

## **TALKING ABOUT THE LIMITS OF LEGAL CHANGE:** an interview with Marc Galanter<sup>1</sup>// *Marc Galanter*<sup>2</sup>, *Maria Cecília Asperti*<sup>3</sup>, *Daniela Gabbay*<sup>4</sup>, *Natasha Schmitt Caccia Salinas*<sup>5</sup> and *Paulo Eduardo Alves da Silva*<sup>6</sup>

Recognized as one of the central figures of the Law & Society and as one of the first editors of *Law & Society Review*, Marc Galanter is the author of pioneer and internationally recognized studies on the legal system and patterns of litigation (including “Why the haves come out ahead: Speculations on the Limits of Legal Change”, one of the most cited articles in legal literature), lawyers and legal culture, legal institutions and informal regulation, among others. In this interview, Galanter speaks mostly about his academic and professional trajectory, a narrative that is intertwined with the history of the Law & Society movement itself and with some of the most important developments in American academia since the 60s to the present day. The author also talks about the growth of law firms (described in *Tournament of Lawyers*) and cultural perceptions currently surrounding lawyers and the legal profession. He discusses the importance of the studies he developed in India for his work, including the famous “Why the haves come out ahead”, a piece that is still relevant in the current context.

1. We would like to thank Professor Marc Galanter for sharing his thoughts and ideas in this interview. Also, we thank Francisco Carvalho de Brito Cruz e Pedro Henrique Butelli for the transcription of the audio of the interview.

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**FALANDO SOBRE OS LIMITES DAS MUDANÇAS LEGAIS:** uma entrevista com Marc Galanter // *Marc Galanter, Maria Cecília Asperti, Daniela Gabbay, Natasha Schmitt Caccia Salinas e Paulo Eduardo Alves da Silva*

Reconhecido como uma das figuras centrais do movimento *Law & Society* e um dos primeiros editores do *Law & Society Review*, Marc Galanter é autor de estudos pioneiros e de relevância internacionalmente reconhecida sobre o sistema jurídico e padrões de litigiosidade (dentre estes o artigo “Why the haves come out ahead: Speculations on the Limits of Legal Change”, um dos mais citados da literatura jurídica), advocacia e cultura jurídica, instituições jurídicas e regulamentação informal, dentre outros. Nesta entrevista, Galanter fala principalmente sobre sua trajetória acadêmica e profissional, uma narrativa que se confunde com a própria história do movimento *Law & Society* e com alguns dos mais importantes desenvolvimentos da academia norte-americana desde os anos 60 até os dias atuais. O autor fala também sobre sua visão acerca do crescimento das firmas de advocacia (descrita na obra *Tournament of Lawyers*) e da atual percepção cultural em torno dos advogados e da profissão jurídica. Relata a importância dos estudos que desenvolveu na Índia para sua obra, inclusive enquanto inspiração para “Why the haves come out ahead”, bem como sobre a pertinência das reflexões descritas nesse famoso texto no contexto atual.

Can you tell us about your career path and your choices in academia? Would you have done something different?

*The choices look like a rational sequence if you look backwards, but, at the time, of course, I really didn't know exactly what I was going to do. I was in Philosophy after I got my undergraduate degree, and after a while I knew that it wasn't for me. My interest was more in the social side of philosophy, and I never really thought about Law School. At the time, I had no intention of practicing Law, but, when in Law School, I began to think that I wanted to be a labor lawyer, and wanted to represent unions, and so on. I went on to do some interviews, and, then, a very good job came along right at the ACLU (American Civil Liberties Union) in Chicago. I applied for that and they hired me. This was in the middle of my last year in Law School.*

*At that time in the United States, you could be drafted into the Army for 2 years until you were 26 years old. I was a few months short of 26, and I called my draft board and they told me I was going to be called in September. Just at that moment, the Dean of the Law School asked me: "would you like to be a teaching fellow?". Teaching fellows taught legal writing to the first year students, and there was a vacancy. He didn't mind that I might be drafted in approximately 2 months, but I thought that it wouldn't be fair with the Civil Liberties Union to leave for the Law School. So, I gave up this job for the fellowship at the Law School.*

