The extent to which law can be used by social movements in order to effect social change: A critical examination of Sarah Levinsky's argument that the effectiveness of legal mobilisation depends on the context and way it is deployed

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Levitsky argues that successfully mobilising the law as a tool for social change is only a productive means largely dependent on the context in which it is used and how it is used. In light of this, the title questions to what extent can the law be used as an effective means for social change by social movements. In order to explore this, I use the social movement of the Campaign Against Racial Injustice ('CARD') and specifically their work around the Race Relations Act 1965 and its amendments in 1968. Through this and the use of legal theory I will illustrate my argument that, in line with Levitsky, the law's role as a tool for social change is a necessary but limited one, as if relied on too heavily, particularly in the context of racial injustice, it can become counterproductive. CARD, which I address in more depth in the following section, is one of the limited examples in the UK of a social movement that focuses on racial injustice that uses the law as their predominant tool to bring about their desired change. This is largely indicative of the distrust of the law amongst such communities which is derived and encapsulated through the understanding that "the master's tools will never dismantle the master's house. They may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change".[1] I argue that such a mindset is a completely justified one with sufficient standing, that is explicitly illustrated by my case study, which is why I chose to address the mobilisation of law in such a context, to exemplify the

[1] Audre Lorde, 'The Personal and the Political Panel' (Second Sex Conference, 29th October 1979) < https://monoskop.org/images/2/2b/Lorde_Audre_1983_The_Masters_Tools_Will_Never_Dismantle_the_Masters_House.pdf> accessed 25th March.

point that the effectiveness of legal mobilisation is dependent on its user and the context.

Case Study

CARD was a social movement active between 1965 to 1967. Their formation came about after the visit of Martin Luther King Jr. in 1964, who called for 'the coloured population in Great Britain to organize and fight against the perils of racism.'[2] Inspired by such remarks a number of immigrant organisations came together to create an 'organization of organizations' [3] to address the discrimination and inequality they experienced. This umbrella organisation aimed 'to struggle for the elimination of all racial discrimination against coloured people in the United Kingdom'.[4] CARD's formation took place in a context of heightened tensions in race relations across Britain as a result of mass emigration from commonwealth countries, following the end of World War 2 and the calls for aid to help 'rebuild' Britain.

In light of such conditions CARD's main aims were to ensure equal opportunity in key areas and pressure for policies that promote social equality.[5] The way in which CARD would enact such aims was largely inspired by the methods used by the Civil Rights Movement in the US, particularly that of the NAACP. Therefore, lobbying for legislative change, particularly in the form of rights was CARD's focal tool for bringing about their desired social change, hence their involvement with the Race Relations Act that sought the prohibition of racial discrimination, was an attractive avenue for CARD.

CARD's mobilisation for the Race Relations Act can be separated into two attempts using two different forms of lobbying. CARD's initial involvement with the Race Relations Act was largely an example of inside lobbying, which is a form of lobbying where individuals seek to influence legislation through direct

[2] Peace News, 11 December 1964.
[3] Benjamin Heineman, *The Politics of the Powerless: A Study of the Campaign Against Racial Discrimination* (OUP, 1972) 1.
[4] ibid.
[5] ibid.

exchanges with policy makers.[6] The specific way in which CARD exercised this form of lobbying followed sight of the Bill drafted by Frank Soskice MP at the first reading and recognised its limited scope. In light of this, CARD's legal subcommittee drew up a 'green document' recommending several draft amendments to the Bill. CARD then sent these proposals to every MP, Cabinet Member and the Attorney-General with the hope of gaining Government support for their proposals.[7]

CARD's second lobbying attempt can be characterised as 'outside lobbying', 'which comprises tactics that indirectly address policymakers through mobilizing and raising the awareness of a broader audience.'[8] This includes the use of public communication channels, through methods such as contacting journalists and the media.[9] The way CARD enacted this was through the launch of their 'summer project' that was a central catalyst to the final amendments of the Act,[10] which will be addressed in the following section. I will use such forms of legal mobilisation throughout the rest of my essay to illustrate the necessity but also limitations of such a mechanism.

