

# Il Bigiavi

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A Multilingual Sketchbook  
of the ISLL - Italian Society for Law and  
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Edited by Enrico Pattaro

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This sketchbook has been named *Il Bigiavi*: This we did drawing inspiration from the column “Cose lette” (Things read), which the eminent Italian jurist and professor Walter Bigiavi maintained in *Rivista di diritto civile*, a journal he himself founded. The column distinguished itself for its acumen, brio, erudition, and irony. A portrait of Walter Bigiavi has been written for ISLL by Francesco Galgano and appears in the first issue of this sketchbook. *Il Bigiavi* collects commentary occasioned by publications, debates, and discussions, and it features as well contributions that have not been placed in the Papers section of this website. All the issues of *Il Bigiavi* may be freely downloaded, the idea being that in this way the material can more easily be disseminated. Contributions are accepted in English or Italian, or in any other language.



Il taccuino è stato denominato *Il Bigiavi* perché si ispira alla rubrica “Cose lette” che il Prof. Walter Bigiavi, eminente giurista italiano, teneva nella *Rivista di diritto civile* da lui fondata: una rubrica che si distingueva per competenza, acume, brio, erudizione ed ironia. Un ritratto di Walter Bigiavi è stato scritto per la SIDL da Francesco Galgano ed è pubblicato nel primo numero di questo taccuino. *Il Bigiavi* accoglie commenti a margine di pubblicazioni, dibattiti e discussioni, e in ogni caso contributi che non siano destinati alla sezione Papers del presente sito. I numeri de *Il Bigiavi* sono direttamente scaricabili dal sito per favorirne la divulgazione. Si accettano contributi in italiano, inglese ed altre lingue.

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**Conversing in the Garden on Psychology, Culture, Law, and Narration: An Interview with Jerome Bruner (Conversando in giardino su psicologia, cultura, diritto e narrazione. Un'intervista a Jerome Bruner)**

**Flora Di Donato**

*Introduction*

Professor Jerome Bruner is known as one of the most important psychologists of the 20th century.

From the first, his psychological research was focused on the relation between *mind* and *culture*, a relation that he explored for the most part on the basis of interdisciplinary methods, as by drawing on anthropology.

Over the last two decades, he has brought cultural psychology to bear on the study of the law in context. In fact, he has been asked to teach at the NYU School of Law, where he made advances in the study of law and culture, thanks in part to

the collaboration of jurists at NYU like Anthony Amsterdam. In 2000, this fruitful collaboration resulted in the publication of a masterpiece on the relation among *mind, culture, and judicial narratives*.

Professor Bruner's thought is well known even in Italy, where he was invited in 2000 by the University of Bologna to lecture on the relation between law and literature.

His most important contributions to the Law and Literature movement concerns some fundamental epistemological aspects. In fact, at the core of his thought is the idea that language shapes the mind within a cultural framework: to tell a story is, for Bruner, to shape reality. Bruner emphasizes that the mind's narrative structures are the same in the context of the everyday as they are in the context of law: stories in literature and stories in law can accordingly be considered alike, in that both always involve the activity of constructing the reality narrated.



*Part One***A first question: How do we learn about the world?**

I will tell you that, what the world does, when it impinges upon us is not to deliver reality but rather to confirm or disconfirm some hypothesis that we are entertaining. This is what we call hypothesis theory – that we are always looking at the world with some hypothesis in mind. The mind is active not passive. This view is in the European tradition of Act Psychology and of theorists like Heidegger and Husserl. It is not a passive view in the manner of the British associationists, but an active view.

**Who were your early teachers?**

The person who had an early effect on me was William McDougal with whom I took my first course in psychology when I was a kid. He was a great British psychologist who called his theory “hormic” psychology, purposive psychology and he also interested Edward Tolman another of my early heroes. It was Tolman who provoked my interest in the purposive nature of cognition. I came increasingly to believe that the development of cognition was in the interest of testing hypotheses about the world, which made one very selective and in need of something to guide your selectivity. So what guides your selectivity? The culture you live in of course: what you take to be ordinary, and you begin to work to confirm what you take to be ordinary.

