Chicanos, Law, and Educational Reform

Anamaria C. Loya

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This paper emerges from my experiences as a Chicana, a law student, and one who believes that access to education is fundamentally necessary for the betterment of Chicanos in the United States. As a student, I have worked with various programs with the purpose of increasing the number of Chicanos in the educational institutions which I attended. Yet, I have always been frustrated by the inadequate facilities, limited resources and inferior education that is provided to members of the Chicano community. As a law student, my frustrations have only increased. In law school, I soon learned that the law is not necessarily an instrument for "justice" and "social change," rather it is often a device used for the preservation of the status quo. Yet, because of a pressing need in the Chicano community, victories in the past, and community activists who do believe law can be progressive, I am motivated to write this paper on how Chicanos have used and can use the law in the struggle to gain access to a meaningful education.

Chicanos have never had equal access to a meaningful education in the United States. Even though litigation, legislation and policy have at times addressed the educational inequalities Chicano students suffer, these students still remain undereducated in the United States. This is evidenced by overcrowded and segregated schools attended by Chicanos, the tracking of Chicano students, and insufficient resources to address the needs of limited English proficient students. All of these problems perpetuate an educational system that does not meet the needs of Chicano students. In the United States, the number of Latinos who graduate from high school is disproportionately low. Approximately 50.9% of

† Third-year student, Boalt Hall School of Law, University of California, Berkeley.

1. This paper will focus primarily on the struggles of the Mexican-American community in the Southwest portion of the United States. I will refer to members of this community as "Chicanos". I prefer the label of "Chicano" over "Mexican-American" and "Hispanic" because of its emphasis on the indigenous roots of the community rather than solely on European ancestry or a hyphenated form of recognition. If I intend to refer to the Latin American population beyond just Chicanos, I will refer to these people as Latinos. Also note that while I focus on Chicanos, much of this paper is relevant to Latinos in general.
Latinos over the age of 25 are high school graduates and about 70% of Latinos between the ages of 18 and 25 complete high school. Accordingly, the number of Latinos who enter four year colleges is also very low. These numbers are even more alarming considering how young the Latino community actually is. Virtually half of the Latino population is under twenty-one years of age. Thus, a vast portion of these youth are school-age but are growing up in this country undereducated. This poses grave consequences for Chicanos now and in the future, because lack of education functions as a major institutional barrier to success, economic survival and self-autonomy in the United States.

Are litigation, legislation, and policy inadequate means of dealing with the educational issues that affect the Chicano community? Are the changes needed in the educational system so great that the law cannot begin to address them? The legal system may not be the best instrument to promote social change because it is often too static and constrained to directly affect the disenfranchised in a truly beneficial manner. Nonetheless, legal challenges have been a useful tool in the continuing struggle for access to meaningful education.

The law can indirectly make it possible for change to occur. For example, the law can be used as a forum to assert one's rights, to legitimize grievances and to get a glimpse into the power structure that dominates this society—one which Chicanos are almost entirely excluded from. Furthermore, legal victories can become tools for grass roots organizing and can help to define a movement.

The legal system, however, functions as a double-edged sword. Legal struggles cannot be the Chicano community's only recourse. Just as laws can be made, they can be revoked. Legal victories might only recognize abstract principles of rights and yet no real victory may occur if people's everyday lives are not affected. Furthermore, legal defeats can be crushing and overwhelmingly demoralizing to a movement. Thus, other foundations are just as important if not more so, than the "tool" of the law.

Chicanos have never solely depended on the law for change but have also recognized the importance and utility of other means. For example, many Chicanos recognize the importance of the development of an identity or consciousness. Such a consciousness can truly empower a people or movement. Also, Chicanos have struggled at the local level to have

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3. Id.
4. Id.
on-hands participation in the education of their children. These other "extra-legal" means may prove to be more useful by far in accomplishing social change in the educational system.

This paper has three parts. First, I will discuss problems that Chicanos face in the educational system and why education is so important to the Chicano community. Second, I will briefly describe significant events in the historical struggles by Chicanos for access to a meaningful education. Finally, I will show how the law can be useful to Chicanos and the problems that Chicanos encounter in attempting to use the legal system as a means to achieve change in the educational system. In this paper, I address the educational problems Chicano students face in the pre-college levels and do not discuss the educational problems Chicanos face in the higher levels of education.

I.
THE PROBLEMS CHICANOS FACE IN EDUCATION AND ITS IMPORTANCE TO THE LATINO COMMUNITY

"Me has estudiado pero no me has ayudado."—"You have studied me but you have not helped me."  

—Anonymous

"I am Joaquin, lost in a world of confusion, caught up in the whirl of a Gringo society, confused by the rules, scorned by attitudes, suppressed by manipulation, and destroyed by modern society. I have come a long way to nowhere, unwillingly dragged by that monstrous, technical, industrial giant called Progress and Anglo success . . . In a country that has wiped out all my history, stifled all my pride, in a country that has placed a different weight of indignity upon my age-old burdened back. Inferiority is the new load . . . I look at myself and see part of me who rejects my father and my mother and dissolves into the melting pot to disappear in shame. . . ."  