The Law's Utility

Legal mobilisation is a means by which the law can be utilised to challenge inequalities in society, particularly those sustained by law. Through an expansive Mccann like understanding of the law, [11] its mobilisation can therefore take on many forms, including, cause lawyering, the demand for legislative change, electoral advocacy and the demand for rights.[12] With regard to the forms of legal mobilisation used by CARD with their work on the Race Relations Act, as mentioned, a mixture of tactics were used,[13], but particularly

[6] De Bruycker I and Beyers J, "Lobbying Strategies and Success: Inside and Outside Lobbying in European Union Legislative Politics" (2019) 11 European Political Science Review 57.
[7] Benjamin (n 3).
[8] Beyers (n 6).
[9] ibid.
[10] Benjamin (n 3).
[11] Michael Mccann, *Law and Social Movments* (Routledge, 2017) 21.
[12] Calvin Morrill, *Stephen Rushin, and Mayra Feddersen, Mobilizing the* Law (International Encyclopedia of Social & Behavioral Sciences, 2014) 590.
[13] An indication of the law's limited capabilities.

the inside and outside forms of lobbying for legislative change was central to their work.

However, in order to establish as to whether such forms of legal mobilisation are an effective means to bring about social change, it is important to first understand that there are two consequences of legal mobilisation that can be categorised as 'direct' and 'indirect' effects.

Direct effects refer to when the result achieved was the aim intended, for example reaching a definitive legal ruling that alters the law in the desired way.[14] We can see such an effect when we look at CARD's work on the final amendments of the Race Relations Act, in their achievement of the Race Relations Act's amendment in 1968. After the Race Relations Act was enacted in 1965, CARD was particularly disappointed in its scope despite their initial lobbying in that 'there [was] disappointment that housing and employment [were] not only not in the Act, but [could] not be accepted as amendments[15]' as these were crucial areas that Black British people faced severe racism. Therefore, they sought ways in which they could lobby to bring about legislative change to broaden the scope of the Act.

The two main ways in which they enacted outside lobbying was firstly what they deemed as 'braintrusting'[16] tasks which included the submitting of evidence, drafting legislation and writing articles. The second avenue of lobbying was to influence as many organisations as possible and to encourage them to state that there is need for legislative change.

With these two avenues of lobbying in mind, inspired by the 1964 'Freedom Summer' in Mississippi and The Student Nonviolent Coordinating Committee's success in testing the effectiveness of anti-discrimination legislation, CARD

[14] ibid 593.
[15] Letter from CARD Organizing Secretary, 38 April 1965, Communist Party Records, Manchester Labour History Archives and Study Centre Manchester.
[16] Benjamin (n 3) 130.

initiated the 1966 'Summer Project', which tested the effectiveness of the 1965 Act.[17]

CARD initiated the project through distributing over 10,000 leaflets to black British individuals on 'How to Expose Discrimination'. They also gathered and paired white and non-white students to complete a set of tasks, including applying for the same housing or job opportunities. Through this they were firstly able to evidence with empirical data that black individuals were facing discrimination based purely on race. Secondly, they were also able to demonstrate that the original 1965 Act did not have a wide enough scope to allow for meaningful change. They were able to do so, as by March 1967 CARD was able to send 150 complaints as a result of the 'Summer Project' to the Race Relations Board set up by the 1964 Act. 90% of these claims were found to be out of remit of the 1965 Act, the majority of which being in housing and employment[18] thus demonstrating the need for further legislation.

This coupled with the major media attention the Summer Project received, was a major driving factor for the final amendments in 1968 that expanded the scope to incorporate issues such as housing and employment. This is therefore a clear example of how legal mobilisation can lead to direct legal and consequently social change.

In addition to the direct effects of legal mobilisation, there are also the indirect effects. The indirect effects of legal mobilisation can be understood as the effects that the process of mobilising and engaging with the law can have and the social change that this can bring, regardless of whether or not the overarching aims sought out have been successful. As Handler notes, such effects can be the raising awareness through media attention and the generation of hope and solidarity,[19] the latter of which can be particularly important in social contexts such as racial injustice where the power dynamics

[17] ibid 131.
[18] Campaign Against Racial Discrimination, 'How to Expose Discrimination,' 1966, Black History Collection, Institute of Race Relations.
[19] Joel Handler, *Social Movements and the Legal System: A Theory of Law Reform and Social Change* (New York: Academic Press 1979).

