

ORGANIZING WHILE UNDOCUMENTED: THE LAW AS A “DOUBLE EDGED SWORD”
IN THE MOVEMENT TO PASS THE DREAM ACT

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INTRODUCTION

Historically, marginalized groups have leveraged the law as an important resource to gain rights or to have their rights recognized.¹ Yet, while the law has many times functioned as a mobilizing tool for social movement activism, it has also proven quite challenging for movements due to the high cost of litigation as well as the immense time required in pursuing court action.² More recently, scholars have conceptualized legal action or engagement with the law more broadly and also have considered the potential drawbacks for movements in pursuing legal tactics.³ In fact, in recent debates some scholars have gone as far as to argue that not all consequences of losing in court are negative and that these effects could in some ways be beneficial to a movement.⁴

Seeking to clarify the role of the law as a tool for social movement organizing and the strategic use of identity in relation to marginalized groups' engagement with the law, in this article I pose the following questions: *Does engagement with the law have to be "either/or" or is there an alternative in which the law can function both as a tool for legal action and the target of such action? Also, what mechanisms are used when the law is leveraged as a tool by social movement actors whose very presence or identity is de-legitimated under the law?*

Using the developmental trajectory of the movement to pass the federal Development, Relief and Education for Alien Minors (DREAM) Act⁵ as a case study, this article examines the role of law as engaged in by groups whose identities as "undocumented" contradict the presumed behavior and actions of such individuals under the law.⁶ Engagement with the law has been conceptualized as either benefiting or detracting from a social movement as well as either a tool for movement activism or target of movement activity. It is within this framework that I propose, for social movement actors, the law can in fact function both as a tool and as the target of mobilization.⁷

¹ Burstein, P., *Legal Mobilization as a Social Movement Tactic: the Struggle for Equal Employment Opportunity*, AMERICAN JOURNAL OF SOCIOLOGY 96(5), 1201–1225 (1991); McCann, M., *Law and Social Movements: Contemporary Perspectives*, ANNUAL REVIEW OF LAW AND SOCIAL SCIENCE 2, 17–38 (2006).; McCann, M., *Law and Social Movements*, Dartmouth/Ashgate (2006); Nakano Glenn, E., *Unequal Freedom: How Race and Gender Shaped American Citizenship and Labor*, Harvard University Press, Cambridge, MA (2002); Sarat, A & Scheingold, S., *Cause Lawyering and the State in a Global Era*, Oxford University Press, Oxford (2001).

² McCann, M., *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago: University of Chicago Press (1994); McCann, 2006, *supra* note 1.

³ *Id.*

⁴ Albiston, C.R., *The Dark Side of Litigation as a Social Movement Strategy*, IOWA L. REV. BULLETIN 61 (2011).

⁵ The Development, Relief and Education for Alien Minors (DREAM) Act (S. 2075, H.R. 5131) is a bill that if passed, would allow undocumented immigrant youth who migrated to the United States at a young age to become eligible for a path to citizenship. For a complete history of the bill see Olivas, M., *The Political Economy of the DREAM Act and the Legislative Process: A Case Study of Comprehensive Immigration Reform* WAYNE L. REV. (2010).

⁶ In this article, "the law" is used to refer to what political scientist and socio-legal scholar Michael McCann has defined as "...signifying different types of phenomena [including] official legal institutions, like courts or administrative bureaucracies; sometimes to legal officials or elites, such as judges, bureaucrats or lawyers; and sometimes to legal norms, rules or discourses that structure practices in and beyond legal institutions" McCann, *supra* note 1, pp. 20–21.

⁷ Extending Bernstein and de la Cruz's formulation of identity in a social movement as both the goal of a movement, but also what is to be deconstructed or argued against, I make a parallel argument regarding the role of

In addition to understanding the ways in which social movement participants and other marginalized groups take up the notion of “the law” in organizing, it is also necessary to examine the role of identity and the construction of legal identities by participants in these movements as part of a given group’s decision to pursue legal action as a movement strategy. In the activism of undocumented social movement participants, they have sought to create a new identity legitimized by formal recognition under the law, but simultaneously worked to counter negative or incomplete depictions of their communities in contemporary legal discourse. In this vein I argue that participants in the movement to pass the federal DREAM Act deploy an intersectional identity⁸ as a strategy to gain traction and legitimacy within the eyes of the law. In doing so, they ascribe to what Myra Marx Ferree calls “discursive opportunity structures” demonstrating both the irony and selectivity of the law in recognizing their cause.

Drawing upon law and society scholarship and literature on the role of identity in social movement activism, this article argues for both a re-envisioning of the role of law in social movements, as both a tool and the target of movement activism, and for a more complex analysis of the deployment of multiple, intersecting social identities as a tactic of social movement participants. While sociologist Nicholas Pedriana and others⁹ have argued for an understanding of legal status as a master frame¹⁰ in interrogating the role of identity for undocumented immigrant activists, those activists have been rendered by the law inadmissible and as occupying a space outside the national body. Their desire to make rights claims and engage with the law stems not from the marginalization they face as a result of the legal structure, but the rights they see themselves as able to claim as a result of the multiple communities to which they belong. These “tangential” rights are tied to varying components of an undocumented individual’s multiple social identities and function similarly to the citizen proxy or oblique rights that legal scholar Hiroshi Motomura refers to in his work on the rights of non-citizens in the U.S. legal system.¹¹ The legal structure is therefore a tool from which immigrants are able to assert formally recognized rights, and the law also functions as a basis from which activists critique the limited and extremely restrictive nature of the legal system to recognize rights aside from those related to legal status in the United States. Scholars have recently demonstrated that these youth’s multiple and differentially situated social identities (racial, gender, class, etc.) are to some extent influenced by the role of the law and legal status’ prohibiting effects on youth’s

law in social movements. See Bernstein, M. & de la Cruz, M. ‘*What Are You?*’: *Explaining Identity as a Goal of the Multiracial Hapa Movement*, 56 (4) SOCIAL PROBLEMS 722–745 (2009).

⁸ I am using “intersectional identity” as a way to refer to the simultaneous deployment of multiple social identities: for example, racial, gender and class. See Kimberle Williams Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991); L. McCall, *The Complexity of Intersectionality*, 30 SIGNS: J. OF WOMEN, CULTURE, & SOCIETY 1771 (2005).

⁹ See also the scholarship of Roberto Gonzales (forthcoming).

¹⁰ In his work, Pedriana argues that a master frame can be understood as a perspective or model with the “theoretical power and importance that goes well beyond the case-specific frames unique to a given social movement” and cites Robert Benford and David Snow’s claim that they serve as “dominant algorithms that resonate deeply across social movements and protest cycles.” See Pedriana, N. *From Protective to Equal Treatment: Legal Framing Processes and Transformation of the Women’s Movement in the 1960s*, 111(6) AMERICAN JOURNAL OF SOCIOLOGY 1718–1761 (2006).

¹¹ Motomura, H. *The Rights of Others: Legal Claims and Immigration Outside the Law*, 59 DUKE LAW JOURNAL, 1723–1786 (2010).

lives.¹² Nevertheless, as my participation observation and interview data will demonstrate, undocumented status, though extremely salient in the lives of undocumented young people, is not necessarily the sole framework shaping the world view and self-image that these youth hold nor does it accurately reflect the ways in which they would choose to represent their identities and that of their community members.

In this article I draw upon data collected over the past three years, primarily in-depth interviews conducted in summer and fall 2011 with undocumented youth activists in the San Francisco Bay Area, and participant observation, which took place in summer and fall 2012 with members of three undocumented community based organizations/student groups—Asian Students Promoting Immigrant Rights through Education (ASPIRE), Rising Immigrant Scholars through Education (RISE), and Graduates Reaching a Dream Deferred (GRADD). A brief description of each organization and the communities they serve as well as the relevance of the groups to obtaining a representative sample of movement participants can be found below.¹³

Group/Organization	Population	Variable
Rising Immigrant Scholars through Education (RISE) and Graduates Reaching a DREAM Deferred (GRADD)	Undocumented youth eligible for the DREAM Act in its proposed form.	Students who are pursuing either a four-year or advanced college degree. Representative of those whom politicians refer to when discussing the “high achieving, exceptional” individuals (though this label is widely contested among movement organizers).
Asian Students Promoting Immigrant Rights through Education (ASPIRE)	Asian American undocumented youth seeking to raise awareness about the issue of legal status in the API community and to build coalitions between Asian and Latina/o undocumented communities.	Individuals who represent a community with which many American do not associate as being undocumented, but have some experiences in common with their undocumented Latina/o peers.

