Free Press.
- Foucault, M. (2004). *Se´curite´, territoire, population: Cours au Colle`ge de France* (1977-1978). M. Senellart (Ed.). Paris: Seuil/Gallimard.
- Foucault, M. (2008). *The birth of biopolitics: Lectures at the College de France, 1978-*

- 1979 (M. Snellart, Ed.; G. Burchell, Trans.). New York: NY: Palgrave Macmillan.
- Freeman, M., deMarrais, K., Preissle, J., Roulston, K., & St. Pierre, E. A. (2007). Standards of evidence in qualitative research: An incitement to discourse. *Educational Researcher*, 36(25), 25-32.
- Gándara, P. & Hopkins, M. (2010). *Forbidden language: English learners and restrictive language policies*. New York: Teachers College Press.
- Gándara, P. & Orfield, G. (2010). A return to the “Mexican Room”: The segregation of Arizona’s English learners. *Civil Rights Project/Proyecto Derechos Civiles*. Los Angeles: University of California, Los Angeles. Retrieved from <http://civilrightsproject.ucla.edu/research/k-12-education/language-minority-students/arizona-educational-equity-project-abstracts-and-papers>
- Gándara, P. & Orfield, G. (2012a). Segregating Arizona’s English learners: A return to the ‘Mexican room’? *Teachers College Record*, 114(9), 1-27.
- Gándara, P., & Orfield, G. (2012b). Why Arizona matters: The historical, legal, and political contexts of Arizona’s instructional policies and U.S. linguistic hegemony. *Language Policy*, 11, 7-19.
- García, E., Arias, M. B., Murri, N. J. H., Serna, C. (2010). Developing responsive teachers: A challenge for a demographic reality. *Journal of Teacher Education*, 61, 132-142.
- Garcia, E. E., Lawton, K., Figueiredo, E. H. D. (2012). The education of English language learners in Arizona: A history of underachievement. *Teachers College Record*, 114(9), 1-18.
- George, A. (1979a). Case studies and theory development: The method of structured, focused comparison. In P. G. Lauren (Ed.), *Diplomatic history: New approaches*. New York: Free Press.
- George, A. (1979b). The causal nexus between cognitive beliefs and decision-making behaviors: The ‘operational code’ belief system. In L. S. Falkowski (Ed.), *Psychological models in international politics* (pp. 95-124). Boulder, CO: Westview.
- George, A., & Bennett, A. (2005). *Case studies and theory development in the social sciences*. Cambridge, MA: MIT Press.

- Gersten, R. (1985). Structured immersion for language minority students: Results of a longitudinal evaluation. *Educational Evaluation and Policy Analysis*, 7(3), 187-196.
- Gersten, R. & Woodward, J. (1995). A longitudinal study of transitional and immersion bilingual education programs in one district. *Elementary School Journal*, 95, 223-239.
- Glass, G. (2008). *Fertilizers, pills and magnetic strips: The fate of public education in America*. Charlotte: Information Age.
- Gold, N. (2006). The high schools English learners need. *University of California Linguistic Minority Research Institute*. Retrieved from <http://escholarship.org/uc/item/6h72r068>.
- Goldenberg, C., & Quach, S. R. (2010). The Arizona home language survey: The identification of students for ELL services. *Civil Rights Project/Proyecto Derechos Civiles*. Los Angeles: University of California, Los Angeles. Retrieved from <http://civilrightsproject.ucla.edu/research/k-12-education/language-minority-students/arizona-educational-equity-project-abstracts-and-papers>
- Gordon, C. (1980). Afterword. In C. Gordon (Ed.), *Power/Knowledge: Selected Interviews and Other Writings* (pp. 229-260). New York: Vintage.
- Gordon, C. (1991). Governmental rationality: An introduction. In G. Burchell, C. Gordon, and P. Miller (Eds.), *The Foucault Effect: Studies in Governmentality* (pp. 1-52). Chicago: The University of Chicago Press.
- Gordon, J. & Patterson, J. A. (2013). Response to Tracy's under the 'big tent': Establishing universal criteria for evaluating qualitative research. *Qualitative Inquiry*, 19(9), 689-695.
- Graber, D. (1984). *Processing the news: How people tame the information tide*. New York: Longmans.
- Graham, C. & Neu, D. (2004). Standardized testing and the construction of governable persons. *Journal of Curriculum Studies*, 36(3), 295-319.
- Grant, D., Keenoy, T. & Oswick, C. (1998). Organizational discourse: Of diversity, dichotomy and multi-disciplinarity. In D. Grant, T. Keenoy and C. Oswick (Eds), *Discourse and organization* (pp. 1-13). London: Sage.
- Greene, R. W. & Hicks, D. (2005). Lost convictions: Debating both sides and the ethical

- self-fashioning of liberal citizens. *Cultural Studies*, 19(1), 100-126.
- Grosjean, F. (2011, March 16). Thinking and dreaming in two (or more) languages: The language(s) of thoughts and dreams. *Psychology Today*. Retrieved from <http://www.psychologytoday.com/blog/life-bilingual/201103/thinking-and-dreaming-in-two-or-more-languages>
- Haas, E. (2005). The Equal Educational Opportunity Act 30 years later: Time to revisit “appropriate action” for assisting English language learners. *Journal of Law & Education*, 34(3), 361-387.
- Habermas, J. (1971). *Knowledge and human interest* (J. Shapiro, Trans.). Boston: Beacon. (Original work published 1968).
- Hacking, I. (1990). *The taming of chance*. New York: Cambridge University Press.
- Hacking, I. (2002). *Historical ontology*. Cambridge, MA: Harvard University Press.
- Hakuta, K., Butler, G., & Witt, D. (2000) How long does it take English learners to attain proficiency?” *Policy Report 2000-1*. The University of California Linguistic Minority Research Institute.
- Hannah-Moffat, K. (2001). *Punishment in disguise: Penal governance and federal imprisonment of women in Canada*. Toronto: University of Toronto Press.
- Harding, S., & Hintikka, M. B. (Eds.). (1983). *Discovering reality: Feminist perspectives on epistemology, metaphysics, methodology, and philosophy of science*. Dordrecht, the Netherlands: D. Reidel.
- Harper, S. M. (2012). Counting the costs of a global Anglophonic hegemony: Examining the impact of U.S. language education policy in linguistic minorities worldwide. *Indiana Journal of Global Studies*, 18(1), 515-538.
- Harvey, D. (2005). *A brief history of neoliberalism*. Oxford, UK: Oxford University Press.
- Hatch, A. (2006). Qualitative studies in the era of scientifically-based research: Musings of a former QSE editor. *International Journal of Qualitative Studies in Education*, 19, 403-409.
- Harrison, T. & Kachur, J. (Ed.). (1999). *Contested classrooms: Education, globalization, and democracy in Alberta*. Edmonton, AB: University of Alberta Press.

- Hoffman, M. J., Wiggall, R. L., Dereshiwsky, M. I., & Emanuel, G. L. (2013). State school finance system variance impacts on student achievement: Inadequacies in school funding. *JEP: EJournal of Education Policy*, 1-8.
- Honeycutt, K., & Castro, M. (2005). How Census 2000 data suggest hostility toward Mexican-origin Arizonians. *Bilingual Research Journal*, 29(1), 109-125.
- Hopkins, M. (2012). Arizona's teacher policies and their relationship with English learner instructional practice. *Language Policy*, 11, 81-99.
- Horne v. Flores, 129 S. Ct. 2579 (2009)
- House Bill 2281. (2010). 49th Arizona Legislature, Second Session. Retrieved from <http://www.azleg.gov/legtext/49leg/2r/bills/hb2281p.pdf>
- Howe, L. E. (2002). Administrative law and governmentality: Politics and discretion in a changing state of sovereignty. *Administrative Theory & Praxis*, 24(1), 55-80.
- Hoy, D. C. (2005). *Critical resistance: From poststructuralism to post-critique*. Cambridge: MIT Press.
- Hunter, M. A. (2005). Building on judicial intervention: The redesign of school facilities funding in Arizona. *Journal of Law & Education*, 34(2), 173-197.
- Iddings, A. C. D., Combs, M. C., & Moll, L. (2012). In the arid zone: Drying out educational resources for English language learners through policy and practice. *Urban Education*, 47(2), 495-514.
- Imhoff, G. (1990). The position of U.S. English on bilingual education. In C. B. Cazden and C. E. Snow (Eds.). *English Plus: Issues in Bilingual Education* (pp. 48-61). The Annals of the American Academy of Political and Social Science. Newbury Park: CA: Sage Publications.
- Intercultural Development Research Association (2012). U.S. Supreme Court Ruling *Horne v. Flores*. Retrieved from <http://www.idra.org>
- James, H. (1908). *The tragic muse*. New York: Scribner.
- Jardine, D. W. (2002). Preface. In D. W. Jardine, P. Clifford, & S. Friesen (Eds.). *Back to the basics of teaching and learning* (pp. xi-xxiv). New York: Routledge.
- Jessop, B. (2002). Liberalism, neoliberalism, and urban governance: A state-theoretical

- perspective. *Antipode*, 34(3): 452-472.
- Jiménez-Castellanos, O., Combs, M. C., Martinez, D., & Gómez, L. (2013). English language learners: What's at stake for Arizona? Morrison Institute for Public Policy. Retrieved from http://arizonaindicators.org/sites/default/files/content/publications/ELL_stake.pdf
- Jiménez-Castellanos, O., & Topper, A. (2012). The cost of providing an adequate education to English language learners: A review of the literature. *Review of Educational Research*, 82, 180-232.
- Joseph, J. (2010). Poverty reduction and the new global governmentality. *Alternatives: Global, Local, Political*, 35(1): 29-51.
- Kašćák, O. & Pupala, B. (2011). Governmentality – neoliberalism – education: The risk perspective. *Pedagogický Časopis*, 2(2): 145-160.
- Keenoy, T., Oswick, C. & Grant, D. (1997). Organizational discourses: Text and context. *Organization*, 4, 147-57.
- Kiesmer, H. (1994). Assessment and teacher perceptions of ESL student achievement. *English Quarterly*, 26(3), 8-11.
- Kirk, D. (2004). Beyond the 'academic' curriculum: The production and operation of biopower in less-studied sites of schooling. In B. M. Baker & K. E. Heyning (Eds). *Dangerous Coagulations? The Uses of Foucault in the Study of Education* (pp. 117-134). New York: Peter Lang.
- Kossan, P. (2007, July 15). New learners must spend 4 hours a day on English. *The Arizona Republic*, A1.
- Krashen, S. (1999). What the research really says about structured English immersion: A response to Keith Baker. *The Phi Delta Kappan*, 80(9), 705-706.
- Krashen, S., Rolstad, K. & MacSwan, J. (2012). Review of "Research summary and bibliography for Structured English Immersion programs" of the Arizona English Language Learners Task Force. In C. Faltis & B. Arias (Eds.) *English Learners in Arizona* (pp. 107-119). Bristol, UK: Multilingual Matters.
- Kuhn, M., & Sultana, R. (Eds). (2006). *Homo Sapiens Europaecus: Creating the European learning citizen*. New York: Peter Lang.

- Lareau, A. (1989). *Home advantage: Social class and parental intervention in elementary education*. New York: Falmer.
- Lather, P. (1986). Issues of validity in openly ideological research: Between a rock and a soft place. *Interchange*, 17(4), 63-84.
- Lather, P. (1996). *Methodology as subversive repetition: Practices toward a feminist double science*. Paper presented at the annual meeting of the American Educational Research Association. New York.
- Lather, P. (2004). This is your father's paradigm: Government intrusion and the case of qualitative research in education. *Qualitative Inquiry*, 10, 15-34.
- Lather, P. (2006). Foucauldian scientificity: Rethinking the nexus of qualitative research and educational policy analysis. *International Journal of Qualitative Studies in Education*, 19(6), 783-7910.
- Lather, P. (2009a). History matters: Neoliberalism and the research/policy nexus. Review of A. O'Connor's *Social Science for What? Philanthropy and the Social Question in a World Turned Rightside Up*. *Educational Researcher*, 38(4), 284-286.
- Lather, P. (2009b). Getting lost: Social science and/as philosophy. *Educational Studies*, 45, 342-357.
- Lau v. Nichols*, 414 U.S. 563 (1974)
- Lawton, S. B. (2012). State education policy formation: The case of Arizona's English language learner legislation. *American Journal of Education*, 118(4), 455-487.
- Leckie, A. G., Kaplan, S. E., Rubinstein-Ávila, E. (2013). The need for speed: A critical discourse analysis of the reclassification of English language learners. *Language Policy*, 12, 159-176.
- LeGreco, M. & Tracy, S. J. (2009). Discourse tracing as qualitative practice. *Qualitative Inquiry*, 15, 1516-1543.
- Lincoln, Y. S. (2010). 'What a long, strange trip it's been . . .': Twenty-five years of qualitative and new paradigm research. *Qualitative Inquiry*, 16(3), 3-9.
- Lincoln, Y. S. & Cannella, G. S. (2004). Dangerous discourses: Methodological conservatism and governmental regimes of truth, *Qualitative Inquiry*, 10, 5-14.
- Lincoln, Y. S., & Guba, E. G. (1985). *Naturalistic inquiry*. Newbury Park, CA: Sage.

- Magaña, L. & Lee, E. (Eds.). (2013). *Latino politics and Arizona's immigration law SB 1070*. New York: Springer.
- Mahoney, K., McSwan, J., & Thompson, M. (2005). The condition of English language learners in Arizona: 2005, pp. 1-24. In D. Garcia & A. Molnar (Eds.), *The Conditions of PreK-12 Education in Arizona, 2005*. Tempe, AZ: Education Policy Research Laboratory, Arizona State University. Retrieved from <http://www.terpconnect.umd.edu/~macswan/EPSTL-0405-106-AEPI.pdf>
- Mahon, M. (1992). *Foucault's Nietzschean genealogy: Truth, power, and the subject*. Albany: SUNY Press.
- Malewski, E. (Ed.). (2010). *Curriculum studies handbook: The next moment*. New York: Routledge.
- Malewski, E. & Jaramillo, N. (Eds.). (2011). *Epistemologies of ignorance in education*. Charlotte: Information Age Publishing.
- Martinez-Wenzl, M., Pérez, K. C., and Gándara, P. (2012). Is Arizona's approach to educating its ELs superior to other forms of instruction? *Teachers College Record, 114*(9), 1-32.
- Marshall, J. D., Sears, J. T., Allen, L. A., Roberts, P. A., & Schubert, W. H. (Eds.). (2007). *Turning points in curriculum: A contemporary American memoir* (2nd ed.). Upper Saddle River, New Jersey: Pearson/Merrill Prentice Hall.
- Masny, D. (2013). Rhizoanalytic pathways in qualitative research. *Qualitative Inquiry, 19*, 339-348.
- May, T. (2005). *Gilles Deleuze: An introduction*. Cambridge: Cambridge University Press.
- McClintock, R. (1971). Toward a place for study in a world of instruction. *Teachers College Record, 73*(2): 161-205.
- McWilliam, E. (2004). What does it mean to feel like teaching? In B. M. Baker & K. E. Heyning (Eds). *Dangerous Coagulations? The Uses of Foucault in the Study of Education* (pp. 135-152). New York: Peter Lang.
- Meier, N. (1999). A fabric of half-truths: A response to Keith Baker on structured English immersion. *The Phi Delta Kappan, 80*(9), 704-706.

