

10-1-2005

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Recommended Citation

UB Law Forum (2005) "Dr. Frankenstein's Lawyers?: Mitchell Lecture Speaker Addresses Increasing Power of "Artificial Persons"," *UB Law Forum*: Vol. 18 : No. 1 , Article 30.

Available at: https://digitalcommons.law.buffalo.edu/ub_law_forum/vol18/iss1/30

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“I do not mean to portray the legal system as one in which individuals never prevail. What I am trying to describe is a structural and cultural situation that puts them at a relative disadvantage...”



Professor David A. Westbrook and Professor of Law and South Asian Studies at the University of Wisconsin Marc Galanter



Professor Robert S. Berger

Dr. Frankenstein’s lawyers? *Mitchell Lecture speaker addresses increasing power of “artificial persons”*

A provocative assessment of the power of “artificial persons” in the court system formed the centerpiece of UB Law’s 55th annual Mitchell Lecture, held April 18 at the Law School.

“Planet of the APs: Are Corporations and Other Artificial Persons Taking Over the Legal System?” was the title of the event, which featured a keynote speech by Marc Galanter, professor of law and South Asian studies at the University of Wisconsin, Madison. Galanter, who taught at UB Law School from 1971 to 1977, addressed the growing power of artificial persons – APs – and spoke of the relative disadvantage that individuals face because of that trend.

“Professor Galanter’s research has shown that artificial persons are relatively more successful in the legal system than individuals,” Dean Nils Olsen said in introducing the speaker. “Asking serious questions about the efficacy and validity of our legal system, Professor Galanter once again is raising profound

and serious issues.”

The speaker began by calling artificial persons “one of humanity’s great inventions,” but went on to say, “But these creatures are more than the passive instruments serving our needs in society. Their presence changes our world and changes us. Like Dr. Frankenstein’s creatures, they both reflect and escape from human purposes.”

APs, Galanter said, are changing the character of the legal and judicial world – partly because of a dramatic transformation in how social life is conducted. For example, he said, the family-owned grocery store has been replaced by the supermarket, which itself is now being challenged by national chain retailers. “An increasing portion of all our encounters and transactions and relationships are with APs,” he said, and case law has grown to reflect the increasing prominence of these legal actors.

Citing figures, Galanter said that in 1970 about 40 percent of civil cases in federal courts involved a natural person suing an artificial person – an individual suing a corporation, for example. Now,



Professors Marc Galanter and Rebecca French

he said, that figure is 60 percent. “Increasingly, the legal system is occupied by individuals trying to control the behavior of artificial persons,” he said.

Concurrently, the growth of APs in the wider society has led to a shift in the focus of lawyers. Since 1970, he said, the number of practicing attorneys has near-



Roger and Karen Jones Faculty Scholar and Professor Robert J. Steinfeld, SUNY Distinguished Teaching Professor Elizabeth B. Mensch, Baldy Center Director and Professor Lynn Mather and Vice Dean Peter R. Pitegoff



Roger and Karen Jones Faculty Scholar and Professor Rebecca French and Associate Professor and head of the department of political science at the University of Oregon Gerald Berk

ly tripled, and “most of the growth has been in law firms that service APs. As a result, the law has become more technical, more complex and more expensive.”

And that, Galanter said, works against equal access and effectiveness in the courts for individual plaintiffs. “The courts,” he said, “are like referees in a basketball game between a natural persons team of 6-foot-tall players and an artificial persons team of equally talented 7-foot-tall players. The 7-foot team does not get its baskets dishonestly, and sometimes the 6-foot team even wins. But over the long haul, the disparity of resources is reflected in the scores.”

Even the way courts decide most cases has been influenced by the shaping hand of artificial persons, Galanter said. As APs move to consolidate their power and are increasingly motivated by concerns about their own power and reputation – rather than their origins as suppliers of goods and services – the practice of adjudication is being transformed. “Courts are shifting from a dispute settlement perspective to a more future-oriented, more managerial, more utilitarian, generally more legislative kind of stance,” he said. “Fewer cases go to trial; more are terminated by pretrial adjudication.”

Galanter qualified his assertions by saying, “I do not mean to portray the legal system as one in which individuals never prevail. What I am trying to de-

scribe is a structural and cultural situation that puts them at a relative disadvantage, one that is increasing over time. The 7-footers are growing into 8-footers.”

Following Galanter’s address, three panelists in varied fields responded out of their own expertise, raising questions and further points.

First up was Gerald Berk, associate professor and head of the department of political science at the University of Oregon. As a historian of political science, his impulse was to look back and ask, “What have others who have been concerned about corporate or organizational power done in the past?”

Berk noted that, earlier in U.S. history, social and political reformers also advocated the concept of the artificial person, saying among other things that powerful APs are a useful check on government power.

The next respondent was Meir Dan-Cohen, professor of legal ethics at the University of California at Berkeley School of Law. Discussing some of the theory behind Galanter’s ideas, Dan-Cohen asked whether APs’ disproportionate influence on the judicial system is necessarily bad news. He related the discussion to the division between “haves” and “have-nots” in the legal system, and noted that corporations, for example, are not necessarily “haves” in the classical sense. Therefore, their presence as APs

could be viewed as a step toward equal justice.

The final respondent was UB Law School professor David Westbrook, who specializes in corporation law and public international law. Westbrook spoke with admiration of the “ambivalences” in Galanter’s remarks, noting that corporations “make any number of collective actions possible” and yet inspire “a familiar antipathy.” There is something unsettling, he said, about artificiality itself – “about something which is created by us but is foreign to us.”

Westbrook also said the distinction between APs and natural persons may be too closely drawn. “In an important way,” he said, “there are no natural persons in courts. There are plaintiffs, defendants, lawyers, clients, judges, witnesses and so forth. Entering a court requires that one adopt such a predefined role.”

The 2005 Mitchell Lecture committee was chaired by Professor James A. Wooten and included Associate Professor Athena D. Mutua, Professor Robert S. Berger, and Professor Rebecca R. French, who moderated the question-and-answer period that followed the discussion.

The annual lecture is funded by a generous endowment from the estate of James McCormick Mitchell, a member of the school’s Class of 1897.