

# This Week's Citation Classic™

**Galanter M.** Why the "haves" come out ahead: speculations on the limits of legal change. *Law & Society Review* 9:95-160, 1974. [Faculty of Law and Jurisprudence, State University of New York, Buffalo, NY]

**Patterns of litigation, legal services, legal institutions, and legal rules are traced to the pervasive effects of differences in the capabilities of disputing parties — especially the differences between recurrent (usually organizational) users of the system and occasional (usually individual) users. [The *Social Sciences Citation Index*® (SSCI)™ indicates that this paper has been cited in over 155 publications since 1974, making it the most-cited article published in this journal to date.]**

M. Galanter  
Law School  
University of Wisconsin  
Madison, WI 53706

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"This paper was the serendipitous product of a delightful semester in 1970 when I was a fellow of Yale Law School's short-lived but amazingly productive soft-money Program on Law and Modernization. The original crystal of this paper—a juxtaposition of observations from the handful of then available empirical studies of litigation—came to me while having a drink with some colleagues before an evening meeting. I stopped by my office and typed a couple of pages of notes. These grew into a well-received seminar presentation. The paper seemed to strike a responsive chord; many readers brought me examples and suggested extensions. All sorts of observations seemed to attach themselves to the crystal. (The ambitious theoretical piece on different kinds of legal knowledge that I expected to complete that semester was put aside. It's still unfinished —I periodically resolve to return to it!)

"As this paper went through successive drafts over the next couple of years, it was rejected by all the leading law reviews and a couple of political science journals as well. (Just recently I met a prominent scholar who told me appreciatively how he assigned this paper to his students every year. He was disbelieving when I reminded him that as an editor of a renowned law review, he had rejected it. I recalled his letter especially because he had written that 'although fascinating and well written' the paper controverted 'what we can observe' about the

legal system.)

"I was about to take over as editor of the *Law & Society Review*. Even my predecessor diplomatically said the paper was too long to consider during his final year. Although I would have preferred that it appear independently of my editorship, I knew the *Review* would be a good place for it and wondered how I might get it in. A wise friend suggested that I invite a guest editor to organize a symposium into which this paper would fit. That's how it got published. The symposium on litigation and dispute processing, by the way, turned out to be path-breaking and influential in focusing research on this area.

"When I began this paper, I had just started to do some teaching about American law. For a dozen years, almost all of my research and writing had been on India. Although India is hardly mentioned in the paper, my Indian work was a real, if ghostly, presence in it. My years of immersion in Indian law, I like to think, emboldened me to discard much of the received view of how legal systems work and to develop a fresh perspective from which to view the legal process in America.

"This paper is often cited to acknowledge the terms 'repeat player' and (less often) 'one shoter' that have been widely used to refer to recurrent and occasional users of legal process. There have been a number of attempts to test hypotheses drawn from the paper. I've seen it cited for various general and specific observations about the legal system. Often, I suspect, citation is a shorthand invocation of an approach that emphasizes the capabilities and goals of the 'customers' who use legal institutions, rather than the concerns of the professionals who staff them.

"Occasionally, I'm frustrated to see it cited rather than other work of mine more relevant to the matter at hand. But I am naturally pleased at the continuing appeal of this paper even as litigation studies have become more sophisticated.<sup>1</sup> The ideas it elaborates continue to animate my work (see, for example, reference 2). (I have become aware of its flaws and have considered improving and enlarging it. I had a contract to turn it into a small book but delayed so long that I ended up returning the advance. So this may never get done.)"

1. **Grossman J B & Trubck D M**, eds. Special issue on dispute processing and civil litigation. (Whole issue.) *Law & Society Review* 15(3-4), 1980-81. 529 p.

2. **Galanter M.** Justice in many rooms: courts, private ordering, and indigenous law. *J. Legal Pluralism* 19:1-47, 1981.