This article proceeds in six sections. Part II provides some basic historical and political context to the movement to pass the federal DREAM Act. Part III consists of a literature review drawing from work by scholars on law and social movements and identity/legal consciousness and social movement participation. Part IV develops my theoretical contribution of intersectional identity as a social movement strategy and Part V includes empirical data and analyzes excerpts from interviews and participant observation conducted with activists and allies in the movement. Lastly, Part VI looks more broadly at the future of social movement scholarship and the benefits of looking at the legal construction of identity and the role of law as a tool for social movement mobilization.

¹² Abrego, L. *Legitimacy, Social Identity and the Mobilization of Law: The Effects of Assembly Bill 540 on Undocumented Students in California*, 33(3) LAW AND SOCIAL INQUIRY 709–734 (2008); Menjivar, C. & Abrego, L. *Legal Violence: Immigration Law and the Lives of Central American Immigrants*, 117(5) AMERICAN JOURNAL OF SOCIOLOGY 1380–1421 (2012); Gonzales, R. *Left Out But Not Shut Down: Political Activism and the Undocumented Student Movement*, 3(2) NORTHWESTERN JOURNAL OF LAW AND SOCIAL POLICY 219–239 (2008).

¹³ In my larger dissertation project I include interviews with members of a third community-based organization who are predominantly African American allies of undocumented youth, but at the writing of this article was still in the process of conducting fieldwork and interviews.

I. HISTORICAL AND POLITICAL CONTEXT

First introduced in 2001 and most recently in 2010,¹⁴ the Development, Relief and Education for Alien Minors (DREAM) Act, if passed, would provide undocumented immigrant youth, many of whom arrived to the United States as children, a path to citizenship.¹⁵ Controversy developed around the bill as a result of the addition of a military component—giving youth the option to complete two years in the U.S. armed forces—with some arguing that option would exacerbate the already over-representation of youth of color in the U.S. military.¹⁶ In the end, this provision was added to replace a community service option and to appeal to Republican constituents.¹⁷

Though the federal DREAM Act, which has the potential to provide undocumented youth with a path to citizenship, has yet to pass, states such as California and Illinois have begun to pass their own, state-level DREAM Acts. These state bills provide undocumented youth with increased rights at the local/state level, but ultimately are unable to offer any path to acquisition of formal legal status. The California bill, passed in two parts, A.B. 130 and A.B. 131, grants the ability to pay in-state tuition when attending public colleges/universities and to possibly access state aid after it has been given to qualified U.S. citizens and permanent residents.¹⁸ The Illinois bill, S.B. 2185, creates a DREAM Commission to raise private scholarships for undocumented youth, allows immigrants and their families to participate in the Illinois College Savings Plan (investing their own money), and provides training to high school counselors on issues affecting DREAM Act eligible students.¹⁹ In addition, at the time of writing this article, ten other states allow undocumented students to be classified as state residents and pay in-state tuition as depicted in the table below.

¹⁴ See Olivas *supra* note 5; Rincón, A. *Undocumented Immigrants in Higher Education: Si Se Puede!* (New York: LFB Scholarly Press).

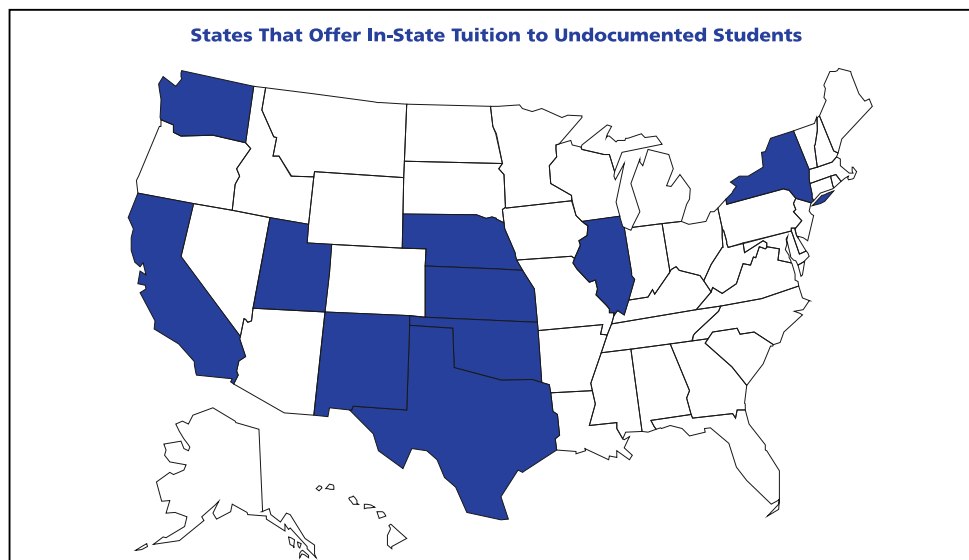
¹⁵ In order to be eligible for a path to citizenship under the version of the bill introduced in 2010 that passed the House of Representatives, but fell five votes short in the Senate, undocumented youth must satisfy the following requirements: have arrived in the U.S. prior to age sixteen, have resided in the U.S. for five continuous years after arrival, be between the ages of twelve and thirty years of age when the bill is passed, have a high school diploma/GED or be admitted to an institution of higher education, be “of good moral character,” and either purpose two years of higher education or two years of service in the U.S. armed forces. See Olivas *supra* note 5.

¹⁶ Association of Raza Educators. *Statement on the DREAM Act*, IN MOTION MAGAZINE, http://www.inmotionmagazine.com/opin/are_dream.html. (last accessed on Feb. 28, 2013).

¹⁷ Alejandra Rincón guest lecture to students in Education 190: Undocumented Immigrant Students and the Struggle for Educational Justice on April 21, 2010.

¹⁸ K. Escudero, *Reclaiming the DREAM*, BERKELEY REVIEW OF LATIN AMERICAN STUDIES (2012); See McGreevy, P. & York. *A Brown Signs California DREAM Act* (2011), <http://articles.latimes.com/2011/oct/09/local/la-me-brown-dream-act-20111009> (last accessed on Feb. 28, 2013); and *California DREAM Act Signed by Jerry Brown: Second Bill Passes*, HUFFINGTON POST, http://www.huffingtonpost.com/2011/10/08/california-dream-act_n_1001828.html.

¹⁹ See Illinois Coalition for Immigrant and Refugee Rights (ICIRR)’s announcement, <http://icirr.org/sites/default/files/ILDREAMAct1Page0525.pdf> (last accessed on Feb. 28, 2013).



Source: American Association of State Colleges and Universities (2007)²⁰

In terms of the proportion of the undocumented immigrant population that could possibly benefit from the federal DREAM Act (in its most recent form), of the estimated 2.1 million potential beneficiaries,²¹ 65,000 undocumented youth graduate from high school each year with only 10–15% of these youth continuing on past K–12 education.²² According to a recent report released by the Pew Hispanic Center, 26% of potential DREAM Act beneficiaries reside in California, 12% in Texas and 9% in Florida. The breakdown of undocumented immigrant group by percentage, though largely Latina/o, also consists of a sizeable Asian/Pacific Islander population: 56% from Mexico, 22% from the rest of Latin America, 13% from Asia, 6% from Europe & Canada and 3% from Africa.²³ The DREAM Act is seen as a benefit because it would encourage more undocumented youth to pursue higher education and provide them with a better outlook on their future as opposed to working under the table for oftentimes below minimum wage.²⁴

²⁰ Russell, A. *In-State Tuition for Undocumented Immigrants: States' Rights and Educational Opportunity*, AMERICAN ASSOCIATION OF STATE COLLEGES AND UNIVERSITIES: HIGHER EDUCATION POLICY BRIEF (2007), [http://www.aascu.org/uploadedFiles/AASCU/Content/Root/PolicyAndAdvocacy/PolicyPublications/in-state_tuition07\(2\).pdf](http://www.aascu.org/uploadedFiles/AASCU/Content/Root/PolicyAndAdvocacy/PolicyPublications/in-state_tuition07(2).pdf) (last accessed on Feb. 28, 2013).

