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Orange County Human Rights Association: A New Law Student Group for a New Era

Denisha P. McKenzie
UC Irvine School of Law

David Rodwin
UC Irvine School of Law

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Orange County Human Rights Association: A New Law Student Group for a New Era

Denisha P. McKenzie and David Rodwin*

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BACKGROUND: THE EXPERIENCES THAT LED THE AUTHORS TO FOUND OCHRA

Denisha P. McKenzie

I was born and raised in South Los Angeles. Growing up, what was happening around me seemed normal: drugs and gangs on every street corner, impoverished families living week to week on welfare checks, decaying schools that did not provide their students with a decent shot at opportunity. Although this was my reality, I somehow managed to see beyond it. I was the first of my mother’s five children to graduate from high school. Four years later, I graduated from one of the top schools in the nation, Tufts University. Though the education I received was invaluable, it was disheartening for me to be the only black student in most of my classes. I soon developed a passion for helping children from similar backgrounds graduate from high school and move on to college.

*The authors would like to thank Professor Trina Jones and Professor Catherine Fisk for their invaluable guidance and support throughout the process of writing this article. The authors would also like to thank Jackie Brenneman, Tracey Steele, Flor Tataje, Reed Bernet, and the members of the UC Irvine Law Review Board for their assistance in preparing this article for publication.

During my senior year, I volunteered at an underperforming inner city public school with some of the lowest test scores in the district. I wanted to tell my story to these children so that the environment in which they lived would not lead them to develop the same sense of hopelessness I saw in so many of my friends and peers in South Los Angeles. Looking at their gleaming black faces inside that elementary school auditorium, I saw myself when I was their age. Although we shared similar backgrounds and probably very similar experiences growing up poor and black in the inner city, there was something I had at their age that I would soon learn they did not: I had hopes of attending college, and was determined to surpass my mother's limited high school education. When I asked the group of fourth and fifth grade students if they thought they could go to college, they all shouted together, "No!" My next question to them was, "Why not?" They shouted back: "It's too expensive." "We're not smart enough." "My mom didn't go." "It's hard." "We can't!"

Despite their youth, these children had settled on expectations of failure. At the end of the day, most people expected them to fail and be siphoned off into the welfare and prison systems that had trapped many of their parents. These children knew it, and no single story could change such a deeply ingrained resignation. I realized then that my own story is an anomaly. This country's public education system is not set up for poor students to graduate from high school and college, like I did. It is set up for most to fail or barely make it out. Only a small minority will be able to break the chain of intergenerational poverty through higher education. Though I had always wanted to be a teacher, after my experience with those children, I changed course and set my eyes on law school. I wanted to learn more about how and why the public education system came to be structured this way. More than anything, I wanted to give myself the tools to change it.

David Rodwin

After college, I spent about fifteen months volunteering in India. I worked at a vocational training center run by Navsarjan, a Dalit human rights organization. Dalits are India's "untouchable" castes, and even today they face terrible discrimination, particularly in rural areas. As I watched the graduates of Navsarjan's training center gain skills that helped to move them from day labor jobs to starting their own businesses, I became interested in the intersection between education and human rights. In order to learn more, I interviewed some of the students at the center about their experiences in primary and secondary school.

The most dramatic story belonged to a young man named Yogesh, who was in the middle of his automobile mechanic course. When I asked Yogesh what he remembered about his village's primary school, he said, "I didn't like it. The teachers made me and my friends sit in the back of the classroom because we were Dalits, and the upper-caste students always sat in front. If I was thirsty I had

to walk one-and-a-half kilometers home because the water pot was only for the upper castes. The teachers told the other kids not to touch us because we would pollute them.” And so at the age of eight Yogesh dropped out of the second grade and immediately began to work as a day laborer in construction. His story was not uncommon among Dalit youth. All of the students I interviewed had gone to government schools. Many reported that their teachers were frequently absent, leaving classes of sixty students to play in the schoolyard or try to learn on their own. Because of the poor quality of their education most had failed their standardized high school exams and were forced to drop out and find work.

Navsarjan describes itself as taking a rights-based approach, and that theme is present throughout its work. The organization’s philosophy is based in part on a redefinition of Dalit. Literally meaning oppressed or broken, Dalit is considered a less offensive way to refer to the “untouchable” castes. Navsarjan redefined Dalit as a person who believes in equality, practices equality with all, and fights against inequality. It took several months of thinking about this redefinition before I began to understand its power. Most people would say they believe in equality, but what does it mean to *practice* equality? How could I really say that I fought inequality? The more broadly I applied the philosophy to myself, the less I seemed to fulfill it. I made several promises to myself then, vowing to alter my attitudes, behaviors, and financial decisions in ways that would make me more of a Dalit. One promise was to dedicate my career to the pursuit of human rights. I looked to Navsarjan as a model, and saw how they combined community education with legal action to foster real social change. I came home determined to follow that model, and saw law school as the next step in building my ability to work for similar change here.