**So how did you study all that?**

So, I did a series of experiments then and when I think about them now I must say Flora, that I smile. They were experiments on what I called the “perception of incongruity”. With precious tachistoscope, I presented highly, highly unlikely scenes to my subjects, scenes of somebody doing something almost completely unusual. I presented these at short durations and the first part of the effect was for subjects to normalize them, to perceive them as ordinary; to fill the world

with ordinariness. The ordinariness was supported by cultural habits, what they had come to expect in ordinary life.

Again you asked me before to come back to the influence of Robert Oppenheimer: I have to tell you that Oppenheimer and the people at the Institute for Advanced Study including John von Neumann were very much interested in this active constructivist view of the world, trying to take the next step after Albert Einstein. Einstein was there too, but he was an old man. His influence was moving on to the next generation of people like Oppenheimer. I should tell you also a funny thing about me during the years after the war when I was at the Institute in Princeton. I used to go down to Washington once a week. When I was in Washington, Wednesday nights I would stay at the home of Richard Tolman who was the brother of Edward Tolman and a more distinguished scientist than his brother Edward. He, Richard Tolman, was the chief consultant to the famous "Los Alamos" project. Though working on the A-bomb, the Tolmans had a big house in Washington and there I would meet people from all over the world. That's where I first met Robert Oppenheimer and I told him my theories and he would say things like: "but Jerry that's just the common sense of modern physics!"

I would take the train down from Princeton to Washington and arrive in time for dinner. The Tolmans had frequent guests who were doing official things in Washington, and on one particular occasion, there was a gentleman there who had a very strong Danish accent who had a name that I did not recognize. It was a pseudonym and it was only a year or two later that I discovered he was really the physicist Niels Bohr. Just imagine this 26 year old having dinner at Richard Tolman's home, talking with Niels Bohr about the active nature of cognition, about how the world got constructed in terms of hypotheses. I felt like the luckiest guy in the world!

Bohr was of a generation of physicists who were increasingly coming to believe in ideas like the uncertainty principle and so on like that; that the role of the physicist was to create physics, not just discover it. So when I first read the book of Edward Tolman, the younger brother of Richard Tolman, called "Purposive Behavior in Animals and Men", I was thrilled and ready and had just gone back to Harvard as an instructor...and Tolman and I got to be very close. I

had also worked closely with another psychologist, Ruth Tolman, who was the wife of Richard Tolman.

So I found myself, so to speak, in a family of purposivists. Besides Harvard was still in the long tradition that had started with William James...making it a central place for the study of purposivism reinforced by Harvard's philosophers as well.

They gave me all sorts of support when I started doing all of those experiments with the tachistoscope to find out the role of hypotheses in perception, that was the real start of the cognitive revolution that then turned into the Center for Cognitive Studies and on and on. The other thing that was very fortunate was that at the time one of the great scientists-philosophers was also president of Harvard, and he liked what we were doing and gave good support - James Bryant Conant.

### **Did you have support from the Foundations?**

There was also good financial support. The foundations (particularly the Rockefeller Foundation) liked our ideas and the Rockefeller Foundation helped us to set up the Center for Cognitive Studies with George Miller and me as co-directors. And we soon started bringing in scholars from Europe as well as America and began creating a strong subculture of cognition. Visitors at the Center included people like Noam Chomsky, Barbel Inhelder, Daniel Kahneman. So in a way, we also "cosmopolitanized" American cognitive science.

I have to confess I wasn't fully conscious of all this until last spring (2008) when Harvard "celebrated" the fiftieth anniversary of the cognitive revolution when it all came back into mind.

I also want to say one other thing too. Encouragement came from the Harvard atmosphere outside psychology . I had good literary friends like Albert Guerard and Perry and a new generation of their students who cheered as well.