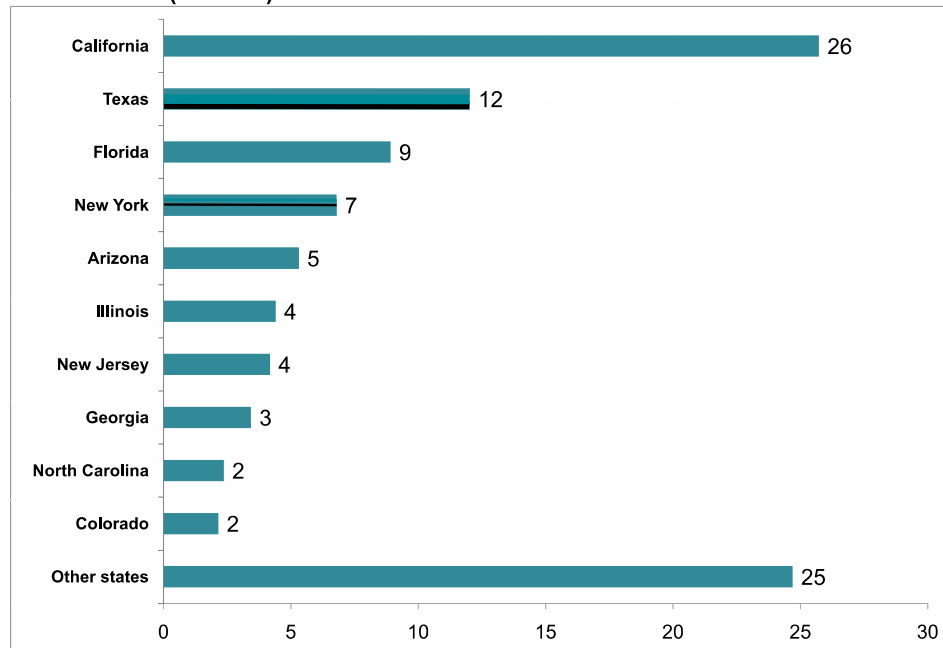
²¹ Batalova, J. & McHugh, M. *DREAM vs. Reality: An Analysis of Potential DREAM Act Beneficiaries* (2010), available at <http://www.migrationpolicy.org/pubs/dream-insight-july2010.pdf>.

²² Gonzales *supra* note 11.

²³ Passel, J. *The Size and Characteristics of the Unauthorized Migrant Population in the U.S* PEW HISPANIC RESEARCH CENTER (2006), available at <http://www.pewhispanic.org/files/reports/61.pdf> (last accessed on Feb. 28, 2013).

²⁴ Abrego, L. & Gonzales, R. *Blocked Paths, uncertain futures: The postsecondary education and labor market prospects of undocumented youth* 15(1) JOURNAL OF EDUCATION FOR STUDENTS PLACED AT RISK 144–157 (2010).

Figure 2. Top Ten States with the Largest Number of Potential DREAM Act Beneficiaries (Percent)



Source: MPI analysis of CPS, 2006-2008 pooled, augmented with assignments of legal status to noncitizens by Jeffrey S. Passel, Pew Hispanic Center.

The situation that these youth find themselves in is unique from that of older members of the first generation: those who migrated as adults. Undocumented youth are members of what scholars have referred to as the 1.5-generation²⁵, who spend the majority of their lives in the United States and are acculturated through the education system as included in a collective notion of being/becoming “American.”²⁶ It is not until they reach the age of 18 that these youth become aware of their inability to work, receive a driver’s license or to, in some states, access financial aid to pursue higher education.²⁷ Despite these challenges and obstructions to the realization of their dreams, these students have persisted not only in earning college degrees, but also in pursuing careers as lawyers, professors and educators.

Narratives present in mainstream have painted the plight of undocumented immigrants and all Latina/o immigrants as “takers” and the quintessential “bad” immigrants who pose a threat to the well-being of the American economy and racial/ethnic composition.²⁸ In contrast to

²⁵ Gonzales, R. *Wasted Talent and Broken Dreams: The Lost Potential of Undocumented Students* 5(13) IMMIGRATION POLICY: IN FOCUS (2007); Rumbaut, R. *Ages, Life Stages and Generational Cohorts: Decompressing the Immigrant First and Second Generations in the United States* 38(3) INTERNATIONAL MIGRATION REVIEW 1160–1205 (2004).

²⁶ Glesson, S. & Gonzales, R. *supra note 10*. See Jose Antonio Vargas, TIME Magazine, <http://www.time.com/time/magazine/article/0,9171,2117243,00.html>.

²⁷ Leisy Janet Abrego, “*I Can’t Go to College Because I Don’t Have Papers*”: *Incorporation Patterns of Latino Undocumented Youth*, 4 *Latino Studies* 212 (2006).

²⁸ Bosniak, L. *Opposing Prop 187: Undocumented Immigrants and the National Imagination*, 28:555 CONN. L. REV. (1996); Chavez, L. *The Latino Threat: Constructing Immigrants, Citizens and the Nation*, Stanford: Stanford University Press (2008); HoSang, D. *They Keep Coming!: The Tangled Roots of Proposition 187*, RACIAL PROPOSITIONS: BALLOT INITIATIVES AND THE MAKING OF POST-WAR CALIFORNIA (2010).; Lakoff, G. *The Framing of Immigration* ROCKRIDGE INSTITUTE (2006); Perea, J. *Immigrants Out!: The New Nativism and the Anti-Immigrant*

this identity, undocumented youth of the 1.5-generation have constructed an oppositional, hyper-nationalistic American identity that has gained significant political traction and is rooted in the rhetoric of the court's decision in *Plyler v. Doe* (1982) that struck down the state of Texas' provision denying undocumented immigrant youth from enrolling in K–12 education.²⁹ Recently, scholars such as Evelyn Nakano Glenn, have argued that because of their participation in the movement, these youth are engaging in a process of re-defining the meaning of contemporary citizenship in a radical, insurgent way that falls outside the realm of what is allowed by the institution of formal legal citizenship.³⁰ Formal legal citizenship and the law renders these youth inadmissible and undesirable subjects of the nation-state, but this more radical form of movement activism represents the youth breaking away from the legal frames available to gain support for their cause. Instead of ascribing to the dominant frames available vis-à-vis the media and legal precedents, undocumented youth have critiqued the law for its basic inability to rectify the situation of undocumented migration. As a result, these youth draw upon a radical discourse arguing that the present-day situation is in fact caused by vast economic inequity between the United States and the “developing” nations, and inequity for which the U.S. is largely to blame for its history of imperialism, labor exploitation, and racial discrimination in Asia and Latin America.³¹

II. REVIEW OF THE LITERATURE

Marginalized groups' use of the law in order to gain increased rights has been studied extensively, especially as applied to U.S. based studies of what have been referred to as “new” social movements.³² Yet, much of this work has principally focused on litigation and court decisions, treating the law as an entity that exists primarily within courts and is shaped by attorneys, judges, policy makers, etc.³³ A synthesis of social movements and legal scholarship, the study of law, and social movements as a field has sought to address the multifaceted complexities of the law as engaged in by social movement participants. While engagement with the law can potentially provide many lucrative benefits for social movements such as legitimizing the movement's cause, attracting media attention to the particular issue the movement is seeking to address, and helping to gain mainstream support for the issue, there are also multiple drawbacks to the utilization of legal tactics.³⁴ These drawbacks include the potential for de-radicalization, the needed investment of significant financial resources that are

Impulse in the United States (1997); Santa Ana, O. *Brown Tide Rising: Metaphors of Latinos in Contemporary American Discourse* (2002).

²⁹ Olivas, M. *No Undocumented Child Left Behind: Plyler v. Doe and the Education of Undocumented Schoolchildren*, (2012).; Olivas, M. & Bowman, K. *Plyler's Legacy: Immigration and Higher Education in the 21st Century*, 2011 MICH. ST. L. REV. 261 (2011).

³⁰ E. Nakano Glenn, *Constructing Citizenship: Exclusion, Subordination and Resistance*, 1 AM. SOC. R. 1–24 (2011).

³¹ Buff, R. *Immigrant Rights in the Shadow of US Citizenship* (2008). New York: New York University Press; Massey, D. & Durand, J. *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration* (2002) New York: Russell Sage Foundation; Ngai, M. *Impossible Subjects: Illegal Aliens and the Making of Modern America* Princeton: Princeton University Press (2004).

³² Hadler, J.F. *Postmodernism, Protest and the New Social Movements* 26(4) LAW AND SOCIETY REVIEW 697–732 (1992).

³³ Douglas NeJaime, *Winning through Losing*, 96 IOWA L. REV. 941; McCann, *supra* note 1.