INTRODUCTION

Our paths converged in the first few weeks of school at the University of California, Irvine School of Law. After class one day, a conversation about the privatization of the prison system led to a broader discussion of social justice issues, and our experiences in India and Boston. The discussion revealed a persistent irony: why is something a human rights issue if it happens in India, but a local or domestic issue if it happens in Boston or Los Angeles? We decided to start a law student group dedicated to addressing domestic issues from a larger perspective that would recognize the connections between domestic and international human rights issues.

Unlike civil rights, human rights stem not from the U.S. Constitution—a very old and arguably incomplete document—but from our existence as humans.¹ Now, a decade into the twenty-first century, there is a growing movement to view

1. LOUIS HENKIN, *THE AGE OF RIGHTS* 139 (1990).

domestic social issues through the prism of human rights.² Though the movement has recently gained momentum, its central idea is not a new one. It has been more than forty years, for example, since Dr. Martin Luther King Jr. implored us to broaden our view of rights. “I think it is necessary,” Dr. King said in 1967, “to recognize that we have moved from the era of civil rights to the era of human rights.”³ In the last years of his life, having witnessed the passage of the 1964 Civil Rights Act, Dr. King shifted his focus from racial segregation to the rights of the poor generally. “If one does not have a job or an income,” he said, “he’s deprived of life; he’s] deprived of liberty; and he’s deprived of the pursuit of happiness.”⁴ Without a job—without a recognized right to work and without decent wages—one cannot take advantage of desegregated lunch counters. Economic and social rights support civil and political rights, and vice versa; when one is lacking, the other suffers.

We founded the Orange County Human Rights Association (OCHRA) to reflect this larger perspective on domestic social issues. We never considered calling the group the Orange County Civil Rights Association, not just because OCCRA is a more difficult acronym to pronounce, but because many of the social issues we care about—education, affordable housing, fair wages and employment opportunities—transcend civil rights. Law student groups concerned with social and legal change often focus exclusively either on constitutional rights or on a discrete social issue. In contrast, OCHRA addresses both under an interrelated framework of domestic human rights. OCHRA’s strategy is to learn about social issues and their human rights implications, broaden our view of the law to include international sources and insights, and promote student community action.

The purpose of this article is to demonstrate how OCHRA seeks to achieve these goals within the context of a growing domestic human rights movement. In Part I, we discuss how OCHRA reconceives rights in the United States. First, we provide a brief background of human rights in the United States and the recent trend to view domestic issues as human rights issues. Second, we examine how a human rights model could better address educational inequity in this country. In Part II, we focus more specifically on our group and describe what OCHRA has achieved in its infancy by using a domestic human rights model. Finally, in Part III we conclude with a plea for partnership and cooperation in the struggle to achieve Dr. King’s goal of a just and equal society.

2. See generally CLOSE TO HOME: CASE STUDIES OF HUMAN RIGHTS WORK IN THE UNITED STATES (Larry Cox & Dorothy Q. Thomas eds. 2004), available at http://www.nesri.org/economic_social_rights/close_to_home.pdf (presenting case studies of human rights work in the U.S.).

3. Vanita Gupta, *Blazing a Path from Civil Rights to Human Rights: The Pioneering Career of Gay McDougall*, in 1 BRINGING HUMAN RIGHTS HOME: A HISTORY OF HUMAN RIGHTS IN THE UNITED STATES 145 (Cynthia Soohoo et al. eds., 2008) [hereinafter BRINGING HUMAN RIGHTS HOME].

4. THOMAS F. JACKSON, FROM CIVIL RIGHTS TO HUMAN RIGHTS: MARTIN LUTHER KING, JR., AND THE STRUGGLE FOR ECONOMIC JUSTICE 343 (2007).

I. RECONCEIVING RIGHTS IN THE UNITED STATES

Our very different life experiences brought us to think about domestic social issues from a human rights perspective. These experiences inspired us to re-imagine what legal education could be for those who want to engage in social transformation. In some ways, OCHRA's focus on human rights represents a generational shift. Most law professors were educated in a way that divides civil rights law, constitutional law, and international human rights law.⁵ Given the historic focus of the civil rights movement on domestic strategies and domestic legislation, these divisions are not surprising. Even an innovative law school curriculum can be conventional in some ways, and can limit law students' understanding of rights. Nevertheless, we believe that legal education should no longer divide the law in this way.

Civil rights law, a mix of statutory and constitutional law, typically comprises its own law school course. The same goes for constitutional law, which necessarily focuses only on the United States. International human rights law is often derided as unenforceable or irrelevant to domestic issues, and is also typically offered as its own course.⁶ Though these bodies of law are traditionally fragmented because of the structure of law school curricula, a fuller, more comprehensive perspective on rights would link them together. OCHRA aims to harmonize civil rights law, constitutional law, and international human rights law, supplementing the legal education students receive in the classroom with a human rights perspective on domestic issues. This broader perspective recognizes the legitimacy of positive rights such as education, enlarges "local" issues to issues of international relevance, emphasizes commonalities instead of division, and inspires new strategies of activism.

