

## Legitimacy, Social Identity, and the Mobilization of Law: The Effects of Assembly Bill 540 on Undocumented Students in California

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*This article examines the instrumental and constitutive effects of California Assembly Bill 540. The law grants undocumented immigrant students an exemption from out-of-state tuition, thereby making some forms of higher education more accessible. Despite the narrow actionable aspects of the law, it unintentionally legitimizes this disenfranchised group. This longitudinal study of undocumented immigrant youth consists of in-depth interviews before, shortly after, and four years after the passage of the law. The findings demonstrate that AB 540 immediately relieved stigma and later provided a socially acceptable identity that, within a legal consciousness informed by meritocracy, empowered these students to mobilize the law in a number of unforeseen ways. The case strongly suggests that it is possible for unintended constitutive functions to have more transformative effects on the daily lives of targeted beneficiaries than the intended instrumental objectives of law.*

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## INTRODUCTION

On October 12, 2001, undocumented students in California were legally granted greater access to institutions of higher education.<sup>1</sup> Then Governor of California, Gray Davis, signed Assembly Bill 540 (AB 540) into law. Currently still known under its bill number, this law qualifies all long-term California residents, regardless of immigration status, for an exemption from nonresident tuition in California public colleges and universities. Although still barred from federal or state financial aid, undocumented students no longer pay three to seven times more for tuition than their documented peers. Since 2001, comparable bills were also passed in nine other states.<sup>2</sup> Students who had organized for months around this piece of legislation rejoiced, and politicians who authored and supported the measure have since publicly touted their success, claiming to have improved the lives of young immigrant students.<sup>3</sup> To date, however, little is known about the effects of this law in the daily lives of undocumented youth. Were students able to benefit as expected? Did the change in law also bring forth any unforeseen consequences?

The relationship between law and social life is extraordinarily complex. Lawmakers and law enforcers tend to emphasize the instrumental purposes of law—those facets that aim directly to control behavior. However, in practice, various social forces can also weigh heavily on people's actions and influence their interpretation and application of laws. Consequently, unintended outcomes of laws are not uncommon. Civil rights laws, for example, often lead to results that contradict stated instrumental goals. Despite attempts to enhance and protect the interests of marginalized groups, targeted beneficiaries rarely invoke civil rights laws (Bumiller 1988; Engel and Munger 1996; Nielsen 2000). Moreover, when change is detected, it is gradual and not necessarily observable in formal legal claims (Engel and Munger 2003).

This article examines one group that is effectively and expeditiously invoking a new rights-granting law to access mainstream institutions. Few studies have traced the interconnections between a new rights-granting law, legal subjects' interpretation of that law, and their everyday application of the law. In this study, I analyze the legal consciousness of undocumented immigrant students who directly stand to gain from the passage of California Assembly Bill 540. I explore participants' belief in meritocracy and how it

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1. For the purposes of this study, undocumented immigrant youth refers to youth who are born outside of the United States, have spent a significant portion of their lives in the United States, and reside here without legal permission from the federal government.

2. The following states have passed similar laws: Texas, Utah, Washington, New York, Oklahoma, Illinois, Kansas, Nebraska, and New Mexico; other states have considered following suit (National Immigration Law Center 2006). But in most cases, these bills do not qualify undocumented students for federal or state financial aid.

3. The signing of the bill was largely publicized through the Spanish-language media but received scarce coverage in the more mainstream English-language media.

powerfully interacts with the law to help construct subjects' identities in support of their claims to higher education and upward mobility. This case study demonstrates that neutral labeling effects of laws have the potential to transform social identities, thereby encouraging greater mobilization of the law. Furthermore, it reveals that in some instances, unintended constitutive consequences can be more beneficial and far reaching than instrumental outcomes of law.<sup>4</sup>

## DISENFRANCHISED GROUPS AND THE (IM)MOBILIZATION OF THE LAW: THE ROLE OF MERITOCRACY

Despite being a “rights” thinking society, people in the United States are, simultaneously, passive law-avoiders when it comes to making legal claims (Engel and Munger 1996, 2003). This is especially true of civil rights and antidiscrimination laws (Bumiller 1988; Engel and Munger 1996; Nielsen 2000). Although these laws intend to improve conditions for marginalized groups—to grant them greater inclusion into mainstream society—they can have precisely the opposite effect. Along with rights, these laws also unintentionally produce negative labels that categorize subjects as victims and associate them with weakness (Bumiller 1988). This backlash, in turn, further undermines subjects' social status (Nielsen 2000). Even when they have a legal claim to rights, people shy away from invoking the law to claim those rights.

I argue that the principle of meritocracy, so deeply rooted in U.S. society (Hochschild 1995; Kaiser and Major 2006; McNamee and Miller Jr. 2004), centrally informs the backlash against those who may potentially make civil rights claims.<sup>5</sup> A meritocratic worldview endorses the belief that anyone, regardless of their social location, is free to be successful through their own merits (Kaiser and Major 2006). Under this logic, individual outcomes are fair and deserved because they are the result of (in some cases, a lack of) individual talent and effort (*ibid.*). It follows, then, that in a context that values individual merit—while it simultaneously overlooks institutionalized forms of inequality—legally mandated rights are thought to be incompatible with the central principles of society. Opponents of rights-granting laws are able to draw on the myth of meritocracy to frame legal rights as unfair advantages in what is, otherwise, premised to be a level field of opportunities.

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4. I recognize that law informs and is informed by society, culture, and legal consciousness in ways that are simultaneously “instrumental” and “constitutive” (Sarat and Kearns 1993). However, in this article it is useful, for heuristic purposes, to distinguish between the two types of effects of law.

5. Meritocracy is also powerfully entrenched in the U.S. legal system, where it informs legal decisions that block the progress of some rights-granting laws (Beiner 2002; Haney and Hurtado 1994).

Simultaneously, they brand potential beneficiaries as weak or undeserving and opportunistic.<sup>6</sup> In this way, the logic of meritocracy deems new rights as socially *illegitimate* (cf. Bumiller 1988; Nielsen 2000).

