

Introduction: A Celebration of the Thought of Marc Galanter - 18th Annual Clifford Symposium on Tort Law and Social Policy

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INTRODUCTION

*Stephan Landsman**

Professor Marc Galanter has, since the 1960s, been one of the most insightful and influential analysts of America's civil justice system. Harnessing the power of social science, he has cast new light on a wide range of topics. He has debunked the "litigation explosion" myth, explored the nuances of access to justice, charted the shifting tides of the legal profession's development, weighed the import of the "vanishing trial," and repeatedly cast a scholarly eye on the shibboleths surrounding our legal system. In more than a half dozen books and literally hundreds of speeches and articles, he has analyzed and dissected our adjudicatory processes and what we say about them. He has made us laugh at lawyer jokes and shown us the heart of darkness in which the "haves" almost always come out ahead. Marc has also been our wise and knowing guide to legal India. He is a towering scholar with a twinkle in his eye.

Nicolai Gogol was, perhaps, the first great author of the flowering of Russian prose in the nineteenth century. His short stories, most particularly *The Overcoat*,¹ stood literary Russia on its ear. Dostoevsky is quoted as having declared: "We all come out from Gogol's 'Overcoat.'"² In just the same way, those of us who have worked on issues to be found under the broad law and society rubric, have all "come out from" under Marc Galanter's capacious "overcoat." No single piece has had greater impact within this community than Marc's *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*.³ It is cited on the first page or two of more than half the articles in this issue. It provides the moral mainspring and compass for the work of those (including myself) who care about equality

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1. NICOLAI V. GOGOL, *THE OVERCOAT AND OTHER TALES OF GOOD AND EVIL* (David Magarshak trans., W.W. Norton & Company, Inc. 1965) (1842).

2. See, e.g., Russell W. Belk, *In the Arms of the Overcoat: On Luxury, Romanticism and Consumer Desire*, in *ROMANCING THE MARKET* 39, 40 (Stephen Brown et al. eds., 1998).

3. Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 *LAW & SOC'Y REV.* 95 (1974).

before the law and the creation of a more truly just society. We are all in Marc's debt for the gift of that wide and splendid mantle.

Marc has worked on so many important civil justice projects that it seems almost churlish to talk about just one. I cannot, however, help myself. Some years ago Marc approached me and suggested that a close examination of court data demonstrated that the trial was "vanishing" from America's courts.⁴ When Marc came to that conclusion, few were talking about it and no one was doing anything about it. Marc changed all that. He got me to persuade the Litigation Section of the American Bar Association to sponsor a conference on the matter. The vanishing trials conference was held in San Francisco in December of 2003 and stood our discourse about civil justice on its ear. Marc's thesis has redefined the way we think about managing the judicial system and has been taken up by an array of scholars, judges, and lawyers. The most important point is not that Marc brought the problem to our attention nor that it poses a profound challenge to justice as we know it. The point I would like to make here is that it is just one of dozens of critical insights Marc has provided us over the years—a magnificent overcoat, indeed!

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