### **And what about the linguists and philosophers of language? Did they help you combine your interest in cognition with your interest in language?**

That's a very interesting question. I have thought about it a lot. I have always been interested not only in language as such, but also in literature and poetry. As I put it in the title of that book, *On Knowing: Essays for the Left Hand*. "How do you get your right hand and your left hand to work together? Even as I sit here talking to you, it is partly poetic and a metaphor and partly empirical. That's why the concept of "hypotheses" intrigued me so much. It places emphasis not only on the imagination of the human being, but also on what they encountered in the world. The interaction of the two is our experience of the world.

So, now we come to a new period. By now, I am a full professor, still a little bit too young. I always had the feeling that I was growing and changing, reacting to what I encountered but also to a wrong-minded parental generation. How am I going to describe it? Let me put it this way: it was the beginning of constructivism: and I found myself beginning to read the French philosophers, some of whom I had actually met during the war, I'm thinking about Albert Camus, I'm thinking (as we talked earlier) of Jean-Paul Sartre – people who had a notion of a constructed world, not just a world that you received from outside. I also became more interested and more active on the anthropological side as well. Not that I was interested in far away places, but rather in the anthropology of social class and family and community. I began studying how, for example, African Americans and others in an underprivileged position, saw the world, how poor children and rich children perceived the size of coins and money and that kind of thing. So, cultural psychology became very central to me and I started reading more anthropology. I got to know people like Clyde Kluckhohn and so on. They had always been of interest partly because of the fact that as my sister used to say to me "It is a good thing that you became a psychologist, otherwise you would have become a novelist, and you would have been even poorer than you are now"... In any case, I also had a lot of literary friends and indeed my first wife, Katherine Frost had studied to be a literary critic and my own PhD was in social psychology but my interests were wider than that. So when, in the 1960's, when Harvard psychology split into two departments, I did not want to be in one or the other. There was to be a department of Experimental Psychology where I had friends like George Miller and a department of Social Relations where I had friends and colleagues like Talcott Parsons, Roman Jakobson, Clyde Kluckhohn, and Roger Brown. So I was caught between the two, and didn't mind it. Besides, I



have to tell that I think the two are incommensurable. Indeed, one of my most recent articles still deals with the fruitful incommensurability of mind and culture.

**...and what about the influence of Vygotskij?**

Not only Vygotskij but also Alexandr Romanovic Lurija. I had my first meeting with Lurija in the early 1970s. Lurija became a kind of father figure to me. He was the inheritor of Vygotskij, Bhaktin, and scholars who did not impose a distinction between the scientific and the literary. The process of researching the two was something that made psychology such an interesting field! So I made my first trip to Moscow in 1970 and also came under the influence of another Russian living in America, the great linguist Roman Jakobson.

Jakobson was a genius. Indeed he became a visiting member of the Center for Cognitive Studies – our Russian influence. He was trying to combat the simplistic behaviorism of Pavlov, stimulus and response and reinforcement as its fundamentals. What I liked particularly about Vygotskij was that he appreciated the intersection of mind and culture and how mind internalized culture. To me, that was the issue.

That takes us into the Kennedy years and let me use a little detour here. Kennedy, as you may know, was a good friend of mine. I had known him first when he was a student at Harvard. And when he ran for the first time to become a congressman as a candidate for 11<sup>th</sup> district of Massachusetts (which is where I lived), I helped him in that campaign and we remained good friends until he was assassinated, which was devastating for me. But then, because of the fact that we had talked about these things when he was a student, he started bringing me down to Washington to discuss matters like the impact of poverty on mental development – from which later grew Head Start. I was also beginning to do more work on developmental psychology. So the idea of what you could do to prevent children from growing up mentally deprived was very much on my mind, how to give them a head start before school began.

**I think that you were also influenced by the pragmatists in Oxford.**

All the pragmatists have had a strong influence on me. Pragmatism of course, is deeply in the Harvard tradition. Its two founders are William James and C.S. Peirce, both very Harvard.