present makes solidarity a highly advantageous result. This can therefore lead to legitimate social change, which is indicative as to why CARD's initial attempts, through inside lobbying without sufficient allyship, had little impact of the 1965 Act.[20]

We can see the strength of generating solidarity and allyship in CARD's lobbying on the final amendments of the Race Relations Act. While mobilising the law in the form of demands for legislative change through outside lobbying, their 'Summer Project' received mounting media attention, including the mainstream press who produced multiple reports on the realities of racial discrimination. This included The Times, the Observer, the Sunday Times, and The Economist who published articles supporting the expansion of the Race Relations Act. Moreover, the Sunday Telegraph published an article entitled 'It's No Fun Being a Brown Briton'[21] with the Guardian describing the 'Summer Project' as 'the most cogent case for extending the Race Relations Act'.[22]

Such publications are indicative of the fact that 'CARD's testing work contributed both to the body of evidence and, through the press report of its efforts, to a more general public awareness of the problem'.[23] The importance of such solidarity cannot be underestimated as I argue, outside lobbying that allows for social change through indirect effects are distinct from the effect of direct mobilisation as they are not plagued by the issues present in the direct effects of legal mobilisation that will be addressed in the second section. I argue that not only does such solidarity in the context of racial injustice help legitimise the demands of ethnic minorities due to the power that the white voice holds politically, but there is also power in creating a shift in social attitudes and societal opinions, regardless of whether the law reflects this or not. Additionally, such a shift can almost force legal reform as legislators, whether for legitimate or political reasons, want to see and ensure that the law reflects the wider attitudes and opinions of society.

[20] Benjamin (n 3) 134.
[21] Ibid.
[22] ibid.
[23] ibid 129.

Rights Discourse

As Heineman notes, CARD were not just seeking legislative change, they were doing so in the form of wanting reform through the demand for civil rights.[24] Through the demand for the expansion of scope beyond just public places, CARD was ultimately asking to have a right to access housing, employment, and public services without facing discrimination.[25] This was encapsulated by Uzo Iwobi stating that 'The Race Relations Acts were introduced to provide clear laws that said that everyone in Britain had a legal right to be treated fairly and equally, and that everyone had a responsibility to make sure that people abided by these rules.'[26]

This therefore opens up the discussion of whether mobilising the law for the demands of rights and its discourse is a productive tool for social movements to effect social change. Although through my second section I will be exploring the critiques of such mobilisation, which I largely agree with, in the context of racial injustice I argue that the demand for rights still provides an integral though limited tool for advancing social change.

Rights discourse, I argue is similar to other forms of legal mobilisation in that it can have both direct and indirect effects. Furthermore, I would also suggest that similarly it is its direct effects that hold greater criticism, which will be addressed in the second section, and that its indirect effects, particularly in such a social context, is a clear illustration of how the law can be mobilised, in the form of rights discourse, to allow for social change.

Therefore, in light of this I argue that the two main reasons as to why legal mobilisation in the form of rights demands can be used as a legitimate tool for social movement to advance social change through indirect effects, is the ability of rights discourses to empower and legitimise.

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[24] Newsround, 'What was the Race Relations Act?' (*Newsround*, 26 November 2018) <https://www.bbc.co.uk/newsround/46310188#:~:text=%22The%20Race%20Relations%20Acts%20were,Race%20CCounci%20Cymru%20in%20Wales> accessed 10th April.
[25] ibid.
[26] ibid.

In terms of empowerment, such an effect, particularly in the context of racial injustice, should not be underestimated, as Wilson and Cordero notes there is power in, 'political minorities to realize their rights'.[27]

The reason I would argue that the use of such language, particularly in the context of racial injustice can be so empowering and thus advantageous is that, as Williams notes, the rhetoric of rights is an effective discourse to fight racial injustice as such vocabulary is compatible and desirable with the 'establishment' 'from whom social change for the better must come'. [28] Furthermore, as Williams notes, such rhetoric is 'deliciously empowering to say. It is the magic wand of visibility and invisibility, of inclusion and exclusion, of power and no power. The concept of rights, both positive and negative, is the marker of our citizenship, our relation to others'.[29] Therefore, I argue that the use of rights rhetoric is a useful tool for social movements, particularly those concerning racial injustice, as they allow marginalised communities to be self-empowered and access spaces and conversations that can effect social change, that they otherwise would struggle or feel disempowered to contribute to.