—Rodolfo "Corky" Gonzalez

Today, Chicanos attain lower levels of education in comparison to the general American population. In 1988, the House Select Committee on Children, Youth and Families reported that 50.9% of all Latinos over the age of 25 were high school graduates compared to 75.6% for all adults. Similarly, 70% of all Latinos between the ages of 18 and 24 completed high school compared to the 86% of all youth in the same age group. Of Latinos 25 years and older, 8% had completed four or more years of college compared to 21.9% for all Americans. The educational

5. Ideal Newspaper, January 20 - December 5, 1972 at 1.
7. HOUSE SELECT COMM., supra note 2, at 3-5.
8. Id.
9. Id.
system's failure to provide Chicano students with a means to attain higher levels of education is only one of the problems that Chicanos encounter in the educational process. Newspaper accounts and studies frequently report school overcrowding, fewer resources, low test scores and high drop out rates as problems that exist in predominantly Chicano schools.10

The problems that Chicanos currently face in the educational system are not new. Since their original entry into the American educational system, Chicanos have been fighting for systematic improvements intended to enhance the quality of the education that they receive. In the 1940s, Chicanos primarily addressed the issue of segregation and integration into American society. During the 1960s, students in predominantly Chicano schools suffered from overcrowded and segregated conditions, low reading scores, the tracking of students into non college-prep courses, exceptionally high drop out rates and an overall inferior quality education. For example, in 1968 the drop out rate for Eastside High School in Los Angeles, California was 44%. Unfortunately, the drop out rate for that high school is as severe today.11 These serious problems existed throughout the educational system such that urban and rural educational systems failed to meet the needs of Chicano students.

Much of the education system's failure to educate Chicanos was not accidental. Chicanos were (and still are today) an exploitable work force that was pushed out of schools through the tracking system in which they were placed in vocational training classes or in programs for the mentally retarded.12 One school board member in the San Joaquin Valley of California was quoted in 1971 as stating:

"Look, you've got to understand that we've built this Valley to what it is and we've gotten to where we are because there's always been cheap labor around. When you come in talking about raising the educational vista of the Mexican-American and helping him to aspire beyond the fields, and curing the dropout problem, you're talking about jeopardizing our economic survival. What do you expect that we'll just lie down and let you reformers come in here and wreck everything for us?"13

Chicano schools were repeatedly treated as dumping grounds where new teachers were trained, where incompetent teachers were sent, and where scant educational resources were found. This was because school administrators often did not concern themselves with actually educating Chicano youth.

10. See, e.g., House Select Comm., supra note 2, at 3-5; L.A. Times, March 7, 1988, at 1, col. 1; L.A. Times, Mar. 6, 1988, at 1, col. 1; L.A. Times, Sept. 11, 1989, at 1, col. 5.
In the 1980s, the status of the Chicano student did not improve in the educational system. Drop out rates, tracking, segregation, and poor quality schools still existed for too many students. A 1981 study showed that the Latino drop out rate fluctuated anywhere from 45% to 80%. The study also suggested that segregation managed to survive the court battles and legislation of the past. In the 1980s, two-thirds of the three million Latino students were in schools comprised predominantly of minority students. Over 30% attended schools in which minority students comprised 90% to 100% of the total school enrollment. In 1984, the Hispanic Policy Development Project issued a report on the condition of education for Latinos. The report declared that the educational system failed to meet the needs of Latino students and failed to recognize their high aspirations and promising potential.

The 1980 Census counted 3.2 million Latinos who are between the ages of 15 and 24. Because of an increasing influx of Latino immigrants and a rapidly rising birth rate, the estimated population of Latino youth is projected to increase from 7.5% in the 1980 Census to as much as 13% by 1996. By the year 2000, Latinos are project to be the largest single minority in the general population. Latinos will also be one of the youngest populations in the country. The median age of the Latino population is 25 years while that of the general population is 30 years. Thus, much of the Latino population will be in the public school system. The fact that Chicanos and Latinos are undereducated should not only be of concern to Latinos but to all Americans in general. This large and young minority group will make up a large part of the workforce and therefore influence the society in the future. It is no wonder that the problems regarding the education of Latinos have caught the attention of non-Latinos. Unfortunately, these problems remain as severe today as they were 20 years ago.

The status of the educational system with all of the problems that it presents to the Chicano community is bleak. Because Chicanos are not attaining higher levels of education, they are deprived of many opportunities that are available to others. American society is highly competitive and technological; it only offers opportunities to those who are trained

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15. Id.
18. Id.
20. Id.
21. Id.
with advanced skills. This type of training is not being provided in the poorer Latino schools. Recent trends show that stable employment is becoming unavailable to those with no advanced training. Chicanos, in essence, are only being provided with the option of working at low-level service type jobs that pay little and often do not provide full-time work. Thus, Chicanos are being prepared to continue as a servant class in the United States.

The agricultural industry is an excellent example of this tendency to promulgate the institutional barriers which prevent Chicanos from enjoying academic and professional success. Chicano laborers provide the foundation for the California agricultural industry's enormous wealth. This industry demands cheap labor that will work for countless hours under excruciating conditions for minimum wage or less. Ernesto Galarza, an activist in the 1920s, described the Chicano community's contribution by stating:

"It is said ... an empire has been created largely by the brawn of the humble Mexican, who laid the rails and topped the beets and poured the cubic miles of cement. But this acknowledgement is misleading—and tardy. For some obscure reason these builders of colossal fortunes have done their jobs and gone their ways still clothed in rags. . . . If it is true that the Mexican has brought to you arms that have fastened a civilization on the Pacific slope, then give him his due."23

Today, farmworkers labor in pesticide-laden fields for less than minimum wage and live in squalid housing. They continue to be builders of colossal fortunes but receive little reward.

Education plays an important role in a person's economic and social well-being and autonomy. Because of the alarming failure of the educational system to meet the Chicano students' needs, the Chicano community is justifiably concerned. The source of blame has been debated by many and has resulted in the expression of varying opinions. The fact remains, however, that without quality education, Chicanos are increasingly excluded from opportunities for success in society.

