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## **LAW AND INEQUALITY**

### **ABSTRACT**

This chapter discusses the concept of class in an important subfield, the sociology of law. Class, a pivotal institution of society, was central to and experience. While acknowledging the value of contemporary research that documents a deeply textured, paradoxical, and nuanced analysis of the role of law in society, the third part argues for theorizing the link between experience and context, including the role of social class, and presents a research agenda for a sociology of law, where the relationship between law and class is considered both as institution and experience. This article explores the complex relationship between law and social inequality, examining how legal systems both reflect and reproduce disparities in wealth, race, gender, and power. While law is often viewed as a neutral framework for justice, it frequently operates in ways that reinforce existing hierarchies. Drawing on historical and contemporary examples, the article analyzes how legislation, judicial decisions, and legal institutions contribute to structural inequality. It also investigates efforts to use law as a tool for social change, highlighting the role of legal activism and policy reform in addressing systemic injustice. By interrogating the dual role of law—as both a mechanism of oppression and a potential avenue for equity—the article underscores the importance of critically engaging with legal systems in the pursuit of a more just society.

### **INTRODUCTION**

In this article we review the ways in which class has been conceptualized and used to explain the role of legal institutions in society. Though always controversial in American social science, class is nonetheless central in thought and theorizing about society, including its legal institutions. In the past two decades, theories of class and social structure have been endlessly critiqued, and the importance of class as a research concept reduced to the point of near extinction. Class is only now beginning to be reconsidered—as one more anchor of personal identity like gender, race, and ethnicity. The contemporary turn from structural theory toward interpretive studies of experience emphasizes nuanced descriptions of actors' orientations to law in a particular context, but it has offered little to explain the interaction between individual agency and continuing patterns of political or economic hierarchy.

Understanding the structural foundations of class continues to be important in the postmodern world. Class describes an individual's position with respect to the central economic and cultural institutions of society and, in turn, relates that position to the social resources available

to the individual. Just as new ways have been found to bring the state back in or to create a new institutionalism that acknowledges the importance of complex continuing patterns in social life-but purged of deterministic claims-so class must be reconceptualized. Indeed, our review of sociolegal research shows that class has continued to be an important, if largely implicit, concept not only making possible a clearer understanding of the distributive effects of economies but also providing a key to understanding power in contemporary society.

We show here that class, as a marker for the distributive effects of law, has been of great importance in sociolegal studies. In the 1970s, structural theories

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began to decline in importance. In the sociology of law, the importance of class was diminished still further by the weight of arguments of neo-Marxists and others that law is an ideological force, not a straightforward reflection of resource inequality or a simple instrument of domination.

The interpretive and postmodern turn in sociology is reflected in contemporary sociolegal research on legal culture and legal consciousness, and on narrative and discourse about law. The critique and decline of grand theory did not undercut interest in the concrete distributive consequences of law, the bread and butter of the field, but the shift did sever these studies conceptually from their roots in general theories of society. The second part of this chapter describes the shift as well as the conceptual limits of this paradigm: Agency alone will not provide an understanding of the group-life of a society or its institutions or the ways in which class continues to form an important bridge between those contingencies that comprise elements of an actor's own understanding of action and those of which the actor is unaware

Finally, the third part of the chapter presents a research agenda for a sociology of law where the tension between structure and agency, class and law, frames the undertaking. Using recent studies as examples, we show why the institutions of class continue to explain dimensions of inequality and hierarchy and how incorporating a nuanced, agency-sensitive concept of class will contribute to the development of sociology of law and to class theory.

**THEORY AND THE PROBLEM OF LAW AND INEQUALITY** The sociology of law has always drawn on theories prevailing in the discipline. Early sociology of law was shaped by mainstream theories, including conflict, structural-functional, and grounded theories of society (Dahrendorf 1959, Parsons 1964, Glaser & Strauss 1967). Conflict and structural-functional theories have been particularly influential in the sociology of law. Both were derived from nineteenth century social theory of industrial society in which class structure was understood as fundamental, as a source of both order and conflict. The purpose of the state was to make the differentiation of social roles at the heart of class structure work smoothly (structural-functional theory) or to contain the inevitable conflict that resulted from inequality created by class structure (conflict theory). Marxist conflict theory also viewed the state as an instrument of the ruling class or some combination of dominant classes (Marx & Engels 1950). In all of these theories of the class-state, the law legitimates state authority,

enabling the state to carry out its purposes (see Evans 1963). Almost all early sociology of law accepted this fundamental ordering of class, law, and the state. Weber's theory of legal formalism and the role of the legal profession in maintaining the authority of law has also been influential. It is not surprising, therefore, given the lineage of the theories dominating the early sociology of law, that economic class was universally and uncontroversially the measure employed in research on law and inequality.