A. Understanding Human Rights and the Growing Domestic Human Rights Movement

As leaders of OCHRA, we have spent a great deal of time researching and discussing the meaning of human rights, the status of human rights in the United States and internationally, and how OCHRA could use a domestic human rights framework in its approach to addressing social issues. We found that some "law schools have become important incubators of domestic human rights practice, exposing students to the theoretical and practical dimensions of human rights law and connecting domestic students to efforts by foreign counterparts around the world."⁷ UC Irvine School of Law, which requires all students to take a course on international legal analysis during the spring semester of their first year, is an

5. Larry Catá Backer, *Human Rights and Legal Education in the Western Hemisphere: Legal Parochialism and Hollow Universalism*, 21 PENN ST. INT'L L. REV. 115, 133 (2002).

6. *Id.*

7. Scott L. Cummings, *The Internationalization of Public Interest Law*, 57 DUKE L.J. 891, 975 (2008).

example of such a law school. For legal education to continue to evolve and transcend the insularity of the past, it must begin to synthesize civil rights, constitutional rights, and international human rights.

Today, the term “human rights” has entered the mainstream discourse of rights in the United States, and is referenced by both local community activists and the U.S. Supreme Court.⁸ In order to fully explain OCHRA’s philosophy and approach, and to demonstrate more clearly how human rights can serve as an organizing principle for legal education and social activism, it is worth providing some context on the development of rights in the United States and internationally, and the growing movement to view domestic social issues through the lens of human rights.

People tend to speak of human rights with a general sense of the term’s power but without a concrete or common definition. Louis Henkin, the great international law scholar often referred to as “the father of human rights,”⁹ provided what is perhaps the clearest and most complete definition:

Every human being has, or is entitled to have, ‘rights’—legitimate, valid, justified claims—upon his or her society; claims to various ‘goods’ and benefits. Human rights are not some abstract, inchoate ‘good’; they are defined, particular claims listed in international instruments such as the Universal Declaration of Human Rights and other major conventions. They are those benefits deemed essential for individual well-being, dignity, and fulfillment, and that reflect a common sense of justice, fairness, and decency.¹⁰

This definition provides the basis for our discussion.

The United States, with France, maintains the distinction of having “launched the idea of rights.”¹¹ However, although the Bill of Rights was revolutionary in the civil and political protections it recognized, it is hardly a complete enumeration of rights.¹² Further, the Constitution’s conception of rights is limited to restrictions on government action, and therefore ignores economic and social rights.¹³ In American constitutional jurisprudence, individual rights are traditionally conceived of only as “immunities,” as limitations on what government might do *to* the individual.¹⁴ Human rights, on the other hand, include

8. Cynthia Soohoo & Suzanne Stolz, *Bringing Theories of Human Rights Change Home*, 77 FORDHAM L. REV. 459 (2008).

9. Catherine Powell, *Louis Henkin and Human Rights: A New Deal at Home and Abroad*, in BRINGING HUMAN RIGHTS HOME, *supra* note 3, at 57, 61.

10. HENKIN, *supra* note 1, at 2.

11. *Id.* at 1.

12. *Id.* at 111.

13. *Id.* at 2.

14. Though the economic and social protections brought about by Franklin Delano

not only these negative “immunity claims” but also positive “resource claims” that speak to what society is deemed required to do *for* the individual. They include liberties such as freedom *from* (for example, detention, torture), and freedom *to* (speak, assemble); they include also the right to food, housing, and other basic human needs.¹⁵ These negative immunity claims and positive resource claims are often referred to simply as negative rights and positive rights.¹⁶ Because of the Constitution’s focus on negative rights, law school education generally frames its conception of rights as restrictions instead of obligations.

One definition of civil rights is “the guarantees contained in constitutional or statutory provisions designed to prevent discrimination in the treatment of a person by reason of his race, color, religion, or previous condition of servitude.”¹⁷ A more expansive understanding of civil and political rights would include, among other things, freedoms of speech and worship, and rights to vote and to due process of law.¹⁸ However, human rights extend beyond political guarantees and prevention of discrimination into the realm of positive rights and affirmative duties: to educate, to provide decent wages, and to guarantee housing and food. The civil rights discourse is therefore inherently limited by the reach of civil rights.

Social activists have long struggled to incorporate a human rights framework in addressing domestic social issues.¹⁹ In the last ten to twenty years, however, a number of activists and non-profits have shifted their discourse and strategies to the United States in recognition that a human rights perspective can advance social justice domestically, not just internationally.²⁰ This “new politics of social justice” is “one that favors multi- over single-issue work; that understands

Roosevelt’s New Deal were significant and have “near Constitutional sturdiness,” they have not entered the Constitution. CASS R. SUNSTEIN, *THE SECOND BILL OF RIGHTS: FDR’S UNFINISHED REVOLUTION AND WHY WE NEED IT MORE THAN EVER* 63 (2004).