### *Part Two*

#### **We were talking about pragmatists, especially at Harvard...**

Especially at Harvard because there was a very strong tradition that had grown out of an early opposition to the religious absolutism of the puritans. So Harvard starting in about the 1830's began moving in a pragmatic direction. "What do you mean values?" They can only be judged by what works to guide us – basic pragmatism. The building in which my office was at Harvard, was called "Emerson Hall" after the pragmatic Ralph Waldo Emerson. And the joke that some of my students used to tell was that Jerry Bruner is trying to show that rats are like people, whereas before psychologists were trying to make it seem as if people were just like rats. Pragmatism was in the foreground.

I have to mention one other figure, with whom I did my rat work in the early days. He was Karl Spencer Lashley. He was the great neuropsychologist of this period and for him the brain served not just to register what things were associated with each other but what was the overall pattern, what was, as he put it, the cognitive map that was being formed through learning.

**So, we have spoken about the influence of Vygotskij, Tolman and Lashley. What else?**

Well, there was politics too. I was also very Leftist in politics in those days. When I was still an undergraduate at Duke, there was a mathematician there, whose course in advanced algebra I took. Politically, I think he was a member of the Communist Party. He inspired me to become a member of the Young Communist League as it was called. And of course, coming from a rather well-to-do family this was also part of my rebellion against their bourgeois world. I realize that my politics and my science were related in some indirect way. This is what probably led me to that study showing that poor kids saw coins as bigger than rich children. I wanted to show that the world looks different depending on your position in it. I did not have a good idea of what I meant by culture then, but I was beginning to read, particularly Bronislaw Malinowski. I have gone back to re-reading his books and realize how dramatic an influence he had on me. He turned me onto cultural psychology. And of course social psychology was taken for granted once the Department of Social Relations was established.

**And was it this rebellion that finally drove you to your interest in the law?**

I think so, probably. It particularly led me to what to me was the most evil part of American law: the death penalty. The idea that people would put somebody to death, in punishment for a crime.

**How did you meet the law?**

It's a very odd encounter. I first became interested in the fact that we settle legal cases by telling stories at the trial. So, I began studying narrative in the courtrooms and people at NYU Law School, which as you know, is a superb place, became very much interested in that work, and they asked whether I'd like to join them – around 1983. I said, "Well, maybe, but I don't really know anything about the law," which wasn't completely true but true enough. So, Tony Amsterdam said to me "ok! You teach me about your kind of thing and I'll teach you what you need to know about the law." He, as you know, is a specialist in capital crime and soon I was deeply into the process of the death penalty. And I'm still there.

**What do you think your contribution has been in these years at NYU School of Law to the theory of law?**

Well, I'd put it this way, I started reading the theory of law and became enormously impressed by the theories that had been presented at the end of the 19<sup>th</sup> century and at the beginning of the 20<sup>th</sup> century by American legal theorists like Oliver Wendell Holmes. The purpose of law was to cut down on the cycling of revenge, that the most destructive thing that can happen when there's bad behavior is not that somebody has stolen my wallet with 400 dollars in it, but that I will then get that son of a bitch and kill him for doing that to me. And then his friends and his relatives will say "he killed him, get him!" So, you get this cycling revenge and as you know from the Amsterdam and Bruner book, we are very much concerned about the way in which law provides a means somehow of looking at violations of the morally expected even pragmatically expected and finds ways to calm them down, to cut down revenge. It does it by ritualization, it does it by the use of formulae like, for example, *stare decisis*, you know *stare decisis*? It is the general rule of following a precedent. A trial is not an occasion for rage and revenge, but for reason and precedent. Law attracted me because it tends to focus us to institutional issues and institutional continuity. It is long term. Law provides an absolutely splendid means of expressing the long-term institutional and moral norms of the society. Yet, I am still puzzled as to what it is that makes people accept the law...perhaps a fear of the consequences of not having the law. That's to say lawlessness is just too dangerous. Does that make any sense? But I want to get away now from the death penalty.