However, because law and legal consciousness are socially constructed, there is room for shifting interpretations and uses of law. Even rights-granting laws can eventually assist targeted beneficiaries. In an impressive analysis of the relationship between law and identity, Engel and Munger (2003) highlight the intricate ways in which the Americans with Disabilities Act (ADA) of 1990 produced gradual social change. Without ever filing a legal claim, targeted beneficiaries enjoy new rights in the form of improved self-esteem, higher aspirations, and greater expectations from social institutions. Although the authors do not emphasize it in their analysis, meritocracy is also one of the forces influencing the largely positive changes. After years of internal debates that encompass conflicting experiences of social exclusion and legal inclusion, subjects in their study justify accommodations by drawing on the principle of meritocracy when they note their individual efforts and abilities.<sup>7</sup> Moreover, people with disabilities underscore society's failure to properly accommodate them (Heyer 2007). In this context, the ADA merely remedies the previously unequal playing field for people with disabilities, and their new rights allow them to properly take part in the meritocracy where their contributions are now legitimized (ibid.).<sup>8</sup>

### Legal Consciousness and the Mobilization of Law

It matters, then, how individuals interpret laws. Legal consciousness—the way people come to understand the law as a result of continual lived experiences (Merry 1990)—is a dialectical process in which the meanings people give to everything in their world, including law, come to be perceived as natural and objective (Ewick and Silbey 1998, 39). Ewick and Silbey identify three predominant types of legal consciousness, each associated with a set of actions. Individuals who are “before the law” are in passive acceptance of a law that is experienced as impartial and grandiose (47). Those who are “with the law” utilize it as a resource and perceive it as a game (48). And

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6. Beneficiaries are perceived to be weak because they presumably can only compete against others when granted “unfair advantages.” Or they are seen as undeserving subjects who opportunistically take advantage of a system that otherwise equally distributes rewards to those who “earn” them without external aid (cf. Bumiller 1988; Nielsen 2000).

7. See, for example, the nurse who justifies testing accommodations for her dyslexia by emphasizing her abilities on the job (Engel and Munger 2003, 1).

8. Meritocracy is also evident in the narratives of people who Ewick and Silbey (1998) categorize as being with the law; people who utilize the law as a resource suggest that individuals can be “effective legal player[s]” (121) while those who do not benefit from law are merely incompetent. See especially the narratives of Charles Reed and Nikos Stavros for examples of how the tenets of meritocracy are embedded in their accounts (1998, 108–28).

subjects who are “against the law” are trapped by its pervasive authority (48–49). Although these categories are shifting and contingent, orientations toward law will loosely correlate with social status.

Analytically, the concept of legal consciousness is useful in this study because it lends itself to an exploration of the ways that knowledge about the law affects individuals’ mobilization of the law (Bumiller 1988; Ewick and Silbey 1998; Nielsen 2000). Ewick and Silbey’s (1998) framework predicts that members of disenfranchised groups will be “against the law”—distrusting and suspicious of the law and its implementation. This corresponds closely with many of the outcomes of civil rights and other antidiscrimination laws (Nielsen 2000).

Previous studies on the mobilization of law have focused on racial minorities, women, the disabled, and other disadvantaged groups (Bumiller 1988; Engel and Munger 1996; Nielsen 2000). This study extends this line of inquiry to examine the experiences of undocumented immigrants, another disenfranchised group in the United States (Chavez 1998; Menjívar 2006). California’s Assembly Bill 540 is a rights-granting law intended to benefit undocumented students. Unlike the aforementioned cases, however, I note the powerful influence of meritocracy to provide an account that demonstrates greater variation in the current understanding of legal consciousness approaches by detailing *how* and *why*, contrary to other disenfranchised groups, undocumented youth do mobilize the law and claim new rights.

### Undocumented Immigrants: A Disenfranchised Group

The very concept of rights for persons with undocumented migratory status may seem counterintuitive. Commonly referred to, both socially and legally, as “illegal aliens,” undocumented immigrants are a legally banned category because they lack the required documentation to reside lawfully in the United States (De Genova 2004). The general public may not associate undocumented immigrants with any form of legal rights. And yet immigration law and other laws can be contradictory (Calavita 1998, 1996; Coutin 2002; Heyer 2007; Macías 2006). This is particularly true because immigration “law on the books” is inconsistently enforced, allowing for the settlement of millions of undocumented immigrants (Castles 2004; Macías 2006).<sup>9</sup>

Although immigration law is commonly portrayed as necessary to curtail undocumented immigration, undocumented immigrants are actually produced through the laws that criminalize their presence in the United States (Coutin 1998, 2000, 2002; De Genova 2004; Ngai 2004). In a study of immigration law in Spain, Calavita (1998) underscores the strong parallel

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9. With over eleven million undocumented immigrants estimated to reside in the United States, undocumented immigration is currently at an all-time high (Passel 2005).

between the Spanish and U.S. cases to suggest that “despite the rhetoric of control and integration, immigration laws and policies have one conspicuous effect: Instead of controlling immigration, they control the immigrant” (560). The exclusivist nature of many immigration policies often lead to intense fear of deportation and a life of permanent anxiety for undocumented migrants.

Undocumented migratory status has important legal and social implications in people’s lives. Barred from most legal resources, undocumented immigrants often live in the shadows of society (Chavez 1998). With limited access to jobs, education, and social services, undocumented immigrants are also restricted in their efforts for socioeconomic mobility and community development (Abrego 2006; Chavez 1998; Hagan 1994; Mahler 1995; Menjívar 2000, 2006). However, while the law renders undocumented immigrants “criminals, fugitives, and illicit” (Coutin 2000, 167–68), migrants inhabit legitimate spaces through practices that include work, paying for legal services, and sending remittances (Coutin 2002, 20). In these ways, undocumented migrants are agents in the creation of legitimate actions and spaces.