A second perspective in the sociology of law was employed in studying inequality, but without connection to grand theory. Sociology of law shares with the discipline at large a body of research that begins with an anti-instrumental and anti-formal model of the relationship between law and inequality. Growing

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out of symbolic interactionism and inductive, grounded theory of society, law and inequality are explained as social processes marked by situation and context (Goffman 1956, 1961, Berger & Luckmann 1966).

Research within the sociology of law thus grew from widely shared theoretical perspectives within the discipline, and the contradictory premises of these perspectives, structural on one hand and antistructural on the other, contained the seeds of tensions that have driven debates within the field about the role of structure and class. Sociology of law has also been deeply influenced by intellectual traditions specific to legal scholarship, particularly liberal legalism. In contrast to conflict, structural-functional, and grounded theories, liberal legalism is not a theory, but rather a "description of ideal practices on which law as we know it is said to depend" (Munger 1993:99). In this model of a sociology of law, social science helps policymakers achieve the law's ideals of fairness and equality. The influence of liberal legalism explains, in part, the tendency of American sociology of law to focus on description of legal problems rather than on theory development. 2

#### **LAW AND INEQUALITY FROM THE TOP DOWN**

Law and society scholars, finding the egalitarian pretensions of both liberal legalism and state theories of law an easy target, produced a vast literature exploring the inevitable gap between an ideal of equal justice on the books and the biases introduced by social organization into the law in action (Abel 1980). Class was often an important element of the explanation of the "gap," but it was rarely developed theoretically.

Numerous studies examined access to justice for persons of limited means. Research projects at the American Bar Foundation and elsewhere documented the legal problems of the poor. The poor, it was shown, made only limited use of lawyers and law, and a resources theory (Mayhew & Reiss 1969) was developed to explain the failure to act in terms of lack of knowledge, lack of material resources, or passivity in the face of oppression (Levine & Preston 1970, Curran 1977, Carlin, Howard & Messinger 1966, Mayhew 1968). Abel (1973) reviewed this literature and reframed its agenda in more general terms as a theory of the structure of dispute processing. While dispute processing theory and research has been criticized for failing to examine underlying social conflict (including class conflict) as well as the interplay and contestation that "socially

constructs” all of social life (Kidder 1980–1981, Berger & Luckmann 1966), Abel’s model provided a more precise conceptualization of the effects of structural inequalities on legal and prelegal conflict resolution than did any prior work (see also Felstiner, Abel & Sarat 1980–1981, Miller & Sarat 1980–1981).

Studies examined the stratification of the legal profession, especially in large cities (Smigel 1964, Carlin 1962, Handler 1967). Smigel’s seminal study of the Wall Street lawyer, for example, documented the ways in which class and status intersected to create a closed world of elite, WASP law practice dominated and controlled by men. Class background and the privileges of status, as measured by such indices as membership in the Social Register, were of no significance for women, as Epstein’s (1983) work made abundantly clear: Daughters of the elite were systematically denied entry to the Wall Street firms of their

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brothers. Epstein’s work demonstrates how gender alters the effects of class on the stratification of legal practice. If gender was one key to exclusion from the professional elite, so was service to clients at the lowest extreme of the class structure, and several studies examined the careers and commitment of lawyers for the poor (Handler et al 1978, Katz 1982).

Research showed the dependence of lawyers on the class structure of society. A market-dependence theory of the legal profession, linking professional organization and individual lawyer behavior to economic dependence on a capitalist market, profoundly influenced empirical research on both stratification and the role of the profession in society (Abel 1989). A more sophisticated theory of market dependence, combining literatures on the lawyer-client relationship, network analysis, and theories of mobility showed that lawyers in Chicago were stratified into two hemispheres of law practice defined by networks of professionals embodying distinct differences in clients, organization of practice, career lines, and values (Heinz & Laumann 1982).