II.
THE STRUGGLES OF CHICANOS FOR ACCESS TO QUALITY EDUCATION

"El saber de mis hijos será mi grandeza." — "My children's knowledge will be my accomplishment."

— Carlos Castañeda

22. Id.
The Chicano community is often portrayed in textbooks and in the media as the cause of its own problems or as a helpless victim. These portrayals do a great disservice to Chicanos who have actively struggled for a voice in the various arenas of the political and legal system. A large part of this struggle has been over education issues.

A. The Early Struggle

In 1910, one of the largest mass migrations of people from Mexico into the United States began. By 1930, the Mexican population in the United States was reportedly 1,225,207.25 This had a significant impact on American public schools.

Chicano working-class children attended segregated schools where they suffered from racism and underwent an intense Americanization process in which they were taught the “wrongness” of their own culture and background and the “rightness” of Anglo-Saxon Protestant culture.26 Many Chicano children were unable to attend the segregated schools. The Chicano community was viewed as a source of exploitable cheap labor. Even the children were often forced to leave formal schooling after a few years in order to help increase the family income.27 The imposing demand of the agricultural industry for cheap Chicano labor made it inordinately difficult for children of rural areas to attend school when they could be laboring in the fields.

In the 1930s, organizations such as the Young Men’s Christian Association (YMCA) were concerned with the increasing number of undereducated Chicano youth and with the growing poverty in Chicano communities. However, at this time, much of the focus was on the Chicano community itself as the source of the problem. Chicano culture was seen as an impediment to success and thus the solution was to “Americanize” the community and promote assimilation.28 The YMCA undertook to deal with the “Mexican problem” by establishing youth conferences for a limited number of Chicano students in Los Angeles, California. Although these conferences did open the door for a few students to attend colleges and universities, it focused on the Mexican culture as the problem rather than the societal forces of racism and exploitation.29

It was also around this time that the League of United Latin American Citizens (LULAC), a small, vocal middle-class organization, was

27. Id. at 21.
28. Id. at 29-31.
29. Id. at 29 - 31.
founded. Like the YMCA, LULAC focused on assimilation as a means of achieving success for the Chicano community. They focused on segregation which they viewed as a means to deny Chicanos with equal educational opportunities. In 1930, LULAC challenged segregation in the case *Independent School District v. Salvatierra*. The court held that segregation per se of Mexican children was not illegal. Since the school district placed these students in segregated schools for language deficiency purposes, this action was within the bounds of the Constitution. Because litigation proved to be economically and psychologically draining and ineffective, LULAC decided to try to persuade school officials to meet the needs of Chicanos. While small gains were made in some communities, little success actually came out of LULAC's "persuasion strategy." 

As in the 1930s, the 1940s was a time in which organizations continued to focus on assimilation as a key to success. It was during this period that the Mexican-American Movement, Inc. (MAM) was organized in California by professionals some of whom were former participants in the YMCA conferences. MAM organized conferences for Chicano youth in Los Angeles, California. It was also during the early 1940s that studies reported on the inferior and segregated education that Chicano children were subjected to. The 1940s also produced a series of conferences for educators throughout the Southwest that attempted to tackle the "Mexican problem." Identified as crucial in the conferences was the need for Spanish language instruction and adapting the curriculum to meet the needs of Spanish speaking students.

The late 1940s marked the formation of the American G.I. Forum which articulated a commitment to combating discrimination in America's public institutions in its constitution. The American G.I. Forum also considered access to quality education to be extremely important. Also in the late 1940s, LULAC returned seeking legal redresses for educational inequalities, specifically segregation. In *Mendez v. West-

31. Id. at 75.
33. G. San Miguel, Jr., supra note 30, at 79.
34. Id. at 81.
35. Id. at 81 - 86.
36. C. Muñoz, supra, note 12, at 47.
37. G. San Miguel, Jr., supra, note 30, at 97.
38. Id. at 103.
39. Id. at 106 - 107.
40. Id. at 116.
minster School District, the federal court for the first time held that the prescribed segregation of Chicano children in Los Angeles, California was unconstitutional. In 1948, the American G.I. Forum and LULAC joined to bring a segregation suit in Texas. In Delgado v. Bastrop Independent School District the court held that the segregation of children in Texas was arbitrary, discriminatory and therefore, unconstitutional. The defendants were no longer permitted to segregate Chicanos. However, despite these rulings, many school districts ignored the courts and continued with their long standing and egregious practice of segregating Chicanos. The Chicanos’ fight for desegregation continued into the 1950s. Suits were repeatedly filed by LULAC and the G.I. Forum and usually resulted in victories by invalidating de jure segregation.

These organizations focused on accommodation and integration into American society as the solution to problems of poverty and undereducation. Despite the work of the various organizations, and the courtroom victories, segregation remained a reality for most Chicano students. Also, the force of these organizations waned in the fifties because the political climate, consisting of anti-foreigner sentiment and McCarthyism, made it extremely difficult to organize around issues affecting the community.

Thus, prior to the 1960s, the assimilation of Chicanos was seen as a key factor in improving educational opportunities for Chicanos. Many of these organizations and conferences sought to promote pride in culture and race. However, many emphasized their “American” identity over any other. This focus on the “American-ness” of Chicanos has continued and is still prevalent among people today. However, beginning in the 1960s, many of the activist organizations struggled to emerge with a new identity that focused on Mexican culture over any American or European culture.