15. HENKIN, *supra* note 1, at 2.

16. Steven J. Heyman, *Topics in Jurisprudence: Positive and Negative Liberty*, 68 CHI.-KENT L. REV. 81 (1992).

17. BALLENTINE’S LAW DICTIONARY, 204 (3d ed. 1969).

18. *See* International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) A, U.N. Dec. A/RES/2200A(XXI) (Dec. 16, 1966).

19. The U.S. has been hesitant to ratify international human rights conventions, and attaches very restrictive Reservations, Understandings and Declarations (RUDs) to those conventions it does ratify. If RUDs have made it difficult to enforce international human rights law in U.S. and international courts, cries of treason during the Cold War era made it difficult to use human rights in appeals to morality and conscience. Due in part to the inclusion of economic and social rights under the umbrella of human rights, many in the U.S. attempted, with a great degree of success, to “depict human rights as communistic, Soviet-inspired, and treasonous.” CAROL ANDERSON, *EYES OFF THE PRIZE: THE UNITED NATIONS AND THE AFRICAN AMERICAN STRUGGLE FOR HUMAN RIGHTS, 1944–1955* 273 (2003). As a result, activists felt compelled to “retreat to the haven of civil rights,” rather than risk losing all popular support. *Id.* Such hostility towards human rights partially explains why Dr. King’s push to move into the era of human rights was not embraced by the civil rights movement as a whole. Unfortunately, the “poisonous effect of these attempts to equate internationalism with subversion or treason lingers to this day.” CLOSE TO HOME, *supra* note 2 at 8.

20. *See generally* CLOSE TO HOME, *supra* note 2.

discrimination in terms of compound rather than singular identities; that conceives of rights holistically rather than in terms of outmoded hierarchies; and, finally, that situates those most affected at the center of advocacy.”²¹ Significantly, the human rights framework provides a common, accessible vocabulary and perspective to lawyers and community activists.

In the United States, human rights strategies are entering what used to be purely domestic movements focused on purely domestic tactics. In contrast to the “insularity of public interest law during the civil rights era, [human rights] movements suggest that American lawyers now perceive that the rest of the world has political lessons to teach and legal models to emulate.”²² Though this strategic shift “represents the optimism of the international human rights movement,” it is “also a pragmatic acknowledgment of the limits of domestic law to produce political change at home.”²³

Slowly, the U.S. Supreme Court has begun to include international human rights law in its analysis, particularly in Eighth Amendment cases.²⁴ In *Atkins v. Virginia*, the 2002 decision that outlawed execution of mentally retarded criminals, the Court referred in a footnote to the overwhelming international disapproval of the practice.²⁵ A year later, the Court struck down a criminal sodomy statute in *Lawrence v. Texas*, citing a decision by the European Court of Human Rights as evidence of wider acceptance of the right of homosexual adults to engage in “intimate, consensual conduct.”²⁶ With *Lawrence*, international human rights moved from a footnote to the body of the majority opinion. In the 2005 case of *Roper v. Simmons*, the Court prohibited the execution of individuals who were younger than eighteen at the time of their capital offense. In its decision, the Court included a longer discussion of human rights law, even referencing the Convention on the Rights of the Child.²⁷ The Court justified this discussion by asserting that, “[i]t does not lessen our fidelity to the Constitution or our pride in its origins to acknowledge that the express affirmation of certain fundamental rights by other nations and peoples simply underscores the centrality of those same rights within our own heritage of freedom.”²⁸ Most recently, the Court concluded in *Graham v. Florida* that for juvenile non-homicide offenders, life sentences without the possibility of parole violate the Eighth Amendment.²⁹ In

21. *Id.* at 7.

22. *Cummings*, *supra* note 7, at 1035.

23. *Id.* at 970.

24. Not all members of the Court have embraced this change. Justice Scalia has been particularly vociferous in his displeasure. *See Roper v. Simmons*, 543 U.S. 551, 622–623 (2005) (Scalia, J., dissenting).

25. *Atkins v. Virginia*, 536 U.S. 304, n.21 (2002).

26. *Lawrence v. Texas*, 539 U.S. 558, 576 (2003).

27. *Roper*, 543 U.S. 551, 576 (2005).

28. *Id.* at 578.

29. *Graham v. Florida*, 130 S. Ct. 2011 (2010).

Graham, the Court again referenced the Convention on the Rights of the Child, along with other international law, as evidence that the United States was an outlier in allowing such sentences. Perhaps the Supreme Court, despite its current status as “the most conservative Court since the mid-1930s,”³⁰ has recognized the inevitable influence of human rights on our domestic laws.

In addition, some local jurisdictions have implemented major human rights conventions even in the absence of U.S. ratification or federal implementation. San Francisco, for example, was the first city in the United States to implement, by local ordinance,³¹ the Convention on the Elimination of All Forms of Discrimination Against Women in 1998;³² a number of other cities, counties, and states have followed suit.³³

Further, legal scholars have taken to questioning the consistency of U.S. human rights policy with increasing frequency and volume. Among many observations, they have criticized the hypocrisy of applying human rights standards abroad and refusing to apply them domestically.³⁴ They have argued against the crippling Reservations, Understandings, and Declarations (RUDs) that the United States attaches to the human rights treaties it does ratify.³⁵ And they have pointed out the irony that the Alien Tort Statute permits aliens to bring actions in U.S. courts under international human rights law, whereas U.S. nationals have no such recourse.³⁶ Perhaps the growth of a human rights movement in the United States is evidence that it is no longer considered treasonous³⁷ to link domestic social issues to human rights norms.