**Yes...**

Let's consider such things as property law, particularly intellectual property. The law, to begin with, recognizes that human beings are not perfect. So then comes the question of how we can live together when we are not perfect. So law specifies which expressions of our imperfections are forbidden, sets parameters for punishing these and establishes means for doing so. Law is about what is forbidden. But I find it difficult to discuss law in general. I want to talk about law in a democratic society.

I want to begin by noting two important functions of law in a democracy. The first has to do with resolving disputes in a way that is fair rather than vengeful, to avoid the cycle of revenge. There must be a general agreement about what it is that the people must not do, what constitutes a violation of the law. But it is often a question of uncertainty and how to reverse it. Here we rely on precedent. Here we rely upon *stare decisis*, as I mentioned. The law must rely on a past body of consistent decisions. The old baronial court precedents of Anglo-Saxon law first became consistently formalized in British law as writs, for example: you may not trespass upon my property, that is, you may not come on my property unless you have my permission. So, rather than try to state this in the most generalized kind of way, I state it by giving this case as an example and it becomes generalized the writ of private property. A writ specifies what constitutes a violation of property. But suppose you're walking by my property and you're a little bit tired and you say "oh, I'll stop for a moment and sit on his fence and have a smoke!" Have I violated his property? The person whose property is contained by the fence takes it to court and pleads his right of property. But was I violating property rights, sitting on his fence and doing him no harm? So intention enters. But suppose that in walking by your property I throw a lighted cigarette butt into your field. Have I violated your property? Well, yes. But if that cigarette butt was to start a fire, then it might support a charge of negligence against me.

By using this system of writs and by emphasizing law as a set of prohibitions of the forbidden, you allow freedom to exist within the society, for the law is not telling you what you should do but telling you that there are certain

limits to what you can do. And in time, these particular writs get organized into a system of law in which underlying rights are specified as well as particular violations. And eventually these rights are defined by the precedent cases that are decided upon by references to them.

But what are the rights and how are they determined? Sometimes they are explicitly stated as in the first ten amendments to the United States Constitution guaranteeing freedom of speech, freedom of property, freedom from arbitrary arrest etc. And they represent the precedents that are to guide judgement. And from this process we construct a system of law. But as the system gets more orderly, as my dear friend Taruffo points out, it may overly extend its prohibitions and come to restrict the basic freedom of the individual. Under those circumstances, we say that the punitive aspect of the law has extended itself to the point where it is not only punitive but it is also cutting down the freedom and rights of individuals.

Come now to the issue of penalty. Take capital crime. We say, in deciding on punishment, that we must look not only at the nature of the act, but we must also look at the circumstances, the motives, the cultural setting, etc. If it turns out that the person found guilty of murder was provoked by certain humane circumstances we take these circumstances as “mitigating” – if for example, he has murdered somebody who has stolen his inheritance or raped his wife, or kidnapped one of his children. Yes, he is guilty of murder “but” under such circumstances we will not permit the death penalty and even leave open the possibility, perhaps, of eventual parole. So, what is our theory of penalty? And how does the notion of mitigating circumstances fit into the doctrine of capital punishment? What is “mitigation?” It is based on “*just deserts*” or on a notion of strict liability – or on the notion of punishment as potentially rehabilitative, or what? We remain amazingly vague. It is certainly not simple, the vengeful business of he killed him and well kill him back.

Or come now to the less extreme forms of restriction – like the prohibition against liquor in the United States in the repealed 18<sup>th</sup> Amendment. It is that “we will curtail peoples liberty because there is a very high chance that, if we don’t, they might do things that are bad”. But, I say to you, maker of such a law, “What right have you telling me how to live my life?” You can punish me if I do wrong, but you can’t tell me that I can’t have a cocktail.” Yet, I can say that you may not



carry a gun – but not that you may not own one and keep it at home. Is the object of such laws to reduce dangerous uncertainty?