- Miller, G. (1997). Building bridges: The possibilities of analytic dialogue between ethnography, conversation analysis and Foucault. In D. Silverman (Ed.), *Qualitative Research* (pp. 24-44). London: Sage.
- Miller, P. & Rose, N. (1990). Governing economic life. *Economy and Society*, 19(1), 1-31.
- Minson, J. (1985). *Genealogies of morals: Nietzsche, Foucault, Donzelot and the eccentricity of ethics*. London: Macmillan.
- Mongiello, J. (2011). The future of the Equal Educational Opportunities Act § 1703(f) after *Horne v. Flores*: Using No Child Left Behind proficiency levels to define appropriate action toward meaningful educational opportunity. *Harvard Latino Law Review*, 14, 211-241.
- Mora, J. K. (2010, May). Overstated optimism: Arizona's Structured English Immersion program under *Horne v. Flores*. Paper presented at the annual meeting of the American Educational Research Association, Denver, CO.
- Morgan, J. M. & Pullin, D. (2010). Social science and the courts: Challenges and strategies for bridging gaps between law and research. *Educational Researcher*, 39, 515-524.
- Morrison Institute for Public Policy. (2001). *Five shoes waiting to drop on Arizona's future*. Retrieved from http://morrisoninstitute.asu.edu/publications-reports/APC01_5ShoesWaiting2DropOnAzsFuture
- Morrison Institute for Public Policy. (2012). *Dropped? Latino education and Arizona's economic future*. Retrieved from <http://morrisoninstitute.asu.edu/publications-reports/2012-dropped-latino-education-and-arizonas-economic-future>
- Morss, J. R. (1995). *Growing critical: Alternatives to developmental psychology*. New York: Routledge.
- National Academies, Division of Behavioral and Social Sciences and Education, The. (2006). *Standards of evidence: Strategic planning initiative*. Retrieved from <http://www7.nationalacademies.org/dbasse/Standards%20of%20Evidence%20Description.html>
- Oliff, P., Mai, C., & Leachman, M. (2012, September 4). New school year brings more cuts in state funding for schools. *Center on Budget and Policy Priorities*. Retrieved from <http://www.cbpp.org/cms/index.cfm?fa=view&id=3825>

- Olivas, M. A. (2005). *Plyler v. Doe*, the education of undocumented children, and the polity. In D. Martin & P. Schuck (Eds.), *Immigration Stories* (pp. 197-220). New York: Foundation Press.
- O'Malley, P. (1992). Risk, power, and crime prevention. *Economy and Society*, 21(3), 252-275.
- O'Malley, P. (1996). Risk and responsibility, In A. Barry, T. Osborne, & N. Rose (Eds.), *Foucault and Political Reason: Liberalism, Neoliberalism and Rationalities of Government* (pp. 189-208). Chicago: University of Chicago Press.
- Osborne, T. (2009). Foucault as educator. In M. A. Peters, A. C. Besley, M. Olssen, S. Maurer, & S. Weber (Eds.), *Governmentality Studies in Education* (pp. 125-136). Rotterdam: Sense Publishers.
- Peters, M. A. (2009). Introduction: Governmentality, education and the end of neoliberalism? In M. A. Peters, A. C. Besley, M. Olssen, S. Maurer, & S. Weber (Eds.). *Governmentality Studies in Education* (pp. xxvii-xlvi). Rotterdam: Sense Publishers.
- Peters, M. A., Besley, A. C., Olssen, M., Maurer, S., & Weber, S. (Eds.). (2009). *Governmentality studies in education*. Rotterdam: Sense Publishers.
- Peters, M. A., Maurer, S. Weber, S., Olssen, M. & Besley, T. (Eds.). (2008). *Governmentality, education and the rise of neoliberalism*. Rotterdam: Sense Publishers.
- Pinar, W. F. (2004a). The synoptic text today. *Journal of Curriculum Theorizing*, 20(1), 7-22.
- Pinar, W. F. (2004b). *What is curriculum theory?* Mahwah, NJ: Lawrence Erlbaum.
- Pinar, W. F. (2006). *The synoptic text today and other essays*. New York: Peter Lang.
- Popkewitz, T. (2004a). Is the National Research Council committee's report on scientific research in education scientific? On trusting the Manifesto. *Qualitative Inquiry*, 10, 62-78.
- Popkewitz, T. (2004b). The reason of reason: Cosmopolitanism and the governing of schooling. In B. M. Baker & K. Heyning (Eds.), *Dangerous Coagulations: The Uses of Foucault in the Study of Education* (pp. 189-224). New York: Peter Lang.
- Popkewitz, T. (2009). Why the desire for university-school collaboration and the promise

- of pedagogical content knowledge may not matter as much as we think. In M. A. Peters, A. C. Besley, M. Olssen, S. Maurer, and S. Weber (Eds.), *Governmentality Studies in Education* (pp. 217-234). Rotterdam: Sense Publishers.
- Popkewitz, T., & Lindblad, S. (2000). Educational governance and social inclusion and exclusion: Some conceptual difficulties and problematics in policy and research. *Discourse, 21*(1), 5-54.
- Porter, R. (2000). The benefits of English immersion. *Educational Leadership, 57*, 52-56.
- Potter, J. & Wetherell, M. (1987). *Discourse and social psychology: Beyond attitudes and behavior*. London: Sage.
- Rabinow, P. (Ed.). (1997). Introduction. *Ethics, subjectivity and truth*. New York: New Press.
- Rabinow, P. & Rose, N. (2003). Foucault today. In P. Rabinow & N. Rose (Eds.), *The Essential Foucault: Selections from the Essential Works of Foucault, 1954-1984* (pp. 1-30). New York: New Press.
- Rajchman, J. (2001). *The Deleuze connections*. Cambridge, Massachusetts: MIT Press.
- Ramírez, J. D. (1992). Executive summary. *Bilingual Research Journal, 16*, 1-62.
- Ramírez, J. D., Yuen, S. D., & Ramey, D. R. (1991). *Executive summary of the final report: Longitudinal study of the structured immersion strategy, early-exit and late-exit transitional bilingual education programs for language-minority children*. San Mateo, California: Aguirre International.
- Reynolds, A. D. (1979). The mechanics of institutional reform litigation. *Fordham Urban Law Journal, 8*(4), 695-729.
- Reinharz, S. (1992). *Feminist methods in social research*. New York: Oxford University Press.
- Richardson, L. (2000). Writing: A method of inquiry. In N. K. Denzin & Y. S. Lincoln (Eds.), *Handbook of Qualitative Research* (2nd ed., pp. 923-948). Thousand Oaks, CA: Sage.
- Rios-Aguilar, C., & Gándara, P. (2012a). *Horne v. Flores* and the future of language policy. *Teachers College Record, 114*(9), 1-13.

- Rios-Aguilar, C., & Gándara, P. (2012b). (Re)conceptualizing and (re)evaluating language policies for English language learners: The case of Arizona. *Language Policy, 11*, 1-5.
- Rios-Aguilar, C., Gonzalez Canache, M. S., & Moll, L. C. (2012a). A study of Arizona's teachers of English language learners. *Teachers College Record, 114*(9), 1-33.
- Rios-Aguilar, C., Gonzalez Canache, M. S., & Moll, L. C. (2012b). Implementing structured English immersion in Arizona: Benefits, challenges, and opportunities. *Teachers College Record, 114*(9), 1-18.
- Rios-Aguilar, C., González Canaché, M. S., & Sabetghadam, S. (2012). Evaluating the impact of restrictive language policies: The Arizona 4-hour English language development block. *Language Policy, 11*, 47-80.
- Robinson, K. J. (2013). The high cost of education federalism. *Wake Forest Law Review, 48*(287): 1-51.
- Rolstad, K. Mahoney, K., & Glass, G. V. (2005). The big picture: A meta-analysis of program effectiveness research on English language learners. *Educational Policy, 19*(4), 572-594.
- Rose, N. (1989). *Governing the soul: The shaping of the private self*. New York: Routledge.
- Rose, N. (1996). Governing 'advanced' liberal democracies. In A. Barry, T. Osborne, & N. Rose (Eds.) *Foucault and Political Reason: Liberalism, Neo-Liberalism and Rationalities of Government* (pp. 37-64). Chicago: University of Chicago Press.
- Rose, N. (2000). *Powers of freedom: Reframing political thought*. Cambridge, UK: Cambridge University Press.
- Rose, N., O'Malley, P., & Valverde, M. (2006). Governmentality. *Annual Review of Law and Social Science, 2*, 83-104.
- Rossell, C. (1990). The effectiveness of educational alternatives for limited English proficient children. In G. Imhoff (Ed.). *Learning in Two Languages: From Conflict to Consensus in the Reorganization of Schools* (pp. 71-122). New Brunswick, NJ: Transaction Publishers.
- Rossell, C. H. & Baker, K. (1996). The educational effectiveness of bilingual education. *Research in the Teaching of English, 30*, 7-74.

- Rothstein, R. (2004). *Class and schools: Using social, economic, and educational reform to close the Black-White achievement gap*. Washington, DC: Economic Policy Institute.
- Safier, D. (2014, March 8). "Imagine Learning" makes a third try at state-wide no bid contract. *Tucson Weekly*. Retrieved from <http://www.tucsonweekly.com/TheRange/archives/2014/03/08/imagine-learning-makes-a-third-try-at-state-wide-no-bid-contract>
- Safier, D. (2014, March 14). "Imagine Learning" bill HB 2485 is an ALEC model-bill clone. *Tucson Weekly*. Retrieved from <http://www.tucsonweekly.com/TheRange/archives/2014/03/14/imagine-learning-bill-hb2485-is-an-alec-model-bill-clone>
- Salomone, R. (2010). *True American: Language, identity, and the education of immigrant children*. Cambridge: Harvard University Press.
- Schwandt, T. A. (1996). Farewell to criteriology. *Qualitative Inquiry*, 2, 58-72.
- Secunda, P. M. (2008-2009). Is federal court oversight of the Arizona ELL public school program no longer necessary? *Education Law*, 7(36), 430-434.
- Shaw, D. L. & McCombs, M. E. (1977). *The agenda-setting function of the press*. St. Paul, MN: West.
- Shoshana, A. (2011). Governmentality, self, and acting at a distance. *Social Identities*, 17(6): 771-791.
- Simon, J. (1988). The ideological effects of a risk society: Insurance, law, and the state. *Socialist Review*, 95, 61-89.
- Simons, M. (2006). Learning as investment: Notes on governmentality and biopolitics. *Educational Philosophy and Theory*, 38(4): 523-540.
- Slavin, R. E. & Cheung, A. (2005). A synthesis of research on language of reading instruction for English language learners. *Review of Educational Research*, 72(2), 247-284.
- Stake, R. E. (2006). *Multiple case study analysis*, New York: Guilford.
- St. Pierre, E. A. (1997). Methodology in the fold and the irruption of transgressive data. *International Journal of Qualitative Studies in Education*, 10, 175-189.

- St. Pierre, E. A. (2000a). The call for intelligibility in Postmodern educational research. *Educational Researcher*, 29, 25-28.
- St. Pierre, E. A. (2000b). Poststructural feminism in education: An overview. *International Journal of Qualitative Studies in Education*, 13(5), 477-515.
- St. Pierre, E. A. (2002). "Science" rejects Postmodernism. *Educational Researcher*, 31(8), 25-27.
- St. Pierre, E. A. (2004a). Deleuzian concepts for education: The subject undone. *Educational Philosophy and Theory*, 36(3), 283-296.
- St. Pierre, E. A. (2004b). Refusing alternatives: A science of contestation. *Qualitative Inquiry*, 10(1), 130-139.
- St. Pierre, E. A. (2006). Scientifically-based research in education: Epistemology and ethics. *Adult Education Quarterly*, 56, 239-266.
- St. Pierre, E. A. (2011). Anything can happen and does. *Cultural Studies<->Critical Methodologies*, 114(4), 386-389.
- St. Pierre, E. A., & Roulston, K. (2006). The state of qualitative inquiry. A contested science. *International Journal of Qualitative Studies in Education*, 19, 673-684.
- Suárez-Orozco, M. M. & Qin-Hilliard, D. B. (2004). *Globalization: Culture and education in the new millennium*. Oakland: University of California Press.
- Taubman, P. (2009). *Teaching by numbers: Deconstructing the discourse of standards and accountability in education*. New York: Routledge.
- Taylor, S., Rizvi, F., Lingard, B., & Henry, M. (1997). *Educational policy and the politics of change*. New York: Routledge.
- Thomas, M. H., Aletheiani, D., Carlson, D. L. & Ewbank, A. (2014). 'Keeping up the good fight': The said and unsaid in *Flores v. Arizona*. *Policy Futures in Education*, 12(2): 242-261.
- Thomas, W. P. & Collier, V. P. (2007). A national study of school effectiveness for language minority students' long term academic achievement. Center for Research on Education, Diversity & Excellence. Retrieved from http://www.crede.org/research/llaa/1.1_final.html

- Tong, F., Lara-Alecio, R., Irby, B., Mathes, P., & Kwok, O. (2008). Accelerating early academic oral English development in transitional bilingual and structured English immersion programs. *American Educational Research Journal*, 45(4), 1011-1044.
- Tracy, S. J. (2007). Taking the plunge: A contextual approach to problem-based research. *Communication Monographs*, 74, 106-111.
- Tracy, S. J. (2010). Qualitative quality: Eight 'big-tent' criteria for excellent qualitative research. *Qualitative Inquiry*, 16, 837-851.
- U.S. Census Bureau. (2012). *Arizona quick facts*. Retrieved from <http://quickfacts.census.gov/qfd/states/04000.html>
- U.S. Department of Justice (2012). Types of Educational Opportunities Discrimination. Retrieved from <http://www.justice.gov/crt/about/edu/types.php>
- Van Mannen, J. (1988). *Tales of the field: On writing ethnography*. Chicago: University of Chicago Press.
- Ventura, P. (2012). *Neoliberal culture: Living with American neoliberalism*. Burlington, VT: Ashgate.
- Veyne, P. (2010). *Foucault: His thought, his character*. Polity Press: Malden, Massachusetts.
- Waterhouse, M. (2011). *Experiences of multiple literacies and peace: A rhizoanalysis of becoming in immigrant language classrooms*. Unpublished doctoral dissertation. University of Ottawa, Ontario, Canada. Retrieved from <http://hdl.handle.net/10393/19942>
- Watters, A. (2012, October 8). ALEC, ed-tech, and the privatization of education. *Hack Education*. Retrieved from <http://hackededucation.com/2012/10/08/alec-and-ed-tech/>
- Webb, J. A., Clerc, R. J., & Gavito, A. (1987). Comparison of bilingual and immersion programs using structural modeling. Houston, TX: Houston Independent School District.
- Weems, L. (2004). Troubling professionalism: Narratives of family, race, and nation in educational reforms. In B. M. Baker & K. E. Heyning (Eds). *Dangerous Coagulations? The Uses of Foucault in the Study of Education* (pp. 225-264). New York: Peter Lang.

- Wells, A. S., & Serna, I. (1996). The politics of culture: Understanding local political resistance to detracking in racially mixed schools. *Harvard Educational Review*, 66(1), 93–118.
- Welner, K. G. (2010). Education rights and classroom-based litigation: Shifting the boundaries of evidence. *Review of Research in Education*, 34, 85-112.
- Welner, K. G. (2012). Scholars as policy actors: Research, public discourse, and the zone of judicial constraints. *American Educational Research Journal*, 49, 7-29.
- Wilce, R. (2013, December 2). ALEC's extreme legislative agenda for 2014. *The Center for Media and Democracy's PR Watch*. Retrieved from <http://www.prwatch.org/news/2013/11/12318/ALECs-extreme-legislative-agenda-for-2014>
- Willig, A. (1985). A meta-analysis of selected studies on the effectiveness of bilingual education. *Educational Research*, 55, 269-317.
- Winter, G. (2000). A comparative discussion of the notion of validity in qualitative and quantitative research. *Qualitative Report*, 4(3&4). Retrieved from <http://www.nova.edu/ssss/QR/QR4-3/winter.html>
- Wong Fillmore, L. (1991). Second language learning in children: A model of language learning in social context. In E. Bialystok (ed.) *Language Processing in Bilingual Children* (pp. 49-69). Cambridge: Cambridge University Press.
- Wong Fillmore, L. & Snow, C. (2000). What teachers need to know about language. *ERIC Clearinghouse on Languages and Linguistics*. Retrieved from http://www.utpa.edu/dept/curr_ins/faculty...m/.../FillmoreSnow2000.pdf
- Wright, W. (2005). The political spectacle of Arizona's Proposition 203. *Educational Policy*, 19, 662-700.
- Wright, W., & Pu, C. (2005). *Academic achievement of English language learners in post proposition 203 Arizona*. EPSL-0509-103-LPRU. Tempe, AZ: Language Policy Research Unit (LPRU)/Education Policy Studies Laboratory. Arizona State University.
- Yamagami, M. (2012). The political discourse of the campaign against bilingual education: From Proposition 227 to *Horne v. Flores*. *International Multilingual Research Journal*, 6, 143-159.

