

A HOLISTIC VISION OF THE SOCIO-LEGAL TERRAIN

BRIAN Z. TAMANAHA*

I

INTRODUCTION

Marc Galanter's oeuvre spans several distinct academic categories, as revealed by the array of contributions to this collection. Although Galanter's research on litigation, courts, and the legal profession, among other subjects, has received high praise and wide recognition, his role as one of the leading socio-legal theorists of this generation is less commonly known. This relative neglect is perhaps explained by the obscurity of theory, but his work in this field is no less important than his celebrated empirical findings. Galanter has produced a consistent, theoretically sophisticated, and empirically informed overarching vision of the socio-legal terrain.

Galanter has not, to my knowledge, explicitly claimed to produce such a vision. His modesty and empirical bent, his recognition of the complexity of social life that constantly eludes our attempts at capture, his contrarian streak—all these characteristics might lead him to resist the suggestion that a single such vision would be viable. Galanter might insist that no particular vision can be exhaustive, and that a limitless variety of different visions constructed for different purposes highlighting different features is possible. He would be hesitant to assert that a vision that fits one situation can apply fully to others; he would remind us that the socio-legal world has no clear boundaries or markers, so each vision is an artificial imposition of the social analyst; and he would be cautious about the durability of any particular vision, since the socio-legal world is in a constant process of complicated and unpredictable flux and since our research purposes and interests change over time. These are legitimate concerns and objections. The vision elucidated here is my projection on Galanter's work, extracted from several major themes that reappear in his writings over four-plus decades. With his indulgence, and subject to his corrections—recognizing that he is far more capable of elucidating his vision than I am—I will tease out the fundamental components of Galanter's socio-legal vision as I see it, because it is illuminating and useful to socio-legal researchers and theorists.

Above all else, Galanter has a thoroughly social view of law: law is a social product—a complex of activities of real people with socially shared and produced, but individually carried out, legal and nonlegal ideas, beliefs, motivations, and purposes. Law is inseparable from and embedded in—an integrated aspect of—social life. Galanter applies this sociological lens to legal actors as well as to nonlegal actors. He looks at how and what people inside and

Copyright © 2008 by Brian Z. Tamanaha.

This Article is also available at <http://law.duke.edu/journals/lcp>.

* Chief Judge Benjamin N. Cardozo Professor of Law, St. John's University School of Law.

outside the official legal system think about law, and he examines their activities in connection with law.

Galanter's socio-legal vision has two central overlapping foci, and he always keeps an eye on each and on their interaction. The first focus is the official state legal system, which he examines from every conceivable angle: who becomes lawyers, how are they trained, how many lawyers are there, what are the circumstances of their work environment, who pays for their services, what do they do, who becomes legislators, how and why do they produce legislation, what is the scope of legislation, what are the effects of legislation, who enforces legal rules, what do they do and how effective are their efforts, who brings legal cases and why, who becomes judges, what kinds of cases do they hear, how efficient and effective are courts, what are the social manifestations and implications of law, how much does law (in all of these different ways) matter? In addition to asking what legal officials and others are doing in all of these contexts, why, and what their effects are, Galanter also focuses on what they are *not doing* (intentionally or otherwise), inquiring into the implications and consequences of their inaction.

These inquiries extend from the official legal system to engage, encompass, and interact with Galanter's second central focus: the social realm of intercourse and regulation. This social realm, in Galanter's vision, is chock full of a plurality of interacting, overlapping, active regulatory systems of every kind—from religious systems, to corporations, to sports leagues, to the family. Like the official legal system, these are socially created and coordinated regulatory systems produced by individuals acting upon shared ideas and beliefs, with particular projects in specific contexts. They have effects and consequences and implications of all kinds for official state legal systems, as well as for the social arena generally.

The relationships between these two centers of focus are various and complex—sometimes conflicting, sometimes complementary, sometimes benign, sometimes cautious engagement, sometimes ships passing in the night. Motivated actors invoke these coexisting systems in various ways for various instrumental and normative reasons, regularly and deliberately pitting one system against another. Changes occur in each, owing to internal and external factors, with each system external to every other, yet with many connections and interrelations. The official legal realm affects and is affected by the multiple regulatory orders in the social realm; the regulatory orders in the social realm affect and are affected by the official legal realm.

