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# TOWARD THE NEXT GENERATION OF GALANTER-INFLUENCED SCHOLARS: THE INFLUENTIAL REACH OF A LAW-AND-SOCIETY FOUNDER

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To say that Professor Marc Galanter's scholarship is diverse would be a woeful understatement. In his over forty years of writing, Galanter's work has covered topics including (but not limited to) torts, contracts, constitutional law, comparative law, empirical legal studies, the legal profession, legal anthropology, and South Asian studies. As if this breadth were not overwhelming enough, more impressive is the extent to which Galanter's work has delved deep into the subjects he studies—frequently uncovering findings that prove to be both significant and long-lasting in the various fields of his focus. Whether it is his research on the “vanishing” number of trials in the American judiciary, his assessment of the status of lawyers in professional and popular cultures,<sup>2</sup> his opus on affirmative action in India,<sup>3</sup> or his classic *Haves* article that documents why certain groups prevail over others in a given legal system,<sup>4</sup> Galanter's contributions are known worldwide and by scholars from so many different intellectual backgrounds.

With Galanter's scholarship so heavily cited and respected, we see it as only fitting, particularly upon his recently turning seventy-five, to acknowledge his achievements in a symposium that reflects back on the years of his work. Yet we hasten to say that this collection of articles is *not* purely a festschrift, in that

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\*\* Malcolm Pitman Sharp Hilldale Professor and Theodore W. Brazeau Professor of Law, University of Wisconsin, Madison. For all of their efforts in making this symposium come to fruition, the authors would like to express deep thanks to Paul Carrington, Mitu Gulati, and Joan Magat.

1. Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIRICAL & LEGAL STUD. 459 (2004).

2. MARC GALANTER, LOWERING THE BAR: LAWYER JOKES AND LEGAL CULTURE (2005).

3. MARC GALANTER, COMPETING EQUALITIES: LAW AND THE BACKWARD CLASSES IN INDIA (1984).

4. A symposium on Galanter's *Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95 (1974) (hereinafter *Haves*), was held at the Wisconsin Law School in 1998, and the papers from that conference were published in the thirty-third volume of LAW & SOC'Y REVIEW (1999). Although this essay deserves special attention, it is but a small part of Professor Galanter's total contribution. For this reason, we propose now to look critically at the entire picture. In addition, a selection of these papers, together with others, appears in HERBERT M. KRITZER & SUSAN SILBEY, IN LITIGATION: DO THE “HAVES” STILL COME OUT AHEAD? (Stanford Univ. Press 2003), which also contains a bibliographic essay by Brian J. Glenn, tracking work that extends the ideas in the original *Haves* article. *Id.* at 371.

the purpose of our contributors is not simply to laud Galanter's achievements. Rather, in the vein of Galanter's own careful scholarship, our authors provide a set of rigorous, analytically sharp, and empirical papers, which cover a range of disciplines: law, sociology, political science, anthropology, history, and philosophy. The works embody Galanter's long-held belief that the law can be an instrument for both elites and grassroots activists in effecting social change.

The symposium contributors also share another connection. Each views her- or himself to be a student of Galanter's. Some of these students have been directly mentored by Galanter while at the University of Wisconsin-Madison and have since gone on to academic posts at other institutions. Others are more "distance students" who have been influenced either while studying elsewhere or while working as academics at different universities. The common link, though, is that this cohort is part of the next generation of Galanter-influenced scholars who will be carrying on the lessons of Galanter's vast scholarship for decades to come.

To that end, our contributors' articles are as wide-ranging as Galanter's own work. Anne Bloom begins our symposium by examining how Galanter's research during the early 1980s on the "style"<sup>5</sup> of lawyers' practice has influenced her own scholarship on the decisionmaking strategies of litigating workers' rights claims. Using Galanter's concepts of "mega-lawyering"<sup>6</sup> and "ordinary lawyering,"<sup>7</sup> Bloom interestingly shows that lawyers who adopt the latter approach tend to be more effective advocates for their clients, as well as for larger political causes they may seek to pursue.<sup>8</sup>

