

How does power contribute to the construction of law, both on the books and in action?

Power, the ability to influence others and the course of events, affects laws and shapes cultural beliefs in society. In our society, power is said to be equally distributed throughout the people, and there is a democratic belief that collective action is able to create change. However, collective power is heavily influenced by the wealthy. Those with power have the resources to influence the creation and termination of law, both on the books and in action. Power, ultimately controlled by the wealthy and elite, shapes the construction of laws to benefit them and their values, in order to maintain the dichotomy between themselves and the less powerful.

While some of the more obvious, tangible foundations of power include money, capital and property, Galanter discusses additional aspects of power in its definition and its benefits. Galanter explains the differences between the “haves”, or the repeat players, and the “have-nots”, or the one-shotters. In this analogy, the former is equivalent to the powerful, and the latter to the powerless. The repeat players, according to Galanter, have the advantage because they know the rules, have previous experience, have both legal and financial resources, and have much less to lose than the one-shotters. All of these assets together demonstrate the “superior opportunities” (Galanter 82) of the powerful repeat players over the powerless. Galanter explains, “To the extent that rules are evenhanded or favor the ‘have-nots’, the limited resources for their implementation will be allocated, I have argued, so as to give greater effect to those rules which protect and promote the tangible interests of organized and influential groups” (Galanter 86). The

repeat players are most benefited by the laws because their assets and resources helped create these laws to protect and promote their own interests.

Those with power have always used their ability and superior opportunities to influence and construct written laws to their advantage. While Galanter and Darrow agree on this, they also concur that the levels of power are disproportionate from one group to the other; the wealthy and the poor, the “haves” and “have-nots”, and the powerful and the powerless. Darrow argues that “those men who own the earth make the laws to protect what they have” (Darrow 229). Those with power, according to Darrow, are able to create laws that protect their assets, thereby keeping them wealthy and elite. Through these laws, the inequality between the rich and poor is expanded and maintained. Darrow reasons that the powerful, no matter how immoral or even criminal their actions are, are never punished for their wrongdoings. “They make the laws and therefore do not need to break them” (Darrow 229). Those without power, on the other hand, are more likely to take the impact of laws, because laws were created to keep them at a disadvantage. Therefore, laws maintain the stratification of power.

Power not only affects laws that benefit and disadvantage, it also affects laws that shape cultural understandings in society. For example, MacKinnon’s article shows there are common misconceptions that strangers and specifically Black men are the perpetrators of rape, when in fact, women are most often raped by men they know and have relations with. These cultural understandings have influenced the way laws concerning rape were formed; up until thirty years ago, a husband could not rape his wife under the law (Lecture 2/8). Because rape was not often associated with intimacy, cases of rape reported involving married couples, unmarried couples, or even friends, were

dismissed, not believed, or not reported. In this situation, men are the repeat players and women are the one-shotters. Men physically and emotionally dominate over women they know through this act of rape, without repercussion to themselves, because law dictates that the cultural understandings are correct. This encourages women to remain silent, making women more powerless and enforcing the belief that strangers are committing this offense. The unpunished actions of violating women by men demonstrates further how the powerful constantly use their influence of law to benefit themselves and to remain in power.

The skewed distribution of power between the “haves” and the “have-nots” is prevalent in cultural beliefs and in written law. The distribution of power, however, can be shifted through collective action of an organized body. “An organized group is not only better able to secure favorable rule changes, in courts and elsewhere, but it is better able to see that good rules are implemented” (Galanter 88). Galanter explains that those without power or with little power can organize and assemble their resources to produce changes in their favor. Inevitably, however, the power of the wealthy and elite manipulates the outcome, as seen in Proposition 215.

Our country prides itself on being a democratically run country, where the power is among the people, the rule is of the people, and social movements of collective action can change laws. While this is true on the surface, those with power have much more influence in the formation of written laws. Power, from wealth and status, has affected which laws get created and terminated. In Proposition 215, power has contributed to both the construction and the halt of this referendum. The proposition garnered much support and was able to raise 1.75 million dollars. With this financial support, Proposition 215

was able to create awareness of the issue through media advertisement, thereby influencing voter opinions. However, about sixty percent of the 1.75 million was funded from only two people (Lecture 2/6). These two men are an example of how the powerful use money and wealth to contribute to the construction of law. Proposition 215 was terminated by the officials not elected into office, but chosen because of their power - their status, education and experience. The course of actions of Proposition 215 is not uncommon, and demonstrates how the power of wealth and status significantly affects the decision making of this country.

Power is influential in the construction of laws. Not only does it have the ability to create and terminate laws, power is also able to influence the cultural understandings of a society. Even though in theory everyone in the United States has power, the power of a few have the real control in our society. The rich and elite, the “haves”, the repeat players, and the men all know how to maneuver and construct law to benefit themselves. The powerful are able to do criminal-like acts without fear of persecution or punishment because they are the ones creating the laws. Whether through written law or cultural understandings, those with power have created and continued stratification between themselves and the powerless. Even when groups of people pool resources and create a collective power, underlying many of these collective actions is wealth. Power, in its truest essence, is the legacy of inequality among groups of people that is maintained through unjust laws and biased cultural understandings.

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