*I didn't get drafted, so, I had this "gift" of 2 years. I had been in school, then, for 8 years straight, so I thought about what should I do. I had never been anywhere outside the US other than Canada, and I was very fascinated about India. I applied for a Fulbright Scholarship to India and I got it! I went to India the following year and it was a big shock. I was in the University of Delhi attached to the Law Faculty. I had 600 rupees a month, which amounted to about 120 dollars, which was about the salary of an assistant professor. It was a lot of money for a student with no dependents, so I traveled around a bit.*

*I was trying to study the abolition of untouchability. I graduated from law school in 1956, two years after*

*Brown vs. Board of Education, the famous desegregation decision. Civil Rights were very much in the air. It was a very exciting time for lawyers. I was very interested in the Indian system of untouchability and its abolition. I thought must be something like civil rights for African-Americans.*

*I was very excited about this and thinking that it would be like our Civil Rights Laws, which had just been enacted. And, there I was, I had this budget and could go around and talk to people, like reformers, government officials. But it turned out that it was very different: the emphasis was not on civil rights, but in what we later, in America, would call "affirmative action". That didn't exist at the time: affirmative action would start with the Kennedy administration, in the 60's. Only then we would have the notion that, for blacks to be better off, we should do things to help them get educational credentials, jobs, and so forth.*

*In 1947, there was a partition of British India into India and Pakistan, with mostly Hindus in the former, and the latter being almost exclusively Muslims. Among the 300 million Hindus, there were about 50 million untouchables, the lowest caste in the castes system. In your village you could probably tell by what they wore, but, if you went into a city, they looked just the same, it was not like blacks in America. The Indian notion was that they should give these people jobs, so, it was a very different idea than in America. I spent one year studying this.*

*India was so remote from the US, then, but now there are thousands of Indians. It is hard to compare, but, in a full year, I had never called my parents at home. I used air letters, which took about 4 or 5 days to get from India to the United States. What I'm saying is that India, in the 50s, was much more further away than it is now.*

*When I got back, I went to Stanford, which had a small program in the Law School for Indian Government lawyers. I went back and worked for this program in Stanford for a year when one of my old teachers in Chicago told me about a vacancy and I decided to go back to Chicago. I was very happy to be back there, because I had been a student there*

for many years. So I taught social sciences there for a year, and, in the middle of the year, they offered me a 3-year appointment, which I accepted. Eventually, after about 7 years, they gave me tenure (which was really nice). I was in this funny position where I had almost no contact with the Law School.

At that time, in the 1960s, Law & Society movement was just getting started. I knew some of these people and I was kind of interested. They always had their meetings in Chicago, because, in the day before jet planes, almost all big scholarly associations always had their meetings in Chicago.

I had been to a couple of these Law & Society meetings, which piggybacked in bigger meetings such as some political science ones. In 1967, I got married and we went to Hawaii for honeymoon, and they had a conference there.

After it, I ran into Lawrence Friedman. I met him and that was a really important event. He was teaching at the University of Wisconsin, and I was at Chicago. He started telling me about this Law & Society course that he was doing with another person that I knew. When I got back to Chicago, I got on a train and went to see them. They were just putting together a book of readings for this course, and I came home with a big pile of stuff. This redefined me: before, I thought of myself as a political scholar who was working on India. But, then, what I was doing in India, which was different than what everyone else was doing there, was basically a kind of Law & Society sociology. This gave me a label, something to identify with. That reconnection with Friedman was an intellectual turning point for me.

Do you know how he [Lawrence Friedman] came up with this idea?

The Law & Society Association was formed in 1964, in Wisconsin, by a group of people. He was probably one of the most prominent. These ideas were floating around in the 60's, and they were related to some political trends. This was the time of Lyndon Johnson and his great society, and it was a period of the most active social engineering trying to do things for the poor and make the United States more equal. Of course, the 60's were also a

time of a great ferment and acting out, hippies, a great exciting time. Law & Society came in, which was basically a movement of the people in the Law School world, which was part of this wave of reform reflected on Lyndon Johnson. The tragedy of it is that Lyndon Johnson was, in some ways, a really great president who knew how to get things done, he really had good values. He was the one who really brought about civil rights legislation in the United States. The strong civil rights legislation is being challenged just now, by Republicans, in reaction to it.