### The Liminal Status of Undocumented Students

The case of undocumented students is arguably even more contradictory than that of adult undocumented immigrants. Because many arrived in the United States as young children, they were able to learn the language, absorb the customs, and make the culture their own in ways that are not available to those who migrate as adults (Abrego 2006; Fernández-Kelly and Curran 2001). For example, whereas working-class adults signal to others through their clothing and language practices that they are outsiders, undocumented students dress and speak English in ways that make them largely indistinguishable from their U.S.-born peers (Olivas 1995).<sup>10</sup> Thus, undocumented students can manipulate social assumptions to avoid questions about their legal status (Abrego 2006; Gonzales 2006). In this sense, undocumented students are simultaneously included and excluded from U.S. society.<sup>11</sup>

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10. In fact, there is little difference between undocumented youth and their documented peers. Because they share the same neighborhoods and schools, their socialization processes are almost identical. The most significant difference between the two groups is only evident in their post-high school options, when legal protections for undocumented youth end. Unlike their documented peers, who can access financial aid for college, undocumented youth face prohibitively expensive fees, thereby greatly limiting their chances for upward mobility through education (Abrego 2006).

11. To date, little social science research has examined the specific experiences of undocumented youth (Abrego 2006; Gonzales 2006). This population, however, is included in an undifferentiated manner in current studies of children of immigrants. For example, although the Children of Immigrants Longitudinal Study (CILS)—a notable recent survey that informs several studies (Rumbaut and Portes 2001)—did not measure immigrant status, undocumented students are included in the sample and their experiences are generally not distinguished from those of their documented peers (Portes and Rumbaut 2001).

Undocumented youth also have legal access to public education through high school (Carrera 1989).<sup>12</sup> The educational system is central to the development of identity and understanding of social norms (Lopez 2003)—forces that, along with the law, powerfully determine legal consciousness. Undocumented immigration, therefore, is a compelling context in which to explore legal consciousness. Straddling between legal and illegal categories (Gonzales 2006), and between inclusion and exclusion, gives these informants a unique perspective when interpreting and mobilizing the law. I argue that these students' liminal status (criminalized for being undocumented, yet legitimated for their successful student status) magnifies the role of law in their lives, making them a strategic group from which to reevaluate legal consciousness and the mobilization of rights-granting laws.

### Enactment of AB 540 in California

California Assembly Bill 540 aimed to improve undocumented youth's prospects for higher education. The potential effects are noteworthy because California is the most popular U.S. destination for undocumented immigrants (Passel 2005). It is estimated that between 5,800 and 7,450 undocumented students per year are eligible to benefit from AB 540 (Bartindale 2001).<sup>13</sup> To qualify, a student must have attended and graduated from a California high school (or obtained a GED), she must enroll in an accredited institution of higher education in California, and must declare, through an affidavit, that she is in the process of legalizing her immigration status or will seek to do so as soon as she becomes eligible.<sup>14</sup> Students who meet each of the bill's requirements are exempt from nonresident tuition. This is important because the cost difference between resident and nonresident tuition is considerable.<sup>15</sup> Moreover, in the original language of the bill, the law intended to grant these students access to state financial aid. However, after amendments, its final language no longer included financial aid.<sup>16</sup>

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12. Since 1982, a Supreme Court ruling, *Plyler v. Doe*, has barred public schools from excluding undocumented children.

13. These figures only include those students who match all of the criteria set forth in AB 540. Presumably, many more drop out or do poorly in school. Nationwide, 65,000 undocumented students graduate from high school every year and roughly 5 to 10 percent of them go on to college (National Immigration Law Center 2006).

14. The exemption is also available for U.S. citizens who graduated high school in California and moved out of state but are now returning. It also benefits current college students who attend college out of state throughout the academic year but want to enroll in a California institution for summer courses.

15. In 2006–2007, for example, the cost difference between nonresident and resident tuition at the University of California was \$25,827 per year versus \$7,143.

16. As will be highlighted in the students' narratives, the lack of access to financial aid plays a crucial role in limiting the effects of AB 540. Specifically, without financial aid, four-year colleges continue to be prohibitively expensive for most undocumented students.



The language of the bill expresses the instrumental intent of the law but also hints at the constitutive effects by emphasizing academic merit and implicitly legitimizing a space in the state's future for undocumented youth.<sup>17</sup> The lawmakers supporting the bill concur. Then governor Gray Davis, for example, justified his signing of the bill by stating that "kids who grew up and graduated from high school here should not be priced out of a future" (Sanchez 2001, A1). Moreover, according to the bill's author, Marco Firebaugh, AB 540 intends to give "hard-working California immigrant students an opportunity to achieve their dreams and contribute meaningfully to our society" (A1).<sup>18</sup>

What effects, then, did AB 540 have? Although undocumented immigrants share a disenfranchised social status with other intended beneficiaries of rights-granting laws, undocumented youth do not stand against the law as predicted in current frameworks (Ewick and Silbey 1998; Nielsen 2000). Instead, this article demonstrates that a belief in meritocracy helped inform their legal consciousness to empower undocumented youth to mobilize the law.

## METHODS AND DATA

While there is great value in exploring legal consciousness in common places, away from legal institutions and separate from specific laws (Ewick and Silbey 1998; Hoffmann 2003), this study examines the outcomes, both intended and unintended, of one particular law. Because even the very presence of undocumented youth in the United States is legally unsanctioned, laws have the potential to be especially salient for this population. Based on this assumption and on a five-year participant observation project with undocumented youth, I employ a longitudinal study that consists of interviews with students before, shortly after, and three to four years after the implementation of Assembly Bill 540.

In total, I draw on forty-three interviews with twenty-seven respondents.<sup>19</sup> From July to November 2001, prior to the passage of the law, I conducted

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17. The bill's language is also informed by the tenets of meritocracy. It states: "These pupils have already proven their academic eligibility and *merit* by being accepted into our state's colleges and universities" (AB 540, sec. 1, para. 2, added emphasis) ([http://www.maldef.org/ab540/pdf/AB\\_540.pdf](http://www.maldef.org/ab540/pdf/AB_540.pdf), accessed Feb. 5, 2008).

18. Interestingly, the words of AB 540 supporters implicate meritocratic ideals. As one *Law & Social Inquiry* anonymous referee pertinently notes, AB 540 further reifies meritocracy by "legitimizing the idea that hard work and educational diligence" result in upward mobility, when, in fact, lack of financial aid continues to block access to college for most undocumented students.