APPENDIX A

FIGURES

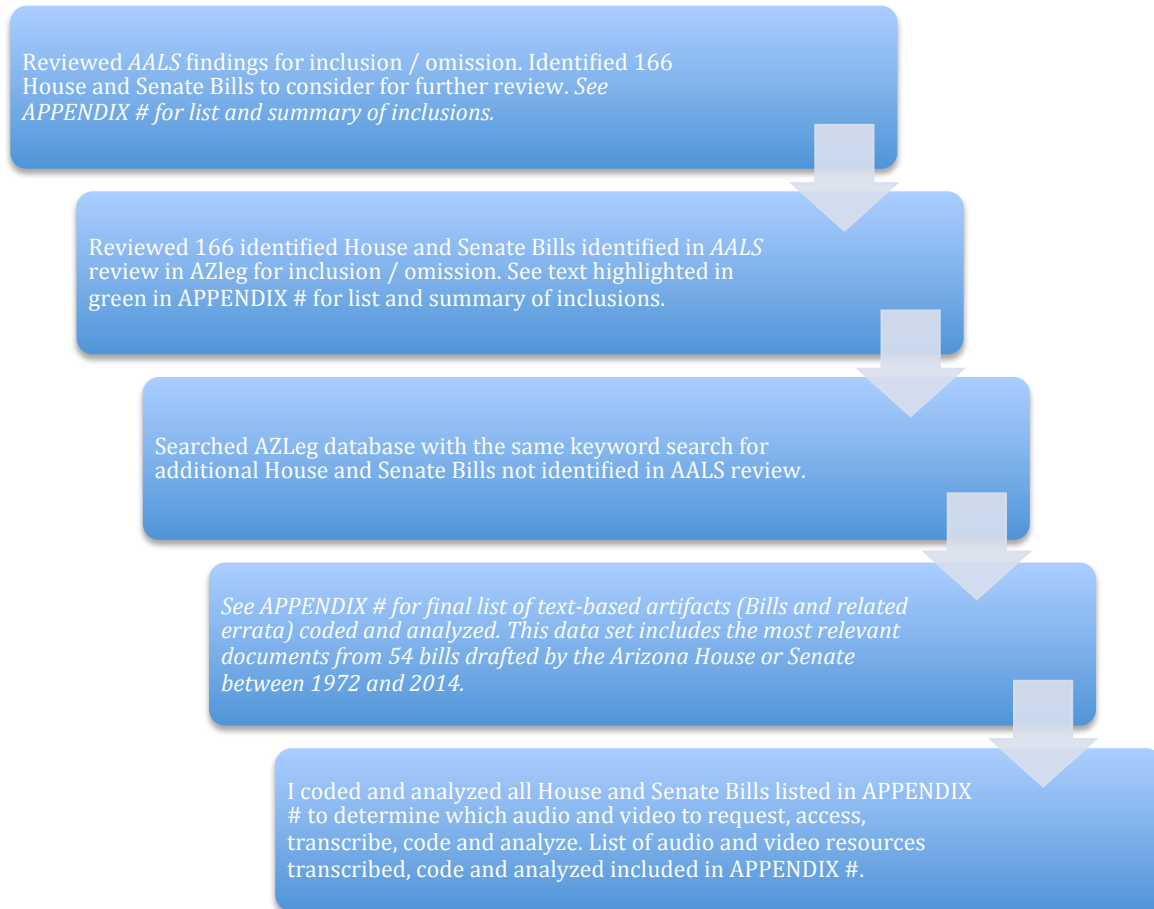
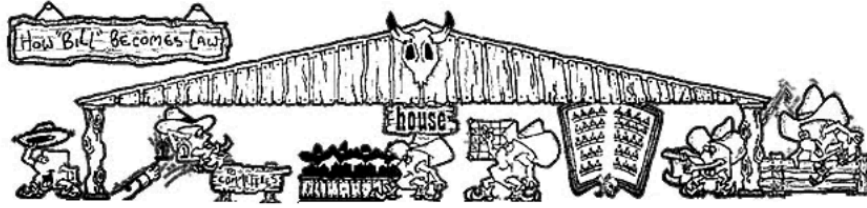


Figure A1. Flow chart to illustrate legislative data harvesting process.



Arizona Bill is introduced in the House by a Member, a group of Members, a Standing Committee or a Majority of a Committee, after being written in proper form by the Legislative Council.

Bill is branded (assigned a number), First Read and referred by the Speaker to appropriate Standing Committees and to the Chief Clerk for printing and distribution.

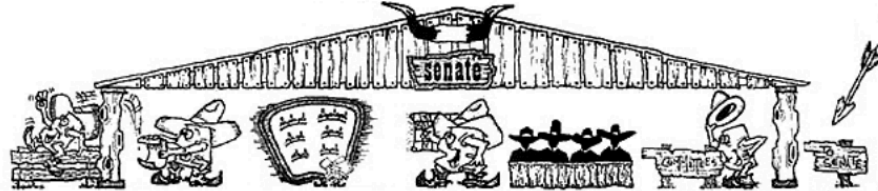
Committees consider Bill (may include hearings, expert testimony, statements from citizenry). Reports recommendations to Whole House. Committee on Rules determines if Bill is constitutional and in proper form.

Committee on Rules places Bill on Active Calendar and Speaker sets order in which measures will be considered.

Committee of the Whole. Informal session of entire House membership acting as one committee. Debate, amendment, recommendations on Bills on Calendar.

Third Reading-Roll Call. Every Member present must vote (unless excused and no Member may vote for another Member.

If passed by House, Bill goes on to the Senate.



If passed by Senate (either in identical form or amended by adding or deleting material), Bill is sent back to House...

Third Reading -- Names called alphabetically and unless excused, each Senator present must vote on each measure.

Committee of the Whole. Entire membership of Senate acts as one committee. Debate, amendments and recommendations on Bills on Calendar.

Committee on Rules' agenda becomes the calendar for Committee of the Whole and after 5 days President designates which measures are to be placed on Active Calendar of the Committee of the Whole.

Committees consider Bill (May include hearings, expert testimony, statements from citizenry). Reports recommendations to entire Senate.

Second Reading-- President refers Bill to appropriate Standing committees.

House Bill is First Read in the Senate and laid over one day.

Figure A2. "How 'Bill' Becomes Law", Image 1 of 2, available at: <http://www.azleg.gov/alispdfs/hbillaw.pdf>

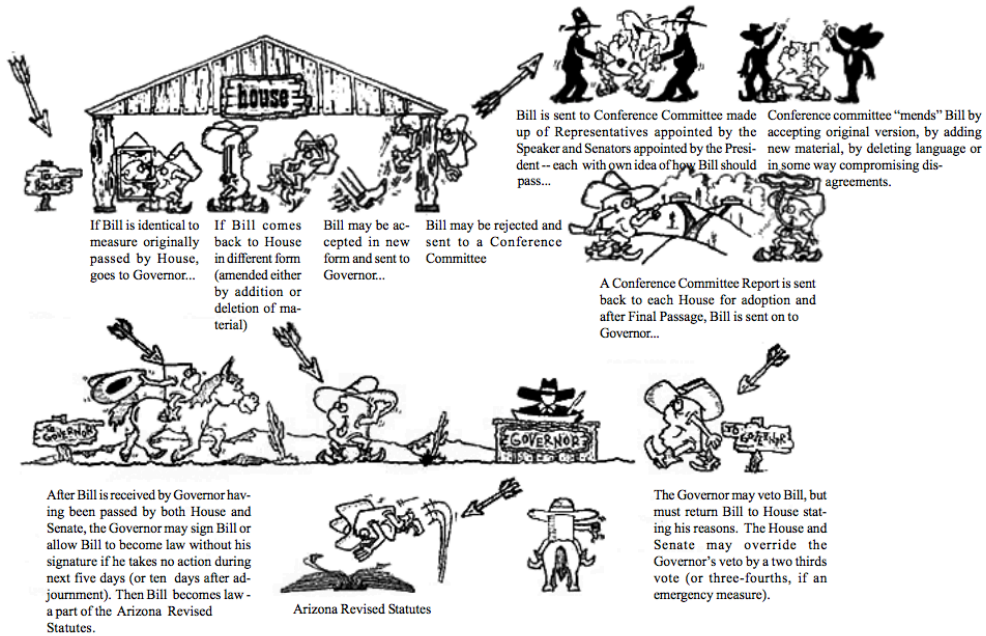


Figure A3. "How 'Bill' Becomes Law", Image 2 of 2, available at: <http://www.azleg.gov/alispdfs/hbillaw.pdf>

APPENDIX B

FLORES LEGAL AND LEGISLATIVE TRAJECTORY

In 1992, Southern Arizona Legal Aid filed a class-action lawsuit in the Federal District Court on behalf of parents and their children in the Nogales Unified School District.¹⁹⁵ The plaintiffs in *Flores v. Arizona* argued that Arizona schools failed to provide instruction for ELL students that supported proficiency in English and enabled students to master the standard academic curriculum. This ruling was the beginning of a lengthy legislative and legal battle that led to the hearing of *Horne v. Flores* in the U.S. Supreme Court in 2009. The case continues to be disputed in lower courts at the time of this article.¹⁹⁶

Miriam Flores, now in her twenties, is the central figure in an ongoing court battle over the provision of English language learning in the state of Arizona. Miriam grew up speaking Spanish at home. She began to fall behind her peers when her bilingual classes ended in the third grade. Her mother, also named Miriam Flores, noticed that her daughter's grades dropped considerably. Miriam's teacher called Mrs. Flores to report that Miriam had not been paying attention and had been chatting during class. When Mrs. Flores asked Miriam about her teacher's concerns, Miriam replied that she was asking her classmates to help her understand what the teacher was saying. Discouraged, Mrs. Flores and other parents of children enrolled in the Nogales Unified School District brought forth a class-action lawsuit alleging that the civil rights of ELL children were violated because the state of Arizona failed to provide instruction that included funding for ELL

¹⁹⁵ The contents of this Appendix are reprinted from Thomas, M. H., Aletheiani, D., Carlson, D. L. & Ewbank, A. (2014). 'Keeping up the good fight': The said and unsaid in *Flores v. Arizona*. *Policy Futures in Education*, 12(2): 242-261.

¹⁹⁶ According to the Intercultural Development Research Association (2012): "the case may be retired by the Federal District Court if the plaintiffs choose to proceed or some settlement on the case is not reached, No schedule has been set to date for follow-up deliberations".

students, adequate English language acquisition, and appropriate academic programs.

In 2000, district court judge Alfredo Marquez ruled in favor of the plaintiffs and stated that Arizona's ELL programs were in violation of the federal Equal Educational Opportunities Act, a result of the 1974 Supreme Court case *Lau v. Nichols*.¹⁹⁷ In the scope of the ruling, while Arizona ELL programs were based on sound educational theory, the funding level for English learners was deemed "arbitrary and capricious" (Arizona Senate Research Staff, 2008, p. 2). Relatedly, the judge ruled that Arizona failed to provide enough teachers, teachers' aides, classrooms, materials and tutoring for these students. The state did not appeal judge Marquez's decision.

Arizona Superintendent of Public Instruction Lisa Graham Keegan then entered into a consent decree with the plaintiffs.¹⁹⁸ While the consent decree addressed program adequacy, it did not address the judge's concern about funding. The same year, Arizona voters approved Proposition 203, which eliminated bilingual education in Arizona. Bilingual education programs were thereafter replaced by Structured English Immersion (SEI) programs for ELL students, except in cases where students were fully proficient in English and signed waivers. SEI programs deliver all materials and curriculum in English, with minimal use of students' native languages, for a period not to exceed one year.

¹⁹⁷ The Equal Educational Opportunities Act of 1974 requires all public schools to provide ELL students with a program of instruction designed to foster competence in speaking, reading and writing English, while also enabling them to learn the standard academic curriculum provided to all students. This Act led to the establishment of Arizona laws that required school districts to provide specialized instruction for ELLs (US Department of Justice, 2012).

¹⁹⁸ The consent decree required several actions, including policies adopted by the Arizona Department of Education that would: standardize the identification of ELL students; create uniform performance standards for assessing and reassessing English proficiency; align the curriculum with instructional strategies appropriate for ELL students; require the Arizona Department of Education to assume compliance and monitoring duties; and provide criteria for individual education plans for ELL students (Arizona Senate Research Staff, 2008).

Concurrent to the elimination of bilingual education in Arizona, the Federal District Court ordered the legislature to conduct a cost study in order to determine the amount of additional funding needed to support the SEI mandate. The court set a completion date of January 2001 so that the results of the cost study could be used to guide the correction of funding deficiencies for SEI programs during the next legislative session. The cost study was not completed until May 2001 and suggested a range of \$0 to \$4,600 additional funding per ELL student. Yet, it too did not provide any specific recommendations. The publication of this cost study was followed by a series of challenges, responses, and mandates that, for my purpose, are best truncated and summarized in a table.

*Activity Following Flores v. Arizona Decision 2001-Present*¹⁹⁹

Date	Action	Response
June 2001	District Court ordered state compliance with January 2000 ruling, setting a due date of January 31, 2002.	The AZ legislature convened a special session in late 2001.
December 2001	AZ legislature approved HB 2010, which increased ELL funding to \$340 per pupil.	In April 2002, the plaintiffs challenged the funding level. The District Court ordered another cost study.
August 2004 – February 2005	National Conference of State Legislatures (NCSL) conducted a cost study that recommended \$670-\$2,571 per pupil.	A plaintiff motion followed.
December 2004	Plaintiffs filed a motion with the District Court requesting a deadline be established for compliance.	A District Court order followed.
January 2005	District Court ordered state compliance for ELL funding.	HB 2718.

¹⁹⁹ The data from this table were derive, in part, from the Arizona State Senate Issue Paper, 2008.

May 2005	The Legislature passed HB 2718, which included the organization of a task force and increased funding for ELL students.	Governor Janet Napolitano vetoed the bill.
December 2005	The District Court ordered progressive daily fines until state compliance.	SB 1198.
January 2006	The Legislature passed SB 1198, which was similar to HB 2718 but also included the establishment of income tax credits for contributions toward scholarship and tuition grants for private schools.	Governor Janet Napolitano vetoed the bill and called the Legislature into a special session.
January 2006	The Legislature passed HB 2002, which was identical to SB 1198 but included a cap on corporate income tax credits for private school contributions.	Governor Janet Napolitano vetoed the bill.
March 2006	The Legislature passed HB 2064, which was like HB 2718, SB 1198, and HB 2002, but it excluded tax credit provisions and increased per pupil funding to \$432.	Governor Janet Napolitano allowed the bill to become law without her signature.
		It became effective in September 2006, with the exception of the funding increase.

By this time, the state had accumulated \$21 million in fines set forth by the District Court in December 2005.

March 2006	The District Court ruled that the \$21 million accrued in fines should be distributed to school districts and that ELL students should not have to take the AIMS ²⁰⁰ as a graduation requirement until appropriate funding is determined and allocated.	
April 2006	The District Court ruled that HB 2064 did not satisfy the 2000 <i>Flores</i> ruling.	The Superintendent and the Legislature appealed the ruling to the Ninth Circuit Court of Appeals

²⁰⁰ AIMS is an acronym for “Arizona Instrument to Measure Standards”, a statewide standardized test.

August 2006 The Ninth Circuit Court of Appeals denied the District Court’s assessment of fines, removal of AIMS graduation requirement, and rejection of HB 2064. The Circuit Court requested an evidentiary hearing to determine if changes in the educational landscape suggest modifications to the 2000 decision.

In the meantime, the Arizona English Language Learners Task Force (authorized by HB 2064) developed and reviewed SEI models and their costs. The “four hour block”²⁰¹ is a required part of SEI programs for all first year ELL students. In determining costs and creating budget forms, the maximum funding provided could not exceed the total amount allocated for Group B funding, Title I, II, and III impact dollars, and any desegregation money allocated to the school.

September 2007 The Task Force formally adopted SEI models that included:

- The four hour block
Annual entry / exit classification through the task forces’ AZELLA²⁰² assessment
Student grouping by overall proficiency level within grade
- Class size targets of 20-28 students

November 2007 The Task Force adopted an ADE developed budget form to fund SEI.

March 2008 ADE reports that public schools requested \$274.6 million in funding for SEI; approximately \$90 million were “approved.” The ADE then subtracted the funding required by HB 2064 to determine that only \$40.7 million funds would be distributed.

April 2008 The Legislature passed SB 1096, approving the \$40.7 million to fund the Task Force models. Governor Janet Napolitano allowed the bill to become law without her signature.