The tragedy of his involvement in Vietnam, that he got so deep, but couldn't get out, because of his reputation or whatever it was. It was a great tragedy. The Law & Society came into being in this period of ferment and reform, and in its very beginning, the social scientists were the models and the lawyers were trying to learn from the social scientists. Later it changed, in that respect.

One of the prominent people in the association was this man, the first editor of the Law & Society Review, Richard Schwartz. Through him, I ended up editing an issue of the Law & Society Review about India, then, I sort of was asked to make some presentations on a summer school for Law & Society, sponsored by the National Science Foundation – where people from law schools and different social science departments would come and spend 8 weeks studying about how to do social science about legal phenomena.

I was a guest speaker at one of those, in 1968, and in the next year they asked me to be one of the two people that ran this course. I got into the Law & Society business still thinking about myself mostly as a scholar in India, but this had reawakened my interest in the United States. And I changed my teaching, so I made up a course about the American legal system. There wasn't much that we called the Law & Society literature, but I've found eight books that looked interesting, so we read one book each week.

Then Schwartz became the dean of the Law School in Buffalo. He was the first Dean to be a non-lawyer in the Law School. He asked me to come, and, at

the same time, the Law and Society Association had never had a meeting, only sessions, other conventions. They never had a membership meeting where everybody came. Schwartz decided to have a meeting and, in the end, we had the first conference of the Law & Society Association there, and I became the editor of the Law & Society Review.

Were you still teaching at the University of Chicago?

Friedman was giving a paper at the Law Schools Annual Conference and invited me to be a commentator where the chair of that was David Trubek – who invited me to go to Yale in the next fall. I had this project that I was going to do, a theoretical project. One night, we were in the faculty club, there was a visitor that we were entertaining, and I had this idea. I went across the street back to my office to write down this idea. It was that paper, “Why the Haves...?”

In Poland, in the salt mines, if you take a stick, wetted it, and took it to the salt mine, you would get a very elaborate salt crystal. It was kind of like that: I had this idea and everything sort of congealed around with all these pieces. I distributed it as a paper in Yale for a group of people who were interested in legal sociology.

I went back to Chicago after a semester in Yale and tried to get it published. It got turned down everywhere. Meanwhile, I moved to Buffalo and became the editor of the Law & Society Review, and Schwartz was the Dean. I was talking to Schwartz and said that I had this papers that couldn't get anyone to print it. He told me to bring a guest editor for an issue into which my paper will fit. So, I brought these 2 people to be guest editors. We put together a terrific issue that had a lot of influence. My paper got published then, a little indirectly, but by me.

The paper was sort of well received, but it was only later that started to be people who counted citations. Nobody knew how many times a paper had been cited. When it happened, I saw that this paper was really well cited. It was reprinted a few times and it became my most well-known paper.

Was it your favorite one?

In a way, there are some other things that I like. To me, one of the interesting things of that paper is that India wasn't mentioned there [in “Why the Haves come out ahead”]. It was not consciously in my mind at all, but, looking back, I was studying India for 15 years at that point, so it was in some sense the lesson that I've learned from it. In the late 50's, when I went to India, there was a great optimism about law, and that became even more so in the 60's. If you had good judges and lawyers who were clever and inventive, who could shrill the judges to do good things, you'd have this social reform through Law. Law was the royal path to great reforms of society.

My exposure to India made me skeptical about that notion that just passing laws would change things. If anything changes is not because you had the law, but because someone actually uses the law by investing effort in trying to get it into force. That paper is about India, in a curious way. It's a distillation of my experience in India.

I was in Buffalo for 5 years, and then did a visiting year in Wisconsin, which I knew slightly since I've been there a few summers. It is a very nice place. Trubek had moved there in the meanwhile, he and I have been writing some things together, which I think were translated to Portuguese. In English, it is called “Scholar and Self-Estrangement”, which is a critique of the development movement.

In the early 70's there were some American foundations interested on Law and Development. One of them was called the International Legal Center, and Trubek and I were involved with them in a committee in Law and Development.