19. Twelve participants form the basis of the longitudinal part of the study. The remaining fifteen participants were recruited only for the interviews that took place three to four years after the passage of AB 540.



twelve interviews with undocumented youth. I located all of the respondents while volunteering at community-based organizations. About half of the respondents participated in an immigrant-rights youth organization. The rest were enrolled in an art class for school credit. From November 2002 to January 2003, just over a year after the passage of AB 540, I reinterviewed eight of the original respondents—all of whom were still undocumented.<sup>20</sup> The third round of interviews took place between December 2005 and June 2006. To control for the effects of the law on the targeted population, in rounds two and three, I only reinterviewed the eight participants from the original sample who remained undocumented. For the purposes of corroborating some of my observations with the smaller original sample, in the third round I also conducted interviews with fifteen more undocumented students who attend various colleges and universities throughout California. All interviews were conducted in English. They were tape recorded and transcribed (all transcripts are in possession of the author).

The interview data is heavily supplemented with participant-observation conducted on a weekly or biweekly basis over the course of several years at community organizations and in numerous meetings and events. From 2001–2006, I gained access to strikingly similar stories of many more students in these interactions. Teachers and school administrators were also often present at meetings, and their accounts serve to further verify the students' accounts.

With the exception of one student who came when she was fourteen, most of the youth arrived in the United States between their very early childhood and the age of eight. Their ages at the time of the interviews range from seventeen to twenty-four. All students are Guatemalan, Mexican, or Salvadoran—representing the three largest national origin groups among the undocumented population of the United States. Of the original twelve respondents, seven were politically active around the passage of the bill; the remaining five were unfamiliar with the bill prior to its passage. Among the additional fifteen respondents, none were politically active around the passage of the bill. All fifteen had only learned about the law through the college application process or upon enrolling in college.

## HOW UNDOCUMENTED STUDENTS EXPERIENCE THE LAW—INSTRUMENTAL EFFECTS OF AB 540

Instrumentally, Assembly Bill 540 aims to “[ensure] access to our state’s colleges and universities” by establishing a “fair tuition policy” for all those

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20. I was able to reinterview all but one of the original respondents. He and his family had relocated. Another three had obtained legal residency through family reunification policies. I did not include the three newly legalized students in the second or third rounds of the interviews because their experiences were no longer relevant for this project.

California-educated students who “have already proven their . . . merit.”<sup>21</sup> Undocumented students who were formerly “precluded from obtaining an affordable college education because they [were] required to pay nonresident tuition fees” should now have access to higher education institutions throughout the state.<sup>22</sup> Effectively, higher education was now within reach for students who previously could not afford even community college. Before the passage of AB 540, for example, some of the students who were academically eligible to attend college decided not to apply because it was beyond their means. Prior to AB 540, Patty describes how she felt when she had to make the decision not to apply to college:<sup>23</sup>

I felt so bad! Because my friends knew my grades and they would ask me, “What school did you apply to?” And I was like, “No, I didn’t.” “How come you haven’t applied?!” . . . And one friend, she knew about my situation and she said, “You know what? I feel so bad because your grades are much better than mine and I’m able to go to a university and you’re not.” I felt like crying. . . . All they do senior year is talk about college. “I applied here and I applied there” and I didn’t even bother applying because I knew the answer—I couldn’t pay for it.

This excerpt highlights the painful consequences of illegal status prior to the passage of AB 540 for academically oriented students. Especially because during her protected status under the law, this student’s academic experiences were in no way distinct from her peers’. In fact, she excelled in comparison to other students. Despite her achievements, college was so unaffordable that she chose to avoid the application process altogether. Shortly after the passage of AB 540, however, Patty’s response is very different. In the second interview, she discusses the law’s effect in her life:

It helped me a lot because before there was no way I could afford community college. They would have charged me around \$1,700 for just one semester and that’s a lot of money! . . . So after the law passed, I was really, really happy. . . . The good thing is that you can take advantage of it right now by going to a community college. And that’s better than not attending school at all.

By the second interview, Patty was already enrolled in community college and more hopeful about her ultimate goal of completing a bachelor’s degree. Although a BA was still economically out of reach, she clearly benefited

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21. AB 540, sec. 1, paras. 2 and 3.

22. AB 540, sec. 1, para. 1.

23. The names of individual respondents, schools, and organizations have been disguised to preserve anonymity.

from the change in law. With greater access to higher education, her experience suggests that AB 540 met its intended instrumental purpose.

Several other participants affirm that AB 540 has reached its instrumental intent, at least at the community college level. Nonetheless, expensive tuition continues to limit undocumented students' access to four-year institutions. Given that most undocumented students live in precarious economic conditions, even when admitted, attendance at a four-year college is rarely an option. Indeed, according to the University of California (UC) Office of the President, in 2002–2003 (the last time they compiled statistics),<sup>24</sup> within a system-wide undergraduate student population of almost 160,000, the exemption was granted to 719 students (University of California 2003). Of these, however, only 93 (13 percent) were potentially undocumented students.<sup>25</sup>

Several students in the original sample gained admission into the University of California straight out of high school, but only one was attending by the subsequent rounds of interviews, after the passage of AB 540.<sup>26</sup> For all admitted students, tuition was still beyond their means. The majority were forced to settle for the more affordable community college. In the following excerpt, Sara, one of the students who earned admission to several UCs, discusses the effects of the bill in her life. Her “first plan” refers to attending a UC; her second plan is attendance at a less expensive community college:

After it passed, I was very happy, excited about going to college, getting my education, you know, actually going to a UC. . . . I told my dad, “You know, this is less money, dad. It’s less for us to pay”. . . . I was going to get to do my first plan rather than my second plan. But then I realized that it was still a lot of money, no financial aid, no one to give you a hand.

Sara, like several other undocumented students, certainly benefited from the bill, but only in a limited way. Access to education is increased because the costs are reduced. However, without financial aid, only community college is accessible. Even after the passage of AB 540, attendance at any California State University or University of California is prohibitively expensive for these socioeconomically disadvantaged students and their families.

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24. Similar statistics are not available for the California State University system or for California Community Colleges, all of which must also comply with AB 540.

25. The remaining 626 exemptions were granted to U.S. citizens, legal residents, or otherwise documented students (University of California 2003).