²⁰¹ The “four hour block” is a period of structured immersion for hour hours each school day in which students are to learn English pronunciation, grammar, and usage in English with other ELL students.

²⁰² AZELLA is an acronym for “Arizona English Language Learner Assessment”.

June 2009	Supreme Court ruled on <i>Horne v. Flores</i> , 129 S.Ct. 2579.	Court ruled in favor of Horne 5-4; reversed District Court rulings; remanded case back to district court.
2010-2011	Evidentiary hearings took place.	Superintendent Tom Horne and the President and Speaker of the legislature defended the four hour SEI requirement.
March 2013	Ninth Circuit Court of Appeals ruled on <i>Flores</i> .	Judge Collins vacated the original judgment and upheld Arizona's ELL programs.
April 2013	Center for Law in the Public interest appealed the decision to the Ninth Circuit Court of Appeals.	The Center's opening brief was due in August, 2013.

APPENDIX C
ACADEMIC SCHOLARSHIP EXAMINED IN CRITICAL REVIEW OF
LITERATURE

- Abedi, J. (2006). Psychometric issues in ELL assessment and special education eligibility. *Teachers College Record*, 108(11), 2282-2303.
- Asturias, M. D. (2012). Burden shifting and faulty assumptions: The impact of *Horne v. Flores* on state obligations to adolescent ELLs under the EEOA. *Howard Law Journal*, 55, 607-642.
- Calleros, C. R. (2006). Patching leaks in the diversity pipeline to law school and the bar. *California Western Law Review*, 43, 131-150.
- Chilton, B., & Chwialkowski, P. (2014). The court versus consent decrees? Schools, *Horne v. Flores* and judicial strategies of institutional reform litigation. *Education and Urban Society*, 46(1), 88-108.
- Combs, M. C. (2012). Everything on its head: How Arizona's Structured English Immersion policy re-invents theory and practice. In M. B. Arias & C. Faltis (Eds.), *Implementing Educational Language Policy in Arizona: Legal, Historical and Current Practices in SEI* (pp. 59-85). Bristol: Multilingual Matters.
- Education research: Data on education research reported by researchers at Arizona State University. (2012, August, 22). *Education Letter*. Retrieved from <http://www.lexisnexis.com.ezproxy1.lib.asu.edu/hottopics/lnacademic/?verb=sr&csi=338210>
- First, P. F. (2007). Financing Arizona's schools: Faltering steps toward the 'good society'. *Journal of Education Finance*, 32(3), 373-381.
- Flores, I. R. (2010). Do the AZELLA cut scores meet the standards? A validation review of the Arizona English Language Learner Assessment. *Civil Rights Project/Proyecto Derechos Civiles*. Los Angeles: University of California, Los Angeles. Retrieved from <http://civilrightsproject.ucla.edu/research/k-12-education/language-minority-students/arizona-educational-equity-project-abstracts-and-papers>
- Garcia, E. E., Lawton, K., Figueiredo, E. H. D. (2010). Assessment of young English language learners in Arizona: Questioning the validity of the state measure of English proficiency. *Civil Rights Project/Proyecto Derechos Civiles*. Los Angeles: University of California, Los Angeles. Retrieved from <http://civilrightsproject.ucla.edu/research/k-12-education/language-minority-students/arizona-educational-equity-project-abstracts-and-papers>
- Garcia, E. E., Lawton, K., Figueiredo, E. H. D. (2012). The education of English language learners in Arizona: A history of underachievement. *Teachers College Record*, 114(9), 1-18.

- García, E., Arias, M. B., Murri, N. J. H., Serna, C. (2010). Developing responsive teachers: A challenge for a demographic reality. *Journal of Teacher Education*, 61, 132-142.
- Gándara, P. & Orfield, G. (2010). A return to the “Mexican Room”: The segregation of Arizona’s English learners. *Civil Rights Project/Proyecto Derechos Civiles. Los Angeles: University of California, Los Angeles*. Retrieved from <http://civilrightsproject.ucla.edu/research/k-12-education/language-minority-students/arizona-educational-equity-project-abstracts-and-papers>
- Gándara, P. & Orfield, G. (2012a). Segregating Arizona’s English learners: A return to the ‘Mexican room’? *Teachers College Record*, 114(9), 1-27.
- Gándara, P., & Orfield, G. (2012b). Why Arizona matters: The historical, legal, and political contexts of Arizona’s instructional policies and U.S. linguistic hegemony. *Language Policy*, 11, 7-19.
- Haas, E. (2005). The Equal Educational Opportunity Act 30 years later: Time to revisit “appropriate action” for assisting English language learners. *Journal of Law & Education*, 34(3), 361-387.
- Harper, S. M. (2012). Counting the costs of a global Anglophonic hegemony: Examining the impact of U.S. language education policy in linguistic minorities worldwide. *Indiana Journal of Global Studies*, 18(1), 515-538.
- Hoffman, M. J., Wiggall, R. L., Dereshiwsky, M. I., & Emanuel, G. L. (2013). State school finance system variance impacts on student achievement: Inadequacies in school funding. *JEP: EJournal of Education Policy*. Retrieved from http://nau.edu/COE/eJournal/_Forms/Fall2013/HoffmanWiggallDereshiwskyandEmanuel_edited/
- Honeycutt, K., & Castro, M. (2005). How Census 2000 data suggest hostility toward Mexican-origin Arizonians. *Bilingual Research Journal*, 29(1), 109-125.
- Hopkins, M. (2012). Arizona’s teacher policies and their relationship with English learner instructional practice. *Language Policy*, 11, 81-99.
- Hunter, M. A. (2005). Building on judicial intervention: The redesign of school facilities funding in Arizona. *Journal of Law & Education*, 34(2), 173-197.
- Iddings, A. C. D., Combs, M. C., & Moll, L. (2012). In the arid zone: Drying out educational resources for English language learners through policy and practice. *Urban Education*, 47(2), 495-514.
- Jiménez-Castellanos, O., & Topper, A. (2012). The cost of providing an adequate

- education to English language learners: A review of the literature. *Review of Educational Research*, 82, 180-232.
- Jiménez-Castellanos, O., Combs, M. C., Martinez, D., & Gómez, L. (2013). English language learners: What's at stake for Arizona? Morrison Institute for Public Policy. Retrieved from http://arizonaindicators.org/sites/default/files/content/publications/ELL_stake.pdf
- Lawton, S. B. (2012). State education policy formation: The case of Arizona's English language learner legislation. *American Journal of Education*, 118(4), 455-487.
- Leckie, A. G., Kaplan, S. E., Rubinstein-Ávila, E. (2013). The need for speed: A critical discourse analysis of the reclassification of English language learners. *Language Policy*, 12, 159-176.
- Lillie, K. E. Markos, A., Estrella, A., Nguyen, T., Trifiro, A., Arias, M. B., & Wiley, T. G. (2010). Policy in practice: The implementation of Structured English Immersion in Arizona. *Civil Rights Project/Proyecto Derechos Civiles*. Los Angeles: University of California, Los Angeles. Retrieved from <http://civilrightsproject.ucla.edu/research/k-12-education/language-minority-students/arizona-educational-equity-project-abstracts-and-papers>
- Lillie, K. E., Markos, A., Arias, M. B., & Wiley, T. (2012). Separate and not equal: The implementation of Structured English Immersion in Arizona's classrooms. *Teachers College Record*, 114(9), 1-33.
- Mahoney, K., McSwan, J., & Thompson, M. (2005). The condition of English language learners in Arizona: 2005, pp. 1-24. In D. Garcia & A. Molnar (Eds.), *The Conditions of PreK-12 Education in Arizona* Tempe, AZ: Education Policy Research Laboratory, Arizona State University. Retrieved from <http://www.terpconnect.umd.edu/~macswan/EPSSL-0405-106-AEPI.pdf>
- Mongiello, J. (2011). The future of the Equal Educational Opportunities Act § 1703(f) after *Horne v. Flores*: Using No Child Left Behind proficiency levels to define appropriate action toward meaningful educational opportunity. *Harvard Latino Law Review*, 14, 211-241.
- Mora, J. K. (2010, May). Overstated optimism: Arizona's Structured English Immersion program under *Horne v. Flores*. Paper presented at the annual meeting of the American Educational Research Association, Denver, CO.
- Morgan, J. M. & Pullin, D. (2010). Social science and the courts: Challenges and strategies for bridging gaps between law and research. *Educational Researcher*, 39, 515-524.

- Rios-Aguilar, C., Gonzalez Canache, M. S., & Moll, L. C. (2012). A study of Arizona's teachers of English language learners. *Teachers College Record*, 114(9), 1-33.
- Rios-Aguilar, C., & Gándara, P. (2012a). *Horne v. Flores* and the future of language policy. *Teachers College Record*, 114(9), 1-13.
- Rios-Aguilar, C., & Gándara, P. (2012b). (Re)conceptualizing and (re)evaluating language policies for English language learners: The case of Arizona. *Language Policy*, 11, 1-5.
- Rios-Aguilar, C., González Canaché, M. S., & Sabetghadam, S. (2012). Evaluating the impact of restrictive language policies: The Arizona 4-hour English language development block. *Language Policy*, 11, 47-80.
- Rios-Aguilar, C., Gonzalez Canache, M. S., & Moll, L. C. (2012b). Implementing structured English immersion in Arizona: Benefits, challenges, and opportunities. *Teachers College Record*, 114(9), 1-18.
- Salomone, R. (2010). *True American: Language, identity, and the education of immigrant children*. Cambridge: Harvard University Press.
- Secunda, P. M. (2008-2009). Is federal court oversight of the Arizona ELL public school program no longer necessary? *Education Law*, 7(36), 430-434.
- Sutton, L. C., Cornelius, L., & McDonald-Gordon, R. (2012). English language learners and judicial oversight: Progeny of Castañeda. *Educational Considerations*, 39(2), 30-37.
- Welner, K. G. (2010). Education rights and classroom-based litigation: Shifting the boundaries of evidence. *Review of Research in Education*, 34, 85-112.
- Welner, K. G. (2012). Scholars as policy actors: Research, public discourse, and the zone of judicial constraints. *American Educational Research Journal*, 49, 7-29.
- Wright, W., & Pu, C. (2005). Academic achievement of English language learners in post proposition 203 Arizona. EPSL-0509-103-LPRU. Tempe, AZ: Language Policy Research Unit (LPRU)/Education Policy Studies Laboratory. Arizona State University.
- Yamagami, M. (2012). The political discourse of the campaign against bilingual education: From Proposition 227 to *Horne v. Flores*. *International Multilingual Research Journal*, 6, 143-159.

APPENDIX D

CODE LIST—CRITICAL REVIEW OF LITERATURE

Accounting / Accountability
Achievement
Adequacy
Advanced liberalism
Audit
Choice
Commodification
Competition
Court failure
Court precedents
Court protection
Demographics
Dividing practices
EEOA
Entrepreneur
Equity
Exceptions
Experts / Expertise
Fear
Federalism
Global economy

Individualizing
Insurance
Judicial rule
Legislative failure
Legislative rule
Neo-socialism
Neoliberalism
New Prudentialism
Population
Prop 203
Revolt
Risk
Scientifically-based research (SBR)
Security
Self-actualization
Standards / Standardizing
Statistics
Status quo
Success
Technologies of citizenship

APPENDIX E

INITIAL HOUSE AND SENATE BILLS INCLUDED IN LEGISLATIVE ANALYSIS

Year	Bill	Brief Summary
1989	SB 1024	Prescribed Limited English Proficiency student count. Districts with LEP pupils who receive Group B funds must conduct biennial self-assessments and maintain all records of the assessments and any corrective measures taken. Pupils in kindergarten programs will be counted as full-time students. Defines Group B with LEP and ENGLISH for the first time:
1999	HB 2387	Conducting of schools in English language; bilingual or English as second language programs; voluntary participation; parental notification All classes shall be conducted in English except classes of bilingual instruction or foreign language instruction.
2001	HB 2010	Appropriations for language acquisition programs. Assessment and reassessment of ELLs. Training for SEI endorsement. Funding for bilingual and SEI.
2001	HB 2633	Funding for a cost study. Program costs for LEP students.
2006	HB 2064	The results of English Language Learners tests: AIMS requirements; identifying and classifying ELLs; establishes ELL Task Force and SEI; describes Budget Requests and ELL funds; determines evaluation processes; describes performance Audits
2010	HB 2281	Prohibited courses
2010	HB 2725	Teaching requirements / English immersion training
2010	HB 2732	AIMs requirements. LEP third graders and SEI program time limits.
2012	SB 1045	School performance audits and LEP program transitions.
2012	HB 2161	Alternative teacher preparation requires training in structured English immersion as prescribed by the state board.
2013	SB 1007	Eliminates the English Language Learner Online Learning Pilot Program. Requires the Department of Education (ADE) to transfer \$10,000,000 to the state General Fund from the Arizona Structured English Immersion Fund.

Year	Bill	Brief Summary
2013	HB 2425	ELLs and standardized assessments. Enforcement of SEI models. State to require adequate staff support.
2013	HB 2637	Establishes the SEI exemption pilot program (literacy software).
2014	HB 2485	State BOE to submit RFPs for ELL literacy software.

APPENDIX F

FINAL HOUSE AND SENATE BILLS INCLUDED IN LEGISLATIVE ANALYSIS

Year	Bill	Citation(s), Location/Link, and Title	Artifacts Included in Data Set	Bill Summary
1972	SB 1137	SB 1137, 30 th Leg., 2 nd Reg. Sess. Committee Minutes. (Ariz. 1972). English Instruction Annual Report	Committee Minutes	Bilingual education
1973	HB 2208	HB 2208, 31 st Leg., 1 st Reg. Sess. Chapter 169 Summary. (Ariz 1973). Summary of Chapter 169, 1973 Session HB 2208	Chapter 169 Summary	Establishment of bilingual classes
1989	SB 1024	SB 1024, 39 th Leg., 1 st Reg. Sess. Committee Minutes and Fact Sheet. (Ariz. 1989).	Committee Minutes and Fact Sheet	Budget, budget overrides
1998	SCR 1010	SCR 1010, 43 rd Leg., 2 nd Reg. Sess. Introduced Version. (Ariz. 1998). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=SCR1010&Session_ID=52	Introduced Version	English as Official Language: Repeal
1999	SB 1001	SB 1001, 44 th Leg., 1 nd Reg. Sess. Senate Engrossed. (Ariz. 1999). SB 1001, 44 th Leg., 1 nd Reg. Sess. Senate Fact: Corrected Revised. (Ariz. 1999). SB 1001, 44 th Leg., 1 nd Reg. Sess. Senate Fact Revised Out of Committee. (Ariz. 1999). SB 1001, 44 th Leg., 1 nd Reg. Sess. Fiscal Note. (Ariz. 1999). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=SB1001&Session_ID=60	State Engrossed Version Senate Fact: Corrected Revised Senate Fact: Revised Out of Committee Fiscal Note	Bilingual Education Reform
1999	SB 1197	SB 1197, 44 th Leg., 1 nd Reg. Sess. Introduced Version. (Ariz. 1999). SB 1197, 44 th Leg., 1 nd Reg. Sess. Senate Fact Sheet. (Ariz. 1999). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=SB1197&Session_ID=60	Introduced Version Senate Fact Sheet	Pilot; bilingual and multilingual education

Year	Bill	Citation(s), Location/Link, and Title	Artifacts Included in Data Set	Bill Summary
1999	HB 2387	HB 2387, 44 th Leg., 1 st Reg. Sess. Senate Engrossed. (Ariz. 1999). HB 2387, 44 th Leg., 1 st Reg. Sess. House Summary. (Ariz. 1999). HB 2387, 44 th Leg., 1 st Reg. Sess. Senate Fact Sheet Revised. (Ariz. 1999). HB 2387, 44 th Leg., 1 st Reg. Sess. Revised out of COW. (Ariz. 1999). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2387&Session_ID=60	Senate Engrossed Version House Summary: 2/15/99 Amended Out of Committee Senate Fact Sheet: Final Revised Senate Fact Sheet: Revised Out of COW	Bilingual education
2000	SB 1242	SB 1242, 44 th Leg., 2 nd Reg. Sess. Introduced Version. (Ariz. 2000). SB 1242, 44 th Leg., 2 nd Reg. Sess. Senate Fact Sheet: Corrected. (Ariz. 2000). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=SB1242&Session_ID=63	Introduced Version Senate Fact Sheet: Corrected for Committee	Bilingual Education Reform
2001	SB 1356	SB 1356, 45 th Leg., 1 st Reg. Sess. Introduced. (Ariz. 2001). SB 1356, 45 th Leg., 1 st Reg. Sess. Fiscal Notes. (Ariz. 2001). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=SB1356&Session_ID=67	Introduced Version Fiscal Notes	English Learners; <i>Flores v. Arizona</i>