³⁴ McCann *supra* note 2.

generally inaccessible for non-elite movements, and the unintentional fomenting of countermovement activism.³⁵ Pioneering law and society scholar Michael McCann has described this dual nature of the law and legal mobilization as a “double edged sword”³⁶:

Legal mobilization does not inherently disempower or empower citizens. How law matters depends on the complex, often changing dynamics of the context in which struggles occur. Legal relations, institutions and norms tend to be double-edged, at once upholding the larger infrastructure of the status quo while providing limited opportunities for episodic challenges and transformations in that ruling order.³⁷

Further elaborating on this fluid dynamic and socially constructed nature of the law and legal mobilization, McCann argues, “Indeed, the primary project of legal mobilization analysis is aimed at the constitutive role of legal rights both as a strategic resource and as a constraint, as a source of empowerment and disempowerment, for the struggles to transform, or to reconstitute, the terms of social relations and power. . . .”³⁸

Yet, this co-constitutive dynamic of the law as both empowering and limiting remains a concept that has not fully been explicated in terms of its effect on movements. Specifically, the strategic decisions activists are forced to make as they navigate the movement development over time. Thus, in this article I aim to provide understanding of the ways in which activists negotiate this unique and limiting, but at the same time empowering, nature of the law. As such, I aim to approach the undocumented youth movement from the “bottom up,” focusing on the conceptualizations of the law by those on the ground and their daily experiences navigating between community needs/desires and effective political strategies.

Furthermore, to understand ways in which the law as a tool for social movement mobilization shapes the goals and strategies of movements, sociologist Nicholas Pedriana has proposed the notion of the law as a master frame.³⁹ Arguing for greater emphasis on the law in framing literature, Pedriana writes, “I suggest that the general absence of law from framing research (and from social movement theory more broadly) limits conceptual and theoretical understanding of how—and with what consequences—challenger groups socially construct their grievances, identities and objectives.”⁴⁰ By examining the role of the law as a cultural mechanism with the ability to provide rights frames how social movement actors are able to strategically draw upon, Pedriana views the law as a useful over-arching theoretical framework for analyzing the prevalent effects of the law in culture and everyday interactions of individuals.⁴¹

³⁵ Albiston, *supra* note 4.

³⁶ McCann, M. *Law and Social Movements* in Sarat, A. (Ed). *Blackwell Companion to Law and Society*. Blackwell.

³⁷ *Id.*

³⁸ McCann, *supra* note 1.

³⁹ Pedriana, *supra* note 9.

⁴⁰ *Id.* at 1720.

⁴¹ *Id.* at 1723.

Master frames are a concept first put forth by Robert Benford⁴² and can be understood as serving a “two fold [function] because they are... applicable across a variety of movement and cultural contexts”⁴³ which serve as “dominant ‘algorithms’ that resonate deeply across social movements and protest cycles.”⁴⁴ Conceiving of the law as a master frame “finds theoretical justification in the social movement literature specifically, and in the sociology of law more generally”⁴⁵ as “rights are fundamental *legal* symbols with a powerful impact on how grievances are conceived, legitimized and acted upon in the American political system.”⁴⁶ Additionally, Pedriana argues that legality has widespread effects on “social expectations and behavior in extralegal organizations” that justifies its place as a master frame.⁴⁷ It would therefore seem clear that there is a strong case for the law as a master frame due to its far-reaching effects on the lives of individuals in terms of everyday social interactions, but also structurally affecting opportunity structures as well.

Moreover, recent studies of social movement activism have reinforced Pedriana’s argument.⁴⁸ In her work on undocumented adult workers, analyzing their decisions whether or not to file official grievances for mistreatment in the workplace, sociologist Shannon Gleeson argues that “undocumented status” can be understood as a “*master status*.”⁴⁹ In justifying such an argument Gleeson cites recent scholarship examining the legal consciousness of undocumented immigrant youth and the larger immigrant community.⁵⁰ Shannon Gleeson and Roberto Gonzales further reinforce this argument in their article comparing the experiences of undocumented immigrant youth and undocumented adult workers noting that

“due to the severe restrictions that the condition of illegality places on individuals, it proves to be a *master status*...[and] as such it shapes every aspect of their lives, determining how they are thought of and treated, placing them face to face with the limits of the law, shaping their fates, channeling them in limited and limiting directions, and restructuring their social mobility and life chances.”⁵¹

Providing more evidence reinforcing Gleeson and Gleeson & Gonzales’ arguments for the use of the master frame concept as applied to the experiences of undocumented immigrants, immigration scholars Cecilia Menjívar and Leisy Abrego have found the law indeed has

⁴² Benford, R. *An Insider’s Critique of the Social Movement Framing Perspective*, 67(4) SOCIOLOGICAL INQUIRY 409–430 (1997).

⁴³ Pedriana, *supra* note 9, at 1725.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Pedriana *supra* note 9, at 1726

⁴⁷ *Id.*

⁴⁸ Pedriana, *supra* note 9.

⁴⁹ Gleeson, S. *Labor Rights for All? The Role of Undocumented Immigrant Status for Worker Claims-Making*, 35(3) LAW AND SOCIAL INQUIRY 563 (2010).

⁵⁰ Abrego 2008, *supra* note 11; Abrego, L. *Legal Consciousness of Undocumented Latinos: Fear and Stigma as Barriers to Claims Making for First and 1.5 Generation Immigrants*, 45(2) LAW AND SOCIETY REV., 337–369 (2011).

⁵¹ Gleeson and Gonzales, *supra* note 10, at 3.

extremely restrictive and over-bearing consequences for undocumented immigrant communities.⁵²

The key difference between Leisy Abrego's work on undocumented immigrant youth⁵³ and claims by Gleeson⁵⁴ and Gleeson & Gonzales⁵⁵ is that undocumented immigrant youth are socialized differentially than their adult parents due to the age or stage in life in which they migrate.⁵⁶ Citing the immense influence of schools and other social institutions in the socialization of undocumented immigrant youth, Roberto Gonzales identifies three stages by which these youth "learn to be illegal"—discovery, learning to be illegal, and coping.⁵⁷ Because undocumented youth are socialized, many do not become aware of their undocumented status until reaching sixteen to eighteen years of age, but could potentially identify primarily in other ways—as people of color, queer, men/women, etc. Also, due to the variable nature of legal status, as socially constructed and fluctuating, its meaning has different meanings for each undocumented individual and it is constantly in a state of re-articulation. As such, to say that legal status functions as a master frame or master status may not be an entirely complete description of what is in fact taking place nor of the ways in which undocumented individuals see themselves. However, this is not meant to negate the extremely deleterious and harsh consequences of legal status that undocumented immigrant communities face on a daily basis.

Recent work by scholars has critiqued this notion of the law as a master frame and the central role of the law in studies of individual/collective engagement with the law by social movement participants.⁵⁸ In Anne-Marie Marshall's article, "Injustice Frames, Legality and the Everyday Construction of Sexual Harrasment," the author finds that "researchers are beginning to explore differences in the kinds of legal consciousness that people deploy to make sense of their experiences" such as gender, class and racial identities.⁵⁹ Furthermore, citing foundational scholars Patricia Ewick and Susan Silbey who first developed the notion of legal consciousness, Marshall writes, ". . . as Ewick and Silbey⁶⁰ have observed, 'To recognize the presence of law in everyday life is not, therefore, to claim any necessarily overwhelming power for the law.'"⁶¹ The author continues, "Still, law and legality remain the focus of many studies of legal consciousness, thus leaving unfulfilled the promise to decenter the law."⁶² By providing an alternative to legal frames, what she refers to as "injustice frames,"⁶³ and by noting that women in her study "rarely chose a single frame for understanding what happened to them,"⁶⁴ Marshall concludes the over-arching legal frame is not necessarily the most useful for understanding

⁵² Menjívar and Abrego, *supra* note 11.

⁵³ *Id.*

⁵⁴ Gleeson, *supra* note 46.

⁵⁵ Gleeson and Gonzales, *supra* note 10.

⁵⁶ *Id.*

⁵⁷ Gonzales, *supra* note 10, at 608.

⁵⁸ Marshall, A.M. *Injustice Frames, Legality and the Everyday Construction of Sexual Harassment*, 28(3)

LAW AND SOCIAL INQUIRY 659–689 (2003).

⁵⁹ *Id.* at 662.

⁶⁰ Ewick, P. & Silbey, S. *The Common Place of Law: Stories from Everyday Life* Chicago: University of Chicago Press (1998).

⁶¹ *Id.* at 22.

⁶² *Supra* note 59, at 662.