26. Two more were enrolled in California State University campuses by the third round of interviews.

Moreover, most scholarships require legal residency or U.S. citizenship for eligibility. After the passage of AB 540, community organizations and a few private institutions began to offer small scholarships to undocumented students.<sup>27</sup> Several students in the study qualify for scholarships, but funding is so minimal that it rarely covers four years of college. Molly is a case in point. Ranked in the top 4 percent of her class, she was guaranteed admission to at least one UC campus. In fact, she was accepted to three and chose, with her scholarship money, to attend one. During the second interview and after her first quarter in college, Molly talked about what it means in her life that AB 540 was passed:

Fortunately AB 540 was ratified, but unfortunately it was just for tuition purposes. I have my money for my first year, but now I'm facing the problem that my scholarship money is running out and as of right now I don't really have money for next year. . . . So that's something that's haunting me . . . it's a major problem. Although AB 540 did help with tuition, it just leaves a lot of room for you just falling back down.

Despite the formal access, it is possible that students like Molly will only be able to partially cover the costs of a college education. Without financial aid, her situation becomes almost as precarious as it was before she started college. By the third interview, Molly was close to graduating from a UC. With great effort and creativity, she found employment and was able to raise just enough funds to pay for tuition each quarter. Not all undocumented students fare as well.

Instrumentally, AB 540 achieved only limited success in granting greater access to higher education. Despite having demonstrated their "merit," not all undocumented students who earn admission to four-year universities are able to attend. And even when they do attend, lack of funds puts them at constant risk of not graduating. Beyond the instrumental effects of the law, however, undocumented students express that they have benefited in other ways from AB 540.

### **How Undocumented Students Experience the Law: Constitutive Effects of AB 540**

Law plays a powerful role in the lives of undocumented students. As Tatiana attests, "Law has been so influential in my life. It dictates my life

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27. The Salvadoran-American Leadership and Educational Fund (SALEF) and the Mexican American Legal Defense and Education Fund (MALDEF), for example, provide scholarships and information for "AB 540-Eligible Students."

and I'd like to know more about how it works." However, according to the constitutive approach, law cannot be separated from other social forces including culture, identity, and everyday experiences—all of which mutually shape one another. Indeed, the undocumented youth who participated in this study commonly referred to social values, along with law, as important forces in their lives and in their quests for greater legitimacy and belonging in this society. Specifically, they shared their beliefs in the notion of objective meritocracy and education as a guaranteed path to upward mobility—both important tenets of meritocracy (Hochschild 1995; Kaiser and Major 2006). In a country that celebrates past immigrants who purportedly “pulled themselves up by their bootstraps,” undocumented youth proudly highlight their own merits and are quick to associate themselves with these social ideals.

Among the respondents, Claudia states the common position with regards to education most clearly: “I will not give up. Education is the only way out of all of these problems. Going to school is not just another thing that I have to do. It's the main way to change my life.” Like the rest of the participants, she invests heavily in the belief that educational success guarantees upward mobility.

Meritocracy is the other social myth that academically successful undocumented students actively invest in. In the following excerpt, Wilfredo draws on ideals of meritocracy to frame his description of the predicament of undocumented students:

Students who are born in the U.S. are completely different from me. They don't know the struggles. None of them have experienced rejection from a program even when they have completed all the requirements needed to participate just because of their legal status. None of them know what it means to work hard and have all the doors close in their face.

Wilfredo suggests that within the logic of meritocracy, undocumented students work harder and are therefore more worthy than their documented peers. Moreover, in his interpretation, formal immigration law is unjust when it impedes the rewards of meritocracy “just because of their legal status.”

By submitting to the myth of meritocracy, students are able to establish a sense of legitimacy despite their status as immigration outlaws. Their legal consciousness, powerfully informed by meritocratic principles, allows them to reinterpret their lives and their social standing in U.S. society.

### **In Search of Legitimacy, Inside and Outside of the Law**

The legal consciousness of undocumented students is informed not only by immigration and other laws, but also by various social norms and ideals.

However, because they are legally always at risk of being deported, it is not surprising that the law plays an explicit and palpable role in their lives. It makes sense that they seek other forms of legitimacy. Armando, for example, makes claims about his legitimacy by drawing upon a law-based rationale: "I've never committed any crimes and I've been a productive member. Not just for my own benefit, but I've helped a lot of other people too." He declares himself as law-abiding, thereby overriding the immigration laws that he is breaking. But more importantly, like the rest of the respondents, he appeals to a greater sense of common good through which he has *earned* his belonging. Karla, another undocumented college student, is more direct in her appeal to circumvent immigration law and focus instead on her merits:

I can understand the point of view of natives who are against immigration. But when it comes to education, that's different. All students want is an opportunity to have a career, to have a better life. . . . The fact that we are in high school and college, that says a lot about a person, that we are going to contribute to this country when we get a degree. We are going to contribute to the economy, to the society. And there is nothing wrong about that. We have worked three times as hard as any other students.

Once again, legal consciousness draws on a sense of justice that is informed by meritocracy. By underscoring their actual and potential positive contributions to society, undocumented students are able to claim legitimate spaces through legal and legitimate actions. In their interpretation, although their presence in this country is outside of the law, their actions redeem them because "there is nothing wrong" with their day-to-day behavior and their outstanding efforts to improve their lives through education.

It is not surprising that undocumented students emphasize their role as successful students to counterbalance their unlawful status. In the following excerpt, Benjamin explicitly connects his educational efforts to his pursuit of legalization:

My parents always told me, "If you do well in school, somehow the government is going to know that you're a good student and a good person and they're going to grant you residency." So I always strived for that. Because I thought, if I do well, someday I'll have the opportunity to become a resident.

Benjamin's experience, like that of his peers, leads to a form of legality that connects educational attainment and good behavior to legal residency. Although not a single student was able to recount a specific example of someone who acquired legal residency through educational achievement, several students made reference to this perceived connection. Given the power of

meritocratic ideals, in their construction of legality, education and effort are on the same plane as law, making the students hopeful that an exceptional report card will ultimately earn them legal residency. Interestingly, in their narratives, students do not make technical legal arguments establishing the legitimacy of their claims. Instead, they focus on providing narrative descriptions of their personal hardships, sacrifices, and, above all, achievements in hopes that their stories will appeal to society's sense of justice. Several students express hope that the difficulty, urgency, sadness, or unfairness of their situation will attract attention from authorities who will feel compelled to grant them legal residency.