Year	Bill	Citation(s), Location/Link, and Title	Artifacts Included in Data Set	Bill Summary
2001	HB 2010	HB 2010, 45th Leg., 2nd Special. Sess. Senate Engrossed. (Ariz. 2001). HB 2010, 45th Leg., 2nd Special. Sess. House Summary. (Ariz. 2001). HB 2010, 45th Leg., 2nd Special. Sess. Senate Fact Sheet Final Revised. (Ariz. 2001). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2010&Session_ID=72	Senate Engrossed Version House Summary 12/28/01 to Governor Senate Fact Sheet final revised	Elections; optical scan equipment. (NOW: English learner programs; funding)
2001	HB 2011	HB 2011, 45th Leg., 2nd Special. Sess. Introduced. (Ariz. 2001). HB 2011, 45th Leg., 2nd Special. Sess. House Summary Caucus COW. (Ariz. 2001). HB 2011, 45th Leg., 2nd Special. Sess. House Summary Failed. (Ariz. 2001). HB 2011, 45th Leg., 2nd Special. Sess. House Adopted Amendment. (Ariz. 2001). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2011&Session_ID=72	Introduced House Summary 12/4/01 Caucus COW House Summary 12/12/01 Failed House Adopted Amendment: Judiciary	English learners; increase group B
2001	HB 2013	HB 2013, 45th Leg., 2nd Special. Sess. Introduced. (Ariz. 2001). HB 2013, 45th Leg., 2nd Special. Sess. House Summary Failed. (Ariz. 2001). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2013&Session_ID=72	Introduced Version House Summary 12/4/01 Judiciary House Summary 12/4/01 Caucus COW House Summary 12/12/01 Failed	<i>Flores v. Arizona</i> ; ELL

Year	Bill	Citation(s), Location/Link, and Title	Artifacts Included in Data Set	Bill Summary
2001	HB 2026	HB 2026, 45th Leg., 2nd Special Sess. Introduced. (Ariz. 2001). HB 2013, 45th Leg., 2nd Special Sess. House Summary Failed. (Ariz. 2001). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2026&Session_ID=72	Introduced Version House Summary 12/18/01 Failed	English learners
2001	HB 2633	HB 2633, 45th Leg., 1 st Reg. Sess. Chaptered. (Ariz. 2001). HB 2633, 45th Leg., 1 st Reg. Sess. House Summary as Transmitted to Governor. (Ariz. 2001). HB 2633, 45th Leg., 1 st Reg. Sess. Senate Fact as Enacted. (Ariz. 2001). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2633&Session_ID=67	Chaptered Version House Summary: 5/11/01 As Transmitted to Governor Senate Fact Sheet: As Enacted	Supplemental appropriations
2001	SB 1001	SB 1001, 45th Leg., 2 nd Special Sess. Introduced. (Ariz. 2001). SB 1001, 45th Leg., 2 nd Special Sess. Senate Fact Sheet Corrected for Caucus and Floor. (Ariz. 2001). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=SB1001&Session_ID=72	Introduced Version Senate fact Sheet Corrected for Caucus and Floor	<i>Flores v. Arizona</i>
2001	SB 1002	SB 1002, 45th Leg., 2 nd Special Sess. Introduced. (Ariz. 2001). SB 1002, 45th Leg., 2 nd Special Sess. Senate Fact Sheet Corrected for Caucus and Floor. (Ariz. 2001). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=SB1002&Session_ID=72	Introduced Version Senate fact Sheet Corrected for Caucus and Floor	English learners; Group B increase

Year	Bill	Citation(s), Location/Link, and Title	Artifacts Included in Data Set	Bill Summary
2001	SB 1013	SB 1013, 45th Leg., 2 nd Special. Sess. Introduced. (Ariz. 2001). SB 1013, 45th Leg., 2 nd Special. Sess. Senate Fact Sheet. (Ariz. 2001). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=SB1013&Session_ID=72	Introduced Version Senate Fact Sheet	English learners; initial enrollment
2005	HB 2718	HB 2718, 47th Leg., 1 st Reg. Sess. Senate Engrossed. (Ariz. 2005). HB 2718, 47th Leg., 1 st Reg. Sess. House Sum as Transmitted. (Ariz. 2005). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2718&Session_ID=82	Senate Engrossed House Summary as Transmitted to Gov.	Education; omnibus (NOW: English language learners)
2005	HCR 2030	HCR 2030, 47th Leg., 1 st Reg. Sess. House Engrossed. (Ariz. 2005). HCR 2030, 47th Leg., 1 st Reg. Sess. House Sum as Passed. (Ariz. 2005). HCR 2030, 47th Leg., 1 st Reg. Sess. Senate Fact Sheet: Approp 4-5. (Ariz. 2005). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HCR2030&Session_ID=82	House Engrossed House Summary As Passed House Senate Fact Sheet: Approp 4-5	English as official language
2005	SB 1167	SB 1167, 47th Leg., 1 st Reg. Sess. House Engrossed. (Ariz. 2005). SB 1167, 47th Leg., 1 st Reg. Sess. House Summary CaucusCOW. (Ariz. 2005). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=SB1167&Session_ID=82	House Engrossed House Summary: CaucusCOW	Child abuse special plates; motorcycles (NOW: English as official language)

Year	Bill	Citation(s), Location/Link, and Title	Artifacts Included in Data Set	Bill Summary
2005	SB 1180	SB 1180, 47th Leg., 1 st Reg. Sess. Introduced. (Ariz. 2005). SB 1180, 47th Leg., 1 st Reg. Sess. Senate Fact Sheet. (Ariz. 2005). http://www.azleg.gov/DocumentsF orBill.asp?Bill_Number=SB1180& Session_ID=82	Introduced Version Senate Fact Sheet	Charter schools; English language education
2006	SB 1001	SB 1001, 47th Leg., 1 st Special. Sess. Introduced. (Ariz. 2006). http://www.azleg.gov/DocumentsF orBill.asp?Bill_Number=SB1001& Session_ID=84	Introduced	School funding; English learners; <i>Flores</i>
2006	SB 1002	SB 1002, 47th Leg., 1 st Special. Sess. Introduced. (Ariz. 2006). SB 1002, 47th Leg., 1 st Special. Sess. Fact Sheet as Vetoed. (Ariz. 2006). http://www.azleg.gov/DocumentsF orBill.asp?Bill_Number=SB1002& Session_ID=84	Introduced Fact Sheet as Vetoed	ELL; SEI models; budget requests
2006	SB 1035	SB 1035, 47th Leg., 2 nd Reg. Sess. Introduced. (Ariz. 2006). SB 1035 47th Leg., 2 nd Reg. Sess. Senate Fact Sheet. (Ariz. 2006). SB 1035 47th Leg., 2 nd Reg. Sess. Senate Proposed. (Ariz. 2006). http://www.azleg.gov/DocumentsF orBill.asp?Bill_Number=SB1035& Session_ID=83	Introduced Version Senate Fact Sheet Senate Proposed Amendment	School funding; English learners; <i>Flores</i>

Year	Bill	Citation(s), Location/Link, and Title	Artifacts Included in Data Set	Bill Summary
2006	SB 1198	SB 1198 47th Leg., 2 nd Reg. Sess. Introduced. (Ariz. 2006). SB 1198 47th Leg., 2 nd Reg. Sess. Senate Engrossed. (Ariz. 2006). SB 1198 47th Leg., 2 nd Reg. Sess. House Summary. (Ariz. 2006). SB 1198 47th Leg., 2 nd Reg. Sess. Senate Fact as Vetoed. (Ariz. 2006). SB 1198 47th Leg., 2 nd Reg. Senate Fact. (Ariz. 2006). SB 1198 47th Leg., 2 nd Reg. Sess. Senate Adopted. (Ariz. 2006). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=SB1198&Session_ID=83	Introduced Version Senate Engrossed Version House Summary 1/27/2006 Senate Fact Sheet: 1-26 as Vetoed Senate Fact Sheet: 1-17 Approp Senate Adopted Amendment	ELL; SEI models; budget requests
2006	SB 1380	SB 1380 47th Leg., 2 nd Reg. Sess. Chaptered. (Ariz. 2006). SB 1380 47th Leg., 2 nd Reg. Sess. House Sum as Transmitted. (Ariz. 2006). SB 1380 47th Leg., 2 nd Reg. Sess. Senate Fact as Enacted. (Ariz. 2006). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=SB1380&Session_ID=83	Chaptered Version House Summary As Transmitted to Governor Senate Fact Sheet as Enacted	Special education; IDEA changes
2006	HB 2008	HB 2008 47th Leg., 2 nd Reg. Sess. Introduced. (Ariz. 2006). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2008&Session_ID=83	Introduced	English language learners

Year	Bill	Citation(s), Location/Link, and Title	Artifacts Included in Data Set	Bill Summary
2006	HB 2021	HB 2021 47th Leg., 2 nd Reg. Sess. Introduced. (Ariz. 2006). HB 2021 47th Leg., 2 nd Reg. Sess. House Summary. (Ariz. 2006). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2021&Session_ID=83	Introduced House Summary	School funding; English learners; <i>Flores</i>
2006	HB 2064	HB 2064 47th Leg., 2 nd Reg. Sess. Conference Engrossed. (Ariz. 2006). HB 2064 47th Leg., 2 nd Reg. Sess. Senate Fact Sheet as Enacted. (Ariz. 2006). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2064&Session_ID=83	Conference Engrossed Senate Fact Sheet As Enacted	Eminent domain; fees and costs (NOW: English language learners)
2006	HCR 2036	HB 2036 47th Leg., 2 nd Reg. Sess. Transmitted to Secretary of State. (Ariz. 2006). HB 2036 47th Leg., 2 nd Reg. Sess. House Summary as Engrossed and Passed. (Ariz. 2006). HB 2036 47th Leg., 2 nd Reg. Sess. Senate Fact Sheet as Transmitted. (Ariz. 2006). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HCR2036&Session_ID=83	Transmitted to Secretary of State House Sum As Engrossed and Passed House Senate Fact Sheet As Transmitted	English as official language
2008	HB 2473	HB 2473 48th Leg., 2 nd Reg. Sess. Introduced (Ariz. 2008). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2473&Session_ID=86	Introduced	School funding; English learners; Flores
2008	HB 2699	HB 2699 48th Leg., 2 nd Reg. Sess. Introduced (Ariz. 2008). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2699&Session_ID=86	Introduced	ELL; federal monies; duration

Year	Bill	Citation(s), Location/Link, and Title	Artifacts Included in Data Set	Bill Summary
2008	SB 1096	SB 1096 48th Leg., 2 nd Reg. Sess. Chaptered (Ariz. 2008). SB 1096 48th Leg., 2 nd Reg. Sess. House Summary as Transmitted (Ariz. 2008). SB 1096 48th Leg., 2 nd Reg. Sess. Senate Fact as Enacted (Ariz. 2008). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=SB1096&Session_ID=86	Chaptered House Summary as Transmitted Senate Fact as Enacted	Bake sales; regulation; exemption (NOW: appropriation; English language learners)
2009	HB 2527	HB 2527 49th Leg., 1st Reg. Sess. Introduced (Ariz. 2009). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2527&Session_ID=87	Introduced	ELL; Native American languages; exception
2010	SB 1160	SB 1160 49th Leg., 2nd Reg. Sess. Senate Engrossed (Ariz. 2010). SB 1160 49th Leg., 2nd Reg. Sess. House Summary: CaucusCOW (Ariz. 2010). SB 1160 49th Leg., 2nd Reg. Sess. Senate Fact: Strikememo (Ariz. 2010). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=SB1160&Session_ID=93	Senate Engrossed House Summary: Caucus COW Senate Fact: Strikermemo	Counties; powers; technical correction (NOW: schools; English language learners)
2010	SB 1319	SB 1319 49th Leg., 2nd Reg. Introduced (Ariz. 2010). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=SB1319&Session_ID=93	Introduced	English language learners; educational technology

Year	Bill	Citation(s), Location/Link, and Title	Artifacts Included in Data Set	Bill Summary
2010	HB 2281	HB 2281 49th Leg., 2nd Reg. Sess. Chaptered Version (Ariz. 2010). HB 2281 49th Leg., 2nd Reg. Sess. House Summary as Transmitted (Ariz. 2010). HB 2281 49th Leg., 2nd Reg. Sess. Senate Fact as Enacted (Ariz. 2010). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2281&Session_ID=93	Chaptered Version House Summary as Transmitted Senate Fact as Enacted	Schools; prohibited courses; discipline (NOW: prohibited courses; discipline; schools)
2010	HB 2313	HB 2313 49th Leg., 2nd Reg. Sess. Introduced (Ariz. 2010). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2313&Session_ID=93	Introduced	ELL; Native American languages; exception
2010	HB 2537	HB 2537 49th Leg., 2nd Reg. Sess. Introduced (Ariz. 2010). HB 2537 49th Leg., 2nd Reg. Sess. House Sum CaucusCOW (Ariz. 2010). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2537&Session_ID=93	Introduced House Sum: CaucusCOW	Schools; ELL models; exemption
2010	HB 2725	HB 2725 49th Leg., 2nd Reg. Sess. Chaptered (Ariz. 2010). HB 2725 49th Leg., 2nd Reg. Sess. House Summary as Transmitted (Ariz. 2010). HB 2725 49th Leg., 2nd Reg. Sess. Senate Fact as Enacted (Ariz. 2010). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2725&Session_ID=93	Chaptered Version House Summary as Transmitted Senate Fact as Enacted	Education; omnibus

Year	Bill	Citation(s), Location/Link, and Title	Artifacts Included in Data Set	Bill Summary
2010	HB 2732	HB 2732 49th Leg., 2nd Reg. Sess. Chaptered (Ariz. 2010). HB 2732 49th Leg., 2nd Reg. Sess. House Engrossed (Ariz. 2010). HB 2732 49th Leg., 2nd Reg. Sess. Concur/Refuse Memo (Ariz. 2010). HB 2732 49th Leg., 2nd Reg. Sess. Senate Fact as Enacted (Ariz. 2010). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2732&Session_ID=93	Chaptered Version House Engrossed Concur/Refuse Memo Senate Fact as Enacted	Schools; third grade retention
2011	SB 1409	SB 1409 50th Leg., 1st Reg. Sess. Senate Engrossed (Ariz. 2011). SB 1409 50th Leg., 1st Reg. Sess. Senate Fact as Passed (Ariz. 2011). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=SB1409&Session_ID=102	Senate Engrossed Senate Fact as Passed	Government publication; English only
2011	SB 1462	SB 1462 50th Leg., 1st Reg. Sess. Introduced (Ariz. 2011). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=SB1462&Session_ID=102	Introduced	Schools; ELL models; exemption
2011	SB 1532	SB 1532 50th Leg., 1st Reg. Sess. Introduced (Ariz. 2011). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=SB1532&Session_ID=102	Introduced	ADE; RFP; ELL instruction
2011	SCR 1035	SCR 1035 50th Leg., 1st Reg. Sess. Senate Engrossed (Ariz. 2011). SCR 1035 50th Leg., 1st Reg. Sess. Senate Fact as Passed (Ariz. 2011). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=SCR1035&Session_ID=102	Senate Engrossed Senate Fact as Passed	English; official language

