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Minority Cause Lawyers and Civil Rights Activism: The Mexican American Legal Defense and Educational Fund (MALDEF)

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I received a travel grant from the Rockefeller Archive Center to conduct research at its archives from July 8th to July 19th 2013. I am writing a new book on the political history of the Mexican American Legal Defense and Educational Fund (MALDEF), 1968 to the present. This new study builds on my interests in social movements, political participation, ethnic identity and political power. It expands into new areas by studying the activities and influence of an organization that claims to speak on behalf of a racial and ethnic minority but has no dues paying members, is run by a professional staff and receives virtually all of its funding from philanthropic sources and settlement fees when the group prevails in court. At the same time, the organization has its roots in the Chicano Movement of the 1960s where its founders wanted to create an organization that would serve as the legal arm of a disruptive social movement organization.

MALDEF is an important case study because it is one of the few Latino political organizations with a national standing. Activist lawyers created MALDEF in 1967 at the height of the Chicano Movement. They wanted a legal organization for Mexican Americans similar to the Legal Defense Fund of the National Association for the Advancement of Colored People. MALDEF has intervened in and litigated for Latinos in cases as wide ranging as Arizona's Immigration Law, Desegregation in Chicago, redistricting in Texas to class action lawsuits in California over unpaid wages. However, MALDEF is has not been without controversy because of dependence upon the Ford Foundation and other funding organizations for its operations. The group has criticized for its lack of accountability to community organizations and its failure to invest more of its resources in legal aid services.

My research on MALDEF will be a study of *cause lawyers*, attorneys who devote their professional lives to a single or multiple causes and those closely identified with a cause. This approach to the study of social movements is challenging both because of MALDEF's long and complicated record as well as the provocative claims made by cause lawyering theorists. For example, the connection between minority activism and legal representation has long been recognized in the literature on social movement organizations, especially in the role it played during the American Civil Rights Movement. However, the assumption that cause lawyers are either an ancillary tool or resource employed by social movements has been criticized. Some scholars contend that *cause lawyers* actually constrain social movements by displacing grassroots leaders, promoting their own status and economic goals, or by funneling popular discontent into institutional processes that consume a movement's time, money, and the disruptive potential. More sophisticated research on cause lawyers views them as activists in their own right who promote their own values, define political goals, and work in tandem with

social movements. What they do *for* and *to* social movements by virtue of their knowledge, expertise and position in the administration of justice enhances our understanding of cause lawyering as an independent political and social force. Moreover, *how* cause lawyers influence the articulation of demands and political outcomes of social movements is critical for our understanding of political participation, especially for resource poor groups like racial and ethnic minorities.

The literature on cause lawyering raises some troubling questions about the direction and outcome of racial and ethnic assimilation. A large body of theoretically based work on assimilation predicts that ethnically based politics declines as immigrants achieve economic mobility and adopt the language and mores of American society. From this perspective, MALDEF's cause lawyers are a puzzle. If Mexican Americans are assimilating, high achieving professionals should be among the first to lose their ethnic identity and engage in group-based politics. In other words, they are the "haves" working with and litigating on behalf of "have nots." The puzzle is that MALDEF lawyers embody both tendencies. They volunteer or work for sub market wages but also gain experience like litigating before the Supreme Court, work that propels lawyers to the highest levels of professional development and stature.

Scholarly work on identity politics tempers the predictions of classic assimilation theory by arguing for greater agency on the part of political actors. It emphasizes ability of activists to create ethnic identities for themselves via symbols, group history, and cultural affinity as well as the power to frame those demands and goals. From this perspective, MALDEF's cause lawyers, as a class of activists, are moved to action by a deep sense of group connection with those suffering persistently high levels of discrimination and socio economic inequality. Because Mexican Americans are assimilating at different rates depending upon generation and other

factors like skin color and region of settlement, the process of incorporation has worked in a much different manner for them than it did for white ethnic immigrants. Reaction toward large-scale immigration has heightened discrimination against all members of the group regardless of their level of cultural adaptation.

New social movement theorists emphasize the multi faceted character of identity and assert that its fluid character drives mobilization in complex and sometimes unpredictable ways. They urge researchers to pay close attention not only to the stated goals of a given organization, but the ways in which the process of association serves the psychic and expressive needs of the individuals involved. A premium is placed on the actor's ability to produce meaning, communicate, and make decisions that are sometimes more often personal rather than social or economic. They point to organizations created by groups as diverse as environmentalists, gays and lesbians, and racial minorities as examples of groups that not only engage in the political process but also define their personal and collective identity in the process. It emphasizes the ability of activists to create ethnic identities for themselves through symbols, group history and cultural affinity. MALDEF's cause lawyers, as a class of activists, are moved to action by a deep sense of group connection with those suffering persistent discrimination and socio economic inequality.