B. The Struggle Continued

“In the spirit of a new people that is conscious not only of its proud historical heritage, but also of the brutal ‘Gringo’ invasion of our territories, we, the Chicano inhabitants and civilizers of the northern land of Aztlán, from whence came our forefathers, reclaiming the land of their birth and consecrating the determination of our people of the sun, declare

41. 161 F. 2d 774 (9th Cir. (1947)).
43. Id.
44. G. San Miguel, Jr., supra note 30, at 126.
45. Id. at 133.
46. Id. at 47.
47. Id. at 74 - 82.
that the call of our blood is our power, our responsibility and our inevita-
ble destiny. . . . Brotherhood unites us, and love for our brothers makes
us a people whose time has come and who struggle against the foreigner
‘Gabacho’ who exploits our riches and destroys our culture. . . . We are
Bronze People with a Bronze Culture. . . . We are Aztlan.”

—excerpt El Plan
Espiritual de Aztlan

“Although ‘the Negro was dragged to this country in chains to be sold in
slavery,’ the ‘Spanish-speaking’ subclass came voluntarily, frequently
without invitation, and the Indians, the Eskimos and the Aleuts had an
opportunity to exploit America’s resources before the ancestors of most
American citizens arrived.”

—Justice Stevens

The 1960s yielded a different political climate than that of the 1950s.
Instead of the McCarthyism of the 1950s, the 1960s was characterized
by the spread of unrest in much of the population over issues of civil rights,
racism and the Vietnam War. Chicano students joined the struggle for
meaningful education by organizing and helping promote awareness of
the needs of Chicano students. The Los Angeles County Human Rela-
tions Commission organized conferences similar to those held previously
by the YMCA and by the Mexican American Movement, Inc. Many of
these activists and organizations were still blaming the Mexican
culture.

However, for the first time, there were a significant number of
Chicanos who were struggling with issues within their communities with-
out blaming their own culture and without seeing assimilation into the
Anglo-American culture as the only solution. It was during this time
that the struggle for a new non-European identity emerged.

Some Chicanos found their way to colleges and universities with the
help of the G.I. Bill and federally funded programs made possible as a
result of the civil rights movement. Many Chicano students who were
exposed to the civil rights movement on their college campuses began to
realize that Chicanos were not a concern of the Black civil rights leaders-
ship and its allies. President Johnson’s War on Poverty Programs and
much of the gains of the civil rights movement virtually ignored the Chi-
cano community.

Local communities found ways to support Chicanos striving to at-
tain higher education. For example, in the small rural area of the

48. C. Muñoz, supra note 12, at 77-78, citing El Plan Espiritual De Aztlan: National Chicano
50. C. Muñoz, supra note 12, at 54.
51. Id. at 51.
52. Id.; see also, G. San Miguel, Jr., supra note 30, at 165.
Coachella Valley in Southern California, local leaders founded the Mexican American Scholarship Association (MAD) in 1966. This scholarship organization was founded in order to encourage and financially support Chicano students who wanted to attend institutions of higher education. This organization was necessary because Chicano students were being overlooked in receiving recognition and support to attend college. The scholarship organization provided scholarship to six students in 1966. This organization has since grown to provide aid to hundreds of students.

Not only were communities organizing to address local educational concerns, but college students also began to struggle with the educational issues that faced the Chicano community. By 1967, the Mexican American Youth Organization (MAYO) formed at Saint Mary’s College in San Antonio, Texas. Similarly, the Mexican American Student Organization (MASO) formed at the University of Texas at Austin. In California, the United Mexican American Students (UMAS) formed at the University of California at Los Angeles, California State College in Los Angeles, Loyola University, University of Southern California, California State College in Long Beach, and San Fernando State College. The Mexican American Student Association (MASA) formed at East Los Angeles Community College.

College students were not the only students struggling with their education needs. In fact, high school students in Los Angeles, California shocked the country by walking out of classes. These students referred to the walkouts as the “blowouts.” The blowouts took place in March of 1968, when over one-thousand Chicano high school students, accompanied by a teacher, Sal Castro, walked out in protest of Los Angeles’ Lincoln High School, a predominantly Chicano school. The students protested racist school policies, overcrowding, scant resources, the lack of Chicano teachers and administrators, and the lack of classes on Mexican history and culture. The strike brought the largest school system in California to a halt. Not only did this strike receive national attention, but it inspired other students throughout the state.

Chicano college organizations intensified in their political nature. For example, despite the indictment of 13 of the Lincoln High strikers,
students continued to strike all over the state. Chicano graduating seniors at San José State College and members of the audience formed a mass of 200 people that walked out during commencement exercises. In 1968 and 1969, Chicano students became part of the Third World Liberation Front at San Francisco State College and at the University of California at Berkeley. In Berkeley students boycotted classes from January of 1969 to April of that same year.

Student activism was not limited to California. In Crystal City, Texas, a high school strike contributed directly to the founding of the La Raza Unida Party. This newly formed political party was eventually elected to positions of power within the municipal governmental structure and school system.

At the same time, Chicano leader, Rodolfo “Corky” Gonzalez, was leading the Crusade for Justice in Denver, Colorado. Corky Gonzalez’ Crusade for Justice hosted the National Chicano Youth Liberation Conference in March of 1969. Through this conference Chicano student leaders and community leaders from all over the country were able to meet for the first time and focus their energy on the formulation of united resolutions. Emerging from the conference was a document entitled, El Plan Espiritual de Aztlan or The Spiritual Plan of Aztlan. This document called for unity based on pride in Mexican ethnicity and culture rather than European ancestry. The document also called for a struggle to gain political and economic control of Latino communities as well as a struggle to attain Chicano studies at college campuses.