Year	Bill	Citation(s), Location/Link, and Title	Artifacts Included in Data Set	Bill Summary
2011	HB 2528	HB 2528 50th Leg., 1st Reg. Sess. Introduced (Ariz. 2011). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2682&Session_ID=102	Introduced	Schools; ELL models; exemption
2011	HB 2683	HB 2683 50th Leg., 1st Reg. Sess. Introduced (Ariz. 2011). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2682&Session_ID=102	Introduced	English language learners; classrooms; balance
2012	SB 1033	SB 1033 50th Leg., 2nd Reg. Sess. Senate Engrossed (Ariz. 2012). SB 1033 50th Leg., 2nd Reg. Sess. Senate Fact Sheet (Ariz. 2012). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=SB1033&Session_ID=107	Senate Engrossed Senate Fact Sheet	Schools; ELL instruction; hourly requirements
2012	HB 2161	HB 2161 50th Leg., 2nd Reg. Sess. Chaptered Version (Ariz. 2012). HB 2161 50th Leg., 2nd Reg. Sess. House Summary as Transmitted (Ariz. 2012). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2161&Session_ID=107	Chaptered Version House Sum as Transmitted	Teachers; specialized certification
2013	HB 2283	HB 2283 51st Leg., 1st Reg. Sess. Introduced (Ariz. 2013). HB 2283 51st Leg., 1st Reg. Sess. House Summary CaucusCOW (Ariz. 2013). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2283&Session_ID=110	Introduced House Summary CaucusCOW	Government publications; other than English

Year	Bill	Citation(s), Location/Link, and Title	Artifacts Included in Data Set	Bill Summary
2013	HB 2425	HB 2425 51st Leg., 1st Reg. Sess. Chaptered (Ariz. 2013). HB 2425 51st Leg., 1st Reg. Sess. House Summary Transmitted (Ariz. 2013). HB 2425 51st Leg., 1st Reg. Sess. Senate Fact as Passed (Ariz. 2013). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2425&Session_ID=110	Chaptered Version House Summary as Transmitted Senate Fact As Passed	ELL task force replacement
2013	HB 2637	HB 2637 51st Leg., 1st Reg. Sess. Introduced (Ariz. 2013). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2637&Session_ID=110	Introduced	Pilot; structured English immersion exemption
2014	HB 2485	HB 2485 51st Leg., 2 nd Reg. Sess. Introduced (Ariz. 2014). HB 2485 51st Leg., 2 nd Reg. Sess. House Summary CaucusCOW (Ariz. 2014). http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=HB2485&Session_ID=112	Introduced House Summary CaucusCOW	Technology-based language development software

APPENDIX G

LEGISLATIVE AUDIO AND VIDEO ANALYZED

Year	Bill	Bill Summary	Notes
1999	HB 2387	Bilingual education	Retrieved from House clerk (cassette)
2001	HB 2010	Elections; optical scan equipment. (NOW: English learner programs; funding)	Retrieved from House clerk (cassette)
2001	HB 2633	Supplemental appropriations	Retrieved from House clerk (cassette)
2005	HCR 2030	English as official language	Retrieved from Senate clerk (CD)
2005	SB 1180	Charter schools; English language education	Retrieved from Senate clerk (digital file)
2006	SB 1198	ELL; SEI models; budget requests	Retrieved from Senate clerk (digital file)
2006	HB 2064	Eminent domain; fees and costs (NOW: English language learners)	Retrieved from House clerk (CD)
2006	HCR 2036	English as official language	Retrieved from House clerk (digital file)

Year	Bill	Bill Summary	Notes
2008	SB 1096	Bake sales; regulation; exemption (NOW: appropriation; English language learners)	<p>04/10/2008 – Senate Final Reading #1 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=3437</p> <p>04/09/2008 – House Third Reading #1 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=3404</p> <p>04/09/2008 – House Committee of the Whole #3 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=3403</p> <p>04/09/2008 – House Rules http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=3398</p> <p>04/09/2008 – House Appropriations http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=3394</p> <p>03/13/2008 – House Appropriations http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=3032</p> <p>02/19/2008 – Senate Third Reading #1 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=2590</p> <p>02/14/2008 – Senate Committee of the Whole #2 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=2507</p> <p>01/28/2008 – Senate Government http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=2236</p>

Year	Bill	Bill Summary	Notes
2010	HB 2281	Schools; prohibited courses; discipline (NOW: prohibited courses; discipline; schools)	<p>04/29/2010 – House Third reading #3 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=7710</p> <p>04/29/2010 – House Final Reading http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=7709</p> <p>04/29/2010 – House Third Reading http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=7705</p> <p>04/28/2010 – Senate Third Readings #4 & #6 and Final Reading http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=7665</p> <p>04/07/2010 – Senate Accountability and Reform http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=7405</p> <p>03/24/2010 – House Third Reading #1 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=7212</p> <p>03/18/2010 – House Committee of the Whole #2 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=7138</p> <p>03/08/2010 – House Democratic Caucus http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=7000</p> <p>03/08/2010 – House Rules http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=6987</p> <p>02/15/2010 – House Education http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=6760</p>

Year	Bill	Bill Summary	Notes
2010	SB 1160	Counties; powers; technical correction (NOW: schools; English language learners)	<p>4/22/2010 – House Rules http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=7575</p> <p>3/29/2010 – House Education http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=7246</p> <p>03/08/2010 – Senate Third Reading #1 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=6986</p> <p>02/24/2010 – Senate Education Accountability and Reform http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=6881</p>
2011	SB 1409	Government publication; English only	<p>3/30/2011 – House Appropriations http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=9020</p> <p>3/21/2011 – Senate Floor Session Part 2 – Third Reading #1 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=8914</p> <p>3/15/2011 – Senate Floor Session Part 2 – Committee of the Whole #1 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=8824</p> <p>3/14/2011 – Senate Floor Session Part 1 – Committee of the Whole #1 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=8797</p> <p>02/09/2011 – Senate Government Reform http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=8301</p> <p>02/09/2011 – Senate Government Reform http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=8285</p>

Year	Bill	Bill Summary	Notes
2011	SCR 1035	English; official language	<p>03/15/2011 – Senate Floor Session part 4-Third Reading #1 Part 2 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=8829</p> <p>03/15/2011 – Senate Floor Session part 3—Third Reading #1 Part 1 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=8828</p> <p>03/14/2011 – Senate Floor Session Part 1 – Committee of the Whole #1 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=8797</p> <p>02/16/2011 – Senate Government Reform Part 2 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=8425</p> <p>02/16/2011 – Senate Government Reform Part 1 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=8410</p>
2012	SB 1033	Schools; ELL instruction; hourly requirements	<p>02/02/2012 – Senate Floor Session Part 2 – Third Reading http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=9945</p> <p>02/01/2012 – Senate Floor Session part 1 – Committee of the Whole #1 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=9905</p> <p>01/23/2012 – Senate Education http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=9761</p>
2013	HB 2283	government publications; other than English	<p>02/05/2013 – House Government http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=11627</p>

Year	Bill	Bill Summary	Notes
2013	HB 2425	ELL task force replacement	<p>03/26/2013 – House Floor Session Part 2 – Final Reading #1 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=12302</p> <p>03/21/2013 – Senate Floor Session Part 2 – Third Reading #1 and #2 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=12267</p> <p>03/21/2013 – Senate Floor Session Part 1 – Committee of the Whole #1 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=12266</p> <p>03/07/2013 – Senate Education http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=12062</p> <p>02/25/2013 – House Floor Session Part 2 – Third Reading #1 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=11899</p> <p>02/18/2013 – House Rules http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=11790</p> <p>02/11/2013 – House Education http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=11694</p>

Year	Bill	Bill Summary	Notes
2014	HB 2485	Technology-based language development software	<p>03/06/2014 – House Floor Session Part 13 – Third Reading http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=13751</p> <p>03/06/2014 – House Floor Session Part 12 – Committee of the Whole #8 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=13740</p> <p>03/06/2014 – House Floor Session Part 11 – Committee of the Whole #7 http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=13739</p> <p>02/17/2014 – House Education http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=13445</p>

APPENDIX H

CODE LIST—LEGISLATIVE RATIONALITIES OF RULE

Access to education
Accountability
Achievement gap
Arizona's future
Categorizing kids
Competition between kids
Competition for funds
Contributing citizens
Corporate involvement
Desired results
Documented / Undocumented
Economy
English dominance
English only
Equity
Globalization
Immigration
International comparisons
Job preparation
Knowing students
Local control

Measurement
Metaphors
Native Language
Parents
Pathologized communities
Personal responsibility
Population counts
Power struggles
Protecting the state
Rate / Pace of child development
Return on investment in kids
Risk
Scarcity
School choice
Science / Research / SBR
Student self
Task force
Tax credits
Taxpayers
Tracking / Student data
Will of the people

APPENDIX I
JUDICIAL ARCHIVES ANALYZED

Flores v. State of Arizona, 48 F. Supp. 2d 937 (U.S. Dist. April 13, 1999).²⁰³

Flores v. State of Arizona, 172 F. Supp. 2d 1225 (U.S. Dist. January 24, 2000).

Flores v. State of Arizona, CIV 92-596 TUC ACM (U.S. Dist. June 30, 2000).

Flores v. State of Arizona, 160 F. Supp. 2d 1043 (U.S. Dist. October 12, 2000).

Flores v. State of Arizona, CIV 92-596 TUC ACM (U.S. Dist. June 25, 2001).

Flores v. State of Arizona, CIV 92-596 TUC ACM (U.S. Dist. June 11, 2002).

Flores v. State of Arizona, CIV 92-596 TUC ACM (U.S. Dist. April 5, 2002).

Flores v. State of Arizona, CIV 92-596 TUC ACM (U.S. Dist. October 4, 2005).

Flores v. State of Arizona, 405 F. Supp. 2d 1112 (U.S. Dist. December 15, 2005).

Flores v. State of Arizona, CIV 92-596 TUC RCC (U.S. Dist. March 16, 2006).

Flores v. State of Arizona, CIV 92-596 TUC RCC (U.S. Dist. April 25, 2006).

Horne v. Flores, 204 F. Appx. 580 (9th Cir. August 23, 2006).

Flores v. State of Arizona, 480 F. Supp. 2d 1157 (U.S. Dist. March 22, 2007).

Flores v. State of Arizona, CIV 92-596 TUC RCC (U.S. Dist. October 10, 2007).

Flores v. State of Arizona, 516 F.3d 1140 (9th Cir. App. February 22, 2008).

Flores v. State of Arizona, 516 F.3d 1140 (9th Cir. App. April 17, 2008).

Horne v. Flores, 08-289 & 08-294 (Horne, Petition for Writ of Certiorari, 9th Cir. August 29, 2008).

Horne v. Flores, 08-289 & 08-294 (Washington Legal Foundation as Amicus Curiae, Petition for a Writ of Certiorari, 9th Cir. October 6, 2008).

Horne v. Flores, 08-289 & 08-294 (Counsel for Respondents State of Arizona and the Arizona State Board of Education, Respondents' Brief in Opposition, 9th Cir. December 1, 2008).

Horne v. Flores, 08-289 & 08-294 (Combined Brief in Opposition by Respondents, 9th

²⁰³ This Appendix is organized by year of emergence, from earliest to most recent.

Cir. December 1, 2008).

Horne v. Flores, 08-294 (Reply Brief for Petitioners, 9th Cir. December 11, 2008).

Horne v. Flores, 555 U.S. 1092 (Opinion, January 9, 2009).

Horne v. Flores, 08-289 & 08-294 (Brief for the Petitioner Superintendent, 9th Cir. February 19, 2009).

Horne v. Flores, 08-289 & 08-294 (Brief for Petitioners, 9th Cir. February 19, 2009).

Horne v. Flores, 08-289 & 08-294 (Brief of the American Unity Legal Defense Fund, English Language Political Action Committee, ProEnglish and the Center for Equal Opportunity, as Amici Curiae Supporting Petitioners, 9th Cir. February 25, 2009).

Horne v. Flores, 08-289 & 08-294 (Brief Amicus Curiae of Eagle Forum Education & Legal Defense Fund, Inc., in Support of Petitioners, 9th Cir. February 25, 2009).

Horne v. Flores, 08-289 & 08-294 (Brief Amicus Curiae of Pacific Legal Foundation and Evergreen Freedom Foundation in Support of Petitioners, 9th Cir. February 25, 2009).

Horne v. Flores, 08-289 (Amicus Curiae Brief of Mountain States Legal Foundation Support of Petitioner, 9th Cir. February 26, 2009).

Horne v. Flores, 08-294 & 08-289 (Brief on Behalf of the American Legislative Exchange Counsel and Certain Individual State Legislators as Amicus Curiae in Support of Petitioners, 9th Cir. February 26, 2009).

Horne v. Flores, 08-289 & 08-294 (Brief for the Washington Legal Foundation as Amicus Curiae in Support of Petitioners, 9th Cir. February 26, 2009).

Horne v. Flores, 08-294 & 08-289 (Brief of Education-Policy Scholars as Amici Curiae in Support of Petitioners, 9th Cir. March 25, 2009).

Horne v. Flores. 556 U.S. 116 (Opinion, April 3, 2009).

Horne v. Flores. 557 U.S. 433 (Syllabus and Court Opinions, April 20, 2009).

Horne v. Flores, 08-289 & 08-294 (Supreme Court Hearing Transcript, April 20, 2009).

Flores v. State of Arizona, CV 92-596 TUC RCC (Order, 9th Cir. June 25, 2009).

Flores v. State of Arizona, 577 U.S. App.1014 (August 13, 2009).

Flores v. State of Arizona, CV 92-596 TUC RCC (Order, District Court of Arizona, August 19, 2010).

Flores v. State of Arizona, CIV 92-596 TUC RCC (Findings of Fact and Conclusions of Law, District Court of Arizona, March 18, 2011).

Flores v. State of Arizona, CIV 92-596 TUC RCC (Order, District Court, March 18, 2011).

Flores v. State of Arizona, 92-596 TUC RCC (Order, District Court, March 28, 2013).

APPENDIX J

CODE LIST—JUDICIAL RATIONALITIES OF RULE

AIMS	Metaphor
Assessment	Monitoring
Classification	Naming
Competition	National identity
Cost study	Other children
Cultural heritage	Parents
Effective instruction	Participation in society
English only	Plaintiff responsibility
Equality	Program deficiency
ESL and bilingual education study	Public interest
committee	Research / expertise
Expert testimony	Responsibility
Federalism	Right to education
Free enterprise	Risk
Funding types	Robbing Peter
Immigration	Role of superintendent
Increased funding vs. equal opportunity	Statistics on students
Individualizing	Student age
Interest groups	Student handicap
Institutional reform litigation	Suffering
Legal predecessors	Threats
Legislation as remedy	Time limits
Linguistic diversity in the nation state	Will of the people
Local conditions / control	

APPENDIX K

SEARCH DATABASES FOR PUBLIC OPINION ARCHIVE

Academic Search Premier
Access World News
AZ Newspapers
Boston Globe
Christian Science Monitor
Washington Post
Miami Herald
Accenda Noticias
News Magazines
Newsbank
Ethnic Newswatch
LexisNexis Academic
Blogs
Broadcast Transcripts
Legal
Newswires
Major World and U.S. Pubs

Web Pubs
US Law Reviews and Journals
Combined
US Newspapers and Wires
Proquest
AZ Republic
Newspapers (NY Times, LA Times,
Washington Post)
Alternative Press
Tucson Citizen
ERIC
Goldwater Institute (Web)
Hoover (Web)
AZ Education Association
AZ Department of Education
AZ Association for Bilingual
Education

APPENDIX L
PUBLIC OPINION ARCHIVES ANALYZED

- \$8.8M for language instruction adequate. (2009, February 13). *The Associated Press & Local Wire*. Retrieved from www.lexisnexis.com
- A job for the district: The case for ending court supervision of key social services. (2009, October 14). *The Washington Post*, p. A22. Retrieved from www.lexisnexis.com
- Amselle, J. (2009, March 2). ALEC and state legislators defend democratic accountability in Supreme Court case. *Targeted News Service*. Retrieved from www.lexisnexis.com
- Amselle, J. (2009, June 29). ALEC hails Supreme Court decision upholding federalism and democratic accountability. *Targeted News Service*, Retrieved from www.lexisnexis.com
- At the center of ELL debate is a youngster named Flores. (2006, March 5). *Arizona Republic*. Retrieved from www.azbilingualed.org/news
- Barr, B. (2006, August 30). Can't get no satisfaction. *Goldwater Institute*. Retrieved from www.goldwaterinstitute.org
- Benson, M. (2009, June 28). Supreme Court goes with English immersion. *Prairie Pundit*. Retrieved from www.lexisnexis.com
- Biggest and brightest stars in Hollywood. (2006, January 9). News at 10pm. 12 HVWB Las Vegas, NV. *inewsnetwork*. Retrieved from www.lexisnexis.com
- Bishop, T. (2009, October 10). Bid to end foster care edict fails – city, state dispute extension of 1988 oversight agreement. *The Baltimore Sun*, p. 1A. Retrieved from www.newsbank.com
- Bolick, C. (2012, July 10). The Supreme Court Stakes in 2012. *The Wall Street Journal*. Retrieved from www.hoover.org
- Brewer, J. (2010, May 28). Statement by Governor Jan Brewer. *State News Service*. Retrieved from www.lexisnexis.com
- Bykowicz, J. (2009, August 5). Foster care pact in doubt – State cites high court ruling in seeking end to federal oversight. *The Baltimore Sun*, p. 1A. Retrieved from www.newsbank.com
- Bykowicz, J. (2009, August 6). Judge says he intends to approve foster plan – but delays decision to weigh effect of high-court case. *The Baltimore Sun*, p. 3A. Retrieved from www.newsbank.com
- Cantoni, C. J. (2006, February 1). A nutty judicial diktat. *Arizona Republic*, p. 13.