However compelling one may find the above logic, assimilation theory tells us little about policy positions ethnic and racial groups will adopt prior to their eventual incorporation. Given the heterogeneity of the Mexican American and Latino population, there is wide latitude for value conflicts and policy disagreements. Here, as in my previous work, I argue that the foundations of political identity for Latino organizations can be understood from the positions activists take on issues of race, class and cultures. When identities are formed in social

movement organizations they are composed of judgments about existing inequalities and a vision of alternate social relations.

Still, MALDEF's record of activism is an interpretive challenge. MALDEF is not a grassroots organization with elected leaders and dues paying members. Conducting research on political identities presents the researcher with a bewildering array of possibilities. The substance of any racially derived identity draws from a complex mixture of variables that includes descent, biological origin, geography, culture, productive and political institutions, and historical memory. Ethnic identity stands for an entire range of phenomena spanning national origin, blood ties, solidarity, unity, security, personal integrity, independence, recognition, equality, cultural uniqueness, respect, equal economic rights, territorial integrity, and these in all possible combinations, degrees of emotional content, and forms of social organization. For Mexican Americans, the list can extend to include variations along the lines of race, cultural practices, citizenship status, parentage, nativity, language ability, and region. Adding to these difficulties, it is not clear what counts as an ethnic goal, how collective interests can be recognized and interpreted, or how they command an individual's loyalty and commitment.

These three points of difference between minority and majority constitute the 'raw materials' from which political identities are constructed. As Beltran (2010) asserts, Latino identities are not static but the result of ongoing dialogue and negotiation. Understanding how MALDEF lawyers and community advocates understand and act upon the racial, economic, and cultural order will generate an insight into the power relationship they had with one another and the evolution of identity politics. The study of identity construction reveals the choices activists make in a context marked by power relationships among themselves and in the larger society. When Mexican Americans name specific problems that merit collective action, they make value

judgments about their status as a racial and ethnic minority. Contained in those grievances are judgments about the tenacity and pervasiveness of racism, the basis of ethnic group solidarity, prospects for economic mobility, and social integration.

Navigating this difficult terrain but the literature on cause lawyers raises questions that offer insight into identity construction in non-membership organizations like MALDEF and their relationships with other social movement organizations. Following Sarat and Scheingold (2005: 15), I seek to answer the following questions about MALDEF. How do MALDEF lawyers operate in the context of their relations with other activists? How do they negotiate their commitments to profession and cause? Where are the significant points of tension in that negotiation? What contributions do they make to articulating movement goals and development of strategies? Do they legalize movements or take into their own work more political orientation of the movements they serve? Do they constrain the movements with which they are associated? My research examines the intersections of legality, professionalism and identity politics.

To this end, I will study decisions made by the Mexican American Legal Defense Fund, why the group chose to pursue litigation in some cases but not in others. Cause lawyers may be part of the political framing process or brought in after the problem or cause is well defined. This strategy gives me an insight into the relationships it has cultivated with other Mexican American social movement organizations, where they agreed or disagreed, and how MALDEF acted in concert with groups or took independent action. The Rockefeller Archive Center was indispensable for my project because it houses all the Ford Foundation materials relating to the debates surrounding the initial and continued funding of MALDEF and other Mexican American projects. The Rockefeller Archive Center also contains some important documents elating to the Rockefeller Foundation's support of MALDEF in subsequent years.

My project is in its initial stages but my preliminary findings are that MALDEF's cause lawyers struggled with their dual identity as a social movement organization and the constraints imposed upon them by their funders. Very soon after its founding in 1968, MALDEF began moving away from the legal aid model advocated by Chicano Movement activists. It no longer defended high profile activists or disruptive organizations and turned to the strategy of setting legal precedent. The transition was significant if inevitable. Officials from various foundations insisted that MALDEF formulate a legal strategy, professionalize its organization, provide verifiable evidence of its impact and assume a leadership role in the pursuit of formal equality. The uproar over MALDEF's transformation by activists who wanted the organization to serve as a grassroots advocacy and legal aid resource was loud but short lived. MALDEF was soon on its way to establishing a reputation as a formidable but financially vulnerable legal force.

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