A large body of research on the role of courts and adjudication (see Galanter 1986 for an extensive review), documented the gap between the promises of fairness and equality and the practices of the legal process. Research examined the stratified functions and effects of courts (Wanner 1974, 1975), their relationship to external social organization, and the construction of roles within the courts (Boyum & Mather 1986, Baum et al 1981–1982, Kagan et al 1977, 1978, Galanter 1986). Tracking social movements for reform of adjudication led to interest in the redistributive effects of judicial rationalization (Heydebrand & Seron 1990), mediation, and alternative dispute resolution [described at length by Menkel-Meadow (1984) and Galanter (1986) and extensively critiqued by Abel (1982)].

At the focal point of the literature on law and inequality is an article by Galanter, perhaps the most frequently cited in all of the earlier law and society research literature, which attempts to summarize the vast array of findings up to the mid-1970s (1975). The article presents a process model of the cumulative effects of disadvantage between those Galanter calls one-shot players in law and those he terms repeat players. The

disadvantages stem from differences in knowledge, experience, material resources, and the social context of typical pairings between one-shotters and repeat players. In addition, the differences in knowledge, resources, and organizational capacity are exacerbated by the institutional biases of legal process itself-unequal access to lawyers and ability to command their best efforts, the complexities of litigation that favor the knowledgeable and the rich, and the advantages of being able to “play for rules” in legislatures and before courts. In all but explicit terms, the article presents comprehensive summary of the sociology of law research showing that the system of justice is thoroughly embedded in the class structure, and indeed the title of the article carries the message-“Why the Haves’ Come Out Ahead.” While Galanter presents a clear and powerful description, he does so, much as does the field itself, without developing a strong conceptual or theoretical scheme: In an article laced with evidence of inequality and hierarchy, the term Haves’, like social class itself, is neither defined nor theorized.<sup>3</sup>

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#### **LAW AND INEQUALITY FROM THE GROUND UP**

There is a second, anti-instrumental and anti-formal tradition of research and theory development in the sociology of law. In contrast to structural models of law and society, grounded theory gives much greater weight to agents’ roles in constructing frames of reference.<sup>4</sup> For example, Blumberg (1967), Sudnow (1965), and Macaulay (1963) assume that the relationship between inequality and law can be understood primarily from the interactions among actors in the settings studied. Blumberg & Sudnow describe the construction of typifications through interaction between the regular participants in criminal court proceedings-the judge, prosecutor, and defense counsel. “Normal” crimes receive well-understood, routine treatment, based on typification of the defendant and the crime situation. Mutual commitments are made between court regulars about the expeditious disposition of cases that leave defendants, usually poor, out of the negotiation.

Macaulay’s study of non contractual relations in business has been highly influential in shaping this microsociology of law. Macaulay observed that sales transactions between businesses led to the establishment of continuing relations between sales personnel and the creation of sales practices based on mutual commitment established through long-term dealings (Macaulay 1963). The law, though technically applicable, was largely irrelevant to such practices when continuing relations developed between actors. The continuing-relations hypothesis, quite similar to observations on conflict resolution by anthropologists, makes understanding the effects of inequality considerably more complex, as Macaulay himself noted. Among his purchasing agents, continuing relations developed among relative equals, but not between large and small or among the very large businesses. Commenting on the generalizability of Macaulay’s study, Yngvesson argued that continuing relations need not involve equals nor be based on trust, and they may involve coercion to prevent recourse to the law (1985, see also Macaulay 1966).