Were you not committed to the Law and Development movement?

Trubek came from a Law and Development background. He was writing some statute for financial something in Brazil, and other people like Robert Sydman, that were going to Africa, and so on... but, my involvement in India had been very different, I didn't know there was a Law and Development

side to it. But, Law and Development issues were in the air. So, I was in this committee, they didn't have anybody who worked in India. But, I was kind of skeptical, I was never a Law and Development person.

Do you believe that Law can be used as an instrument of social change?

*It can be an instrument of social change, but it can also be an instrument of social stasis, social reaction. You can do good things with Law, but just having certain legal arrangements doesn't necessarily lead to development. I think that Trubek turned from being very much devoted to it to suddenly becoming skeptical with it, not necessarily with the idea of Law and Development, but with what people were doing with it, in the AID, in the US, or the Ford Foundation. There was an interesting critique by James Gardner, who was with the Ford Foundation, of Law and Development in Brazil.*

What courses were you teaching at the time?

*I didn't do much teaching at Buffalo. I edited the journal and taught some seminars, but people advised me that if I were to be in the Law School world, I should teach some regular courses. I had a friend called Stewart Macaulay, who was a contracts teacher, and he taught me how to teach contracts. So when I moved to Wisconsin, I taught Contracts for many years.*

Can you talk a little about your article, "Scholars in Self-Estrangement: Some Reflections on the Crisis of Law and Development Studies in the United States"?

*Trubek was disillusioned and I was more of a skeptic, so we developed this critique of what we thought was wrong in the way people were trying to use Law and Development.*

I read a critique saying that you were disappointed with being in the United States and the liberal idea of Law...

*Yes, I think that David's term for it is liberal legalism. You have to take this skepticism into context. You can't imagine the inflated hopes and expectations that people had. In the 60's, people in the US thought that we had it all, and we somehow knew the secret of this enormous prosperity, and somehow we can show other people how to do it and*

*part of that was to have good laws. People went to India and said that they should reform legal education and introduce the case method, for example. I'm not attacking the case method, it was more interesting than what the Indians were doing, but that whole notion that if we somehow change the law schools or some statutes, then society is going to change... Of course Law is important, but there was this vastly inflated egomania. "If we change law, we will change society". That's really what we were attacking there. I haven't looked at it for years, but I don't know how much sense it makes if you take it out of that context of very high expectations that people had. We were basically throwing cold water on those expectations.*

People say that this article marked the end of the first wave of Law and Development.

*Yes, and this was a good thing, really, because this first wave was full of illusions that people had. And I enjoyed working with David.*

You were talking about Law in Action at that time?

*Yes, I think that Wisconsin had a long tradition in the study of Law in Action, and it had this wonderful historian called [James] Willard Hurst, who was this sort of senior presence there. He was very much a pioneer of a kind of legal history that tries to get away from these grand ideas of law that people are using to produce certain results. So, Hurst really transformed legal history, in the United States. In addition to that, he was a great mentor.*

You wrote a lot about legal pluralism...

*Yes, India gets into Legal Pluralism. And, in 1980, maybe, there was a Dutch person who had an idea to create an international body to talk about legal pluralism. There was a lot of correspondence between he, and I, and Richard Abel, so, in the end, he organized this thing and I guess he got a grant. He went to Bellagio, in Italy, which is a conference center owned by the Rockefeller Foundation, and they lend it to people for a week for them to have week-long conferences. So, we had this conference on legal pluralism. This was 1981, around the time I wrote "Justice in Many Rooms: Courts, Private Orders, Private Ordering and Indigenous Law". Richard Abel, and I, and John Griffiths were interested*



*in legal pluralism in modern societies, not in tribal societies with separate systems, for example.*

Do you think you were the first ones to think about that?

*I think that it was one of those ideas that were around and a number of people were discussing them. I certainly don't remember anybody that inspired me to do it. But I think that a number of people had this idea of pluralism analyses that were basically applied in colonial settings. There were around 25 to 30 people in Bellagio, and there was this interesting split between the people whose interest in legal pluralism was that they wanted to help Indian tribes or Eskimos to preserve their distinctive legal regimes. And, then, there were people like Abel and I that were interested in the way that modern societies were full of these pluralistic phenomena. There were real differences in the way people thought there, and this commission still exists, it's about 30 years old.*

You did further work on affirmative action in India. Can you talk more about that?