B. *The Example of Education*

Though international law understands education to be a human right,³⁸ the

30. Erwin Chemerinsky, *The Roberts Court at Age Three*, 54 WAYNE L. REV. 947 (2008).

31. Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. No. 46 at 193, U.N. Doc. A/34/46, (Sept. 3, 1981).

32. S.F., CAL., ADMIN. CODE ch. 12K, § 12K.1-.6 (2001). “The ordinance articulates several ‘local principles,’ grounded normatively within CEDAW, in the areas of economic development, violence against women, and health care.” Gaylynn Burroughs, *More than an Incidental Effect on Foreign Affairs: Implementation of Human Rights by State and Local Governments*, 30 N.Y.U. Rev. L. & Soc. Change 411, 415 (2006).

33. *States, Counties, and Cities Who Have Passed Resolutions about CEDAW*, NEW YORK CITY HUMAN RIGHTS INITIATIVE (2005), http://nychri.org/documents/CEDAWRes_000.pdf.

34. HENKIN, *supra* note 1, at 76.

35. Louis Henkin, *U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker*, 89 AM. J. INT’L L. 341, 349–350 (1995).

36. Richard J. Wilson, *Defending a Criminal Case with International Human Rights Law*, THE CHAMPION 28, 56 (2000); Martin A. Geer, *Human Rights and Wrongs in Our Own Backyard: Incorporating International Human Rights Protections Under Domestic Civil Rights Law—A Case Study of Women in United States Prisons*, 13 HARV. HUM. RTS. J. 71, 74 (2000).

37. See ANDERSON, *supra* note 19, at 273.

38. See Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc A/RES/810 at 71 (Dec. 10, 1948); see also International Covenant on Economic, Social and Cultural Rights, G.A.

U.S. Supreme Court does not view it as a constitutional right.³⁹ It seems clear that a shift from a civil rights context to a human rights framework could change the concept of education and the quality of public education in the United States. This human rights approach to education could allow students to see beyond the Supreme Court's interpretation of a right to education, and would provide a more expansive perspective on what the right to education includes and what strategies are best to achieve that right. Solidifying the status of education in the United States as a human right would, for example, "raise it above discretionary consideration" so that it is not "subject to partisan shifts and political whims,"⁴⁰ and allow activists a more effective legal tool to challenge substandard education.

The Supreme Court's treatment of equality in education has been relatively weak; initial strides were promptly followed by crippling retreats.⁴¹ Perhaps most significantly, the Court held in *San Antonio Independent School District v. Rodriguez* that a school-financing system based on local property taxes—one that funded schools based on the value of property in the school district—was not a violation of the equal protection clause of the Fourteenth Amendment, essentially declaring that the Constitution provides no fundamental right to an adequate education.⁴² This decision has proven so influential and expansive that it has been called the "death knell for the idea that the Constitution protects social and economic rights."⁴³ In *Plyler v. Doe*, the Court struck down a Texas statute banning public education for undocumented immigrant children.⁴⁴ Though *Plyler* makes clear that once the government undertakes to provide education it cannot discriminate regarding overall admission, we are left with the irony that the Constitution prevents schools from denying undocumented children access to education, but does not ensure that the education provided is adequate.

Today, constitutional jurisprudence has moved from an era of "separate but

Res. 2200 (XXI) A, 21 U.N.GAOR Supp. No. 16 at 49, U.N. Doc. A/6316 (Jan. 3, 1976) [hereafter ICESCR].

39. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

40. Janet M. Hostetler, *Testing Human Rights: The Impact of High-Stakes Tests on English Language Learners' Right to Education in New York City*, 30 N.Y.U. REV. L. & SOC. CHANGE 483, 485 (2006).

41. See, e.g., *Milliken v. Bradley*, 433 U.S. 267 (1977) (undermining the Court's decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), which held that "separate but equal" is unconstitutional and inherently unfair because it promotes a sense of inferiority and diminishes a child's motivation to learn and that inter-school district remedies to eradicate segregation are impermissible); *Bd. of Ed. of Okla. City Pub. Schs. v. Dowell*, 498 U.S. 237 (1991) (undermining the Court's decision in *Brown* even further, by concluding that minimal attempts to desegregate were sufficient to meet the "all deliberate speed" requirement); *Gratz v. Bollinger*, 539 U.S. 244 (2003) (undermining the Court's acknowledgment in *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978), that diversity in the classroom is a compelling interest, thus severely limiting the ability of higher education institutions to effectively promote a racially diverse classroom and provide disadvantaged students with the opportunity to attend college).

42. *San Antonio Indep. Sch. Dist.*, 411 U.S. 1.