⁶³ *Id.* at 667.

⁶⁴ *Id.* at 679.

certain types of marginalization and the resulting mobilization.⁶⁵ In the case of gender discrimination and sexual harassment, Marshall finds,

Law alone is insufficient for understanding the meaning that women assign to their experiences with sex at work. Legal frames do not really address the question of how women decide whether they have been harmed in the first place. Instead, the question of whether conduct is harmful, funny, flattering, humiliating or annoying is best answered by considering the way sexual harassment has been framed by the women's movement, employers, and others engaged in the public debate around this issue. The frames are more often invoked in women's evaluations of the nature of the conduct and how it affects them and their working lives.⁶⁶

Combining Marshall's critique of the master frame paradigm that has emerged in socio-legal studies scholarship and social movement scholars' recent emphasis on intersectionality in relation to a movement's tactics and frame repertoires,⁶⁷ I aim to put forth a model for studying the law's effects on choices of movement participants in how to represent their plight. I do so by carefully examining the effects of multiple social identities on a unique population of undocumented immigrant youth activists in the movement to pass the federal DREAM Act.

III. INTERSECTIONALITY AS A SOCIAL MOVEMENT STRATEGY

Extending from feminist legal scholarship and work on the role of intersectional identity in the study of social movements, I argue in this article for an analysis of the role of intersectionality as a movement strategy. A term first introduced by legal scholar Kimberlé Crenshaw, intersectionality can be understood operationally as the ways in which socially constructed identities such as race and gender as well as social positionings (e.g., class) converge in order to in a layered manner, co-constitutively shape the way an individual experiences both identities/social positionings simultaneously. Discussing the ways in which the term is derived largely from structural positionings and identities imposed by the rigidity of the law and other institutional structures, Crenshaw notes,

. . . the failure to embrace the complexities of compoundedness is not simply a matter of political will, but is also due to the influence of a way of thinking about discrimination which structures politics so that struggles are categorized as singular issues. Moreover, this structure imports a descriptive and normative view of society that reinforces the status quo.⁶⁸

⁶⁵ *Id.* at 686.

⁶⁶ *Id.* at 686.

⁶⁷ Ferree, M.M. *Inequality, Intersectionality and the Politics of Discourse: Framing Feminist Alliances* in Lombardo, E. et. al. (Eds), *The Discursive Politics of Gender Equality*, New York: Routledge 88 (2009).

⁶⁸ Crenshaw, K. *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, UNIVERSITY OF CHICAGO LEGAL FORUM, 166–167.

This use of the term therefore can be understood not only as an intervention in describing the ways in which identities and experiences converge, but how individuals experience identities differentially than how the law and larger over-arching systems conceive of these identities operating. Furthermore, explaining her intentions for the future adaptability of the term aside from the nexus of race and gender, Crenshaw explains,

I consider intersectionality a provisional concept linking contemporary politics with postmodern theory. In mapping intersections of race and gender, the concept does engage dominant assumptions that race and gender are essentially separate categories. By tracing these categories to their intersections, I hope to suggest a methodology that will ultimately disrupt the tendencies to see race and gender as exclusive or separable. While the primary intersections that I explore here are race and gender, the concept can and should be expanded by factoring in issues such as class, sexual orientation, age and color.⁶⁹

Building on the work of Crenshaw and other feminist scholars who have articulated a perspective of intersectionality as a methodology for social science research, Leslie McCall, has argued that intersectionality as a theory and method calls for the dismantling of a system of master categories that are instead socially constructed and continually being re-shaped.⁷⁰ She writes,

The methodology of anticategorical complexity was born into this moment of critique, in which hegemonic feminist theorists, poststructuralists and antiracist theorists simultaneously launched assaults on the validity of modern analytical categories of the 1980s...[and] the emphasis...was on the socially constructed nature of gender and other categories and the fact that a wide range of different experiences, identities and social locations fail to fit neatly into any single 'master' category.⁷¹

The very notion of an "intersectional approach" was born out of a struggle to displace and problematize master analytical categories. Similarly, sociologist and feminist theory scholar Myra Marx Ferree has argued that master frames are problematic: "The relationality and fluidity of meaning carried in and to frames even in institutionalized text is what makes the idea of a 'master frame' (Snow et. al. 1986) problematic."⁷² Although rights discourse has gained particular salience in this debate, she argues that the continually contested and transformative nature of the ways that rights are articulated by institutions and a variety of legal actors makes the idea of developing a master frame counter-intuitive and unrealistic.⁷³

In this article, I argue that social movement participants, when confronted with the task of compartmentalizing their identities and experiences within the dominant categories available instead deploy an intersectional identity. Along this line, master frames, while relevant in depicting the state's far reaching consequences on the lives of everyday individuals, prevents an

⁶⁹ *Supra note 8*, p. 1244 at 9.

⁷⁰ McCall, *supra note 8*.

⁷¹ *Id.*, pp. 1776–1777.

⁷² *Supra note 67*.

understanding of the law as a dynamic, co-constituted endeavor between the government and the individuals who its rules affects. This restrictive framework for understanding identity and identity regulation under the law also provides an incomplete view into the ways in which individuals, in particular those taking part in social movement activism, position themselves in relation to the law and work within and outside of the legal system to alter the available categories.

Furthermore, I explore the use of intersectionality as a tool for empowerment by social movement actors both individually and collectively building on its use from a method to understand the similar and overlapping agendas of oppressive systems and the movements to dismantle these systems. To examine the deployment of intersectionality at the individual and collective levels and the conscious decisions by movement participants to emphasize particular aspects of their social identities, I draw upon Myra Marx Ferree's notion of discursive opportunity structures, developed out of a critique of Benford and Snow's idea of culturally resonant frames.⁷⁴ According to Robert Benford and David Snow, culturally resonant frames are social movement frames that work to align the ideals of a movement with the beliefs and motivations of potential movement participants noting that "the more central or salient the espoused beliefs, ideas and values of a movement to the targets of mobilization, the greater probability of their mobilization."⁷⁵ As such, frame resonance is an attempt to take into account influences outside of the movement in shaping movement ideas, goals and values.⁷⁶

Ferree critiques Benford and Snow's conceptualization arguing that it has not been operationally defined across movements,⁷⁷ that framing language can distract from power relations present in the strategic use of such discourse,⁷⁸ and there may be significant variation between ways in which issues are framed within a movement including achieving short-term and long-term goals.⁷⁹ Ultimately, she makes the claim that "institutionalized forms of discourse offer opportunities for speakers but do not force the choice of the most resonant framing; the gradient of opportunity structure still allows actors to opt for radicalism over resonance."⁸⁰ Offering an alternative to the notion of culturally resonant frames, Ferree's concept of discursive opportunity structures function as "institutionally anchored ways of thinking that provide a gradient of relative political acceptability to specific packages of ideas."⁸¹ For Ferree, fields or webs of understanding are more useful and productive ways of thinking about the law and the various ways that individuals engage with the law and legal institutions as evidenced by her concept of discursive opportunity structures and, as I will discuss in the following paragraphs, intersectionality and rights discourse.

Parallel to the notion of discursive opportunity structures as a field including both culturally resonant and radical frames of social movement participants, Ferree articulates

⁷³ Ferree, M.M. *Resonance and Radicalism: Feminist Framing in the Abortion Debates of the United States and Germany*, 109(2) *AMERICAN JOURNAL OF SOCIOLOGY* 304–344 (2003).

⁷⁴ *Id.*

⁷⁵ Benford, R. & Snow, D. *Framing Processes and Social Movements: An Overview and an Assessment*, 26 *ANNUAL REVIEW OF SOCIOLOGY* 621 (2000).

⁷⁶ *Id.* at 622.

