AFTERWORD

MARC GALANTER*

It is of course delightful to read this wide-ranging collection of articles that flatteringly claim to be inspired or influenced by my work. I am grateful to the contributors and to my colleagues Jayanth Krishnan and Stewart Macaulay for organizing this collection. I do see myself reflected in the diversity of topics and approaches. A few years ago, I was invited to give a talk at the University of Denver College of Law and the then-Dean, preparing to introduce me, surprised me by asking what single word I thought best characterized me. Without premeditation, I unhesitatingly replied "eclectic." Years earlier, my friend Steven Beyer, when I wondered about his abrupt switch from Tibetan scholarship to law practice, explained that "some dogs like to dig the same hole over and over; some dogs like to dig a new hole each time." Although I have made a few repeat digs, there have been a fair share of new holes over the years.

Apart from a few side trips to the United Kingdom and to Israel, all of my diggings have been clustered in two regions widely separated in both space and culture: predominantly India at first, then predominantly the United States, and now a mix of both. It is hard to say which is home and which is my diaspora. I suppose that if I can claim a distinctive perspective, it comes from not being too much at home in either. The papers here reflect this dispersion. In India I have looked at the enforcement of civil rights and at compensatory discrimination in favor of historically disadvantaged groups, and generally at the relation of law to ascriptive identities like religion and caste. That led me into work on lawyers and litigation and the relation of informalism to civil justice. In the United States, after a brief excursion into law and religion, I have focused on patterns of litigation; on tort and contract claiming; on lawyers, especially the increasing presence of large law firms and their corporate clients; and on jokes, legends, and other aspects of legal culture. In addition to looking at the use of lawyers and courts and at perceptions of their use, I have occasionally looked at the enterprise of looking at them.

At first glance the Indian and American work may seem to occupy separate compartments. Very little has been explicitly comparative, but as I look back there are common themes—law and social identities, legal pluralism, informal justice, the legal profession, and above all access to justice—and lots of

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* John and Rylla Bosshard Professor Emeritus of Law and South Asian Studies, University of Wisconsin—Madison; Centennial Professor, London School of Economics and Political Science. Email: msgalant@wisc.edu. Examples of the writings referred to may be found at my website: www.marcgalanter.net

subterranean connections, crossovers, and transpositions. The most emblematic and readily identifiable of these is the anticipation of *Why the "Haves" Come Out Ahead* (published in 1974 but originally framed in 1970) in my work on the history and implementation of India's Untouchability Offences Act (1955), a civil-rights statute outlawing discrimination against members of the lowest castes.[1] My passage to India (first in 1957) was also (eventually) a passage outside the perspective and assumptions of my American legal training. My choice of topic, the abolition of untouchability, was inspired by the American civil-rights struggles of the 1950s. Arriving in India with no specific Indianist training, I recall a vague expectation that the result of my research would resemble an Indian version of Morroe Berger's fine *Equality by Statute: Legal Controls Over Group Discrimination*.[2] Dissecting the accomplishments and limitations of the Indian statutes honed a perspective that formed the basis for the "*Haves*" paper, although India is not mentioned in that paper and I don't recall thinking about India at all while I was writing it. I now recognize it as my attempt to extract the unspoken lessons of the Indian case from my encounter with the first wave of American "law and society" literature about litigation. In that literature, I found my Indian intuitions mirrored, enlarged, and refined by pioneering observational research on American institutions, notably Stewart Macaulay's *Law and the Balance of Power* (1966)[3] and the late H. Laurence Ross's *Settled Out of Court* (1970).[4]

I came away from this fusion with the abiding conviction that in spite of the law's aspiration (and pretension) to neutrality and equal treatment, we can never get away from the identity and resources of the parties. As Lynn LoPucki and Walter Weyrauch neatly put it many years later,

> One can no more predict the outcome of a case from the facts and the law than one can predict the outcome of a game of chess from the positions of the pieces and the rules of the game. In either case, one needs to know who is playing.[5]

The traffic moves in both directions. For example, my later Indian work on the legal aftermath of the Bhopal disaster and on Lok Adalats ("informal" auxiliary courts) draws on my long absorption in litigation and informalism in the United States. This back-and-forth movement can expose deep commonalities in the ways that law inspires and disappoints in different settings. In particular it reveals the complex, layered quality of legal systems that contain many sectors beyond doctrine. King Doctrine is a constitutional monarch: he

1. Marc Galanter, *Untouchability and the Law—The Abolition of Disabilities*, ECON. & POL. WEEKLY 131–70 (Jan. 1969), and, slightly revised, in THE UNTOUCHABLES IN CONTEMPORARY INDIA (J. Michael Mahar ed., 1972).

2. MORROE BERGER, EQUALITY BY STATUTE: LEGAL CONTROLS OVER GROUP DISCRIMINATION (1952).

3. STEWART MACAULAY, LAW AND THE BALANCE OF POWER: THE AUTOMOBILE MANUFACTURERS AND THEIR DEALERS (Russell Sage Foundation 1966).

4. H. LAURENCE ROSS, SETTLED OUT OF COURT: THE SOCIAL PROCESS OF INSURANCE CLAIMS ADJUSTMENT (1970).

5. Lynn M. LoPucki & Walter O. Weyrauch, *A Theory of Legal Strategy*, 49 DUKE L.J. 1405, 1472 (2000).

reigns; his habits are influential; but he rules as deputy and herald to the powers in the land.

The legal realm provides exceptionally nutritious soil for illusion, so it is unsurprising that our understanding of law's working is constantly deflected by wishful thinking. Notwithstanding my skepticism, I am recurrently seduced by the notion that law can not only order our affairs, but assist in transforming them closer to our dreams of justice. So I am an adherent of the maxim "be a pessimist of the intellect, an optimist of the will," popularized by Antonio Gramsci.[6] Gramsci, it turns out, had it from the French novelist Romain Rolland, a grand literary figure of the early twentieth century,[7] who in turn reported drawing his inspiration from Indian philosophy (perhaps completing the circle?). For Rolland, penetrating to the truth requires the creative destruction of our illusions. He tells us, "Never do I hesitate to look squarely at the unexpected face that every passing hour unveils to us, and to sacrifice the false images of it formed in advance, however dear they may be."[8]

6. ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS 175 n.75 (Quintin Hoare & Geoffrey N. Smith, trans. and eds. 1971).

7. According to the editors, "Romain Rolland's maxim, 'Pessimism of the intelligence, optimism of the will' was made by Gramsci into something of a programmatic slogan as early as 1919, in the pages of *Ordine Nuovo*." *Id.* at 175 n.75.

8. ROMAIN ROLLAND, JOURNEY WITHIN x (1947).