Soon after the Denver conference, a similar conference was held at the University of California at Santa Barbara. This conference had more specific goals. The purpose of the Santa Barbara conference was to formulate a master plan for the creation of Chicano studies at college campuses and for providing services and resources to facilitate Chicano access to institutions of higher education.

The conference also became the founding convention of El Movimiento Estudiantil Chicano de Aztlan (MEChA) or The Chicano Student Movement of Aztlan. MEChA was a student organization whose purposes included promoting Chicano culture, and creating and implementing Chicano studies and support services on college campuses.

60. C. Muñoz, supra note 12, at 68.
61. Id.
62. Id. at 69 - 70.
63. Id. at 64 - 71.
64. Id. at 75.
65. Id. 77 - 78.
66. Id. at 78 - 84.
67. Id. at 80 - 84.
MEChA did not only view itself as an organization limited to the college campus. Instead, MEChA considered itself a community organization. By fighting for greater access for Chicanos to higher education, MEChA hoped that Chicanos would use their education to benefit their communities. Thus, MEChA also was active in community issues such as the farmworker struggle led by Cesar Chavez. In fact, the first large scale MEChA conference took place in the rural community of Indio, California on June 6, 1970.68 The conference was held to address the issues surrounding the plight of farmworkers. Much of the Chicano leadership throughout the country was present at the conference. Speakers at the conference included Alurista, a well known Chicano poet, Cesar Chavez, leader of the United Farmworkers Union, Corky Gonzalez, director of the Crusade for Justice in Denver, Raul Loya, a local educator and long time Chicano activist, Bert Corona, a long time Chicano activist and labor organizer, and Abe Tapia, another long time Chicano activist.69

Throughout the early part of the 1970s student activism only increased. On February 6, 1973, 1,000 Chicanos boycotted school in San Bernardino, California, demanding affirmative action in the hiring process of teachers, aides, and administrators. In order to make up for missed classes, parents and community leaders taught at the Casa Ramona, a local community center.70

The struggle for quality education often meant that local communities had to take matters into their own hands. For example, in the small rural city of Blythe, California, Chicanos who were fed up with the public school system’s failure to educate students, formed their own school, La Escuela de La Raza Unida.71 This school was an effort to provide a “relevant” education for the students of Blythe. The school’s focus was on Chicano pride and identity. The first graduates stated that the diplomas granted from this school were more meaningful than anything that the public school system could offer.72

Groups like the Mexican American Political Association (MAPA) also confronted educational systems that were indifferent and insensitive to the culture and the language of Chicano students. For example, MAPA exerted pressure on school districts in Santa Ana and San Diego to prevent these school districts from tracking Chicanos to mentally retarded classes simply because they were limited in English proficiency.73

68. Ideal Newspaper, July 1 - 14, 1970 at 1.
69. Id.
70. Ideal Newspaper, February 20 - March 5, 1973, at 3.
71. Ideal Newspaper, May 20 - June 5, 1972, at 3.
72. Id.
73. Ideal Newspaper, February 20, 1974, at 5.
MAPA also provided teacher training courses in various areas to prepare teachers to teach the culturally different.74

These efforts were not easy. Teachers who taught Chicanos pride in their ethnicity were demoted, fired, or harrassed by local law enforcement agencies. For example, Arnulfo Lucio, a teacher at Coachella Valley High School, in California was fired for teaching Chicanos to be proud of their cultural heritage.75 Another example is Raul Loya, a high school teacher who publicly criticized the local school board in the rural Coachella Valley of California for poor minority recruitment efforts and for failing to meet the needs of Chicano students. Raul Loya and three other community leaders were arrested in 1968 after clapping their hands at a public assembly. They were incarcerated for approximately one month for interfering with a public assembly, before the California Supreme Court reversed the conviction.76

Law enforcement agencies' harrassment not only led to unjust arrests, but at times led to the deaths of Chicano leaders. For example, one of the Crusade for Justice's leaders, Luis Martinez, was killed by police violence.77 Three Chicanos died in the Chicano Moratorium anti-war rally in 1970.78 One of those killed was Los Angeles Times journalist, Ruben Salazar.79 Six members of UMAS at the University of Colorado at Boulder were killed in two separate incidents when their cars exploded.80

Despite the harassment and repression that community activists faced, much was accomplished during this period. Chicano Studies programs were established at California community colleges, state colleges, and almost all the universities in the University of California system. Educational Opportunity Programs and other support services were formed to increase Chicanos' access to college.81

The bitter struggles for a meaningful education were not only waged through organizing and protest. The law also was a forum for the heated debate on bilingual education that still rages on today.

C. The Struggle for Bilingual Education

"Miss Maestas was a kind woman. . . . '¿Como te llamas?' she asked.
"'Antonio Marez,' I replied. . . .
"She smiled. 'Anthony Marez,' she wrote in a book.

74. Id.
75. Ideal Newspaper, March 15 - April 1, 1971, at 5.
77. C. Muñoz, supra note 12, at 173.
78. Id. at 173 - 174.
79. Id. at 174
80. Id. at 174.
81. Id. at 75 - 84.
I drew closer to look at the letters formed by her pen. 'Do you want to learn to write?' she asked.

"'Yes,' I answered.

"'Good,' she smiled.