⁷⁷ *Supra* note 67, at 305.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 309.

intersectionality as “a web of meaning” rather than intersection of socially constructed categories.⁸² Due to the highly fragile and contested nature of these categories, their locations are perpetually in flux and thus cannot be precisely located. Conceiving of intersectionality as a dynamic and institutional process in which “rather than identifying *points* of intersection, this approach sees the dimensions of inequality themselves as dynamic and in changing, mutually constituted *relationships* with each other, from which they cannot be disentangled”⁸³ is parallel to her formulation of discursive opportunity structures, Ferree raises the notion of rights frames as possible master frames. She writes,

In sum, ‘rights’ is not a master frame that has a ‘real’ meaning that could ever be fully known or ‘correctly’ used, but is a more or less meaningful and discursively powerful way of speaking...[and] unlike the way that Benford and Snow (2000) talk about ‘frame amplification’ or ‘frame extension’...I contend that actors who make political claims that ‘stretch’ the meaning of a concept do not ‘extend’ their single ideas to apply to new groups or new elements that were simply missing before, but rather ‘stretch’ their whole web of meaning to encompass people or practices that were connected in different patterns.⁸⁴

Building upon Ferree’s idea of discursive opportunity structures, I argue that the deployment of an intersectional identity can be thought of as a web that works to further the ways in which discursive opportunity structures operate and are constructed. As the following section will demonstrate, such a strategy affects both the internal and external effects on social movement organizing. Internally, the strategy emphasizes the heterogeneity of participants and works to counter the rigid identities made available under the law while externally it works to appeal to a diverse set of potential movement supporters and allies. This dual functioning of intersectionality in the movement contributes to recent discussions of the pliability and durable nature of the law aside from being cast as a fixed formal extension of the state.⁸⁵ It also further develops Ferree’s notion of discursive opportunity structures and the gradient that they provide as an alternative to fixed, static notions of frames by providing a way of thinking about the agency of the individual movement actors as well as their collective voice. Therefore, while I critique master frames and offer intersectionality as a strategy of movement participants, I do not intend to advocate for intersectionality as a master frame nor am I a proponent of a “rights” master frame. In line with Ferree and other feminist scholars’ discussion of the functioning of intersectionality as a mutually constitutive process, I argue that it can best be understood as a strategy of movement participants taking into account their individual and collective agency with both internal and external effects on social movement organizing.

Referring back to the questions posed in the opening pages of this article and to visualize the interaction between the ways movements engage with the law in addition to the functioning of identity as a social movement strategy, I developed the table below. In table I combine both these variables, which culminates in the crossing of organizing both with *and* against the law as well as the internal *and* external uses of identity as a social movement strategy. By creating this table, I find it helpful to understand that there are multiple points of intersection and overlap

⁸² Ferree, *supra* note 70.

⁸³ *Id.* at 85.

⁸⁴ Ferree, *supra* note 70, at 89.

⁸⁵ *Supra* note 4 and 30.

between these two variables that should be thought of in a dynamic, relational process rather than as static variables. By demonstrating multiple levels of intersection and variance, I seek to move towards a formation of the law and identity as socially constructed fields that for the purposes of analyses of social movement organizing can be named and located, but need to be done in a manner that emphasizes the fluid, constantly shifting nature of these categories. Also, embedded within these institutions/constructions of the law and identity is a larger positioning of individual movement participants seeking to exercise agency through the ways that they interact individually and collectively with these principles. Though this proposed model is still under development, my hope is that by thinking through and applying the model to lived experiences of activists “on the ground” in both the multiracial and undocumented youth movements, we will begin to move towards a more clear, nuanced understanding of the ways the law and identity operate as organizing tools for movement participants.

Intersectionality as a Movement Strategy

The Movement's Relationship with the Law

	Internal Effects	External Effects	Internal <i>and</i> External Effects
Organizing with the Law	Emphasizes heterogeneity and difference among movement participants; using the law to expand the categories available to movement participants	Uses heterogeneity and multiplicity of identities in the movement to gain the support of multiple communities and to build alliances; does so by emphasizing similarities with formal legal recognition	Emphasizes internal difference among movement participants and builds upon this internal diversity in order to build alliances with other groups whose identity is also unrecognized; leverages the law to provide movement participants a sense of formal legitimacy and helps the movement to gain recognition in the eyes of possible allies/supporters without a legal victory
Organizing against the Law	Emphasizes heterogeneity and difference among movement participants; positioning one's identities as outside the law or in opposition to those made available under the law	Uses heterogeneity and multiplicity of identities in the movement to gain the support of multiple communities and to build alliances; does so by emphasizing similarities with other groups that are not recognized under the law	Emphasizes internal difference among movement participants and builds upon this internal diversity in order to build alliances with other groups whose identity is also unrecognized; the law as a target of social action is a motivating factor that adds cohesion to movement activism/ and organizing
Organizing with <i>and</i> against the Law	Emphasizes heterogeneity and difference among movement participants; uses the law as a means of gaining legitimacy for the movement and its participants under the law, but also critiques the very nature of having to seek recognition under the law/legal system	Uses heterogeneity and multiplicity of identities in the movement to gain the support of multiple communities and to build alliances; uses the law as a means of gaining legitimacy for the movement and its participants under the law, but also critiques the very nature of having to seek recognition under the law/legal system	Emphasizes internal difference among movement participants and builds upon this internal diversity in order to build alliances with other groups whose identity is also unrecognized; uses the law as a means of gaining legitimacy for the movement and its participants under the law, but also critiques the very nature of having to seek recognition under the law/legal system

IV. SOME PRELIMINARY EXAMPLES FROM THE UNDOCUMENTED YOUTH MOVEMENT

A. METHODS

Fieldwork for this project took place between 2009–2012 in the greater San Francisco Bay Area. Interviews with undocumented immigrant youth activists were conducted in summer and fall 2011 with those who were participants in the protests, rallies and activities of the organizations with whom I partnered. Participants for this project were recruited through social networks I established as a participant-observer in local organizing networks and student groups in the area. Drawing from these initial networks I interviewed forty-five self-identified undocumented youth who were current or recent college graduates. These youth were all to some extent involved in advocating for the passage of the DREAM Act evidenced by their membership in one of three San Francisco bay area organizations that support undocumented immigrant youth and have an advocacy agenda: Rising Immigrant Scholars through Education (RISE), Asian Students Promoting Immigrant Rights through Education (ASPIRE) and Graduates Reaching a Dream Deferred (GRADD). In this study, though my intent was to examine the activism of undocumented youth in the region, there were varying levels of identification by participants as activists and differential understandings/articulations of how they understood “activism.” Some respondents embraced the idea of being an activist due to their participation in protests, rallies and national campaigns to pass the DREAM Act, while others said that they felt this work was not activism because it was directly related to their personal situation, arguing that activism was taking a stand on an injustice on an issue “greater than one’s self.”⁸⁶ For the purposes of the sample selection I deferred to the individual’s self-identification as a participant in the movement and/or as a member of the respective organization.

B. POSITIONALITY

As a self-identified ally of the DREAM Act and comprehensive immigration reform some may argue that my positionality would make me a biased observer as a researcher. Nevertheless, I found that drawing upon my identity as mixed race and my background as the son of a Vietnamese refugee mother and Bolivian immigrant father as well as my fluency in English and Spanish facilitated my entry into the community and helped build rapport with participants in the study. As an “insider,” with the aim of testing theoretical hypotheses and developing a theory around social movement organizing, I sought to engage in what has been referred to as a critical engaged scholarship approach to research.⁸⁷ As part of such an approach, the researcher is not the sole creator of knowledge and institutional knowledge is not the only source of knowledge that can be drawn upon. Instead, research participants are equally agentic in terms of their ability to create knowledge and to theorize regarding their own experience. In this methodology, researchers are active participants in the movement and there does not exist any boundary between “research collection” and aiding the goals of the movement participants.

⁸⁶Data is based on interviews conducted in summer and fall 2011. IRB/CPHS approval #2011-01-2751. All names have been changed to pseudonyms to protect the identities of participants and potentially identifying information removed or changed in the quotes.

⁸⁷ Mitchell, T.D. *Traditional vs. Critical Service Learning: Engaging the Literature to Differentiate Two Models*, 14(2) MICHIGAN JOURNAL OF COMMUNITY SERVICE LEARNING 50–65 (2008).

Furthermore, positionality and the potential overlap of one's identity can be traced back to the silencing of knowledge by marginalized communities and the ability for such communities to take part in the knowledge production process. Lindsay Perez Huber, citing Octavio Villalpando and Dolores Delgado Bernal, propose the term "apartheid of knowledge" to signify "the racial divisions that exist between dominant Eurocentric epistemologies and other epistemological stances which create a separation of 'legitimate' and 'illegitimate' forms of knowledge."⁸⁸ By taking seriously the knowledge of researchers of color who many times identify in some way or another with their research participants, decolonizing and critical race methodologies challenge positivist assumptions about the "objective" and "scientific" assumptions that pervade majoritarian research methods.⁸⁹ These majoritarian research methods seek to model social science research after the "scientific" process and position the researcher as a neutral, unbiased observer.⁹⁰ Such an approach is problematic and dangerous as it focuses research as a process that takes place in the academy and can only be engaged in by those who possess a certain type of "academic" knowledge. Inherent in this process is a matrix of power and domination by intellectual elites differentiated by their racial, class, and gender identities.⁹¹ It also exists in a world that denies the agency and ability of those in academia with particular experiences to take part in the knowledge production process.