*I got to Wisconsin, and I had been in Buffalo for 5 years. There's a system that after 6 years you have a sabbatical year, and you can have two semesters with half pay or one semester with full pay. I was moving to Wisconsin, and they said that they didn't have sabbaticals, but they could give me a research-leave if I gave them a project. I had this book that I've been writing on India for 15 years or something like that, so, I wrote that as my project. Then, it was my good fortune that a student of mine from Buffalo who was interested in India came to learn a language, Telugu, for his research. It's a big language, with about 80 million speakers, maybe 100 million now. And it was only taught in Wisconsin, so he went there to learn it for the year and he worked for me. I actually finished that book, my "Manum Opus", and it got published in India around 1984.*

*It was about this affirmative action in India which had suddenly become a really hot topic. When I was there studying, people were saying: "why are you studying that? It's going to disappear". But it then turns out that it was the biggest thing going and it is still going after 30 years, so, it was a very fortuitous*

*timing that the book, which was generally regarded as the most thorough scholarly treatment of this area that became the most contested area of Indian Law. This was one of those accidents of timing. In the meanwhile, I was going to India for the Ford Foundation. This was an interesting period for India, sometime in the late 70's when Mrs. Gandhi took over as a sort of "dictator", with a lot of suppression of civil liberties and she thought that the public really approved this and she called an election. The opposition combined and threw her out. She came back later.*

*So, now that Mrs. Gandhi had been swept out, they were feeling that they [the Supreme Court] had to reinvent themselves. Suddenly, they became this really activist Court, doing all kinds of innovative things. It was a period of great ferment and change in the Indian legal system, starting around 1979 to the mid-80's. They invented what they called Public Interest Litigation, when sometimes a Court would take its own initiative. Somebody would write the court, sending them a postcard, saying that some terrible thing was going on, and the Court would appoint some Law Professor or lawyer and tell them to look into this. It was a very exciting period.*

*The Ford Foundation was very supportive of this project: they brought me over for 3 or 4 weeks at a time, maybe 3, 4 times a year, and went around trying to find interesting legal action groups that they would support. That was a really different slant on India, so even though I was not a Law and Development person in the 1960's, I really was in the 1980's, by working for Ford and trying to find these activist groups to be supported. That was probably my active political involvement in India.*

That was after the book, right?

*The book came out during that time, but the book was a fruit of much earlier involvement. It was all fortuitous because it came out at the same time that I had this activist period. That lasted until 1986 or 1987. New people came to Ford Foundation, the atmosphere changed.*

*Right after this period, it came the Bhopal Disaster, when this big gas plant blew up in India. It was the*

world's biggest industrial accident, with thousands of people killed. I think that it was December 1984. What kind of remedy would it be? It was Union Carbide, so, it was an American Company that had a subsidiary in India, making fertilizer or its chemical components. All these American lawyers tried to sign up people to sue in the US, because its owner was from the US, and, besides, they could get much more, and way faster, in the US than in India. However, the Indian government was concerned, so they passed this statute that, basically, said: "we, the Indian Government, are the sole representative of all these victims". But then the Indian government went to the US and wanted to sue Union Carbide in the US, who contest this idea and said that the US is not an appropriate forum, since the fact happened in India, the witnesses and physical evidence was there.

There was little interest in India during the 60's and the 70's. I was probably the only person in the US legal academy who was known for doing law-related studies on India. The Indian government hired me as an expert because we were fighting a motion that the case should be dismissed and sent to India. We were arguing that the Indian Legal System was not adequately prepared to handle a case like this. In effect, the Indian Government hired me to bad-mouth their legal system. That was right after the accident. After a few months passed and the shock wore off, the Indian lawyers were angry with the Indian Government for taking this stance. It was a fun assignment, to point at all the deficiencies of the system and how it was unable to handle the matter (which turned out to be true).