Given their construction of legality, it is understandable why undocumented students readily welcomed AB 540. Not only did the bill recognize their merit but it granted them another legitimate space—in colleges and universities—where, as students, they are valued and “legitimate” members of society. Considering the fundamental role of law in their lives, AB 540 has also led to other, less directly visible effects in them. Specifically, the law provided undocumented students with a new, neutral, and more socially acceptable label that subsequently changes their social identity and their potential for collective organization and further claims-making.

### The Stigma of Undocumented Status

To appreciate the various unintended constitutive effects of the law, it is necessary first to understand how the students felt about their status before the law's enactment. Prior to the passage of AB 540, aside from the worries of not having access to college, several youth expressed a sense of stigma and embarrassment that derived from being undocumented. In the first round of interviews, for example, Elizabeth notes, “I hate how they call us ‘illegal *aliens*.’ I feel like telling them that I don't have antennae, I'm not a weirdo like they think.” In the same conversation, Emily adds, “Or they call us ‘illegals’ and they think we're committing crimes all the time and we're not.” Having gone through the educational system in the United States, protected by the law up until high school graduation, their experiences are similar to those of their school peers (Abrego 2006). However, for undocumented youth, their status was a constant reminder that they were different, vulnerable, and considered suspect.

Undocumented status, because it is tantamount to illegality, is stigmatizing and renders migrants suspect in the eyes of the rest of society. Mateo claimed that he was always fearful and embarrassed about being undocumented. Before the passage of AB 540, he described the stress of having to hide his illicit status from friends and strangers alike. Rather than revealing the truth, he provided people with a different version of his background each time he was asked. This was difficult and led to more pressure:



Psychologically, you get damaged, because you know, any time they ask you where you're from, it's such a pain. I mean, your mind goes like, [quickly] "Whoa, whoa, what do I say? What do I say? What do I say?" I mean, so it's a lot, I mean a lot. You torture yourself, you get depressed. Anything starts going down.

Aside from the instrumental effects of marginalizing immigrants and denying them basic rights and protections, Mateo demonstrates that undocumented status—created by immigration laws—can also be internalized to affect a subject's sense of self and social identity. Based on his initial articulation of stigma, it was fascinating to reinterview Mateo shortly after the passage of AB 540. In the second interview, he had a markedly different perspective. He was very frank with the college representative who helped him fill out the forms for community college matriculation:

Question: Did you tell him that you weren't a citizen?

Mateo: Yeah, I said I had been here for many years, but I'm not a citizen or a legal resident.

Question: And you felt comfortable telling him?

Mateo: Yeah.

Question: How come?

Mateo: I don't know, the atmosphere was more welcoming or something. Since AB 540 had passed and I had worked with a lot of students around this issue and I think that atmosphere made me more comfortable. So back in that scenario, I was comfortable saying, "The truth is, I'm not a citizen, I'm not a legal resident."

The constitutive power of law is evident in this drastic shift in attitude. As a result of the change in law, this student has a newfound confidence when disclosing his undocumented status. Revealingly, he directly links his new sense of comfort regarding the college application process to the "atmosphere" created through his work and the passage of the law.

It is possible that Mateo's participation in organizing around and lobbying for AB 540 greatly informed his new relaxed approach when disclosing his undocumented status. Indeed, in the second round of interviews, shortly after the passage of the law, only students who had been politically active in support of the bill were familiar enough with it to invoke it or benefit from it. However, by the third round of interviews, four years after the passage of the bill, more students were familiar with AB 540, whether or not they had heard of it prior to its passage. Among them, even students

who described themselves as “politically apathetic” shared similar accounts of greater willingness to divulge their status.<sup>28</sup>

Prior to the passage of AB 540, a few students in the interview sample and many whom I met at community meetings had abandoned their dreams of pursuing a college education simply because they were too ashamed of their undocumented status to ask for help. However, AB 540 unintentionally led to changes in many of the students’ outlooks. Molly, who started out with an acute sense of stigma stemming from undocumented status, went through a striking transformation. She knew few other undocumented students her age, was very popular in high school, and recognized for being a high achiever. Like other informants in the study, she had difficulty or simply avoided seeking information and resources from her peers, teachers, and counselors out of fear of denigration and possible deportation. The normally poised student held her stomach and became very fidgety when describing, prior to the passage of AB 540, how she felt about being undocumented:

Well, I feel ashamed. I debated so many times whether to tell my counselor. Because you’re just scared to tell somebody because you don’t know what they’re going to think. And you’re just so scared of that reaction. Because you do feel inferior to somebody because you don’t have the same rights as they do. . . . You feel inferior because you know they have more rights than you. And even though I know I’ve worked as hard as my friends, they’re the ones who are going to get to go to [four-year colleges].

This subject specifically links her sense of inferiority to having fewer rights than her peers. Implicitly, she notes that even her merit and academic excellence fail to grant her equal rights. More importantly, and related back to the literature on the mobilization of law, having a group of disenfranchised people who are also ashamed of themselves makes for an additional demobilizing force.

During the second interview and after the passage of AB 540, however, Molly expressed a greater degree of assurance with her unchanged status. She no longer refrains from seeking assistance with legal issues and has even shared her story with many of her new friends. She described how AB 540 helped change her feelings about being undocumented:

I guess I always felt confident that I belonged here, but they always just have that advantage where they can use that “undocumented” word

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28. In fact, among the fifteen additional students recruited in the third round of interviews, none of them had been politically active around the passage of AB 540. Despite only learning about AB 540 in college, their social identity changed in the same ways as the participants in the longitudinal part of the study. Given the strong association between higher education and political engagement (Hillygus 2005), it is likely that the college experience also affects these students’ increasingly political social identities.

to address me and that would be my scar. . . . But it did reinforce the idea that the state was becoming a little bit more open-minded, more aware of immigrant issues. And in that sense it just gave me a reassuring feeling that we were a step closer.