'I wanted to ask her immediately about the magic in the letters, but that would be rude and so I was quiet. I was fascinated by the black letters that formed on the paper and made my name. Miss Maestas gave me a crayon and some paper and I sat in the corner and worked at copying my name over and over. She was very busy the rest of the day with the other children that came to the room. . . . I sat in my corner alone and wrote. By noon I could write my name, and when Miss Maestas discovered that she was very pleased.

"She took me to the front of the room and spoke to the other boys and girls. She pointed at me but I did not understand her. Then the other boys and girls laughed and pointed at me. I did not feel so good. Thereafter I kept away from the groups as much as I could and worked alone. I worked hard. I listened to the strange sounds. I learned new names, new words.

"At noon we opened our lunches to eat. Miss Maestas left the room and a high school girl came and sat at the desk while we ate. My mother had packed a small jar of hot beans and some good, green chile wrapped in tortillas. When the other children saw my lunch they laughed and pointed again. . . . Even the high school girl laughed. They showed their sandwiches which were made of bread. Again I did not feel well.

"I had tried to learn and they had laughed at me, I had opened my lunch to eat and again they had laughed and pointed at me.'\textsuperscript{82}

—Rudolfo A. Anaya

The government first provided money for bilingual education programs in 1968 in Title VII of the Elementary and Secondary Education Act referred to as the Bilingual Education Act.\textsuperscript{83} In the Bilingual Education Act, the federal government provided money to train teachers and aides, to develop institutional materials, and to establish parent-involvement projects.\textsuperscript{84}

The implementation of the Bilingual Education Act did not get underway until 1970 when Congress first appropriated $7.5 million to programs under the act.\textsuperscript{85} This financed 76 projects which served about 27 thousand children.\textsuperscript{86}

The Bilingual Education Act, however, did not appear out of the

\textsuperscript{82} R. A. ANAYA, BLESS ME, ULTIMA, at 48-55 (1972).
\textsuperscript{84} Id.
\textsuperscript{85} Id.
\textsuperscript{86} Id.
kindness of Congressmen's hearts. In 1965 and 1966 the National Education Association drew attention to the fact that Chicano children were educationally neglected with its "Tucson Survey." The survey showed that Chicanos had inadequate facilities and materials, a lack of trained teachers, and were subjected to "sink or swim" schooling. During the hearings of the Bilingual Education Act, the "Tucson Survey" received much attention.

Pressure to create bilingual education programs also came from the community through activism and protests. The La Raza Unida Party in Texas organized boycotts to protest school conditions and to demand bilingual education programs. Similarly, educators, students, and community activists in general were engaged in protests demanding bilingual programs for their youth.

In 1970, the federal Office for Civil Rights (OCR) informed school districts with more than 50% limited English proficient children of their obligation to take affirmative steps to rectify language deficiency in English. However, many Chicanos felt that this memorandum was not a substantial response to the serious educational problems that Latinos faced. Indeed, many school districts throughout the Southwest ignored the memorandum. Thus, parents, students, and the Latino community resorted to protests and also turned to the courts for redress.

In 1972, in Serna v. Portales Municipal Schools, the 10th Circuit held that Title VI of the Civil Rights Act gave Latinos a "right to bilingual education." In 1974, Puerto Rican students in New York won a consent decree that established a bilingual education program for Spanish speaking children in New York City. Perhaps, the most important bilingual education case is Lau v. Nichols, which held that limited English proficient students in San Francisco were not getting an education on equal terms if they received the same texts, facilities, and curriculum as students who do understand English. By this time the Title VII budget had increased to $50 million. In 1975, the OCR visited 334 districts which had large numbers of students with limited English proficiency. These visits were disturbing in that most districts were not meeting their legally mandated responsibility to educate these children.

87. Id. at 23.
88. Id.
89. C. Muñoz, supra note 12, at 70 - 71, 101.
91. Bilingual Policy Has Taken Shape Along Two Distinct Federal Tracks, supra note 85, at 23.
93. Bilingual Policy Has Taken Shape Along Two Distinct Federal Tracks, supra note 85, at 23.
95. Bilingual Policy Has Taken Shape Along Two Distinct Federal Tracks, supra note 85, at 23.
96. Id.
made remedies, known as "Lau Remedies," that mandated bilingual education for elementary school children who spoke little or no English. By 1980, the OCR had negotiated 359 "Lau plans" to remedy past discrimination.

D. The Reagan Era

The 1980s provided another change in the political climate which made activism extremely difficult. Bilingual education programs, for example, suffered setbacks in the 1980s under the Reagan administration. In 1981, the Secretary of Education withdrew the mandate of native language instruction as "an intrusion on state and local responsibility." Under Reagan, Title VII funding was cut from $167 million in 1980 to $133 million in 1986. Thus, although the OCR continued to find violations in nearly 60% of its school district visits, follow-up visits were rare.

III. USING THE LEGAL SYSTEM AS A MEANS OF ACHIEVING SOCIA L CHANGE IN EDUCATION

A. Potential Beneficial Uses of the Law

"In the law, rights are islands of empowerment. To be un-righted is to be disempowered, and the line between rights and no rights is most often the line between dominators and oppressors. Rights contain images of power, and manipulating those images, either visually or linguistically, is central in the making and maintenance of rights. In principle, therefore, the more dizzyingly diverse the images that are propagated, the more empowered we will be as a society."