Reflecting on the implications of the line of research inspired by his study, Macaulay has suggested that continuing relations in the form of social networks, private associations, organizations, and informal groups break down formal structure and instrumental legal processes, rendering the state-society boundary meaningless. Sociology of law thus constructed from the ground up supports many of the impulses that led to rejection of class-structural theory of the state, including the claim that agency is more important than the invisible hand of class. Anticipating this turn in sociology of law, Macaulay has remained firmly committed to the importance of the role of social life in explaining the relationship between law and inequality (1984)

### **LEGAL IDEOLOGIES AND SOCIAL CLASS**

The failed social reforms and revolutions of the 1960s and 1970s fueled disillusionment with structural theories of law, in particular theories of class instrumentalism. Empirical studies of contemporary and historical legal conflict by Marxist scholars pointed to a more ambiguous role for class in determining the long-run benefits and burdens imposed by law. A study of the court dispositions of participants in riots by African-Americans in Detroit in 1968 (Balbus

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1973) showed that even in response to a serious episode of class and racial strife the courts followed conflicting imperatives. The findings of the study cast serious doubt on the ability of any one perspective, in particular class theory, to explain the behavior of courts even in the middle of a serious episode of class conflict. Similarly, studies by Hay (1975) and Thompson (1964, 1975) of the enforcement of repressive eighteenth century English criminal laws showed that law aided class rule by being violent but also by seeming, and to a degree by being, just. Thompson concluded that the law displayed a "relative autonomy" from class control: examine the politics of law—the playing out of class conflict in contests about the meaning of law in a process that was class-biased but historically genteel. Instrumentalism, state-centered law, structural models of society, and ahistorical social science all came into question as ideology became the vehicle for explaining the relationship between law and social class.<sup>5</sup> Reviewing the literature on the study of law as ideology, Hunt cautioned "ideology is and will remain a difficult, slippery, and ambiguous concept" (1985:31), though it endures as a powerful lens for explaining the role and power of the legal form in social relations. Some who have contributed to the growing body of research on legal ideology have assumed, as did most Marxist scholars, that legal ideology is a terrain of struggle, conflict, and indeterminacy, but also that ideology is related to "broader social forces rooted in economic, political, and other practices and to institutions" (Hunt 1985:32), i.e. the reproduced patterns of social life that we have called structure. For example, Larson (1977) examined the historically contingent ways in which lawyers and other professionals secured a powerful class position by using ideological claims—merit, science, and service—coupled with political closure and control over access through university-based education and licensure by the state. Abel and his collaborators (1982) describe the rise of the politics and ideology of informalism in law and the reasons for its

seemingly contradictory effect—extending the legitimacy and power of the state to new disputes and new parties. Both studies document the historically contingent impulses embedded in legal institutions with a view toward explaining their role in legitimating a structurally unequal, class-based society.

Studies like those of Larson and Abel that located legal ideology in an institutional structure have avoided a simplistic base-superstructure reading of Marx by emphasizing the complex and often contradictory functions of law in society, including the ways in which law constrains both the dominated and the dominating and the contingencies that mediate the law's effects. Some scholars have criticized the lingering instrumentalism and structuralism in such sociological studies of ideology (Harding 1986, Trubek 1984). Indeed, some scholars of legal ideology begin from altogether different premises. Grounded sociological theory of law and inequality (described earlier) privileges agency by emphasizing the sociological task of explaining the ways in which agents act and construct social meanings in the process. Interpretive theory in the sociology of law takes this one step further by being anti-institutional as well. Social difference—race, class, gender, or sexual preference—is explained entirely through the words, meanings, and language used by actors in the process of going about their business as citizens, employees, legal professionals, plaintiffs, or defendants. Interpretive explanations of difference are theoretic-

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cally severed from any analysis of ongoing patterns of society outside the framework by which meaning is created for the actors being considered. There is no place for a classical sociological concept of structure in such an analysis, and in particular there is no room for analysis of relational inequalities such as class.

#### **Understanding Legal Perspectives on Inequality: Causes, Impact, and Remedies**

**Introduction** Inequality has been a pervasive issue across societies for centuries, manifesting in various forms—social, economic, political, and legal. While inequality has been a natural byproduct of human civilization, the legal frameworks designed to address it have evolved. Historically, the law has both perpetuated and mitigated inequality, depending on the prevailing political, economic, and social conditions. This article will examine the various dimensions of inequality, its legal implications, and potential remedies, with a focus on how the law can reduce inequality and foster a more just and equitable society.