C. INTERVIEW DATA

In this section are some preliminary interview findings and reflections on my participant observations of ways movement participants engage with the law and conceptualize their multiple social identities as related to the chart presented in the previous section. Though not all variables from the diagram are represented some of the initial quotes and themes are presented in order to demonstrate the need to look beyond the argument for illegality and undocumented status as a primary/master frame, in particular for social movement activists/participants. In this article, I seek to demonstrate that while such an understanding of the role of legal status structurally is useful for explaining the pervasiveness of the oppression faced by those without status, it is limited in that it does not accurately and holistically capture the experiences of this population.

While the DREAM Act has failed to pass in since its initial introduction in 2001 and has undergone multiple transformations including the incorporation of a military service provision, state level DREAM Acts have been passed and provide a particular subset of undocumented immigrant youth with benefits such as the ability to pay instate tuition and, in some cases, to become eligible to receive state financial aid. In June 2012, President Barack Obama in conjunction with a memo issued by Department of Homeland Security Secretary Janet Napolitano instituted the Deferred Action for Early Childhood Arrivals (DACA) program, which

⁸⁸ Perez Huber, L. *Disrupting apartheid of knowledge: testimonio as methodology in Latina/o critical race research in education*, 22(6) INTERNATIONAL JOURNAL OF QUALITATIVE STUDIES IN EDUCATION 640 (2009).

⁸⁹ *Id* and Delgado Bernal, D. & Villalpando, O. *The apartheid of knowledge in the academy: The struggle over 'legitimate' knowledge for faculty of color*, 35(2) JOURNAL OF EQUITY AND EXCELLENCE IN EDUCATION; see also Smith, L.T., *Decolonizing Methodologies: Research and Indigenous Peoples*, New York: St. Martin's Press (1999).

⁹⁰ Tackacs, D. *Positionality, Epistemology and Social Justice in the Classroom*, 29(4) SOCIAL JUSTICE 168–181 (2002).

⁹¹ Delgado Bernal and Villalpando *supra note* 87.

provides benefits to undocumented youth who meet a particular set of provisions⁹² that are largely similar to the provisions of the DREAM Act.⁹³ Despite these recent victories, members of the movement still continue to rally around the federal government's passage of the DREAM Act which is the only entity able to provide a path to citizenship and for larger comprehensive immigration reform for family members and relatives of undocumented youth.

In the movement, the construction and articulation of identity—individually and collectively—of participants functioned as a key social movement strategy. In the undocumented youth movement, participants emphasized multiple aspects of their identity and their intersections as a means of pointing to the heterogeneity of the undocumented immigrant community. David, a twenty-two-year old undocumented student at a University of California campus reflecting on his understanding of identity as both queer and undocumented, remarked:

I feel like it wasn't until a year and a half ago that I started thinking 'I am undocumented but I'm also queer.' I started seeing how in my own organizing and involvement with different organizations on campus that I was really dividing my identity up into these spaces. My work at the Gender Equity Resource Center meant being gay, my work as part of the Chicano Latino Student Development office meant being a person of color and organizing in the Multicultural Immigrant Student Program meant being an immigrant. It wasn't until a year and half that I really started engaging with a lot of feminist-of-color thought that this mindset began to change. It really got me thinking and just processing what it meant to be undocumented, what it means for me to be a student of color or what it means for me to be queer. It's something that I feel very fragmented about because I can't find that center ground for myself that while I try to be inclusive with my identity it's something that I still don't know how to do because [it is] difficult. At times I can't even understand and process or even digest what it means to be both queer and undocumented.⁹⁴

This example of how David came to understand his navigation of multiple social identities was a result of his participation in many political/organizing groups on his college campus that catered to working with specific subsets of students. A self-identified queer, undocumented immigrant student, David found that juggling these identities in isolation from one another prevented him from fully investing in the larger campaign for the passage of the federal DREAM Act. Drawing upon his intersectional identities, David was able to bring issues of gender and sexual orientation to the forefront of the movement. David continued:

Eventually I became involved in organizing spaces that catered directly to issues facing queer and undocumented youth or as we call ourselves, 'undocuqueers.' For me this was a very fruitful experience as I was able to connect, network and

⁹² For a list of the full requirements needed to qualify under President Obama's Deferred Action for Early Childhood Arrivals (DACA) plan see Department of Homeland Security Director Janet Napolitano's memo, available at <http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

⁹³ Olivas, M. *Dreams Deferred: Deferred Action, Prosecutorial Discretion and the Vexing Case(s) of DREAM Act Students*, WM. & MARY BILL RTS. J. 463 (2012).

⁹⁴ Personal interview with David conducted by author, June 2011.

build solidarity with other undocuqueers. It also allowed me to help bring discussion of gender and sexuality in conversation with those around the topic of undocumented students and the DREAM Act. Many times people forget the pervasiveness of sexuality present in immigration laws and policies and how while some undocumented people might be able to fix their status through marriage, us undocuqueers do not have that option.⁹⁵

A discussion of these multiple social identities also helped participants to understand their positionality in relation to the overall goals and scope of the movement in that, at times, not all participants identified primarily as undocumented. In fact, some participants identified more with other social and cultural identities for example, being indigenous, but situationally. Azucena,⁹⁶ a third-year undergraduate student at a California State University (CSU) campus in the San Francisco Bay Area explained:

Right now, if I was to meet someone at this point in my life, I would identify myself as who I truly am, you know, an indigenous woman of Oaxaca. I feel sometimes it really just depends on who I'm talking to, so if I feel pretty comfortable with you, I'll be like 'yeah, I'm a zapoteca, I'm indigenous, and I come from this specific pueblito.' This will usually trigger more conversation like 'oh, really?' and stuff like that. I find myself explaining a lot of the culture.

On campus though, where Azucena takes part in many on-campus student groups around issues affecting undocumented students, she identifies differently depending on the spaces she is in and those with whom she is working.

I think my key identity within the campus itself is as [Azucena], the undocumented student, you know. The student that is part of that special population that's very vulnerable, but not very exposed because you know, there's lots of dangers out there, and I think a lot of people know me as, you know, that I'm indigenous, or they just assume that I'm Mexican, or they don't really know the complexities that are part of my identity; they just see me as the undocumented student and that's pretty much it.

Therefore, for Azucena, promoting her identity as undocumented, as part of an overarching identity that is understood as connected to one's status as an AB540 student⁹⁷, provides strategic benefits as she navigates the university's institutional culture. At the same time, she brings to the movement an understanding of indigenous issues and, rather than identifying primarily with her national-origin identity as Mexican, foregrounds her regional and cultural identity as an Oaxacan indigenous woman. While emphasizing difference within the movement, Azucena opts for a common, unifying identity of undocumented with her peers and one that holds particular political weight within the college context. In contrast, through

⁹⁵ *Id.*

⁹⁶ Personal interview with Azucena conducted by author, September 2011.

⁹⁷ AB540 refers to California Assembly Bill 540, passed in 2001, which provides qualifying individuals (both documented and undocumented) the ability to be classified as California state residents for tuition paying purposes at public colleges/universities. For more information see Rincón, *supra note* 12.

leveraging his sexual orientation, legal status, and immigrant background, David seeks to change the internal and external framing of the issue of the movement as inter-related to larger issues concerning the queer and immigrant communities.

Henry, a twenty two-year old recent college graduate originally from South Korea discussed how in “coming out” as an Asian undocumented student he found himself under immense pressure from Asian community based organizations and nonprofits to speak publically. His narrative was used both voluntarily, and coercively at times, to raise consciousness in the Asian American community around comprehensive immigration reform:

I remember when I read the stories of other undocumented students: the combination of all of them like really made me go to the next level, because there were other undocumented students. I no longer felt alone. That’s the first thing I remember I shared my immigration status with the [community college] newspaper, and got really good, positive feedback from nonprofit organizers and some people around me. Because of this I slowly continued to publicize my story and gradually became a little comfortable. I started sharing my story to different classrooms and doing some AB540 workshops to the point where you know what I am going to come out as undocumented in the camera and you know released a YouTube. I also created my personal webpage and shared my blog. After that things were getting, it exploded in a way because it was so, I guess nonprofit organizations were like ‘it’s a Korean undocumented student actually coming out’ and there were so many opportunities for me to do speaking engagements and do a lot of work around the DREAM Act and AB540.⁹⁸

Because of his increased visibility as an Asian undocumented student and activist, Henry was asked in spring 2011 if he would consider participating in an act of civil disobedience, which sought to bring attention to the issues facing undocumented immigrant communities. In the interview Henry mentioned that he was chosen specifically because of his identification as an Asian undocumented youth activist and the visibility he held in the Korean American and other Asian American communities. In a statement he issued following his arrest in July 2011 for engaging in an act of civil disobedience, Henry urged the Asian American community to take a stand and support the undocumented immigrant community.