The two centers of focus, and their interactions, are evident in three main pieces: *The Modernization of Law* (1966),¹ *Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law* (1981),² and *Law Abounding:*

1. Marc Galanter, *The Modernization of Law*, in MODERNIZATION (Myron Weiner ed., 1966) [hereinafter *Modernization*].

2. Marc Galanter, *Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law*, 19 J. LEGAL PLURALISM 1 (1981) [hereinafter *Justice in Many Rooms*].

Legalisation Around the North Atlantic (1992).³ The key point at the outset, though, is to appreciate how thoroughly social and holistic Galanter's vision of the socio-legal world is.

II

AN EARLY HOLISTIC SKETCH

The Modernization of Law (hereinafter *Modernization*) is likely one of Galanter's least-known publications, written when he was only thirty-four. It is an exemplary work of brevity (twelve printed pages), clarity, erudition, and scope, covering in broad strokes the elements and trajectory of modern law. The essay was written at the height of "modernization theory" and the "political development movement," which was paralleled by a contemporaneous "law and development movement" in legal circles. The 1950s and '60s witnessed an optimistic burst of theorizing and activity by western scholars and consultants aimed at building post-colonial political and legal systems. This enterprise consisted mainly of transplanting western liberal democratic political, legal, and economic models. By the late 1960s and early 1970s, however, these development movements underwent a severe bout of critical self-examination and loss of confidence (coinciding with a loss of funding from formerly supportive institutions) for two basic reasons. It became clear that western models could not easily be transplanted to nonwestern settings. And, equally important, turmoil in the United States relating to civil-rights protests and the Vietnam War led many western scholars to become disenchanted with their own liberal legal systems, prompting questions about whether these systems should be transplanted.⁴ An influential and widely cited article published by Galanter and David Trubek in 1974, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States* (hereinafter *Self-Estrangement*), mounted a sharp critique that exposed the flawed assumptions and failures of this effort.⁵

In *Modernization*, Galanter identified the characteristics of modern law in terms of the western model. Law consists of uniform rules applied equally to all; it emphasizes rights and obligations; it is universalistic; it is bureaucratic and hierarchical; it is rational and instrumental; it is run by trained professionals; it has a monopoly over coercion and resolving disputes; it separates power into legislative, executive, and judicial branches. Galanter attributed the origins of modern law to eighteenth-century Europe, spreading elsewhere thereafter (through imitation, colonization, or other forms of diffusion). He proclaimed that these "developments in Europe and elsewhere should be seen as phases in

3. Marc Galanter, *Law Abounding: Legalisation Around the North Atlantic*, 55 MOD. L. REV. 1 (1992) [hereinafter *Law Abounding*].

4. These events and ideas are explored in Brian Tamanaha, *The Lessons of Law and Development Studies*, 89 AM. J. INT'L L. 470 (1995).

5. David M. Trubek & Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 4 WIS. L. REV. 1062 (1974).

a world-wide transformation to legal systems of this ‘modern’ type. This sort of modernization continues today in both new and old states.”⁶ The set of ideas Galanter articulated at the outset of his piece were typical of modernization theory in its heyday, especially in the suggestion that the world was headed toward some kind of uniformity that conformed to western examples and institutions. One might conclude from this that Galanter early on espoused ideas that he would later come to repudiate in *Self-Estrangement*. But that would be a superficial and erroneous reading of his argument.

After setting out the elements of modern law, Galanter immediately noted that this was only a “model,” a model that was not achieved in its entirety in the West, much less in nonwestern societies, where the process of transformation was taking place “painfully.”⁷ Ever the socio-legal scholar, Galanter injected a strong dose of corrective reality into this picture: “Our model pictures a machinery for the relentless imposition of prevailing central rules and procedures over all that is local and parochial and deviant. But no actual legal system is really so unified, regular, and universalistic.”⁸ Galanter invoked the familiar Realist distinction “between the law on the books and the law in action.”⁹ The actions of legal officials often diverge significantly from the official rules: “[T]he going practice of any legal agency or locality involves local standards and understandings, informal relations, and personal judgments.”¹⁰