India was filing suit in New York, and the first thing they did was having this hearing about the motion to send it out because it was not the right forum. Union Carbide hired two of the biggest lawyers in India as experts to say that the case could be handled in India with no problems. A couple of months went by, these papers going back and forth, and, in the end, the American judge got the case. He was the newest judge and suddenly had to handle this enormous case. He wrote his opinion saying that, on one side there's professor Galanter, an expert in India, but, in the other hand, he couldn't say that

those distinguished Indian lawyers were wrong about their country. But he bought one of our arguments and imposed a condition on the process being sent to India. In the US, if you're suing somebody, you can demand to see certain papers that they had, everything to do with the construction of the factory, memos they got about the conditions in the plant, and so on. You couldn't do that in India or most other places, so, the judge imposed that the plaintiffs would have American-style discovery in India. Our side could have it, and so could the other side, after an appeal by Union Carbide.

Indians weren't used to allowing people to dig around all of these papers and see what's in the files, so the American-style discovery never happened. There was some talk about it, some planning, but it never happened because the Indian government didn't want it. The Indians were afraid to make any changes in procedure because the money was in the US, so, the Indians would have to get a judgment in India, then take that judgment to the US and do what we call as "sue on the judgment", to turn that Indian judgment into an American judgment. This is routine, but the defendant can say that the procedure through which this judgment was acquired violated due process, so they wouldn't enforce the judgment. So, everyone was afraid to change anything so as not to violate due process. The one thing that they did was to take one judge in Bhopal and let him handle exclusively this case, so this young judge was suddenly in charge of it.

How long did it take to judge the case?

What happened is: first day they start on the preliminary motions, and a young Indian lawyer comes in and says: "why don't you give them some interim relief?". He said, "after all of what these people have suffered they can't wait for this case to be over – give them some relief now". That was never done in tort cases, but it is done in other kinds of cases. The British had recently passed a statute providing for interim relief in certain cases, so they could point to that statute. The judge in Bhopal – who was very sympathetic – said "yes" and ordered this vast amount of interim relief. Union Carbide immediately appealed and went to the High Court in that



state. The High Court fiddled around and said: “oh, yeah, interim relief, that’s ok, but you are giving too much here and not enough there”. And it adjusted it a little bit, but they approved that. Union Carbide took it to the Supreme Court of India, in Delhi. Meanwhile, of course behind the scenes, there was bargaining going on, to see if they could come to some settlement. While the case was sitting on the Supreme Court, there was a settlement – about half a billion dollars at that time. It wasn’t a lot, considering the damage. It was much more than any other Indian judgment, but it wasn’t as much as would have been awarded in the US. I call it a mid-Atlantic award. The US standard is much more than the Indian would ever be. In fact, one of the interesting things is that if it wasn’t a foreign company, there would have never have been a lawsuit, I think. The government would just give some money to the victims and maybe try to put some people from the company in jail. They just don’t have big tort recovery. Tort: it is on the books, but is rarely used. In India, you don’t have much in terms of tort remedies.

So, suddenly the government of India settles and gets this half a billion dollars, which, at the time, was valued very much as a foreign exchange. They had these 5 hundred million dollars and they established courts in Bhopal to work with thousands of people affected by this gas. They set up these tribunals. Meanwhile, of course, the records of who was actually hurt didn’t exist. People were hurt and they went to the hospital. The hospital would treat them and give them a sheet – a little piece of paper that says: “this person was seen at the hospital on such a day”. The point is that these sheets could be easily counterfeited – and they were. So, there were many more claimants than people in the city at that time. Nevertheless, I think that there were some 14 tribunals giving people appointments and having 10-minute hearings for each one. It took 20 years! Of course, there was some litigation going on about the criminal case. Finally, the Supreme Court of India said to the government: “just divide it up and give to everyone proportionately”. Finally, after 25 years or so, it was resolved. It was an infernal mess. It was worse than we projected back at the time of the US procedure. Of course, if the case

was done in the US they could have had the same disastrous distribution.

After Bhopal, I got interested in torts in India. Because lower courts are so ineffective, people go to other non-Court remedy systems: they bribe the police, or hire gangsters. That is something that happens in many societies. What I am interested in now is in how people actually settle things. I’m really interested in this proliferation of these non-governmental legal institutions.