### **1. Understanding Inequality**

Inequality, in its most fundamental form, refers to the uneven distribution of resources, opportunities, and privileges among individuals or groups within a society. The causes of inequality are complex and often deeply rooted in historical, social, and economic systems. Broadly, inequality can be categorized into several types:

**Economic Inequality** Economic inequality refers to the unequal distribution of wealth, income, and access to resources such as education,

housing, and healthcare. It is often represented by measures like the Gini coefficient or income disparity between the rich and poor. Economic Inequality is typically the result of factors like market structures, inheritance, education access, and job opportunities.

**Social Inequality** Social inequality involves disparities based on factors such as race, gender, ethnicity, disability, and class. This form of inequality often manifests as discrimination and social exclusion, affecting an individual's ability to participate fully in society and access social goods and services.

**Political Inequality** Political inequality pertains to the unequal distribution of political power and influence within a society. It can manifest in unequal voting rights, lack of representation, or a biased legal system that favors particular groups. In democratic societies, political inequality can undermine the integrity of the political process and marginalize certain populations.

**Legal Inequality** Legal inequality refers to situations where the law is applied unequally to different groups. This could involve biased enforcement of laws, discriminatory laws, or laws that perpetuate social inequality. Legal inequality is often the result of outdated or prejudiced legal systems that fail to recognize the equal dignity and rights of all individuals.

## 1. Historical Roots of Inequality

To understand the legal context of inequality, it is crucial to consider its historical roots. Inequality has not emerged overnight; it is the product of centuries of social and economic developments. In many societies, legal systems have played a significant role in the institutionalizing inequality.

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**Slavery and Colonialism** Slavery and colonialism were two pivotal historical processes that entrenched social and economic inequalities in many parts of the world. In the United States, for instance, the institution of slavery perpetuated racial inequality, and even after abolition, laws such as the Black Codes and Jim Crow laws continued to segregate and disenfranchise African Americans. In many colonized regions, laws were designed to maintain the supremacy of colonizers, often denying indigenous populations equal rights.

**Gender Inequality** Gender-based inequality has also been perpetuated through legal systems, with women historically denied property rights, voting rights, and access to education. The legal subjugation of women was widespread, and it was only in the 20th century that significant legal reforms were made, such as granting women the right to vote and access to equal employment opportunities.

**Class Inequality** Class-based inequality has been a feature of many legal systems, particularly those that were influenced by feudal structures. The legal systems in such societies often codified the privileges of the nobility while enforcing subjugation of the lower classes. This continued through the industrial revolution, when labor laws were often designed to benefit industrial capitalists at the expense of workers.

## III. The Legal Framework and Inequality

The legal system can either perpetuate or reduce inequality, depending on the laws enacted and how they are implemented. A just legal system should work to reduce inequality by promoting equal rights and opportunities for all individuals, regardless of their social status, race, gender, or economic position.

**Constitutional and International Law** Many countries have embedded principles of equality and non-discrimination in their constitutions. For example, the 14th Amendment of the U.S. Constitution guarantees “equal protection of the laws” to all citizens. Similarly, international legal frameworks, such as the Universal Declaration of Human Rights, enshrine the right to equality before the law, regardless of nationality, race, or religion.

**Anti-Discrimination Laws** One of the most important legal tools to combat inequality has been the development of anti-discrimination laws. These laws are designed to prevent discrimination based on race, gender, sexual orientation, disability, and other protected characteristics. For instance, in the United States, Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, religion, sex, or national origin.

**Affirmative Action and Positive Discrimination** In some countries, affirmative action policies have been implemented as a remedy to past discrimination. These policies seek to increase representation and opportunities for historically marginalized groups. For example, in India, affirmative action through reservation policies has been used to provide better access to education and employment for lower-caste groups. Similarly, in the U.S., affirmative action programs aim to ensure that universities and workplaces are more inclusive of underrepresented groups.

**Economic and Social Rights** A growing recognition of economic and social rights has influenced the legal landscape of inequality. Many legal systems now recognize that individuals have the right to access certain basic goods and services, such as healthcare, education, and housing. The right to an

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adequate standard of living is enshrined in the International Covenant on Economic, Social, and Cultural Rights. These rights are crucial for reducing the economic dimensions of inequality.