Along with empowerment, rights discourse can also indirectly bring about social change through its ability to translate a social movement's demands into a language that legitimises their concerns, thus allowing them to be seen, heard, and addressed by those that have the power to effect social change.

In Kimberli Crenshaw's exploration of the civil rights movement in the US, which CARD drew great inspiration from methodology-wise, she highlights how demands made without using such rhetoric would be limited in its accomplishments due to the fact that black people were seen as the subordinate 'other' and therefore to allow for their inclusion into such necessary

[27] Emilio Lehoucq, Whitney K. Taylor, 'Conceptualizing Legal Mobilization: How Should We Understand the Deployment of Legal Strategies?' [2020] Law & Social Inquiry 166, 183.
[28] Patricia Williams, *The Alchemy of Race and* Rights (HUP 1991) 149.
[29] ibid 164.

spaces, the use of the dominant's rhetoric was necessary. Through this such communities would then be able to 'manipulate elements of the dominant ideology to transform the experience of domination. It is a struggle to create a new status quo through the ideological and political tools that are available.'[30]

Furthermore, I argue it to be important that to evaluate the usefulness of rights discourse, it is important to contextualise its use. As Crenshaw notes, although there are legitimate concerns with the direct effects of using rights, one must evaluate its usefulness with the knowledge that for marginalised groups wanting to alleviate racial injustice, due to power dynamics, there are limited options presented to such groups due to their marginalisation. As Crenshaw states, there is 'the unlikelihood that specific demands for inclusion and equality would be heard if articulated in other terms'.[31] Therefore, any attempts by such a community to 'appropriate rhetorical/legal incantations should be appreciated'.[32]

This is a major critique of Critical Legal Theory's ('CLT') own critique on rights in which Christopher McCrudden justifiably questions as to what other means would provide minorities with comparable protection and therefore perhaps the critique on rights is coming from white critical legal theorists who are unable to recognise that rights discourse can be 'invigorating cloaks of safety[33]'. Through the ability of rights discourses to empower and legitimise social movements and their demands, 'Rights do at times, give pause to those who would otherwise oppress us'.[34]

Furthermore, though a critic of rights discourse, Tushnet highlights how rights discourse is a way of declaring what a society is or what commitments it should be living up to, as

[30] Kimberli Crenshaw 'Race, Reform, And Retrenchment: Transformation And Legitimation In Antidiscrimination Law' [1988] 101 HLR 1331, 1386.
[31] ibid 1385.
[32] ibid 1382.
[33] Christopher McCrudden, *Anti-discrimination law* (NYUP 1991) 360-361.
[34] Richard Delgado, 'The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?', (2016) <https://scholarship.law.ua.edu/fac_working_papers/446> 305.

> ‘the sort of rights-talk that makes sense and turn defines what the society is. When someone objects to an act as a violation of a right, the ensuing dialogue either involves a claim that the challenged act is inconsistent with some "deeper" commitments that the actor has . . . or deals with what kind of society we ought to have”.[35]

This is a clear illustration of how powerful and beneficial the indirect effects of empowerment and legitimisation can be. Therefore, I argue that the indirect effects of legal mobilisation, including the use of rights discourse, can be beneficial to social movements to effect social change, particularly for those like CARD who deal with racial injustice.

Therefore, legal mobilisation for groups such as CARD, I argue, can be relied upon to a limited extent to effect such social change, specifically when outside lobbying is used and relied on for its indirect effects. However, as the following section will address, how legal mobilisation should not necessarily be relied upon for its direct effects.

The Law’s Limitations

As Levitsky states, the law is not an inherently empowering tool for social movements to mobilise, and its success depends on the context and ways in which it is used. This point is exemplified when we look to contexts of racial injustice and social movements such as CARD.

CARD was ultimately concerned with the social change that would bring about the advancement of experiences for ethnic minorities in Britain. However, at the same time as advocating for such social change, the Government had just initiated the 1962 Commonwealth Immigrants Act.