Interestingly, this subject conceives of the “undocumented” label as a “scar” that needs to be hidden and causes shame. Her response also suggests that aside from the instrumental effects, the constitutive function of the law is communicating to her that “the state” is becoming more “open-minded.” The pro-immigrant nature of AB 540 has unintentionally relieved some of the stigma and improved the way undocumented youth feel about their place in this society. By the third round of interviews, this theme was prevalent in all of the college students’ narratives.

### **A New Label to Disguise Their Undocumented Status**

Participants’ narratives reveal that the label as “undocumented” or “illegal” is a source of profound shame. Consequently, the most intriguing effect of Assembly Bill 540 in undocumented students’ day-to-day lives is the employment of a new, neutral, and, therefore, more socially acceptable label and identity. As noted in the previous section, the labels “illegal” and “undocumented” conflict with the students’ perceptions of themselves as upstanding and productive members of society. It is understandable, then, that students now prefer to adopt the label “AB 540 student” when referring to themselves and to their peers who share undocumented and student status. In the second round of interviews, shortly after the passage of the law, all students who were familiar with AB 540 recounted stories of interactions with high school and college staff in which they identified themselves as AB 540 students. By the third round of interviews, the usage of this label is prominent not only in all of the participants’ narratives but also appeared in college, university, and scholarship agency publications.

Douglas explains how he introduced the topic of the AB 540-mandated affidavit with school officials: “I just came out and said, ‘I’m an AB 540 student so I need an affidavit.’” During the second round of interviews, several students also mentioned requesting the affidavit because they are AB 540 students. In response to further inquiry about the term, Molly explains, “I used [the term] because it’s cool that it fills in the blank for ‘undocumented.’” According to all the students who employed it, “AB 540” is more acceptable than “undocumented” because it helps conceal their illegal migratory status. Furthermore, as Marily fittingly notes, “the fact that we’re students gives us credibility and, in their eyes, that’s better.” Indeed, in a society that values education and individual effort, an emphasis on the student status will give subjects legitimacy and social acceptance. In this way, students unintentionally

gain greater legitimacy while claiming their new legally granted right. In the following excerpt, Patty, who also identified herself as an AB 540 student when requesting the affidavit, responds to questions about fears in the process.

No, no, I wasn't really scared because everything that we did made me feel confident. . . . like there's nothing to fear. This is not illegal, this is legal. You know you can go ahead and do it, and they know about it, so they shouldn't be surprised about me being undocumented. So I felt really comfortable and really confident about it.

This subject's response powerfully draws out the point that beyond the instrumental effects of AB 540, the law has also granted undocumented students a new sense of legitimacy. As students, they can "legally" and, therefore, legitimately request rights formally granted by the law. The legitimacy attached to their status and actions as students allows them to confidently claim their new rights. Such confidence stands in stark contrast to the stigma they all felt prior to the law.

The unintended effect of AB 540 to procure a more disguising and socially acceptable label lends itself to greater success for the intended instrumental effects of the law. The neutral label disguises subjects' marginal status, thereby promoting a more accepting environment in which to claim their rights. Unlike the potential beneficiaries of civil rights and other rights-granting laws who are perceived as victims when they invoke the law (Bumiller 1988; Engel and Munger 1996; Nielsen 2000), undocumented students are able to further hide their marginalized status with a label that is neutral and socially unrecognizable. When invoking the ADA, or calling for protection against sexual harassment or other legally defined discriminatory actions, subjects are directly identifying as members of marginalized groups. On the other hand, undocumented students can disassociate themselves with negative labels and instead identify themselves as AB 540 students, thereby not only concealing their stigmatized status but also reinforcing their merits as students.

### **Mobilization of the Law: Invoking AB 540 and Claiming Rights**

By claiming their right to an exemption from out-of-state tuition, undocumented students are mobilizing the law. However, unintentionally, the constitutive effects of AB 540 have produced more far-reaching outcomes. Specifically, the increased confidence, coupled with a more socially acceptable label, has allowed undocumented students to identify themselves publicly in an effort to find others who share their status. Collectively, they have been able to organize, inform greater numbers of undocumented students about their rights, and further mobilize to request rights not directly granted by the law.

Although in the second round of interviews, shortly after the passage of the law, students were still relatively timid about claiming their rights, by the third round of interviews four years later, students were organizing to pursue their interests collectively. Students from four different colleges and universities described the work of student organizations that mobilized exclusively around AB 540 student rights. The same students, who initially dreaded disclosing their status to school staff, are now approaching them to claim their rights and expressing a greater sense of entitlement.

This post-AB 540 atmosphere has allowed students to further disseminate information about the law and attract greater numbers of undocumented students into four-year universities. Maria, a third-year university student, describes an annual event that her student organization coordinates:

Maria: We came up with the idea to have a workshop for incoming students who were AB 540, to tell them about our group, the work that we do, and to share resources about scholarships . . . and the affidavit.

Question: What did you call the workshop?

Maria: I think it was just something like “Orientation for AB 540 Students.”

Question: Did many students come?

Maria: Well, we had like ten students and they all thanked us. They were so happy because it’s always good to find others like you.

Question: Do you think you would have organized the workshop and called it “Orientation for Undocumented Students”?

Maria: (Laughs.) I think that would have been kind of problematic. Maybe we could have, but we probably would have gotten complaints or questioning from other students.

This example once again demonstrates the power of the legally produced neutral label to disguise undocumented status. Under this new label, identifiable only by their undocumented peers, students can organize, recruit others, share resources, and work to pursue more common goals. Unintentionally, Assembly Bill 540 granted more than just an exemption from out-of-state tuition—it gave undocumented students an opportunity to claim a legitimate space in institutions of higher education.

Once legitimated in those institutions, both as individuals who demonstrated their merit by earning admission and as legally sanctioned subjects, undocumented students are more willing to demand other rights that are

consistent with their merit-based student status. In the following excerpt, Mirna illustrates this point.