43. SUNSTEIN, *supra* note 14, at 165.

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

equal”⁴⁵ to an era where diversity is embraced, yet separate and unequal conditions persist. A number of scholars have argued that the Supreme Court’s treatment of education over the past several decades tends to reinforce the status quo instead of embodying the true equal citizenship envisioned by the post-Civil War Amendments.⁴⁶ In *The Conservative Assault on the Constitution*, Dean Erwin Chemerinsky demonstrates that our nation’s public education system is even more segregated now than it was during the era before *Brown v. Board of Education*.⁴⁷ Schools in Washington, D.C. and Detroit, for example, have large populations of Black and Hispanic students: ninety-four percent and ninety-six percent, respectively.⁴⁸ In the absence of a federal right to education, startling inequality has persisted.⁴⁹ Clearly, neither the Constitution nor the laws enforcing civil rights have adequately addressed the structural inequalities in our educational system.

Human rights law, specifically the International Covenant on Economic, Social and Cultural Rights (ICESCR), could provide a way forward. The ICESCR is a multilateral treaty adopted by the United Nations General Assembly in December 1966, and in force since January 1976.⁵⁰ The purpose of the ICESCR, which is monitored by the UN Committee on Economic, Social and Cultural Rights, is to provide for the gradual realization of rights to health, work, an adequate standard of living and education.⁵¹ Because countries are at different

45. *Plessy v. Ferguson*, 163 U.S. 537, 552 (1896) (Harlan, J., dissenting).

46. See, e.g., Amelia Parker, *Racial Disparities in U.S. Public Education and International Human Rights Standards: Holding the U.S. Accountable to CERD*, 14 HUM. RTS. BRIEF 27 (2007); Jennifer S. Hendricks, *Contingent Equal Protection: Reaching for Equality After Ricci and Pics*, 16 MICH. J. GENDER & L. 397 (2010); Joshua Drew, *Snapshots from the Jurisprudential Wilderness; The Federal Court’s Understanding of the Equal Protection Clause in the Voting Rights Arena*, 5 VA. J. SOC. POL’Y & L. 373 (1998); Rhonda V. Magee Andrews, *The Third Reconstruction: An Alternative to Race Consciousness and Colorblindness in Post-Slavery America*, 54 ALA. L. REV. 483 (2003).

47. ERWIN CHEMERINSKY, *THE CONSERVATIVE ASSAULT ON THE CONSTITUTION* (2010).

48. MICHAEL DRAKE & ERWIN CHEMERINSKY, *THE CIVIL RIGHTS MOVEMENT AND THE SUPREME COURT* (forthcoming 2011).

49. A 2010 study by the National Center for Education Statistics demonstrates that students who attend high-poverty schools are more likely to do poorly in math and reading and less likely to attend a four-year college. ROBERT STILLWELL, NATIONAL CENTER FOR EDUCATION STATISTICS, *PUBLIC SCHOOL GRADUATES AND DROPOUTS FROM THE COMMON CORE OF DATA: SCHOOL YEAR 2007–2008* (2010). (The National Center for Education Statistics is the statistical center of the Institute of Education Sciences in the U.S. Department of Education). African American and Latino children are more likely to attend high-poverty schools, because more African Americans and Latinos in the U.S. live in poverty. For instance, in California, a state with one of the highest childhood poverty rates, twenty-seven percent of Black and Latino children live in poverty compared to the statewide average of nineteen percent. LOIS M. DAVIS ET AL., *RAND HEALTH, REPARABLE HARM: ASSESSING AND ADDRESSING DISPARITIES FACED BY BOYS AND MEN OF COLOR IN CALIFORNIA*, 13 (2009). Consequently, African Americans in California above the age of twenty-five are now twice as likely as Whites to be without a high school diploma. *Id.* at 18. The effects are even more drastic for Latinos, who, as a group, are seven times more likely to be without a high school diploma. *Id.* Further, instead of graduating from high school and moving on to college, African Americans and Latinos face incarceration at an increasingly alarming rate. *Id.*

50. ICESCR, *supra* note 38.

51. *Id.*

stages of development and the ability to fulfill many of the rights in the ICESCR depends on available financial resources, fulfillment of the treaty's goals will necessarily vary by country. Nevertheless, unlike many international treaties, the ICESCR allows for progressive realization of its provisions based on each nation's financial resources.