Elizabeth Chambliss' article flows nicely from Bloom's contribution. For Chambliss, as for Bloom, Galanter's contributions are significant because they challenge myths that often stereotype how law and lawyers are depicted in public-policy debates.<sup>9</sup> Chambliss explains that whereas legal empiricism has been the buzz among legal academics in recent years, Galanter was, in fact, one of the early pioneers of the empirical legal studies movement, constantly urging his colleagues then (and now) to let evidence and facts—rather than false perceptions—guide our inquiry into socio-legal issues.<sup>10</sup>

Charles Epp provides the third article in our symposium. Epp, an award-winning political scientist,<sup>11</sup> draws on Galanter's well-known *Haves* article,<sup>12</sup> his

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5. Marc Galanter, *Megalaw: An American Invention*, 3 HUMAN. 16 (1982); Marc Galanter, *Mega-Law and Mega-Lawyering in the Contemporary United States*, in THE SOCIOLOGY OF THE PROFESSIONS: LAWYERS, DOCTORS AND OTHERS 152 (Robert Dingwall & Phillip Lewis eds., 1983).

6. *Id.*

7. *Id.*

8. Anne Bloom, *Practice Style and Successful Legal Mobilization*, 71 LAW & CONTEMP. PROBS. 1 (Spring 2008).

9. Elizabeth Chambliss, *When Do Facts Persuade? Some Thoughts on the Market for "Empirical Legal Studies"*, 71 LAW & CONTEMP. PROBS. 17 (Spring 2008).

10. *Id.*

11. His book, THE RIGHTS REVOLUTION, received the American Political Science Association's Corwin Award for the best book in law and courts literature for 1998.

“equally famous”<sup>13</sup> research on why the American litigation explosion is a myth,<sup>14</sup> and a lesser-known work that discusses how unclear rulings and messages from courts often take on different interpretations by subsequent disputants.<sup>15</sup> As Epp skillfully shows, lessons from these studies directly apply to his analysis of how actors within administrative agencies in the United States perceive (1) their roles vis-à-vis the communities they are affecting, (2) the likelihood that their agencies will be sued by members of the public, and (3) how broadly they should be constructing rights-based policies.<sup>16</sup>

Elizabeth Hoffmann’s piece connects well with the first three contributions. Like Epp, Hoffmann is interested in organizational dynamics; like Bloom, Hoffmann focuses on workplace disputes and approaches Chambliss’ study from an empirical perspective.<sup>17</sup> Employing a socio-anthropological methodology and relying on honed interview data she collected on visits to three different employment sites, Hoffmann lucidly illustrates how, as Galanter’s long-sustained argument reveals, power differentials among workers in her case studies affect whether and to what degree workers will pursue filing grievances when they have been wronged.

Margo Schlanger, next, also offers an engaging empirical assessment of what she calls “jail strip-search litigation.”<sup>18</sup> Relying on Galanter’s scholarship regarding the importance of considering the various actors in the litigation process,<sup>19</sup> Schlanger demonstrates that whereas “differences among participants [in jail strip-search cases] do not demonstrably correspond to differences among case outcomes, they matter nonetheless to other aspects of litigation and legal change.”<sup>20</sup> Her conclusion thus confirms Galanter’s long-held view about always needing to emphasize both process and culture in socio-legal analysis.

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12. See Galanter, *Why the “Haves” Come Out Ahead*, *supra* note 4.

13. See Charles Epp, *Implementing the Rights Revolution: Repeat Players and the Interpretation of Diffuse Legal Messages*, 71 *LAW & CONTEMP. PROBS.* 41 (Spring 2008).

14. The piece Epp refers to here is Marc Galanter, *Reading the Landscape of Disputes: What We Know and Don’t Know (and Think We Know) About Our Allegedly Contentious and Litigious Society*, 31 *UCLA L. REV.* 4, 33 (1983).

15. See Marc Galanter, *The Radiating Effects on Courts*, in *EMPIRICAL THEORIES ABOUT COURTS* 117 (Keith Boyum & Lynn Mather eds., 1983).

16. See Epp, *supra* note 13.

17. Elizabeth Hoffmann, *The “Haves” and “Have-Nots” Within the Organization*, 71 *LAW & CONTEMP. PROBS.* 53 (Spring 2008).