But consider another kind of issue that brings us a bit closer to civil law. The whole project of life is based on our reliance upon ordinary expectations. But what do we mean by ordinary expectations? Expectation is established by some sort of business contract or by implicitly acknowledging an obligation. I say that I will deliver a manufactured product by a certain date or we sign a contract to that effect. If I violate the agreement I may be liable before the law either to fulfill this obligation or pay you punitive damages. Or you may plead extenuating circumstances and if you do so successfully, you may have your obligations reduced. So, now I must raise the question, what kind of a system of law is this? One thing is clear. A system of law, criminal or civil needs to be procedurally specified. You cannot be vaguely spontaneous in the law. Law is designed to deal with conflict and vagueness is not permissible. Law is fundamentally different from everyday behavior, yet it must be seen as adjudicative of it. So, we have formal courts of law and we have judges who wear white wigs and we have a distinctive legal language.

And all of this imposes legitimacy, a most interesting cultural concept. Legitimacy requires not only official authority, but also a symbolic form. We need a system of law in which judges and juries are known to be disinterested in the outcome, that they are judging it entirely from the point of view of doing justice. And ritually, the judge sits on a bench higher than everybody else and is garbed in a beautiful black gown. The courtroom is orderly and ritualized. Jurors must be found to be impartial in advance, before being selected.

In addition, there is also the testimony, when appropriate of guaranteed neutral “friends of the court,” the so-called *Amicus curiae*, who give the court presumably his or her “objective view”. He or she is not speaking from prejudice, but is a distinguished scholar who has studied these matters and has a high reputation for both his expertise and his neutrality. Bringing in an amicus is a highly ritualized business.

The management of what constitutes legitimate evidence is also governed by procedural rules and rituals. Indeed, the rules of evidence are as complex and searching as anything in the law. Partly because of the cognitive revolution, the notion of objective evidence is always open to question, including expert

testimony. The law now has to take into account the psychology of witnesses, of judges, of the jury, and of the procedures used. I come increasingly to the conclusion that what we call the official normative structure of the law, its very notion of legitimacy, depends to some extent on anthropological and psychological conditions. Half the lawyers in the country would like to banish psychology from the law, while the other half would say “bravo!” Now many people say: “well maybe the law isn’t so different from the rest of life” and distinguished law schools like mine must appoint a psychologist or two. Even here in Italy now! Increasingly today, law is taken to be an expression of the culture in which it exists. Things are changing! One effect of all this has been the increased use of ADR – Alternative Dispute Resolution – in place of the classic judge-jury court. In ADR you use arbitration and mediation – and discussion. We are moving away from single yes/no legal procedure and moving toward a more balanced conception of conflict and its resolution.

**Jury? No...not the jury...**

No, it’s not the jury system...where you bring a group together to discuss the issues and to talk them out. Arbitration is one way and then there’s another kindred form called mediation. So, we introduce a notion of bringing the opposite sides together not just adversarially, but to consider the complexities and to discuss the ambiguities and, needless to say, we do it first in the realm of civic law. I suppose it started first in labor relations where you don’t have one judge...you have a group that comes together and the arbitrator tries to get things going. We do not yet have it in capital law and in many parts of criminal law. But I tell you, if I were to make a prediction about the way in which things would change over the next 100 years; my guess would be that criminal law procedure, particularly in the sentencing phase, will move in the direction of a more arbitral kind of thing; that’s my prediction.

**You are speaking about ADR. Will court ritual change?**

Yes, it will certainly change. That’s why we speak of alternative dispute resolution, ADR. It is growing because of the importance of cultural context is



getting more appreciated. Already I'm struck by the fact that even in criminal law cases, even in Italy, Spain, and France, that there is more discussion of points of view and that it's not enough to say "guilty or not guilty." It's developing first, as I said, in civil law but I think it's beginning to spread to criminal law as well.