In sharp contrast to the U.S. Supreme Court's holding in *San Antonio*, Article 13 of the ICESCR recognizes a universal right to education. Under the treaty, education should serve as a means to promote "the full development of the human personality and the sense of its dignity, and . . . strengthen the respect for human rights and fundamental freedoms."⁵² The treaty further recognizes that education is essential to enable full participation in a free society, promoting understanding, tolerance, and friendship among all nations for the maintenance of peace.⁵³

The ICESCR provides a list of provisions necessary to realize the right to education.⁵⁴ The nation should provide compulsory and free primary education,⁵⁵ or develop a plan within two years to provide this right if primary education is unavailable at the time a nation becomes a party.⁵⁶ The nation should guarantee "the right to a generally available secondary education in all its forms, including technical and vocational training," as well as accessible higher education.⁵⁷ Parties are encouraged to aim for the progressive introduction of free secondary and higher education.⁵⁸ The nation should encourage and intensify a fundamental education to those who have not received or completed primary education.⁵⁹ Parents also have a right to choose schools for their children, outside of public institutions, which match their own religious and moral convictions.⁶⁰ Although the United States does provide free primary and secondary education, U.S. policy has failed to remedy severe, longstanding educational inequality, much of which results from funding schemes that reward students in wealthier areas with better-funded public schools.⁶¹

In General Comment 13, the U.N. Committee on Economic, Social and Cultural Rights interpreted the right to education in ways that could eradicate historically discriminatory educational policies in the United States. There, the committee stated that Article 13 obligated, first, the prohibition of discrimination

52. *Id.*

53. *Id.* at 7.

54. *Id.*

55. *Id.*

56. *Id.* at 8.

57. *Id.* at 7.

58. *Id.*

59. *Id.*

60. *Id.*

61. Peter Enrich, *Leaving Equality Behind: New Directions in School Finance Reform*, 48 VAND. L. REV. 101, 145 (1995).

in all aspects of education;⁶² second, the promotion of de facto equality in education through temporary remedial measures, not to be construed as a violation of the right of non-discrimination so long as the measures taken are not continued beyond the period necessary to effectuate equality;⁶³ third, a mandate to monitor educational policies, institutions, programs, spending patterns, and other practices in order to identify and redress de facto discrimination;⁶⁴ fourth, the provision of culturally appropriate and good quality curricula, teaching, and educational objectives;⁶⁵ and fifth, the responsibility to enhance equality of educational access for individuals from disadvantaged groups.⁶⁶

In these comments, the Committee enshrined principles that many civil rights advocates in the U.S. have been fighting to achieve for decades. The comments make clear some of the ways in which the U.S. would benefit from adherence to the ICESCR. For example, the U.S. would likely be responsible for remedying de facto discrimination that results from unequal spending patterns, such as the funding of public schools based on district property taxes. Although it is obvious that inequitable school funding leads to inequitable education, the funding of schools based on local property taxes has persisted.⁶⁷ Under the ICESCR, such funding practices are unacceptable.

The ICESCR directly confronts a number of laws and policies that have allowed social inequities in education and in other areas to continue for generations. OCHRA strives to educate students about such international sources of law to provide a broader understanding of potential domestic strategies. Even if the United States does not ratify the ICESCR and other international treaties, studying them as a model can provide domestic activists with additional tools and strategies. A curriculum that treats international human rights law as an essential part of understanding rights would allow students to access these tools and strategies.

II. OCHRA'S APPLICATION OF A DOMESTIC HUMAN RIGHTS MODEL

OCHRA is a student group dedicated to addressing social issues from a human rights perspective. A student group using this model must be able to demonstrate why a particular social issue impacts human dignity and, thus, should be protected as a human right. The group must also give students the opportunity to learn about the domestic and human rights laws that relate to a particular social

62. U.N. Committee on Economic, Social and Cultural Rights, General Comment 13, ¶ 31, E/C.12/1999/10 (Dec. 8, 1999).

63. *Id.* at ¶ 32.

64. *Id.* at ¶ 37.

65. *Id.* at ¶ 6(c).

66. *Id.* at ¶ 26.

67. See generally Lauren Nicole Gillespie, *The Fourth Wave of Education Finance Litigation*, 95 CORNELL L. REV. 989 (2010) (examining litigation strategies that challenge the funding of public education by local property taxes).

issue. Finally, the group must provide a way for students to engage with the issue through direct service and activism. In this section, we intend to demonstrate specifically how OCHRA has tried to achieve these goals in its first year at UCI School of Law.

OCHRA focuses on three components to every issue we address: the issue itself, its connection to human rights, and how we can engage with the issue in our community. OCHRA holds issue-based events to educate ourselves and others about specific domestic issues, and how they can be viewed through a prism of human rights. Students choose the topics for each OCHRA event. From there, the proposed topic, such as education, immigration, or criminal justice, is narrowed down to a discrete issue within that topic, such as the school-to-prison pipeline, prospects for immigration reform during the Obama administration, or disparities in criminal sentencing. OCHRA then researches the relevant human rights law and provides students with a summary of that information at the event. Lastly, OCHRA strives to get students involved within the communities affected by the social issue to further our understanding. This community engagement has the added benefit of countering the isolation typical of law students focused solely on their studies.