The Act ultimately was a restriction on the migration of Commonwealth citizens. The Act streamlined the ability of migrating by only permitting entry to those who had work permits. Though seemingly neutral, such a requirement had a

[35] Crenshaw (n 28) 1366.

clear disproportionate effect on non-white individuals wishing to migrate. The Act was initiated and passed by the Conservative Government then ratified by the succeeding Labour Government in 1964. It has been justifiably argued that the Conservative Party's decision to introduce such legislation and the Labour Party's decision to keep such immigration controls operative was motivated by their want to appeal and appease to the white working-class voter that were threatened by and in clear contention with the growing presence of black and other ethnic minority immigrants in the country.[36]

Such an Act clearly sets a tone for of a hostile environment, in which non-white individuals are made to feel unwelcomed and as second-class citizens, and thus almost validating and enshrining racial discrimination into law, in the way that it encourages the questioning of the statuses and positions of 'un-deserving immigrants'. Furthermore, such legislation creates a xenophobic precedent of thought of allowing and encouraging the questioning of non-white individual's presence in Britain generally, behind the façade of neutrality. As Andrew Geddes noted, 'the coupling of immigration controls with race relation legislation suggested that the authorities assumed that a numerical limit on immigration would improve race relations. Thus, such a connection characterised immigration as a problem and, by extension, also the immigrant's themselves'.[37]

Such strict and discriminatory immigration legislation is in clear juxtaposition with the ethos behind the Race Relations Act, which almost presents a counterintuitive stance that the law takes on race relations. Through this we can see how although law can be a tool that when mobilised can produce social change, the legal landscape that it sits in can itself ultimately be a hindrance to the effectiveness of the change brought about by that mobilisation.

Furthermore, although one could argue that such legislation sought to and achieves the appeasement of two juxtaposed sectors of society and thus, they

[36] Benjamin (n 3).
[37] Simon Peplow, 'The 'Linchpin for Success'? The problematic establishment of the 1965 Race Relations Act and its Conciliation Board' [2017] Contemporary British History 430.

balance each other out, the weakness to such argument is found through the political agenda of the legislation.

Soskice who introduced the Bill into Parliament himself termed the Act to be part of a 'package deal',[38] which insinuated that the instruction of this Act would therefore allow the Government to pass harsher immigration legislation without coming across as overly hostile. Furthermore, it has been argued that legislation, such as the Race Relations Act, that appears to attempt to tackle and denounce racial discrimination would make increased immigration restrictions more widely accepted, whilst also projecting the image that such restrictions are not to do with race.[39] Furthermore, Geddes also suggested that there was an arranged bipartisan agreement necessitating the need for immigration to be controlled, initiated by Labour 'in order to diminish its electoral significance and 'depoliticise race issues".[40] Ira Katznelson similarly stated how the enactment of the Act marked 'the third phase of this two-party consensus on race,' [41] which Douglas Ashford claimed to represent the bipartisan agreement 'to do little or nothing' with racial discrimination.[42]

Such a political agenda undermines the sincerity and authenticity of the social change, which in turn weakens its reliability when there is more genuine state backing for the counteractive immigration legislation. Therefore, it is arguable that CARD was advocating for reform in something that even when such reform took place, it would not be able to overcome the explicitly discriminatory and prioritised laws already in place and to come. Such a context clearly stunts the ability for CARD's mobilisation for the Act and its modification to bring about sufficient and significant social change.

Such an observation links to the issues of using rights discourse, in that in reality rights are hard to rely on. After lobbying for the initial amendments of the

[38] ibid.
[39] ibid.
[40] ibid.
[41] ibid.
[42] ibid.

Act, CARD criticised it for its narrow scope of civil rights that it protected, namely on the protection in 'public spheres'.[43] However, I argue further in saying that the effectiveness of such an Act both in its substance and form, were also limited due to the fact that it relies on rights. To argue this, I will be exploring Critical Legal Theory's ('CLT') critique on the use of rights, particularly in a context such as racial injustice, in order to establish that mobilising the law by lobbying for legislative change in the form of rights is arguably largely un-advantageous, which is evidenced in its overriding direct effects.