Do you see that in the US as well?

I think modern societies have this tremendous proliferation of legal systems. The societies have many kinds of institutions that are constantly making a huge number of rules, all the time. The credit card company, the airline company... It’s not exactly a legal system, though. In our perspective, the world is really becoming legalized. In the US, it maybe is fading now, but we had it for 20 years – since 1990, a tremendous anti-lawyer prejudice. They have nasty jokes about lawyers. This notion of lawyers as parasites, that they don’t produce anything, only make things difficult, complicated.

I wrote this book that is about anti-lawyerism. I got very interested in anti-legal feeling in the US. And I’ve written a lot about it, and wrote this book in 2005. One of the manifestations against lawyers is the tremendous number of jokes against them. I used the jokes, but it’s about the great wave of anti-lawyers. The history of lawyer jokes, and attitudes toward lawyers.

There were always jokes about lawyers, but now there are some hostile jokes. There used to be jokes that said that lawyers were just like servants of business people. That is not in circulation today. There is one joke about a big businessman that calls his lawyer and says: “this law is going to interfere with my business, can you call it unconstitutional?”. The lawyers say: “of course I can do that”. “Get to work”. “Don’t worry, I’ve already done all the work, because last year you asked me to call it constitutional”.

This kind of joke is not in circulation anymore, but

*back in the 1930's it was funny. It will only be funny if it is something that has some surprise. Now, there's no surprise with the notion that the lawyer is eager to be a tool of the businessman. It falls out of the joke universe. There were a lot of jokes with that theme, but they were all left behind.*

*There are also another group of jokes about people illegitimately trying to create a claim. Most people stopped telling that jokes, because there are so many stories of misused litigation. Those stories took over, and many jokes sort of disappeared. I think Brazil has a rich joke culture, people tell jokes. In the US, there are a bunch of jokes told about polish people.*

*In Brazil, as I understand, the Portuguese occupy the role of dumb people. There's a theory that in every place you'll have some group that is used like some kind of "dumb". In the UK, the targets are the Irish. In America, it were the blacks, but, of course, that's not politically correct. And, now, there are polish jokes in some parts of the US. In Minnesota, the jokes are about North Dakota people.*

Can you tell us about your studies about "megalawyeering"?

*That is another thing that I got interested in. I remember that back in the 80's the literature about lawyers seemed to be about that. I was reading about it in the newspaper. I got interested in this whole notion of big law firms, where they came from, when they appeared. I wrote this book about how law firms grew.*

*It was in the 1990's that these kinds of firms started to appear. With their system of promotion, the older lawyer would take the younger lawyer, because the older lawyer had too much work. And he gives something to this young man, being sure that this young man wouldn't run away with the client. Basically, lawyers hired this young man, and if he really worked hard, after a while he would be given a part of the business. This turned out to be a very successful strategy.*

*This was the age of big railroads, big industries. This form of law firm and partnership was good,*

*because before that lawyers sort of just moved around. This whole notion of organizing the firm is invented in the 1990's. This form of firm spreads. They started to need more associates, so the firms became bigger. Basically, they started to promote those people to partners, to correspond to the expectations. There's an economist that traced the growth of the 50 biggest firms, every year for 56 years, and you can see them all growing. The firms got bigger, and they had to keep getting bigger. The firms were kind of shaped this way, more junior people as the number of the senior people increases. A couple of things happened in the last years. People started moving around. Suddenly, firms were worried about losing partners, so they started to do much bigger payments, much bigger rewards to partners. This whole world of large firms has been changing, but it had a long run in which what we call tournament was working in a pretty regular fashion, and the young people were getting promoted.*

*The tournament is changing. I am not claiming that it is an eternal truth. But, there was a period when this model really worked. Everybody adopted it.*

*In America, what happens is that the fathers used to promote their sons, but, then, they adopted an anti-nepotism rule. In India, there are firms growing up and, of course, you'll want your son there. And, often, young people break away and create their own firm, because they are not really going to get power in the old firm.*

*In India, there are two kinds of big prosper jobs. One are the firms, and the other are advocates, who make a really big amount of money, and have a lot of juniors around them. But they are not partners and not even employers of their junior lawyers – that research for them. They are famous in India. There's a lot of that in television. The firm people are very rich and respected in the professional circle, but, they are not public faces, like the advocates are, who are really known, and are involved in every big thing in the Courts.*

You have mentioned that when you were in Yale, in the 70's, the setting was much different, even the image

of lawyers and the whole legal context. Considering the skepticism that you also talked about, would that change the reception of the “Why the haves” today?