But let me close by introducing another topic: the importance of narrative in legal procedure. In court; tell stories, good stories because I want to appreciate the cultural setting and the plight of all those involved. It is not just factual testimony but testimony in a narrative form with appropriate context: not just yay-nay, guilty-not guilty, but providing an appropriate narrative context. Take a murder trial in Seattle, Washington where the accused boy murdered a guy who stole something from him in anger, a boy who had been exploited all his life, between the ages of 4 and 15. When the murder was committed, had moved house 16 times, a poor family kicked out because they couldn't pay their rent, moving from one neighborhood to the other. Always the new kid in the neighborhood always exploited. So, one more was already enough, and he picked up a baseball bat and killed the guy trying to rob him. So, the Prosecution said that anybody with a temper like that should get the death penalty. But maybe a kid who has had to move 16 times should be permitted to make a charge against the society. Is it this kid or society? Who's guilty?

So, at NYU we introduced seminars on legal narrative and they are popping up all over the country. To do legal analysis requires more than legal analysis, but to look as well at the alternative ways in which a narrative structure can be organized. You need to consider alternative ways of proceeding.

Now, mediation! Mediation brings in another issue – a new feature of law, the establishment and use of norms. Some say mediation is "softer."

And yes, soft may be the right word, but I would also say mediation is more comparative. That is to say you'd take more of a comparative perspective on the matter and it would become then somewhat more relativistic but not relativistic in the bad sense, but in the good sense of relating different points of view and not feeling that from the start, the moment you raise your hand: "the whole truth, nothing but the truth..." that from the start, law should take it into account. That there is a question of how you decide between two accounts of how things happened and the way in which you have accounts of how things happen is through the narratives that people organize. So, that's the second point.

And the third point is that, because of this, what happens is that law itself becomes less rigid, less yes/no, not just writs. What happens is that context takes on a new importance and under those circumstances the whole notion of *stare decisis* requires looking not only at the past judicial decisions but also looking at the past ways in which things were narratively interpreted and to recognize, for example, that narratives during the 19<sup>th</sup> century, during our grandparents' times, were different from the way they are now, and were taken into account then and they have always been. The effect somehow to rule them out is stupid: rule them in! Be aware of what you are doing rather than saying I am gonna close my eyes...so that develops a humanization of the law. Some people say that this leads us to be soft on crime. But what's the evidence for that? I compare for example the United States, which is anything but soft on crime, as compared for example with Italy or France or other countries which I know fairly well.

I am looking at the American situation and talking from an American point of view. In American, we now have something close to six hundred people per one hundred thousand in prison, and we still have the death penalty, though very ambivalent about it. We have about 3500 people on death row but we only execute 60 a year, so "why do we need this?" "What is this thing about?" And some say that it is a continuation in legal form of American race prejudice and I think that there is some truth to this, because the much higher percentage of African Americans are on death row. I mean 35 per cent of people in American prison death row are black. So, I see...the American case is such that we want to have yay and nay, I mean, I am not interested in the story, I am interested in "is he guilty or is he not guilty", because I think it's probably primed by a combination of things, one of which I mentioned as race prejudice, I mean, we can't lynch the black man, all we can do is to put him in jail for the rest of his life or execute him, needless to say...a much higher...about 40 per cent of the people who are given the death penalty in America are Black and it makes me feel deeply humiliated...I hate it. And when I try to tell this story around the country and people say "You're going soft on crime" ...Soft on crime, the United States having six hundred people per hundred thousand in jail while in Italy there are only forty people per hundred thousand in jail. Yet the crime rate in the two countries is about the same. So, where do we gain? The main official justification for being tough on crime by using the death penalty is just not true! Instead our racism is

keeping alive a sense of revenge, a false sense of racial revenge that has little to do with our criminal problem, but is chiefly political and racial. It's hard to believe that it should be so in America, the home of democracy, where people have come to escape from countries that are too autocratic. They come here to America for the opportunity to get more democracy...But our system of criminal justice divides America. Does this make any sense? The country is more divided today, I think, than it has been since the Civil War. Talking seriously about what it means to be an American has become painful these days. Our judicial system would be a good place to start repairing things.

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