Rights Discourse

CLT has established that although mobilising to extend legal rights might have beneficial indirect effects, ultimately, they have overriding direct effects of legitimising the inequality and oppression that the rights were attempting to ameliorate. CLT put this down to a multitude of reasons, but particularly as they understand rights as 'inherently unstable, contingent, and manipulable'.[44] By this they ultimately argue that rights are conceptualised as whatever those with power say they are, therefore when individuals seek to rely on and create them for protection, they are ultimately re-creating and reinforcing the conditions oppressing them.[45]

CLT notes how the 'use of legal rights impedes advances by progressive social forces by allowing the state to define a movement's goals'.[46] The reason why this is problematic is that the state is never going to craft and extend rights in a way that could radically disrupt the structure and order of society, which ultimately would be necessary to see substantial and meaningful change and advancement.[47] This, I argue is based on an almost Hobbesian understanding of humans, who are only concerned with protecting their security and property, and therefore rights reinforce such alienating characteristics. CLT argue that rights encourage and validate such characteristics as they force individuals to

[43] Benjamin (n 3).
[44] S. R. Levitsky, 'Law and Social Movements: Old Debates and New Directions', in Sarat and Ewick, *The Handbook of Law and Society*, 2015 383-384.
[45] ibid.
[46] ibid.
[47] ibid.

look at themselves and others as 'isolated rights-bearers'.[48] as opposed to members of a community, thus making 'it impossible for us even to imagine what a non-hierarchical society founded on cooperation and love would look like'.[49]

Therefore, CLT is particularly driven for the 'demystification'[50] of rights to break away social movement's dependency on them, which Richard Delgado notes is already apparent for minority groups who have a foundational distrust in law due to the way, "society has provided us with more than adequate tutelage". Delgado argues, minorities know the weakness of using rights as a shield, particularly as they are generally dictated by those in power wanting to maintain their power.[51] In light of this Alan Freeman argues that the legal reforms born out of the civil rights movement, which CARD drew much inspiration from, were severely limited by the constraints embedded in relying on the law due to it being dictated by "needs basic to the preservation of the class structure",[52] which Freeman argues were 'simultaneously repositories of racial domination and obstacles to the fundamental reordering of society'[53] which is indicative of why CARD's initial lobbying attempts to widen the proposed scope of the Act, purely based on inside lobbying, were overlooked.

This argument can explicitly be seen in the application of the legislation that CARD was lobbying for. Gavin Schaffer noted that Section 6 of the Race Relations Act, which established the right to not be subjected to racial hatred, saw a number of examples of attempted prosecutions asserting Section 6 against black activities, and in fact the pursuance of Section 6 was used against such activists more readily than their white counterparts[54] For example, Michael Abdul Malik (Michael X), the Black Power leader and four members of the Universal Coloured People's Association were tried under Section 6 for

[48] McCrudden (n 31) 358.
[49] ibid.
[50] Levitsky (n 42).
[51] ibid.
[52] Crenshaw (n 28) 1352.
[53] ibid.
[54] Gavin Schaffer, 'Legislating against Hatred: Meaning and Motive in Section Six of the Race Relations Act of 1965' [2014] 25 Twentieth Century British History, 251.

allegedly 'stirring up racial hatred against white people'.[55] The ultimate effects of such usage was the prosecution of black Britons, thus ultimately allowed racism to continue through a 'new language of racism'[56] as opposed to ensuring their protection which was the motivating factor for CARD lobbying such legislation. Such an example not only demonstrates the un-genuine motivation behind such legislation as already mentioned, but it also goes to highlight that those with power will formulate rights in a way that does not threaten their power or threaten to disrupt the hierarchies and power structures in society generally, which is indicative of the fact that such legislation was proposed and therefore lobbied by movements such as CARD with the aim of eradicating racial discrimination in Britain, yet in practice it is being used for the complete opposite and arguably ultimately allowed the enshrining of the maintenance of racial oppression into law.

Furthermore, as Joel Handler notes, another issue with the reliance on rights is that 'in practice, their rights are not fulfilled because enforcement relies too much on the complaining client' [57] and on complaints in areas such as employment, what Handler notes as the 'bureaucratic contingency' 'would present an insuperable obstacle in battling employment discrimination. It would be impossible for the victims of discrimination to challenge a significant number of employment decisions'.[58] Handler notes this in recognition of the fact that although the rights might be there, particularly when it is a civil right against racial discrimination, in order for one to rely on them, one must prove the racial discrimination, which is a difficult task particularly when the perpetrator has not explicitly but implicitly discriminated, which can often have a façade of neutrality despite being racially charged,[59] which again highlights the law's limitations to effect sufficient social change in such a context.