—Patricia J. Williams

Many scholars argue that there are many drawbacks to the use of the legal system to assert one's rights. Since rights are defined often times by the legal system, not by the community that asserts them, little progress occurs in communities seeking change by asserting these legally defined rights. However, disempowered communities often assert rights not necessarily to effectuate immediate change but as a means of organi-

98. Bilingual Policy Has Taken Shape Along Two Distinct Federal Tracks, supra note 85, at 24.
99. Id.
100. Id. at 25.
zation and self-empowerment. As Patricia Williams states above, "To be un-righted is to be disempowered . . . ."

Chicanos, for example, who have struggled within the system to achieve change by asserting their rights, may find that their struggle is legitimized when the courts or legislature recognize their rights. This is so because supposed legitimate institutions of power within the society actually recognize the community's claim of a right as valid. Furthermore, a legal declaration of rights helps to articulate the social discontent of the Chicano community. Of course, when the courts or legislatures have declared that certain rights exist, this rarely has led to a direct beneficial change in the lives of many Latinos. After all, the courts have recognized the right to attend non segregated schools and yet Chicanos still continue to attend schools that are predominately Chicano.

Asserting one's rights, however, is not useless. Elizabeth Schneider addresses the potential power of demanding one's rights in The Dialectic of Rights and Politics: Perspectives from the Women's Movement. According to Schneider, the articulation of a right can express political vision, affirm humanity, and contribute to a community's individual and collective development. Furthermore, the psychological impact of a legal victory where the law recognizes certain rights can mobilize a community into action.

For example, while not all of the litigation over bilingual education caused immediate beneficial changes for Chicanos in every school district, victories in the courts did serve to ignite the movement. After the 10th circuit handed down the Serna decision which declared that limited English proficient students have a right to bilingual education, many Chicanos were inspired to take action. Local newspapers expressed hope that change was possible through action. One rural newspaper, for example, ran a cartoon in which the caption read:

"Bueno Raza! The law has finally opened their minds! An important court decision has been rendered that will progress the educational needs of our children. It is our duty to join all councils that schools provide in order that some of our educational priorities may begin to be met!!! Val-lan y vocen sus opiniones con vozes fuertes!! Schools must budget monies for bilingual and bicultural education. . . ."

Legal struggles and victories such as the court's recognition of a right to bilingual education in Serna, not only mobilize communities into action

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104. Id.
105. Book Note, supra note 102 at 552.
106. Serna, supra note 92.
but become tools for raising the expectations and political consciousness of a community.\textsuperscript{108} These struggles instill a sense of moral passion and social purpose within a community, which in turn, might replace feelings of hopelessness or defeat.

Similarly, legislative victories can inspire communities to take action and directly address problems faced by the communities. For example, the needs of limited English proficient students remain unaddressed in the educational system for many years. However, with the passage of the Bilingual Education Act in 1968, students were finally given an opportunity to have their language needs met.\textsuperscript{109} After the passage of the Act, the number of children enrolled in bilingual classrooms in the United States doubled.\textsuperscript{110} In 1968, only twenty-six thousand students received bilingual instruction. By 1972, 112,000 children received bilingual instruction.\textsuperscript{111} It is important to note, however, that the Bilingual Education Act is not solely a byproduct of legislative lobbying. It emerged as a result of persistent and principled community activism and protest combined with extensive political lobbying.

The law not only serves to recognize a community’s rights or legitimize a community’s struggle, but as Gabel and Harris point out, it can offer a unique opportunity to disempowered communities.\textsuperscript{112} Involvement in the legal system, whether it be through litigation or through some other means, provides an opportunity for people to get a glimpse of the institutional power structure of our society.\textsuperscript{113} While this power structure is generally part of a public institution that permeates many aspects of all of our lives, it usually remains invisible to most of us.

Gabel and Harris suggest that another way to achieve change through the law is to change the legal system and culture.\textsuperscript{114} This, they suggest, is done by professionals who are an integral part of the legal system and who often perpetuate its existing culture. For example, a lawyer often sees herself as being in charge of the case and therefore is more important than a clerk, paralegal or even a client. Gabel and Harris suggest that the lawyer could instead see her role as a functional one where she provides a service. Her relationships with clients could be ones that are equal and mutually respectful. Professionals within the legal system can individually or collectively work to formulate the law as

\textsuperscript{108} Serna, supra note 92.
\textsuperscript{109} BILINGUAL EDUCATION ACT OF 1968, supra note 83.
\textsuperscript{110} Bilingual Policy Has Taken Shape Along Two Distinct Federal Tracks, supra note 85, at 23.
\textsuperscript{111} Id.
\textsuperscript{113} Id.
\textsuperscript{114} Id.
one that is reflective of the community that it affects. However, changing the legal system and culture itself might not be immediately possible for the Latino community. Because the legal profession is severely underrepresented by Chicanos, this method of achieving change through the law excludes involvement by the Chicano community.

B. Difficulties in Using the Law

“A group of Chicano parents from Center, Colorado, accused the school administration of discriminating against children who were not fluent in English. A bilingual program was established in Center in 1981, but by 1984 the administrators had whittled it down to practically nothing. . . . [In 1985 a] suit was filed against the school district, the school superintendent, the five school board members and the principal of the junior and senior high schools. [The] presiding judge . . . ordered the parties in May 1986 to resolve their dispute. [A consent decree was issued in October 1986.] Five months after the signing of the settlement, the parties reverted to feuding over the district’s efforts to prepare for the program for the 1987/1988 school year. . . . ‘Everyone had different expectations of what signing the agreement meant,’ says associate Michael Gilbert. Defendants thought, ‘Oh good, this is a quick fix . . . Now we can be done with this thorn in our side,’ and then they went back to their old processes.”

