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Law as An Ally to Black Lives Matter – An Unfortunate Necessity

Law does, to a degree, deradicalize social movements. Social movements are messy, they cause disruption to daily life, they instigate disorder among society. This disorder often causes a society to wake up and to analyze its shortcomings. The radical nature of social movements can be altered, however, when it needs to be reconfigured by legal actors into legal language, which can take sparks away from the fire. Law is a necessary ally for BLM and social movements, but is admittedly flawed, and is founded upon systems which actively work against equality. Law, on its own, is too flawed and formal to bolster rights claims by social movements. However, when law and legal systems are used in unison with other forms of protest, it is conducive to change. And in the world of social movements and moves for racial equality, small victories should be celebrated, not demeaned.

I. Litigation versus other forms of activism

Litigation is necessary for social movements to gain attention and mobilize, and BLM should certainly engage in litigation to some extent, certainly not depending on it entirely. However, there are both benefits and drawbacks of litigation in the frame of social movements. Litigation by social movements in order to assert rights is one useful tool, but should be used in a system of legal leveraging. When combined with protest and other forms of activism and awareness, Michael McCann, in his text, Law and Social Movements: Contemporary

Perspectives, asserts, “much study emphasizes that litigation and other official legal actions are most commonly and effectively utilized as a secondary or supplementary political strategy in social movement struggles” (23). Litigation can be incredibly useful in dramatizing events and incidences, as well as publicizing issues and the narrative of the movement. McCann reminds us that in the courts, social movements do not need to win, as “mass media tend to be particularly responsive to rights claims and litigation campaigns for social justice” (26). With either a win or a loss in the courts, litigation is paramount in allowing social movements to get their narrative out into the world, motivating people to continue grassroots approaches to activism to further mobilize the movement.

It must also be noted that risks come with litigation by social movements. According to McCann, one common critique of litigation is that it “diverts resources to lawyers who focus on litigation rather than on grassroots mobilization and other forms of potentially more effective political organizing” (28). Litigation is expensive, and most organizations do not have unlimited funding and resources to splurge on lawyers. However, this seems only possibly reprehensible if litigation was the only tool being used by social movements, therefore BLM should certainly utilize litigation to its benefit, without allowing it to become a primary form of advocacy – still continuing to utilize protest and other grassroots approaches.

Avoiding litigation would be a mistake for BLM. However, like most happenings, there are once again both benefits and drawbacks. One benefit to avoiding litigation would be avoiding the possible risk of deradicalization of the movement. According to McCann, the “litigation-obsessed propensities of some lawyers thus can divert or drain movement energies” (23). When

draining a movement of its passion and vitality is a great fear of many social movement organizers, McCann asserts that this occurrence is incredibly rare.

If BLM were to avoid litigation, they would risk losing the ability to "wake up" our society and spark genuine change. McCann asserts that "litigation and other seemingly conventional legal tactics sometimes can be fused with such disruptive forms of political expression. Law sometimes serves disorder as well as order. Litigation can provide a form of, or forum for, rebellion" (24). As law serves both order and disorder, we see that the world responds when society is made to question itself, when the majority is made to feel uncomfortable. This is why people respond when movements become messy and complicated, and why people respond to violence. Avoiding litigation is not the answer, and BLM should hold tightly to the use of both litigation and other protest tools in order to further effectively mobilize the movement.

II. LeBron's Interpretation of #blacklivesmatter

Love is what makes and defines the Black Lives Matter movement, according to LeBron's analysis of Baldwin and King in his text, "The making of Black Lives Matter: A brief history of an idea." Lebron argues that redemption, which stems from the root of love, is the underlying foundation for the movement. While he understands that loving others "first and well" (107) can be difficult, especially when met with hate and aggression, he promises that when we love, "We realize and reconcile ourselves to the fact that we, each of us, are humans with not only equal capacities but equal needs. Love delivers what democracy promises: equality and fairness" (109). Black Lives Matter focuses on law, aiming to establish this equality and

fairness for all, which can only be achieved, according to LeBron, by meeting opposition with love – for with that love, black lives will not merely be acknowledged, but will truly matter in equal capacity to all other lives.