[55] ibid.
[56] ibid.
[57] Joel F. Handler, *Social Movements and the Legal System: Theory of Law Reform and Social Change* (AP 1978) 10.
[58] Ibid 145.
[59] Crenshaw (n 28) 1352.

Ultimately, as Kimberli Williams Crenshaw states, in line with CLT's argument, 'If law functions to reinforce a world view that things should be the way they are, then law cannot provide an effective means to challenge the present order'. Therefore, I argue that law is a tool for maintenance and reinforcement and cannot be relied on for radical change, particularly in contexts of civil rights that require the dismantling of the very avenues that largely go against the interests of the legislators and those in power, hence why law is a tool of maintenance.

Therefore, as Domingo and O'Neil note, to effectively use law and, in particular, rights requires the mindset of what he notes as a 'practitioner of rights'[60] namely someone who is 'something of a game-player, particularly skilled in the law, but keenly aware of its limitations and the social conditions necessary for its effective deployment'.[61]

Habermas

Furthermore, as Habermas notes, there is something paradoxical with the use of law, as the law both protects and restricts individual autonomy and rights. Before exploring such an argument, it is important to briefly establish the framework and context in which Habermas establishes this augment. Habermas builds on Luhmann's systems theory, which I will be discussing later, and makes a distinction between what he calls the 'lifeworld' and systems. The lifeworld refers to the spheres of communication affecting all areas of life, it incorporates all aspects of everyday life, including family life, culture, and informal social interactions.[62] Whereas the systems simply refer to the systems/operations of sectors such as the economic and political sectors.

The law relates to this as it operates as a medium between the systems as well as the life world. Habermas states that through the use of law there has been the colonisation of the lifeworld.[63] When Habermas argues this, he refers to the

[60] Pilar Domingo and Tam O'Neil. "The politics of legal empowerment Legal mobilisation strategies and implications for development." (2014) 53.
[61] ibid.
[62] S. L. Roach Anleu, 'Contemporary Social Theory and Law' *Law and Social Change*, (SAGE 2010).
[63] ibid.

concept of 'Juridification', namely the process in which there are tendencies towards increasing regulation of the lifeworld through law.[64] Habermas then deems this as the colonisation of the lifeworld due to the codification in law of the insurance of protection and rights as well as the offer of 'protection to citizens against the inhumane effects of the capitalist market and provide such rights and freedoms'.[65]

Habermas is critical of this as he sees the involvement of the law and state as paradoxical. Although he notes the benefits and a sense of security that having state and law there to protect you, thus making you and your position stronger, but as mentioned at the same time Habermas argues that with this comes a restriction of individual autonomy due to a reliance on the state of protection. This is problematic as the more this 'colonisation' interferes with the lifeworld, individuals become more dependent for having to go to the state for protection. Therefore, ultimately this protection and interference comes with a cost, namely autonomy.[66]

The reason this is so problematic in contexts when one is increasingly relying on the state to protect their civil rights, is that firstly, as already established, such legislation is almost always not drafted to sincerely be in their favour, which is also backed by a state that is not going to interpret and apply such legislation in a way that could threaten their position in society, and such ways are usually necessary to bring around sufficient social change. Therefore, in this sense I argue that for groups such as CARD, the want for legislative change and protection in the form of rights is almost a 'trap' as they are looking to rely on arguably baseless rights that at the same time restrict them from acting on alternative methods.

Luhmann

[64] J. Habermas, *The Theory of Communicative Action, Vol. 2* (Boston: Beacon Press, 1987) 359.
[65] ibid.
[66] ibid.

The final way that I address the limitations of mobilising the law to effect social change is through looking at an aspect of Luhmann's qualms with the use of the law and thus its limitations, specifically through looking at the systems theory.

The systems theory, amongst other things, notes an almost incompatibility of languages between the systems and the lifeworld, and therefore the laws interjection as a mediator between these systems, which ultimately keeps society together.[67] This is where Luhmnan notes an important issue that is particularly relevant for establishing the law's limited ability to be mobilised to facilitate change.