*There has been many applications of this testing. There is a huge number of studies. People have to operationalize it somehow. There were several collections of papers, journals, studies. There is a lot of different ways to operationalize it... You asked about the timing... I think it is like those jokes. Nowadays, it would be no surprise. But, in the 70's, people were so taken by these legal developments that they thought: “how long will it take to solve all these problems to build an equal society? And these lawyers, using law that could do these wonderful things”. This was so optimistic. I think the message was: “look, if you want to use law to do things, in order to be effective, it has to be part of some organized movement”.*

*Yes, we had a tremendous change in race relations in the US, and the law was part of it. But the civil rights movement made that law effective. The law without politics is not going to change, it has to be a part of a political movement. It's one of the instruments to change things.*

That message stands today?

*Yes. I think the people who were running the Civil Rights movement were aware of that. The Civil Rights have been a fantastic change in the US since I was a child. Of course, there were still many problems, but there was an enormous change and, of course, the change reflected in the laws. But it's not that the laws caused these changes. They contributed. I grew up in the North of the US. There were no social relations between blacks and whites. The schools were not segregated, but, in my school, there were two blacks among forty students.*

*I must have been one of the few people who had any social relations with the blacks. I had a black friend in high school, but I was never at his home. It just didn't happen, it was a different world. Obviously, the law made some contribution, but you can't say that the law changed it. The political movement and the change of the culture did. There was no television then, but, when it came on the scene on the 50's, there were very few blacks. The whole no-*

*tion of whites and blacks interacting as equals just didn't happen. The Civil Rights laws precipitated a lot of that change, and perhaps propelled in the law. The Civil Rights laws registered the change, rubricated the change, but were not the driving force.*

Back to the Law & Society movement, do you agree with the statement that Law & Society doesn't have the same prestige as Law & Economics, in the curriculums?

*Yes. Although I think Law & Economics is taking a hit. Maybe, it's because economics is a profession that the depression/recession has definitely spiked the reputations of economics as a field, and therefore Law & Economics has less magic than it did ten years ago.*

*Economics was riding very high and now people got more skeptical about economics. The economists have lost interest in Law & Economics. They got all technical in high mathematical sphere. So it seems to me that Law & Economics is turning into Empirical Legal Studies, in the US. At least at the meetings, people who were so obsessive with methodology are like that: they have this method and they want to use it whatever the problem is. They are looking for where they can use this method. I think it's a movement in its adolescence. Sooner or later, maybe, they will find the problems that really matter.*

*I just want to say that it's so terrific here in Brazil, where there is really a movement here of Law & Society. Of course, there is the very fact that you have something to be against, because you really have a flourishing tradition of formalism. In the US, if we look at the major law reviews, the law journals, I would say we could never have published there 20 years ago. Never! Editors would say that they're not interested in that script. I think in the US, now, the curse of whatever formalism lost largely the spell. So, the only thing they know is what has been, what they learned in two years of law school, and used to be these two years of law school that turned them against any kind of empirical, and now they are accepting it, so that's something that has changed.*

*It's interesting. I think if you look at the American law schools, the more prestigious law schools are*

*trying to work in their law reviews, so you can tell which way things are moving. After all, the teachers of the future are now students in the most prestigious law schools. Harvard, Yale, Chicago... Unfortunately, people's attitudes and their basic perspective are constructed earlier, so they are coming out of the law schools with a way of seeing the world that will be transmitted to the law students of the future. There will obviously have some changes, it's unpredictable the way the world is going.*

*I am really pleased to see the way that you guys are going, and you should do the same thing for the next years. There's no place else in Latin America... Well, in Colombia there's a group of Law & Society...*