LeBron's analysis poses that democratic processes fall short when they do not begin with love, with the goal of redemption. Law has the capacity to further these ideas, if it exists in the capacity to enforce accountability and responsibility, which will allow a society to set out and want to be a better, more righteous and equitable and people. If law were to be created and enforced with this love which Lebron speaks of at its epicenter, it will invite "others to take responsibility for what they think, say, and do - we empower them to realize that they can be better people, that character is malleable when the will to face the challenge of love rises to the occasion. If and when all of this can be done, love leads to our collective redemption" (109). This perception of law's capacity to aid in furthering these ideas is admittedly idealistic, but the premise of building law upon deep loving sensibilities is indeed idealistic as well. Both are possible and certainly righteous if a cooperating society believes in the values outlined within Lebron's interpretation of the words of Black Lives Matter.

Theoretically, however, using law can inevitably hold back the ideas set out by Lebron, simply because law and legal ideology, at its core, obscure and rationalize social inequality. The myth of rights and politics of rights illustrate a gap between the promise of equality and the reality of social inequality, that the goals of law are aspirational and remain unfulfilled. According to Michael McCann in his text, "Union by law: Filipino American labor activists, rights radicalism, and racial capitalism," "In the classic realist perspective, the history of

exclusionary hierarchy and uneven liberal legal administration has been portrayed as a gap between the written rules and symbolic promises of law, on the one hand, and the widely variable practices of rights enforcement, sustained by the allure of the realistic "myth of rights" on the other" (376). Claiming rights and equity through love and redemption can be tricky, as the legal system seems fundamentally formed against it. It is also incredibly easy to give up hopes of redemption, when the processes and the reality of the legal system's application seem stacked against a movement like Black Lives Matter, which seeks to change the very law that establishes this gap.

III. How law can be an ally to BLM

Overall, although law and legal systems are at their core systemically repressive, utilizing them is a necessary means of mobilizing movements. Dereck Bell's concept of the interest convergence dilemma is a key aspect in reasoning for barriers posed in BLM's use of the law. Simply, the way which American law functions is based off of accommodating the majority white population. According to Bell, "the interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites". This forces black activists and organizers to depend on the white population, a group that is partially responsible for upholding the institutions which BLM is actively fighting to destroy. Bell's scholarship emphasizes the idea that interest convergence is unreliable and temporary, that support from the white population can waver, depending on circumstance. Black Lives Seattle wishes to declare racism a public health crisis, defund the police, fund community health, end voter suppression, end youth incarceration, and dismantle the school to prison pipeline. Enlightened by Bell, we see

that these goals may only be accomplished with brandished white support. BLM's goals, left in the hands of white support, seem difficult to accomplish. According to Jennifer Chudy and Hakeem Jefferson at the New York Times, data has shown that "white Americans were more supportive of B.L.M. following [George] Floyd's murder. This sentiment, however, did not last long and, as with Republicans, support eventually plunged. This movement among Republicans and white Americans helps us understand why aggregate support for Black Lives Matter has waned since last summer."

The legal system is badly broken, this is undeniable. Though, the use of the system, however repressive and outdated, is paramount in changing it. While law's tendency to serve black people only at the convenience of white people is acknowledged and legitimate, there is still value in BLM pursuing a relationship with the law to help it achieve its goals. A fine example of racial justice-social movements' utilization of law as an ally is brought up by Tomiko Brown-Nagin in his text, "Elites, Social Movements, and the Law: The Case of Affirmative Action." Brown-Nagin accounts the history of the BAMN organization, a far-left group that promoted the need for affirmative action by participating in both protests and litigation to achieve its goals. According to Brown-Nagin, to defend affirmative action, "BAMN continued its practice of engaging in both direct and legal action. BAMN staged demonstrations in support of the Grutter intervention on several occasions. Prior to and throughout the trial and appeal in the Michigan cases, BAMN and its cosponsors used public awareness of the stakes involved in the cases, and to win converts to its "movement"" (1461). BAMN combined litigation with protest, while also using law and litigation to publicize the issue of pushback against affirmative action. BAMN was critiqued by Brown-Nagin for narrowing its objective to simply preserving

affirmative action, blaming its use of the law. However, this critique also fails to acknowledge good work that was done.

IV. Conclusion

In today's current events, Black Lives Matter strives to protect and liberate black lives. The movement has pushed to include all races and ethnicities in garnering support for equity and change. Although white support for the movement is necessary, research has shown that that support wavers, and has decreased over the past year. And while litigation seems daunting for racial justice-social movements, it has been proven as a necessary means of mobilization. However, litigation alone will not yield adequate change for BLM. It is imperative that BLM works with the law, though it is recognized that the law has not served the black community well and has in fact contributed to its oppression. Yet, when protest and grassroots approaches to mobilization are combined with the law and litigation, mobilization may actualize.

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