I risked my life because I wanted to empower other young undocumented youth. In particular, I strongly encourage my fellow Asian American undocumented youth to take the next step and come out of the shadows. Start sharing your personal story to your friends, your relatives, your counselors, and your communities. This is only way we can empower our communities and fix our broken immigration system.⁹⁹

As David, Azucena and Henry’s experiences demonstrate, undocumented status, while a salient and very relevant component of undocumented young people’s identities, is repeatedly constructed in relation to the other social realities of youth experience on a daily basis. In

⁹⁸ Personal interview with Henry by author, October 2011.

⁹⁹ *Id.*

addition to the complexities of individual identities of movement participants, many young people resist dominant characterizations of their communities which reinforce the depiction of youth as “worthy” potential citizens while rendering their parents as law breakers and the culprits for their unauthorized entry into the United States.¹⁰⁰ The U.S. Supreme Court’s decision in *Plyler v. Doe* and its language referencing undocumented youth as individuals who are “special members of the [undocumented] underclass”¹⁰¹ who can neither affect their parents or their own decisions with regards to legal status¹⁰² points to the view of undocumented youth as passive agents in migration who are not to blame because of their parents’ actions. Yet, undocumented young people, as explained in my recent work, are actively contesting and challenging these narratives present in the media and court opinions that paint an image of the youth as working in opposition to the movement for legalization for their parents and siblings.¹⁰³ Writing for the majority, Justice Brennan acknowledges the shifting nature of the law and legal identity: “Finally, the court noted that, under current laws and practices, ‘the illegal alien of today may well be the legal alien of tomorrow.’”¹⁰⁴ Rather than viewing legal status as a master status, but instead as an identity that is co-constitutively developed in relation to other social identities scholars will be able to recognize the agency undocumented youth have in the cultivation of their own legal and political consciousness. Undocumented immigrant youth, similar to other social movement actors facing marginalization on multiple fronts, are not at all passive or helpless. As I argue in this article, such individuals are not only aware of the discrimination they face, but actively work to contest their lesser social status as well as to critique the structural forces at work in the production of such hierarchies of inequality.

CONCLUSIONS AND AREAS FOR FUTURE RESEARCH

Looking forward in terms of future scholarship on the role of law in social movements, the interaction between legal identity and other social identities of movement participants, the recent surge in scholarship advocating for the role of undocumented status as a master frame provides a captive audience for an ensuing debate as to the meaning of the continually shifting nature of law, but also its structural and long term societal effects on the lives of everyday individuals.

Recent scholarship by Nicholas DeJamie and Catherine Albiston¹⁰⁵ pushes researchers to look beyond the consequences of winning and losing when engaging the law as a tactic for social movement activism and, in doing so, asks researchers to think more critically about the social and cultural effects of the law for movement organizing. Similarly, the case of undocumented youth activism around the passage of the federal DREAM act demonstrates that, while controversy has surfaced with regard to the potential benefits of the bill, its framing as a potential rationale for the inclusion of undocumented youth as Americans has proven highly resonant to

¹⁰⁰ Bosniak, L. *Arguing for Amnesty*, LAW, CULTURE AND THE HUMANITIES (2012); Motomura, H. *Immigration Outside the Law*, 108 COLUM. L. REV. 2037 (2008).

¹⁰¹ *Plyler v. Doe*, 457 U.S. 202, 220 (1982).

¹⁰² *Id.* at 221.

¹⁰³ Escudero, K. *Constituting Citizens, Performances of ‘American-ness’ and Alternative Articulations of Belonging*, Paper presented at the Politics of Race, Immigration and Ethnicity Consortium (PRIEC) at UC Berkeley on January 25, 2013.

¹⁰⁴ *Supra* note 94, pp. 207–208.

¹⁰⁵ *Supra* note 4 and 30.

the mainstream framing of citizenship/belonging within the national cultural imagery . Additionally, given the bill's multiple introductions and the subsequent proposal of smaller, local level pieces of legislation, legal tactics, while not necessarily successful in how the movement actors had initially anticipated, can have positive long-term effects. These contradictory effects of the law both as a tool to bring about sustainable cultural change, but one that brings with it the confining nature of frames available highlight the ways social movement actors must continually navigate these options on a daily basis. The law is thus neither a tool nor a target of change, but *both* and because of this, law can function as a marginalizing framework and as a manifestation of the agency of immigrant youth activists.

Identity-wise, reinforcing the notion of legal status as tenuous and shifting in accordance with other socially constructed and legitimated identities is a perspective that must be adopted for scholars to consider not only the top-down effects of the law on marginalized groups, but also activists' own engagement and awareness of the law for their movement. In this vein, regional and international comparisons are critical given that in the United States alone there exists great variation among legal environments with some states having passed state level DREAM Acts¹⁰⁶ and others whose governments refuse to comply with federal statutes under the Deferred Action program or to permit undocumented youth access to institutions of higher education.¹⁰⁷ Differences in the national legal landscape have created a context in which the legal identities and experiences of undocumented immigrant communities are rapidly changing and are not uniform. Not only is the law unstable and applied differently, but it can also be understood in a variety of terms by judges, police officials or government enforcement and those who the law seeks to penalize or regulate.

Moreover, in recent years, research published on undocumented youth activism has focused primarily on Western nations in Europe and North America; those with highly developed visa schemes and long waiting lines.¹⁰⁸ For migrants in these nations illegality or undocumented status is most definitely an important characteristic of surveillance and extension of the state that continually marginalized members of these communities. Yet, other research, such as the scholarship of political scientist Kamal Sadiq, has shown that the role of legal status for South-South migration may be much less important or restrictive, offering yet another potential case study for the claim of law as a master frame. Implications for the promise of the law and unauthorized status as a master frame is therefore incomplete without a consideration of the variation that occurs within the application of legal status to immigrant communities around the globe and the self-perception of immigrants in relation to the way the state and the general public views such individuals.

¹⁰⁶ Examples include the comments of Chancellor Robert Birgeneau at UC Berkeley's outspoken remarks urging state legislators to pass the federal DREAM Act (<http://newscenter.berkeley.edu/2010/07/21/dreamact/>) and Senator Durbin of Illinois' spearheading of the national push to pass the bill. A statement detailing Senator Durbin's position, *available at* <http://durbin.senate.gov/public/index.cfm/pressreleases?ID=070d1061-66c4-45ef-bb34-41da7e1e7d40>.

¹⁰⁷ Take for example Arizona's passage of SB1070 in 2010 and Georgia's HB87 barring undocumented immigrant youth from attending public colleges/universities despite their willingness to pay out of state and/or international tuition.

¹⁰⁸ Enghtceren, G. *The undocumented outsider class: Illegal Status in Dutch society* in Boje, T.P. et. al. (Eds). *European Societies: Fusion or Fission?* London: Routledge; Willen, S. *Toward a Critical Phenomenology of 'Illegality': State Power, Criminalization and Abjectivity among Undocumented Workers in Tel Aviv, Israel*, 45(3) INTERNATIONAL MIGRATION 8–38 (2007). *See also*, the recent scholarship of Professor Susan Plann in the Chicana and Chicano Studies Department at UCLA and that of Professor Nando Signona at the University of Oxford.

While the research presented in this article points to the need to look at identity, the law and legal consciousness and mobilization more closely, it does so building upon the foundational work of interdisciplinary researchers, scholars, and community activists to date. Seeking to push forward the conversation around immigrants' rights and organization, and to paint a broader picture of the ways in which those classified as "illegal" mobilize the law to become recognized as legitimate social actors under the guise of the state, I propose a model of intersectionality as a movement strategy. This model aims to encapsulate the multiple contradictory and shifting ways that one's social identity and legal identity interact and effect the participation of individual members and groups in a social movement. This article explicitly examines the activism of undocumented immigrant youth to pass the DREAM Act, in a manner that I hope will have broader effects on discussions in the field of social movement scholarship for those studying the mobilization of immigrant communities in future years.