I applied for a scholarship that was only for legal residents and citizens. Because my resume is very strong, they gave it to me. Then they wanted to go back and tell me that I didn't qualify for it. I felt very strongly that it should be for AB 540 students too because we work as hard, if not harder. So [the director] helped me write letters and all this bureaucracy and then they opened the scholarship for AB 540 students. So now I'm motivated to speak up for change whenever I feel strongly about it.

Interestingly, despite her unchanged immigration status, this subject is empowered as a deserving student to use her neutral legally produced label to demand privileges for herself and for others in her situation. The change in law that granted her a single right unintentionally led to greater legitimacy and more possibilities of mobilization.

## IMPLICATIONS AND CONCLUSION

Current frameworks predict that although forms of legal consciousness are contingent, marginalized groups typically stand against the law (Ewick and Silbey 1998; Nielsen 2000). That is, they feel trapped and powerless in a system that they try to resist in various futile ways. Because many undocumented students have no legal or legitimate paths to secure residency or citizenship under current U.S. immigration law, they are arguably a disenfranchised group. As such, their legal consciousness should place them against the law. And, in fact, they participate in legality regarding migratory status from this perspective. However, as *students*, they are able to reposition themselves through AB 540 because it crucially provides a neutral, socially acceptable label that, in turn, hides their stigmatized social identity while also underscoring their merits. The neutral label is the means to claiming their rights. In their new social identity as AB 540 students, they shift legal consciousness from being against the law to being with the law—able to mobilize the law by using it as a resource in their favor.

It is also noteworthy that the legal claims-making of undocumented students stands in contradiction to previous sociolegal scholarship that repeatedly demonstrates that rights-granting laws rarely have the widespread transformative effect they set out to achieve (Bumiller 1988; Engel and Munger 1996; Nielsen 2000). Instead of furthering and protecting the interests of intended beneficiaries, many rights-granting laws unintentionally lead to backlash and greater stigmatization before advancing to gradual positive changes. This is not to say that rights-granting laws have had no effect, but

rather than the effects are complex and often slow to take place. AB 540, on the other hand, has had an empowering effect in a relatively short time.

Some may argue that the findings are unsurprising. Intuitively, it makes sense that undocumented immigrants would take any opportunity to claim rights in this country. However, in actuality, undocumented immigrants risk deportation any time their unauthorized status is made public (De Genova 2002). Moreover, there is a history of immigrant fear and mistrust of immigration agencies due to harassment and deportations, and this fear extends to other officials, including law enforcement, which undocumented immigrants are known to avoid (cf. Hagan 1994; Hamilton and Chinchilla 2001; Menjívar 2000). Within this context, then, the outcomes of AB 540 are particularly intriguing.

This case study indicates that legal consciousness is central in explaining AB 540's complex constitutive outcomes. Unlike their adult counterparts who were socialized in their home countries, undocumented youth's legal consciousness is informed by U.S. social values that venerate education and individual merit (Hochschild 1995; Kaiser and Major 2006; McNamee and Miller Jr. 2004). Undocumented students believe in objective meritocracy and in the notion that dedication alone will be enough to achieve upward mobility (Abrego 2006; Olivas 1995).<sup>29</sup> Strongly shaped by these beliefs, academically high-achieving undocumented students use the language of "justice" to claim legitimate spaces for themselves in higher education. This allows them to declare themselves worthy and legitimate members of society, even though legally they are immigration outlaws. This is also *why* they claim this new right. When a law like AB 540 underscores their merits and grants them rights, it gives them legitimacy, and they willingly invoke the law despite risking deportation. Moreover, the disguising label—also generated directly by the law—lends itself to greater mobilization of the law. The disguising label explains *how* they are able to claim their new right.

The case of AB 540 in California strongly suggests that unintended constitutive functions of law may sometimes have more transformative effects on the daily lives of targeted subjects than the intended instrumental objectives of law. Instrumentally, AB 540 has been partially successful; the exemption from out-of state tuition makes community college more accessible, but fails to make a university education affordable for most undocumented students. In comparison, however, the constitutive effects of the law are considerably more far reaching. Despite the narrow actionable aspects of AB 540, the law is powerfully symbolic for the students who benefit from it. To

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29. Clearly, not all undocumented youth are successful students. The alarmingly low educational attainment levels of Latino students, many of whom are likely undocumented, is manifested in their high school graduation rate of only about 60 percent in California (Swanson 2005). This study, however, focuses on the experiences of those who are college-bound or currently attending college.



them, the law represents a statement about their earned belonging in this society; it signals support for their endeavors and affirmation of their legitimacy.

While courts and other state actors play important roles in the production of law, the constitutive approach underscores that ordinary citizens and subjects also contribute greatly to the meaning and outcomes of law. Law's constitutive power is relational and leaves room for contestation. Although marginalized groups have been known to stand against the law (Ewick and Silbey 1998; Nielsen 2000), the relational nature of law's constitutive power opens up the potential for innovative actions to exploit law's possibilities and invoke its power and protection. In this way, law may be invoked and utilized in ways never intended by legislators.

For undocumented students, the contradictions between social values and immigration laws cause pain and frustration when they are blocked from full inclusion in U.S. society (Abrego 2006). Social values exalting meritocracy and education as the path to upward mobility live strongly in the minds and actions of these students. However, immigration laws, particularly as they determine these students' lives, stand squarely in contradiction. These contradictions open up spaces for undocumented students to make claims and stake their sense of belonging in the United States.

But how does an empirical study of undocumented students and the passage of a single state law aid our understanding of legal consciousness and mobilization of law? My cautious assertion is that these means are available to other intended beneficiaries of rights-granting laws. Using the neutral labeling based on bill numbers—or any other neutral label—can provide similar protective identities for other marginalized groups trying to claim rights. For participants in this study, their status as *students* works strongly in their favor. Similarly, other groups can accomplish the same effect by emphasizing such social roles as workers, citizens, community members, and taxpayers. For example, potential beneficiaries could call themselves “AB 00 workers” or “AB 00 citizens” to capitalize on this strategy. Utilizing language in this way can empower disenfranchised groups to exploit the constitutive powers of law and help promote changes in legal consciousness from being against the law to being with the law. With a more empowering legal consciousness, subjects are more likely to mobilize the law in their favor, thereby making more effective use of rights-granting laws.

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