Sometimes the official legal system at the local level absorbs local ways of doing things. Sometimes local ways of doing things take on legal forms and styles. These adjustments from both directions result in a degree of uniformity at the local level between the official legal system and circulating social attitudes and practices. But it is also often the case that these systems—their processes as well as their norms—remain distinct and inconsistent, with a large “gap” between the official law, the local law, and popular attitudes. Even when the official legal system strives to absorb local or lived norms and institutions (for example, recognizing religious or customary law), it transforms them in the process, such that the incorporated indigenous law “takes on a new character.”¹¹ What exists is an unruly complex of “legal pluralism” in which various legal and cultural systems exist side by side, sometimes complementary, sometimes conflicting, sometimes acknowledging and incorporating the other (albeit altering them), sometimes ignoring them, and sometimes attempting to stamp the other out.¹²

Official legal systems have a tendency to try and supplant local systems—consistent with the comprehensive and exclusive claims and image projected by

6. Galanter, *Modernization*, *supra* note 1, at 156–57.

7. *Id.* at 157.

8. *Id.*

9. *Id.* at 158.

10. *Id.*

11. Galanter, *Modernization*, *supra* note 1, at 161.

12. *Id.* at 159–61.

the modern law model—but they are never entirely successful in this endeavor. Local ways continue to thrive:

The dissemination of lawyers' law is not wholly a one-way process. But official law is limited and contained by the very conditions of its success. The law on the books does not represent the attitudes and concerns of the local people. The demise of traditional law does not automatically bring the demise of traditional society. People learn to manipulate it for their purposes, to make it express their concerns and serve their ambitions. They devise new patterns of avoidance and evasion of the rules promulgated at the upper reaches of the system. The law in operation is always a compromise between lawyers' law and parochial notions of legality.¹³

In Galanter's vision, official legal systems are rarely able to dictate their terms (and regularly do not even try). The reality on the ground described by Galanter bears little resemblance to the modern law model he articulated at the outset. The center of gravity lies with the regulatory orders circulating in the social realm. Although often impotent or only selectively effective, official legal systems nonetheless have significant consequences for the local normative systems, some of which are unintended and unpredictable:

A modern system breaks the tie of law with the local and group opinion; this can be liberating for the dissenter and the deviant. The individual is freed from the prescriptive usage of the local group; the group itself must now be responsive to norms of a much wider collectivity.¹⁴

Today these ideas will have a familiar cast for socio-legal scholars, who are well versed on legal and normative pluralism and their complex interactions, but in 1966 Galanter articulated these ideas in a mere dozen pages. His holistic, thoroughly social vision of the socio-legal terrain was already evident in this early piece. He articulated the elements of official law, pointed out the disparity between reality and official claims, and showed that the law was affected by and affected a social realm filled with coexisting (often powerful) systems of normative ordering. Galanter was able to envision the messy social existence of law because the first decade of his research focused on law in India, where the complexity he described was evident, although it took a sharp observer and sophisticated theorist to present this jumbled situation in such concise terms. Other socio-legal scholars of the day, especially Lawrence Friedman,¹⁵ explored the socio-legal realm in comparable terms, but in Galanter's work this vision was the central organizing framework of his analysis.

III

THE TWO FOCI AS OFFICIAL LAW AND UNOFFICIAL LAW

Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law (hereinafter *Justice in Many Rooms*),¹⁶ published in 1981, fills out the sketch of

13. *Id.* at 161.

14. *Id.* at 162.

15. See Lawrence M. Friedman, *On Legal Development*, 24 RUTGERS L. REV. 11 (1969); Lawrence M. Friedman, *Legal Culture and Social Development*, 4 LAW & SOC'Y REV. 29 (1969).

16. Galanter, *Justice in Many Rooms*, *supra* note 2.

the socio-legal terrain that Galanter articulated in *Modernization*. His vision of the socio-legal terrain—the two centers of focus, and their interactions—is reflected in the three-part organization of the paper. Part I discusses the official legal system. Part II discusses the many sources of normative ordering that circulate within social arenas alongside the official legal system. Part III plays out several of the lines of interaction between these coexisting systems. In the concluding paragraph of the article, Galanter observes that “[c]ourts (and other official agencies) comprise only one hemisphere of the world of regulating and disputing. To understand them we must learn how they interact with the other normative orderings that pervade social life.”¹⁷

It is impossible to summarize *Justice in Many Rooms*, which is at once theoretically ambitious and empirically fulsome. For the purposes of this article, the key point is to show how the paper advanced Galanter’s vision of the socio-legal terrain. The most obvious advance has already been mentioned: merely by organizing the paper in terms of the two centers of focus (his “hemispheres”) and their interactions, and by producing important insights there from, he demonstrates, through application, the value of this perspective on the socio-legal realm.

