

Introduction to Legal Studies

Spring 2007

Who Makes Law? What Shapes Law?

Discussion Questions for Thursday, February 8th

On Thursday we will continue our discussion of who makes law and what factors shape it. Last class we talked about what influences the making of written law. But once law is made, other factors shape and reshape that which is written down. In other words, the law-making process does not end with the printing of a statute or judicial decision.

The various authors we'll read for Thursday's class offer a variety of ideas as to how law is remade in the interpretation, enforcement, and acceptance by formal legal actors and society at large. Catharine MacKinnon is one of the leading American legal scholars alive today. Clarence Darrow was the most prominent and respected lawyer of the early 20th century (the Johnnie Cochran of his era, perhaps). Marc Galanter, a professor at the University of Wisconsin, wrote this article in the 1970s and it continues to be seen as one of the most influential articles in the field of law & society.

1. Having read MacKinnon's article, "Rally Against Rape," what does she believe are the factors that shape our understanding of the crime of rape? How do these understandings of what constitutes rape change alter the law?
2. What does Clarence Darrow say about the role wealthy people play in crafting the law in their favor? Do you agree with his assessment? Why or why not?
3. According to Galanter, how is it that "repeat players" (R.P.s) shape the law in ways that benefit them? How does this differ from Darrow's explanation? Can the "have nots" or "one shotters" ever win?