

Access to the law and legal system is the ability to shape it, both in its meaning and understanding. While the factors that usually determine the power to shape law are not static, in general, access to law has been held by specific groups of people: the wealthy, males, whites, and religious authorities. In constructing the law, these specific groups have traditionally used their power to reinforce their dominant position and impede the ability of powerless groups to further their interests. It is this position of advantage that allows the prevailing groups to maintain a system of inequality fortified by the law that protects their prosperity while forcing the disadvantaged to appeal to problematic methods to promote their well-being as a result of their lack of access.

In his speech, “Address to the Prisoners in Cook County Jail,” Clarence Darrow defines law as a creation of the rich, who, because of their wealth, own and control most of the property and institutions of society (Darrow 229). The access that comes with their wealth then grants them the power to construct the law in a way that sustains their elite position. For Darrow, as a consequence of this system of power, the unprivileged individuals are forced to seek out other, often criminal means of living in order to survive. He explains this by stating, “The more that is taken from the poor by the rich, who have the chance to take it, the more poor people there are who are compelled to resort to these means for a livelihood” (227). By wielding their power, the rich have been able to consistently thwart the ability of the poor to access legitimate opportunities, often leading them to participate in activities such as robbery and burglary in order to obtain money. Thus, according to Darrow, the individuals in prison are not there on account of any inherent criminality, but because they live in a system where the only way to ensure that their interests and needs are served is to “break the rules of the game” (229). As long as there is an unequal distribution of the power that allows individuals to shape the law, there will

consequently be a system that perpetuates criminal activity as a direct result of this imbalance. In the eyes of Darrow, the only way to prevent the poor from pursuing illegitimate means of survival is to create a system of equality, in which the power to construct the law is not restricted to the wealthy, thereby allowing for the promotion of all interests (230).

Similar to Darrow, Peter Kropoktin, in his article “Law and Authority,” discusses how a class of individuals, in this instance religious authorities, acquired the power to shape the law. As society became more divided and autonomous over time, Kropoktin claims that priests were compelled to institute laws that reinforced their control of society. Because the power to shape the law was vested in religious authorities, respect for the law came to be seen as moral behavior, and thus a blind obedience to authority began (Kropoktin 161-162). According to Kropoktin, it was this forced respect for those in power that led society into a state of rebellion. He states, “Rebels are everywhere to be found who no longer wish to obey the law without knowing whence it comes, what are its uses, and whither arises the obligation to submit to it, and the reverence with which it is encompassed” (160). Kropoktin conveys the idea that a system of law founded solely with the intent of perpetuating the position of those in power is inherently problematic, as it forces individuals into a state of contempt for the law, and this undermines the very purpose for which the law was instituted. Because religious authorities implemented a system of law that was intended to serve their authority instead of the interests of society, individuals were compelled to question law, its origins, and above all its creators.

Marc Galanter, in his article, “Why the Haves Come Out Ahead,” implies that proximity to the law and the legal system grants individuals the power to frame the law to serve their interests. Galanter focuses on the role of repeat players, or generally large units constantly involved in litigation that usually have the advantages of experience, expertise, and resources to

promote their long-term interests. A significant advantage of these units is their ability to choose which cases to adjudicate because of their constant involvement in the legal system (Galanter 82). This allows them to subtly shift the law over time in a way that will best promote their interests, thereby continually reinforcing their advantageous position. Galanter notes, "...those with other advantages tend to occupy this position of advantage and to have other advantages reinforced and augmented thereby" (83). The ability to affect the law reflects power; those in the inferior position are then forced to become involved in a system in which they benefit the most by having the least influence on the law. As a result, one-shotters, or units who infrequently become involved in the legal system, are generally compelled to prefer a settlement in order to maximize their tangible gain (82). One-shotters often lack the access to the legal system and the resources necessary to have the same relative power in constructing the law as the repeat players. This unequal distribution of advantage is problematic because the law becomes slowly skewed towards the interests of the more powerful, most often the repeat players. Although the one-shotters are compelled to prefer the options that will maximize their immediate gain, they will simultaneously maintain a system of law that reflects the position of the more powerful. Galanter claims that in order to equalize the advantage of both parties involved, access to the system and the necessary resources must be made available to those who have not had them, thus allowing repeat players and one-shotters alike to shape a law that encompasses all interests.

In her speech, "A Rally Against Rape," Catherine MacKinnon understands rape as an issue of both sexism and racism, as she describes a cultural perception of rape that protects the position of white men. Historically, the white male in American society has held more power culturally, socially and economically, and their superior position has given them the ability to shape the law to protect themselves. With regards to rape, this is most clearly seen in the societal

misunderstanding of rape. As MacKinnon notes, the kind of rapes that are most commonly reported are those in which the perpetrator is a stranger, an African American, or both. In reality, though, the most common rape experience is intra-racial and is committed by a man the victim knows (MacKinnon 81). Because women have been restricted to a position of disadvantage, they have been forced to be silent about their experiences as a result of the cultural misinterpretation of what rape actually constitutes. MacKinnon states, "...part of the culture of sexual inequality that makes women not report rape is that the definition of rape is not based on our sense of violation," as she defines rape as any time a woman has sex and feels violated (82). This misunderstanding of rape protects men by leading women to often not label their experience as rape because it does not agree with what society dictates is or is not rape; in turn, women have no other option but to remain silent. When women are dissuaded from reporting instances of rape, the misconception of rape is reinforced, and the superior position of men and whites is protected by preserving a definition of rape that allows for their dominance over women.

Though not all of these authors offer alternatives to the problematic methods less powerful groups have been forced to perform, they all make apparent the need to more fairly distribute the power implicit in the construction of the law. Those groups that have tended to be more powerful in society have had the ability to shape the law to conform to their interests, whether in terms of the meaning of the law or its understanding. As long as only the interests of select groups of individuals are protected by the law, disadvantaged individuals will continually be compelled to seek out other ineffective means in order to ensure that their needs are met. In order for the structure of inequality to be destroyed, access to the law and the ability to shape it must be given to all.

Works Cited

MLA Citation

Darrow, Clarence. "Address to the Prisoners in the Cook County Jail." Before the Law: An Introduction to the Legal Process. Ed. John J. Bonsignore., et. al. Boston: Houghton Mifflin Company, 2006. pp. 225-232.

Galanter, Marc. "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change." Before the Law: An Introduction to the Legal Process. Ed. John J. Bonsignore., et. al. Boston: Houghton Mifflin Company, 2006. pp. 81-89.

Kropoktin, Peter. "Law and Authority." Before the Law: An Introduction to the Legal Process. Ed. John J. Bonsignore., et. al. Boston: Houghton Mifflin Company, 2006. pp. 158-167.

MacKinnon, Katherine. "A Rally Against Rape." White Plaza, Stanford University. 16 Nov. 1981.