18. Margo Schlanger, *Jail Strip-Search Cases: Patterns and Participants*, *LAW & CONTEMP. PROBS.* 65, 66 (Spring 2008).

19. See Galanter, *The Radiating Effects on Courts*, *supra* note 15; Marc Galanter, *Case Congregations and Their Careers*, 24 *LAW & SOC’Y REV.* 371 (1990); Marc Galanter, *The Life and Times of the Big Six; Or, the Federal Courts Since the Good Old Days*, 1988 *WIS. L. REV.* 921 (1988); Marc Galanter, *Conceptualizing Legal Change and Its Effect: A Comment on George Priest’s “Measuring Legal Change,”* 3 *J. L. ECON. & ORG.* 235 (1987); Galanter, *Why the “Haves” Come Out Ahead*, *supra* note 4.

20. See Schlanger, *supra* note 18, at 88.

The first half of the symposium is then rounded out by a rich contribution from one of the leading jurisprudential scholars in the world, Brian Tamanaha.<sup>21</sup> Writing along the lines of his expertise, Tamanaha explains that, for him, the significance of Galanter's work stems from the overarching theory it possesses, particularly in terms of how law is a complex social phenomenon.<sup>22</sup> According to Tamanaha, what often gets overlooked is how Galanter's scholarship theoretically identifies the influences on official legal systems from participating players, including lawyers, judges, litigants, juries, and the like; how Galanter recognizes that within civil society important legal-like relationships emerge and are often contested; and how, ultimately, official legal systems and societal players constantly interact and help shape one another.<sup>23</sup>

Tamanaha's article is an apt segue into the second half of the symposium, which deals with Galanter's theoretical and empirical law-and-society contributions outside of the American context—specifically in India. Many scholars who are familiar with Galanter's work on the United States are frequently surprised to learn that he began his career—and continues to write—as an “Indian-ist.” Indeed, Galanter recounts that his famous *Haves* article was based on his experiences observing the workings of civil-rights legislation in India, and since that 1974 piece he has gone on to write some of the most pivotal work on Indian law in modern times.<sup>24</sup>

Donald Davis, a Hindu-law scholar, recognizes these accomplishments in his article *Before Virtue: Halakhah, Dharmasastra, and What Law Can Create*.<sup>25</sup> Davis notes that he was inspired, as a result of Galanter's influence, to compare how religious law from Hinduism and Judaism—the latter being another of Galanter's interests—discuss the intricacies of the human condition. Davis provides an enlightening, comparative religious and legal analysis of how these two traditions are relevant in the “creation of democratic citizens—people who are aware of the ‘internal goods’ of law and other human institutions, who participate in their practice, and who have, therefore, earned the right to criticize them when necessary.”<sup>26</sup>

Laura Jenkins, too, focuses on Galanter's work on religion in India,<sup>27</sup> namely as it relates to the issue of caste conversion.<sup>28</sup> Drawing on several of Galanter's

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21. See Brian Z. Tamanaha, *A Holistic Tradition of the Socio-Legal Terrain*, LAW & CONTEMP. PROBS. 89 (Spring 2008).

22. *Id.*

23. *Id.*

24. See Marc Galanter, Comment, *Farther Along*, 33 LAW & SOC'Y REV. 1113 (1999).

25. See Donald D. Davis, *Before Virtue: Halakhah, Dharmasastra, and What Law Can Create*, LAW & CONTEMP. PROBS. 99 (Spring 2008).

26. *Id.*

27. For the work of specific focus here, see GALANTER, *supra* note 3. See also MARC GALANTER, *LAW AND SOCIETY IN MODERN INDIA* (1989); Marc Galanter & Jayanth Krishnan, *Personal Law and Human Rights in India and Israel*, 34 ISR. L. REV. 101 (2000).

28. See Laura D. Jenkins, *Legal Limits on Religious Conversion in India*, LAW & CONTEMP. PROBS. 109 (Spring 2008).

treatises,<sup>29</sup> Jenkins describes a number of laws in India that prohibit or restrict the ability of an individual to convert from one religion to another.<sup>30</sup> As she argues, such statutes (which are regularly upheld by courts) come into deep conflict with individual autonomy as well as the Indian constitution's guarantee of freedom of religion.<sup>31</sup> Tapping into Galanter's past contributions, Jenkins' study illustrates the hierarchical rigidity, but also the fluid nature, of caste and religious identity in India.