- Retrieved from www.proquest.com
- Cauvin, H. E. (2009, December 17). D.C. disabilities agency faces test in court; Plaintiffs in lawsuit seek independent administrator. *The Washington Post*, p. B02. Retrieved from www.lexisnexis.com
- Cauvin, H. E. (2009, December 19). Judge continues oversight of D.C. care of disabled. *The Washington Post*, p. B03. Retrieved from www.lexisnexis.com
- Cauvin, H. E. (2010, April 6). Overseer of suit faults district: Duty to children unmet, judge says Nickles to appeal in class-action case. *The Washington Post*, p. B01. Retrieved from www.lexisnexis.com
- Cauvin, H. E. (2010, April 8). Judge rejects D.C.'s demand to end lawsuit: 1976 class action continues over care for disabled citizens. *The Washington Post*, p. B07. Retrieved from www.lexisnexis.com
- Chavez, L. (2011, May 12). English for immigrants. *Creators Syndicate*. Retrieved from www.lexisnexis.com
- Chen, M. (2009, June 25). *Horne v. Flores*: Lessons in equality. *RaceWire: The Colorlines Blog*. Retrieved from www.racewire.org
- Crawford, A. J. & Benson, M. (2006, April 2). Tough judge in English-learner case defies stereotypes. *Arizona Republic*, p. A.1. Retrieved from www.proquest.com
- Crawford, A. J. (2007, March 23). English-learner funds are ruled still not enough. *Arizona Republic*, p. A.1. Retrieved from www.proquest.com
- Crawford, A. J. (2007, June 25). Judge to rule on school funds: Decision today on whether to hold English-learner order against state. *Arizona Republic*, p. A.7. Retrieved from www.proquest.com
- Davenport, P. (2009, June 25). Court orders new look at Arizona's English program. *The Associated Press*. Retrieved from www.lexisnexis.com
- D.C.'s efforts to pay providers may require court to vacate 1995 injunction. *School Law Bulletin*, 15(10). Retrieved from www.lexisnexis.com
- District of Columbia: Courts won't dismiss social service suits. (2010, May 17). *Class Action Reporter*, 12. Retrieved from www.lexisnexis.com
- Diverde, P. (2006, February 8). Governor is right. *Arizona Republic*, p. 22. Retrieved from www.proquest.com

- Dunn, J. & Derthick, M. (2009). The legal beat: Language barriers. *Education Next*, 9(1). Retrieved from www.hoover.org
- Embrey, L. (2009, March 25). NSBA asks Supreme Court to support funding for English language learners. *Targeted News Service*. Retrieved from www.lexisnexis.com
- Federal court upholds Arizona's ELL program. (2013, April 17). *Education Week* 32(23), p. 4. Retrieved from www.lexisnexis.com
- Fenty administration files motion to remove court monitoring of department of mental health. (2009, September 4). *States News Service*. Retrieved from www.lexisnexis.com
- Fischer, H. (2001, December 28). Hull oks bilingual funds for schools. *Arizona Daily Star*. Retrieved from www.newsbank.com
- Fischer, H. (2009, April 20). Justices get AZ bilingual case today. *Arizona Daily Star*. Retrieved from www.newsbank.com
- Flores order. (2007, October 10). *Arizona Education Association*. Retrieved from www.arizonaea.org
- Gassen, S. G. (2009, April 19). Does Arizona's system serve? *Arizona Daily Star*. Retrieved from www.azstar.net
- Gerard, D. (2010, April 11). State can win challenge. *Star-Tribune*. Retrieved from www.newsbank.com
- Gonzalez, D. (2006, January 19). Governor's border plan criticized by Latinos. *Arizona Republic*, p. A.19. Retrieved from www.proquest.com
- Gov. Napolitano issues statement regarding *Flores* ruling. (2007, March 29). *US States News*. Retrieved from www.lexisnexis.com
- Grado, G. (2011, May 4). Potential conflicts of interest lead to Arizona Attorney General Tom Horne's removal as ethnic studies attorney. *Arizona Capitol Times*. Retrieved from www.newsbank.com
- Grado, G. (2011, July 19). Time is out: Arizona school districts out of ELL compliance face losing money. *Arizona Capitol Times*. Retrieved from www.proquest.com
- Grado, G. (2011, July 25). Arizona's English language learner program battle being waged on multiple fronts. *Arizona Capitol Times*. Retrieved from www.lexisnexis.com

- Grado, G. (2013, April 1). U.S. district judge in Arizona upholds immersion approach to teaching English. *Arizona Capitol Times*. Retrieved from www.lexisnexus.com
- Guerra, C. (2009, June 27). Ruling is bilingual ed vs. immersion. *San Antonio Express*, p. 1B. Retrieved from www.lexisnexus.com
- Haskell, M. (2010, March 20). U.S. judge ends Pineland decree maintaining compliance a key to decision. *Bangor Daily News*, p. 1. Retrieved from www.newsbank.com
- High cost of illegal aliens. (2006, February 20). *Chattanooga Times Free Press*, p. B9. Retrieved from www.lexisnexus.com
- Hoover, T. (2008, March 18). New estimate for ELL funds – Mesa, Gilbert districts concerned. *East Mesa Independent*. Retrieved from www.newsbank.com
- Horne, T. (2006, March 23). 7 Steps to better learning: Basic strategies lead to spectacular results in Nogales. *Arizona Republic*. Retrieved from www.azbilingualed.org
- Horne, T. (2007, February 3). Racist views are poor use of school funding. *Arizona Republic*. Retrieved from www.azcentral.com
- Horne, T. (2010, July 28). Tom Horne attorney general candidate, is interviewed on CNN. *Political Transcript Wire*. Retrieved from www.proquest.com
- Horne, T. (2011, March 23). Robb column about me was wrong. *Arizona Republic*, p. B4. Retrieved from www.proquest.com
- Hughes, P. (2006, January 28). GOP legislation a mockery of court order: Language difficulties. *Arizona Republic*, p. B.7. Retrieved from www.proquest.com
- Inmigrante impulse programas de ingles. (2010, January 4). *El Diario La Prensa*, p. 25. Retrieved from www.proquest.com
- Is Arizona targeting teachers through unfair English standards? (2010, September 16). *The Tennessee Tribune*, 6A. Retrieved from www.proquest.com
- Jacobs, D. (2010, October 25). 4th Circuit poised to hear Baltimore foster-care case. *The Daily Record*. Retrieved from www.newsbank.com
- Jagirdar, S. (2009, April 21). Arizona's English language learner issue before U.S. Supreme Court on April 20. *US State News*. Retrieved from www.lexisnexus.com
- Jagirdar, S. (2009, September 10). Mayor Fenty administration files motion to remove court monitoring of department of mental health. *U.S. Federal News*. Retrieved

from www.newsbank.com

- Judge suggests both sides in English learning debate talk it over. (2007, December 5). *The Associated Press State and Local Wire*. Retrieved from www.lexisnexus.com
- Kossan, P. (2009, March 19). Officials at odds over English case. *Arizona Republic*, p. B.3. Retrieved from www.proquest.com
- Kossan, P. (2009, June 23). Twice as many advance out of language class. *Arizona Republic*, p. A.1. Retrieved from www.proquest.com
- Kossan, P. (2009, June 26). Mom at head of suit still worried about Arizona's English learners. *Arizona Republic*, p. A. 15. Retrieved from www.proquest.com
- Krikorian, T. (2006, January 27). Yuma educators support governor's vetoes. *Knight-Ridder Tribune Business News*. Retrieved from www.lexisnexus.com
- Ladner, M. (2006, January 25). Estudiantes de ELL Necesitan Opciones. *Goldwater Institute Today's News*. Retrieved from www.goldwaterinstitute.org
- Lindseth, A. A., & Hanushek, E. A. (2009, September 15). The Supreme Court gets school funding right. *Education Next*. Retrieved from <http://hanushek.stanford.edu/publications/supreme-court-gets-school-funding-right>
- L'ecuyer, J. (2005, June 17). New proposal for funding of English immersion. *US States News*. Retrieved from www.lexisnexus.com
- L'ecuyer, J. (2006, January 24). Gov. Napolitano calls ELL special session. *US States News*. Retrieved from www.lexisnexus.com
- L'ecuyer, J. (2006, January 26). Gov. Napolitano issues statement on judge's ruling on Flores, fines. *US States News*. Retrieved from www.lexisnexus.com
- Lewin, T. (2009, May 20). End is near in a fight on teaching of English. *The New York Times*, p. A16. Retrieved from www.lexisnexus.com
- Lewin, T. (2009, June 26). Supreme Court sides with Arizona in language case. *The New York Times*, p. A16. Retrieved from www.lexisnexus.com
- Lopes, P. (2008, January 16). Guest opinion: How house Dems see the 2008 state legislative session. *Tucson Citizen*. Retrieved from www.tucsoncitizen.com
- Lowy, J. (2009, April 19). Court weighs state's duty to English learners. *The Associated Press & Local Wire*. Retrieved from www.lexisnexus.com

- Lowy, J. (2009, April 20a). Supreme Court to rule on states' obligation to non-English speakers. *Associated Press*. Retrieved from www.zwire.com
- Lowy, J. (2009, April 20b). US court weighs state's duty to English learners. *Associated Press Worldstream*. Retrieved from www.lexisnexis.com
- Marshall, M. (2013, March 29). Court rules in favor of Superintendent in *Flores* case. Arizona Department of Education Office of Superintendent of Public Instruction John Huppenthal. Retrieved from <http://www.azed.gov/public-relations/files/2013/04/press-release-court-rules-in-favor-of-superintendent-in-flores-case.pdf>
- Mattix, A. (2007, April 18). Hangin with Mr. Cooper. *Goldwater Institute Today's News*. Retrieved from www.goldwaterinstitute.org
- Maxwell, L. A. (2013, April 17). Federal court upholds Arizona's ELL program. *Education Week*. Retrieved from www.lexisnexis.com
- McNeil, M. (2009, January 8). Funding disparities squeezes ELL efforts: States vary widely in how much of their own money—if any—they allot to English-language-learner programs to supplement federal funding. *Education Week*, 28(17), 41. Retrieved from www.lexisnexis.com
- McNuff, E. (2006, March 5). Where's the problem here? *Arizona Republic*, p. V.4. Retrieved from www.proquest.com
- Mears, B. (2009, June 25). High court dismisses English-deficient students' case. *CNN.com*. Retrieved from www.lexisnexis.com
- Montini, E. J. (2009, Jan 15). Kids still losers in English-learner suit. *Arizona Republic*. Retrieved from www.azcentral.com
- Montini, E. J. (2009, June 25). Horne 'wins.' But did school kids? *E.J. Montini's Columns & Blog*. Retrieved from www.azcentral.com
- Murray, V. (2005, July 10). Learning English involves more than money. *Arizona Daily Starr*. Retrieved from www.goldwaterinstitute.org
- Myer, R. (2007, October 11). House democrats applaud recent *Flores* ruling. *US States News*. Retrieved from www.lexisnexis.com
- New teaching study findings recently were reported by researchers at University of California. (2012, October 31). *Education Letter*. Retrieved from www.lexisnexis.com

- Newton, C. (2010, July 12). Horne touts his legal background, success as superintendent. *Arizona Republic*, p. B.1. Retrieved from www.proquest.com
- Nick, D. (2006, January 26). Horne files motion to put English language learner fines into a separate fund to benefit English language learners but delay specifying the method to ensure dollars are spent in accordance with court requirements. *Arizona Department of Education News*. Retrieved from www.azed.gov
- Nick, D. (2006, March 9). Horne predicts new *Flores* law to be approved by court. *Arizona Department of Education News*. Retrieved from www.azed.gov
- Nick, D. (2006, March 22). Horne responds to governor's criticism of *Flores* appeal. *Arizona Department of Education News*. Retrieved from www.azed.gov
- Nick, D. (2006, March 31). Horne pleased with news that ninth U.S. Circuit Court of appeals has issued a 10 day stay in the *Flores* decision. *Arizona Department of Education News*. Retrieved from www.azed.gov
- Nick, D. (2006, April 6). Horne announces U.S. Court of appeals stays judge's order until completion of appeal. *Arizona Department of Education News*. Retrieved from www.azed.gov
- No end to oversight: D.C. still has work to do on protecting children and the disabled. (2010, April 11). *The Washington Post*, p. A14. Retrieved from www.lexisnexis.com
- Offley, C. (2009, July 2). New education next forum: Is there a connection between school spending and student achievement? Should courts decide? *Business Wire*. Retrieved from www.lexisnexis.com
- Other matters being handled by the court. (2009, June 26). *The Washington Post*, p. A08. Retrieved from www.lexisnexis.com
- Our opinion: Mediation in Flores case is unlikely to resolve fracas. (2007, December 19). *Tucson Citizen*. Retrieved from www.tucsoncitizen.com
- Our opinion: Stop fighting federal judges on education. (2007, March 26). *Tucson Citizen*. Retrieved from www.tucsoncitizen.com
- Parker, R. (2008, October 5). Con: Our way not the best way. *Arizona Republic*, p. B.4. Retrieved from www.proquest.com
- Patterson, T. C. (2008, April 15). English language learning. *Goldwater Institute Daily Email*. Retrieved from www.goldwaterinstitute.com

- Peck, C. & Manning, V. (2005, June 2). Early intervention vital in education process. *Arizona Republic*, p. B.9. Retrieved from www.proquest.com
- Peck, C. & Palmer, J. (2005, July 7). Classroom size is vital to quality education. *Arizona Republic*, p. B.7. Retrieved from www.proquest.com
- Pitzl, M. J. (2007, March 30). Flores by the numbers. *Arizona Republic*. Retrieved from www.azbilingualed.org
- Pitzl, M. J. (2007, July 25). Lawmakers buck contempt request over court order. *Arizona Republic*, p. B.1. Retrieved from www.proquest.com
- Pitzl, M. J. (2007, October 12). New English-learner ultimatum set: Judge vows to penalize state if funding isn't met by March 4. *Arizona Republic*, p. A.1. Retrieved from www.proquest.com
- Pitzl, M. J. (2007, December 11). State cool to 'Flores' proposal. *Arizona Republic*, p. B. 1. Retrieved from www.proquest.com
- Pitzl, M. J. (2008, January 25). Madison board balks at state English curriculum mandate. *Arizona Republic*, p. 3. Retrieved from www.proquest.com
- Pitzl, M. J. (2008, February 29). Extension is sought for English-language budget plan. *Arizona Republic*, p. B.6. Retrieved from www.proquest.com
- Pitzl, M. J. (2008, March 7). \$40 million urged for English-learners. *Arizona Republic*, p. B.1. Retrieved from www.proquest.com
- Pitzl, M. J. (2008, March 12). Language-funding deadline set. *Arizona Republic*, p. B.1. Retrieved from www.proquest.com
- Pitzl, M. J. (2008, April 2). Napolitano seeks state exemption of fines over English-learner case. *Arizona Republic*, B. 1. Retrieved from www.proquest.com
- Pitzl, M. J. (2008, April 15). Governor declines to sign English-learner bill. *Arizona Republic*. Retrieved from www.azbilingualed.org
- Pitzl, M. J. (2008, April 18). School fray to go to top court. *Arizona Republic*, p. B. 1. Retrieved from www.proquest.com
- Pitzl, M. J. (2008, May 3). Attorney: Shelve ed program until it has enough funding. *Arizona Republic*, p. B.2. Retrieved from www.proquest.com
- Plainly speaking; Our stand: Lousy plan to teach English deserves a veto. (2005, May