Another contribution of *Justice in Many Rooms* to Galanter’s vision is its specification of what should be examined in the social realm. One may urge socio-legal researchers to observe how law operates in society, but this is unhelpfully vague counsel. Society is vast and fuzzy—it encompasses everything and anything. Each study—particularly a comparative study—must fix its attention on something more specific. Galanter suggests that it is useful to focus on “concrete patterns of social ordering to be found in a variety of institutional settings—in universities, sports leagues, housing developments, hospitals, etc.”¹⁸ He labels these sources of ordering “indigenous law.” They do not exhaust the social realm, but they are a useful starting point for the analysis because they produce and enforce norms in ways that are parallel to and interact with official legal systems. Owing to these capacities, they can operate as rivals or barriers to the official law, and in many contexts they are more efficacious than official law in influencing social behavior. Taken in their totality, they constitute a sizable (though not the entire) body of the regulatory ocean that official law swims in as one big fish among many.

The argument in *Justice in Many Rooms* advanced Galanter’s vision of the socio-legal realm in another, more subtle way: by consistently breaking down prevailing assumptions about the primacy of official law. Legal scholars and government officials dominantly focus on official law (what Galanter calls the problem of “legal centralism”),¹⁹ often ignoring the social realm. Galanter’s vision of the socio-legal realm requires that both realms receive attention. A

17. *Id.* at 34.

18. *Id.* at 17–18.

19. Galanter borrows this term from John Griffiths, *What is Legal Pluralism?*, 24 J. LEGAL PLURALISM & UNOFFICIAL L. 1, 3 (1986). An early draft of Griffiths’ article was circulated in 1979.

more balanced view would bring official law down a few pegs and move the social realm up a few pegs. In Part I, Galanter highlights features of law that get scant attention: courts are passive and do not control what is brought to them; most disputes are not solved through legal means; only a small fraction of cases filed are actually heard; courts can be remote, overburdened, and extremely slow; courts can cause disputes; law relies upon cooperation (or a lack of resistance) for the bulk of compliance; and a substantial aspect of the social manifestation of law is about symbols and messages.²⁰ The cumulative effect of these themes is to readjust how one thinks of official legal institutions, reminding the reader of their limitations.

To redress the other half of the imbalance, in Part II Galanter makes a strategic move: he appends the label “law” to the institutionalized regulatory orders circulating in the social realm, thereby bringing attention to them.²¹ Through this relabeling, he is able to invoke the symbolic authority that attaches to the term “law,” immediately achieving a kind of equivalence, at least in standing, between the two realms.²² Galanter’s article, along with John Griffiths’s *What is Legal Pluralism?*,²³ gave a major boost to the notion of legal pluralism, which is virtually taken for granted by socio-legal scholars today.

Another important way this article advanced Galanter’s vision is that, unlike the thrust of his *Modernization* piece, this article is primarily about law in western societies. It is not controversial or threatening to argue that official law is weak in developing societies, and therefore that the social realm has greater sway; the same argument in western settings is more jarring to prevailing assumptions. Galanter was aware of this and left no doubt about the homeward direction of his challenge:

The legal centralist disdain of these lesser orderings is matched by the view that they have been so attenuated by the growth of the state and/or the development of capitalism that their presence is vestigial or confined to backwaters. But indigenous and official ordering may not be mutually exclusive (or historically serial): modern society proliferates both. . . . The survival and proliferation of indigenous law in the contemporary United States is attested by a literature that displays the immense profusion and variety of “semi-autonomous social fields” existing within a single society.²⁴

Galanter also wrote, “I visualize a landscape populated by an uneven tangle of indigenous law. In many settings the norms and controls of indigenous ordering

20. Galanter, *Justice in Many Rooms*, *supra* note 2, at 2–17.

21. *Id.* at 17–18.

22. Although I have elsewhere objected to the analytical confusion created by this application of the label law, I do not doubt its effectiveness for the strategic purpose of combating “legal centralism.” See Brian Tamanaha, *The Folly of the ‘Social Scientific’ Concept of Legal Pluralism*, 20 J. L. & SOC’Y 192 (1993).