OCHRA's final event of its first year, "Police Misconduct and Community Strategies for Justice," serves as a case study of this philosophy in action. The event focused on the killing of Oscar Grant by Bay Area Rapid Transit officer Johannes Mehserle while Grant was lying face down on a train platform. Though Mehserle was recently found guilty of involuntary manslaughter and has been sentenced to two years in prison, at the time, his trial had yet to begin.⁶⁸ The event consisted of a panel discussion attended by Wanda Johnson, mother of Oscar Grant; Minister Keith Muhammad, a family spokesperson and community activist; Jack Bryson, father of Nigel and Jacky Bryson (two of Mr. Grant's friends who were with him the night he was killed); and Jamon Hicks, an attorney at the Cochran Firm with extensive experience in police misconduct litigation. After this event, a number of people contacted us to describe how they became involved in the efforts to ensure that Oscar Grant's murderer was brought to justice. In addition, UC Irvine students increased awareness by speaking to friends and family members who were not aware of this particular case and the issues underlying the tragedy. Finally, students and others affected by this event further increased community awareness and broadened the impact of this event by participating in rallies on behalf of the Grant family, and making a commitment to serve on juries to ensure that legal decisions include their new perspectives.

68. Jack Leonard et al., *2 Years in BART Killing: Windshields Are Smashed in Oakland over the Sentence of Johannes Mehserle*, L.A. TIMES, Nov. 6, 2010, at AA1, available at <http://articles.latimes.com/2010/nov/06/local/la-me-bart-cop-sentence-20101106>.

Though OCHRA organized the event, we sought out diverse co-sponsors, including the Black Law Society, the Radical Student Union, the Black Student Union, Flying Sams, the Public Health Law Brigades, and SAGE Scholars. None of these organizations view police misconduct, or the Oscar Grant tragedy, in precisely the same way. Because the issue was framed as a human rights issue, however, these organizations could come together with the shared recognition that nobody deserves Oscar Grant's fate.

So far, the main source of our community engagement component has come from working with two extremely vulnerable populations: children and the homeless. Following an OCHRA event entitled "Homeless in Los Angeles," OCHRA partnered with the Medical Initiative Against Homelessness, a student organization run by UCI medical students, to tutor homeless children temporarily staying with their families at a local motor inn. These tutoring sessions connect UCI law students to the community while teaching us about homelessness and poverty in ways that scholarly articles cannot. Future plans include touring the Los Angeles County Jail and developing relationships with local schools.

An added benefit of a human rights framework is that it allows OCHRA to address multiple social issues while avoiding the divisiveness of identity politics. From the beginning, OCHRA aspired to be a student group that welcomed all students regardless of background or ideology. Because OCHRA is not based on a particular identity, it allows individuals to bring together their perspectives and experiences on common ground.

OCHRA focuses on a variety of social justice issues because the issues connect to each other. Domestic violence can relate to immigration, which can relate to education, which can relate to voting rights, poverty, and employment. As OCHRA organized and co-sponsored events throughout the year on topics ranging from criminal sentencing to immigration to California's ban on gay marriage, we collaborated with a number of different graduate and undergraduate student groups, each of which had its own agenda and identity. Identity-based groups can advance a movement around a particular social issue by organizing and galvanizing affected individuals. However, such groups tend to fall short of having a larger, sustained impact because they frequently divide. OCHRA recognizes that social change is simply more probable and more sustainable when individuals beyond just those most directly affected by a particular social issue can understand the problems and participate in the solution.

III. CONCLUSION

Dr. King declared, "true compassion is more than flinging a coin to a beggar; it comes [when we are able] to see that an edifice which produces beggars needs restructuring."⁶⁹ Indeed, many of the social problems in the United States are a

69. Martin Luther King, Jr., *Beyond Vietnam—A Time to Break Silence*, AMERICAN RHETORIC

result of systematic inequities. We believe that looking at these problems from a human rights perspective can help us see and combat those inequities. We are all human, and as human beings we all have a stake in ensuring that every individual receives the rights to which he or she is entitled. When one speaks of something as a human rights issue, it becomes more difficult to dismiss it as merely a local issue of local concern. A human rights perspective exposes local issues as symptoms of a larger human rights violation common across identity-based and geographic borders. The discrimination the Dalits face in India, for example, has been compared to the discrimination African Americans face in the United States.⁷⁰ The comparison is not perfect; caste is not race, and India is not the United States. Nevertheless, such comparisons are useful because they enlarge the issue from something singular and domestic to something widespread and international. This larger view allows us to see local issues in a new light. Learning about India's underfunded and notoriously poor-quality public schools—and the students whose poverty leaves them with no choice but to attend them—can make us think differently about our own public school system.

Our hope is that OCHRA will help law students and others see that a local issue can be more than just a local problem, and indeed can be a human rights violation. We want OCHRA to complement UC Irvine School of Law's curriculum by providing a view of the law's effect on the poor and vulnerable. In the process, we hope to challenge the ignorance and change the institutions that perpetuate societal inequality. We welcome ideas and proposals for collaboration from any who are interested in pushing for the change envisioned by Dr. King. The age of human rights is here, and we must work together to make sure those rights are truly a reality for all.

ONLINE SPEECH BANK, <http://www.americanrhetoric.com/speeches/mlkatimetobreaksilence.htm> (last visited Nov. 11, 2010).

70. See Cass R. Sunstein, *Affirmative Action, Caste, and Cultural Comparisons*, 97 MICH. L. REV. 1311, 1315 (1999).