Luhmann notes that the legal system itself has an even more distinct logic from the other systems, and therefore during its roles as a mediator it has to translate other systems into legal terms, ideas and logic to be able to comprehend them, which as Luhmann argues, turn them into entirely something else. The issue with this is that with all the systems it interacts with, the law makes an incorrect alternative reality based on its own logic, and therefore fails to facilitate the improvement, advancement and change of society.[68] Ultimately 'Law cannot deal directly with economic policy, medical dilemmas, moral values, political philosophy or family life, but it produces parallel legal communications on all these issues and through this production nonlegal issues are transposed into legal questions and communicated as lawful/unlawful or legal/illegal'.[69]

This is also a point raised by Mark Tushnet who notes that, specifically with rights, 'the language of rights undermines efforts to change things by absorbing real demands, experiences, and concerns into a vacuous and indeterminate real confrontations and real circumstances'.[70] He argues that through the use of rights discourse, the integral objectives change and are then constrained to

[67] ibid.
[68] Niklas Luhmann , "Systemtheorie, Evolutionstheorie und Kommunikationstheorie", in: *Soziologische Gids* (1975) 154–168.
[69] Anleu (n 60).
[70] Crenshaw (n 28) 1353.

the ideological limitations of the law.[71] Therefore, he argues that '"[i]f we treated experiences of solidarity and individuality as directly relevant to our political discussions, instead of passing them through the filter of the language of rights, we would be in a better position to address the political issues on the appropriate level".[72]

The reason I argue the relevance of can be seen when we look to CARD's mobilisation of law. Through this it is clear that the original aims of CARD, namely for the eradication of racial discrimination, were somewhat lost through their mobilisation which ultimately did not necessarily reflect nor achieve their original aim, highlighted by the tight scope and unintended application. Therefore, in light of Luhmann's observations I argue that simply because legislation has been enacted to outlaw discrimination through rights, does not equate to the eradication of racism, particularly as the law is unable to grasp and reflect the moral, political and economic intersecting factors that need addressing to do so. This is a sentiment also held by Angela Davis, who notes that:

> 'The civil rights movement was successful in achieving the legal eradication of racism and dismantling segregation, but the eradication of the legal apparatus is not equivalent to the abolition of racism. Racism persists in a framework more expansive than the legal framework'.[73]

Therefore, ultimately to rely on rights, as CARD did through lobbying for legislative change in the form of civil rights, is clearly not the most advantageous avenue to effect social change for social movements, particularly when concerned with matters of racial discrimination that inhibit moral questions that the law is unable to grasp and thus unable to attend to appropriately nor adequately. Clear evidence to support this failure on the law's inability to enact the radical social change needed on such matters can be seen

[71] ibid.
[72] ibid.
[73] A. Davis and F. Barat 'Ferguson Reminds Us of the Importance of a Global Context', *Freedom is a Constant Struggle: Ferguson, Palestine and the Foundations of a Movement*, (Haymarket Books 2016) 16.

in the fact that although the Act was repealed and covered by the Equality Act 2010 which aims to deal with the discrimination addressed in Race Relations Act and more, contrary to the UK Government's findings, the Runnymede Trust confirmed that the UK is still systemically racist, if not more so in comparison to when the Race Relations Act was enacted , particularly in the areas that the Race Relations and now Equality Act claim to deal with, such as employment and housing.[74] This therefore indicates that the law is not the best place to deal with such issues due to the incompatibilities of what the 'lifeworld' needs and what the law can offer.

Overall, I argue that the efficiency to mobilise law to effect social change centrally depends on who is enacting such mobilisation and what it is for. Furthermore, I argue that the extent of its effectiveness is also dependent on what it is being depended on for and if their efficacy is being judged based on the direct or indirect effects of legal mobilisation. As the case study of CARD has demonstrated, that for social movements advocating for legislative change on issues such as racial injustice, the use of the law is arguably a 'necessary evil' in that such groups have limited alternatives other than dependence on the law, however what they should limit their dependency to is the advantageous indirect effects of legal mobilisation to bring about social change.

Therefore, as Domingo and O'Neil note in line with Levinsky, the law's 'usefulness',

> 'Depends not just on their normative content – which is in any case indeterminate at best – but also on the position of the actor deploying them, his linkages with other individuals and groups in the social system in which he is embedded and his capacity to form alliances across a range of social groups and institutions'.[75]

[74] Bridget Byrne, Claire E. Alexander, *Ethnicity and Race in the UK: State of the Nation* (Policy Press 2020).
[75] Domingo (n 58).

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