23. Griffiths, *What is Legal Pluralism?*, *supra* note 19.

24. Galanter, *Justice in Many Rooms*, *supra* note 2, at 21–22. Galanter borrows this idea from Sally Falk Moore, *Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Object of Study*, 7 L. & SOC’Y REV. 719 (1973).

are palpably there, the official law is remote and its intervention is problematic and transitory.”²⁵

Every socio-legal scholar today will be familiar with these ideas, which Galanter elaborated in a single paper twenty-five years ago. Galanter was not alone at the time in applying this perspective of the socio-legal realm. He generously credits and builds upon the works of others along similar lines, especially John Griffiths and Sally Falk Moore. It was a golden age for socio-legal studies, in which a generation of imaginative researchers, working on a mostly blank slate, strove to articulate theoretical frameworks for understanding law and society from an empirical perspective. In no other single piece of that period was this dual-centered vision of the socio-legal realm, with its complex interrelations, worked out in such clear and elaborate detail (in structure and content) as in *Justice in Many Rooms*. It is a timeless piece that produces insights still capable of shaking assumptions about law.

IV

ANOTHER LOOK AT OFFICIAL LAW

These, then, are basic elements of Galanter’s vision of the socio-legal terrain. But this exploration should not end without a brief mention of the themes in Galanter’s *Law Abounding: Legalisation Around the North Atlantic* (hereinafter *Law Abounding*).²⁶ This piece focuses on the shape, form, and operating reality of official state law in Anglo-American societies in the 1980s and early ‘90s. Although Galanter expended a great deal of effort to bring attention to social regulatory orders and their interaction with official law, his prodigious research has mainly focused on the official legal system.

The essential point here is that when Galanter examines official law, he always does so through a thoroughly social lens. *Law Abounding* details the increase in the numbers of lawyers, changes in who becomes lawyers and in their training, the amount of money per capita spent on legal services, the number of statutes and regulations produced and written decisions issued (counted by pages and volumes), the number and types of cases brought and by whom, the scope of subjects addressed by law, the growth of legal journalism, the views about law among the public, and so forth. His account construes official law as the product of social activities operating in social contexts driven by social factors.

In the course of articulating the various ways in which legal activities have expanded in quantity and reach, Galanter also points out the ways in which various aspects and institutions from the social realm have penetrated law. Alternative-dispute-resolution systems, once external to law and on the periphery, are now standard aspects of law; various groups (like cause-litigation firms and institutes) have formed and operate in strategic relationships with

25. Galanter, *Justice in Many Rooms*, *supra* note 2, at 23.

26. Galanter, *Law Abounding*, *supra* note 3.

legal institutions.²⁷ An especially important shift Galanter identifies—as an aspect of the penetration of the legal by the social—is the reduction of legal autonomy. Legal education and legal decisionmakers no longer focus exclusively on legal rules and principles: policy decisions, economic analysis, contextual considerations, social goals and purposes have all become integrated into law at various levels and locations.²⁸ An arguable consequence of these changes, by virtue of which law is used as an instrument to serve a limitless variety of ends, has been the reduction of law’s certainty and uniformity.

Galanter thus draws a nuanced portrait in which law is in many ways expanding and intensifying its social presence, while in the process losing aspects of its legalistic (rule-based) nature. These are social changes in the character of official law itself, changes that Galanter attributes mainly to social factors: developments in modern capitalism, modern bureaucratic organization, the spread of instrumental rationality, the growth in population, and urbanization, among other social, political, and economic changes. In the final sentence, Galanter cautions that that it is hard to predict what law will look like twenty years hence because “the deep fountains of change are outside it.”²⁹ This is a reminder, once again, that the legal *is* social.

V

CONCLUSION

With these observations, we can return to the modern law model Galanter articulated almost thirty years earlier. His description then still captures what is the model of modern law today. Official legal systems in the West and elsewhere have expanded and developed along certain of the lines suggested by the model, expanding and differentiating their institutional presences in many societies. At the same time, however, official law in many settings has undergone internal changes that move it further away from matching the model. In addition, the gap between official law and reality, and the multiplicity of regulatory orders circulating in society, remain resilient in all legal settings. Galanter’s insistence that we must take seriously the image that law projects, while remaining cautiously skeptical about the social reality of law, is as timely as ever. And Galanter continues to be the leading guide and exemplar for how to approach and understand the socio-legal realm in these terms.

27. *Id.* at 11–13.

28. *Id.* at 17–22.

29. *Id.* at 24.