Legal victories whether they be in the courtroom, through settlement or through the legislatures do not always yield results that the parties involved may have expected. A court order or the passage of a new law do not suddenly mean that schools will start educating students. Why are legal victories sometimes hollow ones for the parties involved?

One reason that legal victories may not produce the desired results is that the law is not written in terms of intuitive rights and wrongs. The legal process is structured to use supposed “objective” facts stripped of emotions or values that the parties may have. With these “objective” facts, the law creates narrow classifications of legal wrongs. For example, with regard to discrimination or segregation law, the plaintiff often must show that the intent of the defendant was to discriminate or segregate. However, eliminating purposeful segregationists or purposeful racists alone does not eliminate segregation or racism. Requiring that the plaintiff prove intent, might actually serve to reinforce segregation by excluding from the definition any segregation that the community actually experiences.

Because the law often does not reflect popular experience people are

115. Id.
117. Book Note, supra note 102, at 571.
118. Id.
actually discouraged from seeking legal help. Involvement in litigation often might mean being publicly demeaned by being identified as a victim or a stereotype. Because of the nature of law and formal definitions that do not reflect community experience, plaintiffs might find themselves having to fight a battle that the law sets forth rather than one that the plaintiff originally sought to fight.

The individualistic nature of the law provides another barrier to achieving social change in education. The law often looks at legal wrongs as acts committed by individuals in particular instances. Even in desegregation cases, where one might expect the outcomes to apply to entire areas, the outcome is still limited to individual school districts over certain periods of time.

The law does not deal effectively with discrimination in education or in other arenas because of its narrow focusing on the actions of individuals. The law labels individuals as villains in discrimination suits rather than focusing on the systemic nature of discrimination in this society. It is this very method of dealing with discrimination that makes the law unable to remedy the problem. While individuals might feel oppressed by societal or institutional structures, the law often does not provide a remedy because of its focus on individuals.

Furthermore, the law, in fact, might truly function to maintain the status quo and therefore be an inappropriate tool for social change. Gabel and Harris have argued that the very hierarchical structure of legal culture functions to legitimize the existing order.

"Hierarchical social relations are fashioned and reproduced principally through cultural conditioning rather than through the direct use of force. One element of this conditioning process is the creation of legal concepts and doctrines to establish the political legitimacy of the existing order. And one means of reinforcing this appearance of legitimacy is through applying these rules in a more-or-less even-handed way. The legal system is an important public arena through which the state attempts—through manipulation of symbols, images, and ideas—to legitimize a social order that most people find alienating and inhuman."
Gabel and Harris argue that through the large amount of legal authoritarian symbolism and ritual, the law, and authority in general, is legitimized. Legal reasoning which rarely questions the existing hierarchy, serves to maintain the existing hierarchical norms.\(^{126}\)

Perhaps the most troubling aspect of using the law as a tool for social change in education is not the nature of the law nor the legal system, but its potential effects on a community or movement. While a community might be mobilized through a legal battle, if the legal struggle results in a legal defeat, it can be demoralizing to a movement. Litigation can damage political organizations by draining scarce money and human energy.\(^{127}\) Furthermore, legal battles require the use of lawyers. This reliance on lawyers might function to exclude members of the Chicano community who are not part of the legal profession and could detract from nonlegal struggles.

Nonetheless, Chicanos have used the legal system with all of its potential problems to try to change the situation in their communities. While the law has many negative aspects to it, it has also served to benefit communities and movements to a limited extent. The struggle waged by Chicanos for a quality education has not been devoid of legal remedies. Important cases have been won in courts and gains have been made in the legislatures.

**CONCLUSION**

Chicanos can organize to change the educational system so that it is more responsive to the needs of the community. However, the legal system, whether it be through litigation or through legislation, cannot be the only means used to address the community's needs. The law is often times too conservative and constrained to facilitate real change in people's lives. Furthermore, the law is too detached and abstract from people's experiences and problems. As discussed in Part II, the Chicano community has made many significant gains through protest, organization, and self-help rather than directly through legal battles.

The law, however, cannot be completely ignored or dispensed with in any movement. While legal battles have not been the reason for many of the gains made by the Chicano community in education, the law has facilitated beneficial changes in education. Legal victories, such as those in desegregation and bilingual education, have legitimized much of the community's grievances and have facilitated organization for change.

However, despite much of the struggle and work by the Chicano

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126. *Id.*  
127. For example, after LULAC lost its first desegregation case in the 1930s, it left deterred from turning to the law to remedy the situation. *See* Independent School District v. Salvatierra, 33 S.W. 2d 790 (Tex, Civ. App. 1930) cert. denied 284 U.S. 580, 52 S. Ct. 28, 76 L. Ed. 503 (1931).
community and even the gains made by the community, the educational vista of many Chicano children remains bleak. Thus, the community's work is certainly not done. The power structure in American society is often slow to change and able to outlast many social change movements. The Chicano community, therefore, in order to achieve the changes needed in the educational system, must be able to empower itself.

Nicholas Gonzalez Yuen, argues that organization involves countering the dominant ideological messages within society that only serve to keep communities, such as Chicanos, disempowered and therefore, unable to significantly change the system for the better. To do this, identity and consciousness are essential. There must be a sense of common goals, shared values, culture, and pride. Chicanos must have a clear vision of the society in which they exist and an understanding of how the society must change. This will contradict much of the disempowering information that members of the community receive and internalize. In this way, Chicanos can work to continue to reform society, empower themselves, and add to the contributions made in the past.

128. Book Note, supra note 102, at 575.