Jenkins' piece is then buttressed by Robert Moog's discussion of legal institutions and legal actors in India.<sup>32</sup> Moog, who is a lawyer and political scientist, has been one of the leading empiricists on India's legal system for the last twenty years. He describes his research agenda on the Indian courts (both regular and alternative dispute models), as well as on the Indian legal profession, as having been indelibly affected by Galanter's groundbreaking study of these topics dating back to the 1950s.<sup>33</sup> Moog's article thus provides a state of affairs of sorts, in that it situates where the Indian legal process currently stands in terms of providing access to justice to ordinary Indians as well as how it must cope with the ever-changing global economy and the demands made by international investors and those engaging in activities such as outsourcing.<sup>34</sup>

The last two articles, by Mitra Sharafi and John Lande, respectively, serve as a nice set of closing remarks on this symposium. Sharafi adroitly concentrates on Galanter's contributions to the legal pluralism debates of the 1980s.<sup>35</sup> During this time, a wave of works championed the significance of nonstate law in how individuals and societies operate. But according to Sharafi, Galanter remained cautious about too strongly embracing this perspective.<sup>36</sup> Galanter's reservations were based on a belief that the propping-up of binary choices by academics—for example, privileging indigenous law over state law, or vice versa—created a false framework for understanding how law and society truly connect and interact.<sup>37</sup> Although Galanter's arguments during the early period of the legal pluralism era often fell on deaf ears, Sharafi explains that in subsequent years the academic literature rightly recognized the value of what Galanter had originally said.

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29. See sources cited *supra* note 27.

30. Jenkins, *supra* note 28.

31. *Id.*

32. Robert Moog, *The Study of Law and India's Society: The Galanter Factor*, LAW & CONTEMP. PROBS. 129 (Spring 2008).

33. *Id.*

34. *Id.*

35. Mitra Sharafi, *Justice in Many Rooms Since Galanter: De-Romanticizing Legal Pluralism*, LAW & CONTEMP. PROBS. 139 (Spring 2008).

36. *Id.*

37. *Id.*

The final article, written by John Lande,<sup>38</sup> highlights the various works of his former teacher at Wisconsin, but gives special focus to a 1990 empirical “gem”<sup>39</sup> Galanter published in the *Law and Society Review*, as well as to Galanter’s most recent book published in 2005.<sup>40</sup> With respect to the former, Lande eloquently explains how Galanter’s article importantly “focuses on [the] ‘congregations’ of cases as the cases interact and the congregations evolve over time,”<sup>41</sup> instead of “on individual cases as the unit of analysis where cases are largely independent of each other.”<sup>42</sup> In terms of the latter, Lande points to Galanter’s book, *Lowering the Bar*, which, while centering on the genesis of lawyer jokes, also contextualizes the comparative and historic roles of lawyers in different societies.<sup>43</sup> Both of Galanter’s works, according to Lande, epitomize Galanter’s talents for challenging “comfortable assumptions of conventional wisdom to produce realistic portraits of the legal world.”<sup>44</sup>

We are, of course, excited about the articles that comprise this symposium. On a personal note, both of us have had special relationships with Marc Galanter over the years. Jayanth Krishnan was Galanter’s student at the University of Wisconsin from 1995–2001—and to this day, he still considers Galanter his foremost intellectual guru. Krishnan has published several pieces with Galanter and credits all that he (Krishnan) knows about the Indian legal process to the direct influence of Galanter’s patient and empathetic mentoring during the past decade.

Stewart Macaulay has been a colleague and close friend of Galanter’s for over fifty years. Macaulay helped bring Galanter to Madison from SUNY-Buffalo in the 1970s; since then, they have written together and served as leaders in what has become the international law-and-society movement. In sum, although we hope you will find the following articles to be as enjoyable as we did, we are certain and delighted that there are many scholars, beyond the stellar group here, who will no doubt continue the legacy of Marc Galanter’s work for decades to come.

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38. John Lande, *An Appreciation of Marc Galanter’s Scholarship*, LAW & CONTEMP. PROBS. 147 (Spring 2008).

39. *Id.*

40. Galanter, *Case Congregations and Their Careers*, *supra* note 19; GALANTER, *LOWERING THE BAR*, *supra* note 2.

41. *See* Lande, *supra* note 38, at 150.

42. *Id.*

43. *Id.*

44. *Id.*