### **1. The Role of the Judiciary in Addressing Inequality**

The judiciary plays a critical role in addressing inequality. Courts are often the final arbiter in determining whether laws are just and whether individuals’ rights are being respected. Over time, courts have interpreted the law in ways that challenge systemic inequality and promote equal treatment.

**Landmark Decisions** Landmark decisions, such as *Brown v. Board of Education* in the United States, have been pivotal in challenging legal inequality. In this case, the U.S. Supreme Court declared racial segregation in public schools unconstitutional, marking a significant step in the legal battle for racial equality.

Judicial Activism vs. Judicial Restraint A key debate in the legal profession is whether courts should actively work to correct inequality or whether they should limit their role to interpreting the law as it stands. Judicial activism has often been associated with progressive rulings that seek to address societal inequalities, while judicial restraint advocates argue that courts should not overstep their role and should defer to legislative bodies for policy decisions.

## 1. Remedies and Policy Solutions to Reduce Inequality

While legal frameworks are crucial in addressing inequality, they are often insufficient on their own. To effectively reduce inequality, there must be a combination of legal reforms, policy measures, and broader social and economic changes.

**Progressive Taxation** Progressive taxation is one of the most effective tools to reduce economic inequality. By taxing the wealthy at higher rates and redistributing that wealth to support public services and social programs, governments can reduce the gap between rich and poor.

**Universal Basic Income (UBI)** UBI is an emerging policy proposal that advocates for providing every citizen with a guaranteed income. While controversial, UBI is seen as a way to reduce poverty and economic inequality, providing individuals with a financial cushion regardless of their employment status.

**Education and Skills Development** Expanding access to quality education and vocational training is a crucial long-term strategy for reducing inequality. By providing individuals from marginalized backgrounds with the skills necessary to compete in the job market, societies can break the cycle of poverty and create more equal opportunities for all.

**Social Safety Nets** Social safety nets, such as unemployment benefits, healthcare access, and affordable housing programs, are essential for protecting vulnerable populations from the harsh effects of inequality. These programs help ensure that individuals and families can maintain a decent standard of living even in times of economic hardship.

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#### **Conclusion:**

Inequality remains one of the most enduring and complex challenges in modern societies. It is multifaceted—rooted in economic, racial, gendered, and class-based structures—and deeply embedded within social institutions, including the legal system. While no single law or policy can eliminate systemic disparities, the legal system plays a critical role in shaping the conditions under which inequality is either maintained or challenged. As this article has argued, law is not a passive or neutral force; rather, it is an active participant in the construction of social hierarchies. Legal institutions often reflect the interests of those in power, legitimizing and reproducing social and economic inequalities through legislation, judicial interpretation, and institutional practices.

Yet the relationship between law and inequality is not one-dimensional. The law also possesses the capacity to be a tool for resistance, reform, and social transformation. Throughout history, legal reforms have played a central role in advancing civil rights, labor protections, gender equality,

and access to education and healthcare. By protecting the rights of marginalized groups, enforcing anti-discrimination laws, and implementing progressive social policies, the legal system can serve as a mechanism for promoting justice and reducing disparities. However, these gains are often limited, contested, or unevenly applied, reminding us that legal progress is neither linear nor guaranteed.

Understanding law as both an institution and a lived experience reveals the contradictions inherent in its operation. It is in the everyday encounters with the legal system—through policing, courts, welfare systems, housing, and labor relations—that the deep entanglement between law and social class becomes most visible. Legal outcomes are often shaped by one's position within broader structures of power and privilege, raising important questions about access, representation, and fairness.

To address these issues, there is a need for a critical sociology of law that places social class, and its intersections with race, gender, and other axes of identity, at the center of analysis. Such an approach must go beyond surface-level legal reforms and grapple with the structural foundations of inequality.

It must ask not only how the law can be used to alleviate injustice, but also how legal systems themselves might be restructured to reflect the needs of all members of society—especially those historically excluded from its protections.

Ultimately, confronting inequality through legal means requires more than technical changes; it requires a reimagining of justice itself. By recognizing the law's dual role—as both an instrument of domination and a potential site of liberation—we can begin to chart a path toward a more equitable legal order. This vision demands ongoing critical inquiry, sustained advocacy, and a collective commitment to transforming the relationship between law and society in the pursuit of justice for all.

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