- 18). *Arizona Republic*, p. B.8. Retrieved from www.proquest.com
- Political headlines. (2009, April 20). Fox News Special Report with Bret Baier 6:00pm. *inewsnetwork*. Retrieved from www.lexisnexus.com
- Porter, R. (2013, May 2). Arizona gets English out of the courtroom and into the classroom: Long-running lawsuit over language instruction comes to an end. *The Washington Times*, p. B3. Retrieved from www.lexisnexus.com
- Purtill, C. (2005, December 27). Dist. 20 legislators pan edict: English-learner spending order termed 'fraud.' *Arizona Republic*, p. 1. Retrieved from www.proquest.com
- Ramos, V. M. (2009, July 7). In Supreme Court language decision, its sink or swim. *Hispanosphere*. Retrieved from www.lexisnexus.com
- Readers' picks for decade's biggest stories. (2010, January 1) *Arizona Republic*, p. 17. Retrieved from www.proquest.com
- Rezzonico, A. (2006, January 17). Superintendent Horne appeals *Flores* decision: Moves for stay of enforcement. *Arizona Department of Education News*. Retrieved from www.azed.gov
- Rezzonico, A. (2006, April 26). Statement by state superintendent Tom Horne regarding the trial court order in the *Flores* case. *Arizona Department of Education News*. Retrieved from www.azed.gov
- Rezzonico, A. (2009, January 9). United States Supreme Court to hear *Flores* case. *Arizona Department of Education News*. Retrieved from www.azed.gov
- Rezzonico, A. (2009, June 25). Horne wins *Flores* case. *Arizona Department of Education News*. Retrieved from www.azed.gov
- Rice, R. (2009, July 5). Horne's victory is a loss for schools. *Arizona Republic*, p. B.10. Retrieved from www.proquest.com
- Riske, P. (2005, June 10). Special session likely as governor, republicans spar over education issues. *Arizona Capital Times*. Retrieved from www.newsbank.com
- Robb, R. (2001, September 9). Activist judge, vague laws trump our elected officials. *Arizona Republic*, p. V5. Retrieved from www.newsbank.com
- Rotstein, A. H. (2009, January 9). U.S. Supreme court enters English learning fight. *The Associated Press State & Local Wire*. Retrieved from www.lexisnexus.com
- Ruling in *Flores* case step forward for Arizona's children. (2005, December 16). *U.S.*

- States News*. Retrieved from www.lexisnexis.com
- Ryman, A. (2006, March 2). Teachers, state at odds over whether test should pass or fail. *Arizona Republic*, p. A12. Retrieved from www.proquest.com
- Ryman, A. (2013, March 29). Judge upholds Arizona program for English language learner classes. *Arizona Central*. Retrieved from www.azcentral.com
- Ryman, A. (2013, March 30). English learner victory for state. *Arizona Republic*, p. A1. Retrieved from www.proquest.com
- Ryman, A. (2013, April 25). Appeal filed vs. decision on Arizona's English language learner programs. *Arizona Republic*. Retrieved from www.azcentral.com
- Sanders, R. L. (2013, March 18). Arizona high-court record: Many cases, many wins. *Arizona Republic*, p. A1. Retrieved from www.proquest.com
- Sandler, R. & Schoenbord, D. (2009, October 22). Soundings: 'Free from decree.' *City Journal*, 19(3), 10-11. Retrieved from www.lexisnexis.com
- Schlafly, P. (2006, February 14). Arizona taxpayers paying dearly for judicial activism. *Copley News Service*. Retrieved from www.lexisnexis.com
- Schoenbrod, D. and Sandler, R. (2012, February 3). Federal consent decree Fairness Act and Sunshine for Regulatory Decrees and Settlements Act. *Congressional Documents and Publications*. Retrieved from www.lexisnexis.com
- Scutari, C. (2001, December 20). English-learner bill passes but plan may face court challenge. *Arizona Republic*, p. B1. Retrieved from www.proquest.com
- Scutari, C. (2005, February 20). Lawyer is loved, loathed at capitol. *Arizona Republic*, p. B.1. Retrieved from www.proquest.com
- Scutari, C. (2006, January 20). Governor, Latino leaders to talk English-learner funding. *Arizona Republic*, p. B.7. Retrieved from www.proquest.com
- Senate president ducks democrats' resign-to-run request. (2007, October 14). *Arizona Republic*, p. B.3. Retrieved from www.proquest.com
- Senseman, P. (2009, June 25). U.S. Supreme Court rules on English language learner case, *Horne v. Flores*. *State of Arizona Press Release*. Retrieved from www.azleg.gov
- Sherwood, R. (2005, August 11). Napolitano, GOP leaders resume talks; 1st meeting in 3 months. *Arizona Republic*, p. B.10. Retrieved from www.proquest.com

- Sherwood, R. (2006, April 4). English-learner law challenged. *Arizona Republic*, p. B.1. Retrieved from www.proquest.com
- Siegel, R. (2009, April 20). Justices hear Arizona case on teaching English. *All Things Considered: National Public Radio*. Retrieved from www.lexisnexus.com
- Simon, J. (2009, August 3). The Roberts Court takes aim at institutional reform litigation. *PrawfsBlawg*. Retrieved from www.lexisnexus.com
- Simpson, M. D. Supreme Court hears student strip-search case. (2009, October / November). *NEA Today* 28(2), p. 23. Retrieved from www.nea.org.
- Small, J. (2005, June 3a). Flores' lawyer monitors English learner stalemate. *Arizona Capitol Times*. Retrieved from www.newsbank.com
- Small, J. (2005, June 3b). Republicans won't budge on vetoed tax credit, English learner bills. *Arizona Capitol Times*. Retrieved from www.newsbank.com
- Small, J. (2005, June 17). Governor releases English language learner, corporate tuition tax credit plans. *Arizona Capitol Times*. Retrieved from www.newsbank.com
- Small, J. (2005, July 29). Lawyer to ask federal judge to halt highway funds. *Arizona Capitol Times*. Retrieved from www.newsbank.com
- Small, J. (2005, August 5a). Fight over English-learners funding. *Arizona Capitol Times*. Retrieved from www.newsbank.com
- Small, J. (2005, August 5b). Special session to iron out English funding? *Arizona Capitol Times*. Retrieved from www.newsbank.com
- Small, J. (2005, October 14). Funding to teach students English mired in legal squabbling. *Arizona Capitol Times*. Retrieved from www.newsbank.com
- Small, J. (2006, January 27). English learner vetoes, fines pile up. *Arizona Capitol Times*. Retrieved from www.lexisnexus.com
- Small, J. (2006, March 24). AZ's superintendent of public instruction seeks to block distribution of \$21M in 'Flores' fines. *Arizona Capitol Times*. Retrieved from www.lexisnexus.com
- Small, J. (2006, March 31). AZ gov. concedes on tuition tax credit, but Republicans still bristle over last year's veto. *Arizona Capitol Times*. Retrieved from www.lexisnexus.com

- Small, J. (2006, April 28). A funding plan passed by a federal judge to teach students English violates federal law. *Arizona Capitol Times*. Retrieved from www.lexisnexus.com
- Small, J. (2006, May 5). Lawyer asks judge to clarify ruling rejecting state law that revamps AZ schools' English programs. *Arizona Capitol Times*. Retrieved from www.lexisnexus.com
- Small, J. (2006, May 12). State challenges court fines in 'Flores' case, exemption from AIMS for English learners. *Arizona Capitol Times*. Retrieved from www.lexisnexus.com
- Small, J. (2006, June 30). Advocate says Horne has no legal standing to appeal 'Flores' decision. *Arizona Capitol Times*. Retrieved from www.lexisnexus.com
- Small, J. (2006, August 25). Federal appeals court cancels lower court's ruling in English language learning. *Arizona Capitol Times*. Retrieved from www.lexisnexus.com
- Small, J. (2007, March 30). Arizona legislature to appeal latest court order in English learner suit. *Arizona Capitol Times*. Retrieved from www.lexisnexus.com
- Small, J. (2007, July 13). Arizona again faces fines in English language learner suit. *Arizona Capitol Times*. Retrieved from www.lexisnexus.com
- Small, J. (2007, October 12). Federal court sets March 4 as new *Flores v. Arizona* suit deadline. *Arizona Capitol Times*. Retrieved from www.lexisnexus.com
- Small, J. (2007, December 14). Federal appeals court panel refers Arizona's English language learner lawsuit to mediation. *Arizona Capitol Times*. Retrieved from www.lexisnexus.com
- Small, J. (2009, March 27). U.S. justice department files briefs to back courts in Flores. *Arizona Capitol Times*. Retrieved from www.lexisnexus.com
- Small, J. (2009, June 25). U.S. Supreme Court remands ELL case to lower court. *Arizona Capitol Times*. Retrieved from www.lexisnexus.com
- Soifer, D. (2012, June 3). In Arizona, Segregation for the children? *State News Service*. Retrieved from www.lexisnexus.com
- Supreme Court: Consider NCLB when conducting EEO compliance review. *School Law Bulletin*, 13(4). Retrieved from www.lexisnexus.com
- Supreme Court urged to uphold states' powers of appropriations and education policymaking. (2008, October 7). *Targeted News Service*. Retrieved from www.lexisnexus.com

www.lexisnexis.com

- Tamber, C. (2009, August 5). Maryland challenges foster care consent decree. *The Daily Record*. Retrieved from www.newsbank.com
- Tamber, C. (2009, August 6). Judge urges both sides to resolve foster-care dispute in Baltimore. *The Daily Record*. Retrieved from www.newsbank.com
- Tamber, C. (2009, October 9). Fight over foster care in Baltimore heads back to court. *The Daily Record*. Retrieved from www.newsbank.com
- Think tank speaks on English language learners – Guest commentary. (2008, April 15). *East Mesa Independent*. Retrieved from www.newsbank.com
- Totenberg, N. (2009, April 20). Supreme Court hears case on English in schools. *National Public Radio*. Retrieved from www.lexisnexis.com
- Trasvina, J. (2006, July 26). Border security and immigration issues. *CQ Congressional Testimony*. Retrieved from www.lexisnexis.com
- Trevizo, E. & Kossan, P. (2009, June 26). Mom at head of suit still worried about Arizona's English learners. *Arizona Republic*. Retrieved from www.azcentral.com
- Valdez, L. (2007, January 29). Let's ditch '50s mentality: Ethnic studies aren't 'frivolous' but important to our children's education. *Arizona Republic*, p. B.5. Retrieved from www.proquest.com
- Vanoverbeke, C. (2008, January 24). Schools demand \$300M to teach students English. *East Valley Tribune*. Retrieved from www.newsbank.com
- Vanoverbeke, C. (2008, March 4). State: Teaching English learners to cost \$40M, not \$300M: Superintendent submits figure deadline. *East Valley Tribune*. Retrieved from www.newsbank.com
- Video commentary with Hoover senior fellows Eric Hanushek and Paul Peterson. *Hoover Institution*. Retrieved from www.hoover.org
- Walsh, M. (2009, April 13). Supreme Court preview: *Horne v. Flores*. *Education Week*. Retrieved from www.edweek.org
- Wells, D. No joking: Schools need to explore immigration issues. *Arizona Republic*, p. 42. Retrieved from www.proquest.com
- Wingett, Y. (2006, January 14). Latino issues facing battle in legislature: Caucus putting

- together plan to push agenda. *Arizona Republic*, p. B.1. Retrieved from www.proquest.com
- Wingett, Y. (2006, August 28). Ariz. Latinos lack an impact in legislature. *Arizona Republic*, p. A.1. Retrieved from www.proquest.com
- Woke up this morning. (2006, January 9). News at 9pm. 18 WVTM Milwaukee, WI. *inewsnetwork*. Retrieved from www.lexisnexis.com
- Zehr, M. A. (2001, May 23). Ariz. faces sanctions in LEP-student funding lawsuit. *Education Week*, 20(37), 19. Retrieved from www.ebscohost.com
- Zehr, M. A. (2005, November 16). Impasse in Arizona: Lawyer in finance case lists Gov. Napolitano as candidate for jail. *Education Week*, 25(12), 21. Retrieved from www.lexisnexis.com
- Zehr, M. A. (2006, January 4). Arizona gets ultimatum on aid for English-learners. *Education Week*, 25(16), 13. Retrieved from www.lexisnexis.com
- Zehr, M. A. (2006, January 18). Teacher pay could rise in Arizona. *Education Week*, 25(19), 19. Retrieved from www.lexisnexis.com
- Zehr, M. A. (2006, February 1). Arizona starts accruing big fines in lawsuit over English-learners. *Education Week*, 25(21), 20-23. Retrieved from www.ebscohost.com
- Zehr, M. A. (2006, February). English-only advocate uses Ariz. state office to carry out mission. *Education Week*, 25(21), 21. Retrieved from www.ebscohost.com
- Zehr, M. A. (2006, March 15). Arizona governor allows ELL bill to become law: Stalemate ends, but issue heads back into federal court. *Education Week*, 25(27), 20. Retrieved from www.lexisnexis.com
- Zehr, M. A. (2008, March 5). Arizona still grappling with order on adequate funding for ELLs: Recent federal appeals court ruling in Flores case puts lawmakers on the spot. *Education Week*, 27(26), 16. Retrieved from www.lexisnexis.com
- Zehr, M. A. (2008, May 7). Arizona ELL-funding plan draws scattered backlash. *Education Week*, 27(36), 16. Retrieved from www.lexisnexis.com
- Zehr, M. A. (2008, September 3). Arizona still grappling with balance on mandated ELL instruction. *Education Week*, 28(2), 14-15. Retrieved from www.ebscohost.com
- Zehr, M. A. (2008, November 25). Janet Napolitano's role in *Flores v. Arizona*. *Learning the language: Education Week Blog*. Retrieved from www.blogs.edweek.org

- Zehr, M. A. (2009, April 8). Roots of federal ELL case run deep. *Education Week*, 28(28), 1-11. Retrieved from www.ebscohost.com
- Zehr, M. A. (2009, April 29). U.S. Supreme Court considers funding for English-learners. *Education Week*, 28(30), 6. Retrieved from www.ebscohost.com
- Zehr, M. A. (2009, July 15). Arizona officials notch win in clash over ELL services. *Education Week*, 28(36), 16. Retrieved from www.ebscohost.com
- Zehr, M. A. (2010, February 24). Home-language surveys for ELLs under fire: Some parents and students say the instruments can lead to the misclassification of immigrants' children. *Education Week*, 29(22), 1. Retrieved from www.lexisnexis.com
- Zehr, M. A. (2010, April 6). Ability to evaluate ELL programs questioned. *Education Week*, 29(28), 24-26. Retrieved from www.ebscohost.com
- Zehr, M. A. (2010, July 14). Studies take aim at policies on English-language learners in Arizona. *Education Week*. Retrieved from www.lexisnexis.com
- Zehr, M. A. (2010a, August 25). Researchers' ELL data subpoenaed in Arizona Court Case. *Education Week*, 30(1), 8. Retrieved from www.ebscohost.com
- Zehr, M. A. (2010b, August 25). Report advises rethinking home-language surveys: Paper finds questions miss or overidentify ELL students. *Education Week*, 30(1). Retrieved from www.lexisnexis.com
- Zehr, M. A. (2010, September 15). Ariz. ELL programs found to violate civil-rights law. *Education Week*. Retrieved from www.lexisnexis.com
- Zeiger, D. (2010, September 18). Horne touts legal experience in pursuit of AG's office. *East Valley Tribune*. Retrieved from www.lexisnexis.com

APPENDIX M

CODE LIST—PUBLIC OPINION RATIONALITIES OF RULE

Accountability
Assessment
Assimilation
Barriers / obstacles
Bilingual curriculum
Changed circumstances
Choice
Classification
Class sizes
Competition
Contribution to society
Court rulings
Democracy
Discrimination
District distress
Effectiveness
ELL vs. non
English only
Equity
Failing schools
Federalism
Funding sources
Immigration
Improvement
Individualizing
Interdisciplinary approach
Investment
Judicial activism
Key players
Local control / needs
Management

Metaphor
Money does not matter
Parents
Partisan politics
Personal freedoms
Personal testimony
Poverty
Private schools / Vouchers
Program success
Related cases
Responsibility
Risk
Robbing Peter
Science / SBR
Segregation
Social services
State bickering
State future
Statistics on students
Success
Taxpayers
Technologies used on students
Threat
Time limits
Unions