

## Chicago vs Virginia

*Charles K. Rowley, The Right to Justice: The Political Economy of Legal Services in the United States, Edward Elgar, Aldershot, 1992.*

*Reviewed by Ian McEwin.*

This is an important book, for two main reasons. First, it provides, in the context of the market for legal services in the US, a thorough analysis of the differences between the Chicago and the Virginia schools of political economy. Second, by using the Virginia school's approach, it shows that consumer preferences (here the preferences of the financially disadvantaged) play virtually no role in determining the allocation of public resources to civil-justice access programs. Instead, Rowley shows that special-interest groups, acting through the Federal Legal Services Corporation, have promoted their own law-reform agendas. The book thus provides a useful basis for assessing the impact of Australia's legal-aid programs.

Rowley argues that the Virginia school of political economy (VPE) offers a much richer framework for analysing government processes than the Chicago school of political economy (CPE). The latter uses price theory and positive economics to examine the workings of government. The state is conceived as a mechanism by which rational individuals redistribute wealth within society. Virtually all government regulatory and other intervention is seen as the product of competing groups seeking to redistribute wealth in their own favour.

Whereas CPE regards the political market as an efficient redistributor, VPE is less sanguine. VPE shares the methodological tools of price theory and positive economics, and accepts that interest groups attempt to redistribute income via the state. But it argues that political markets are not always efficient; participants are not fully informed, and so institutions matter to outcomes. The different approaches of CPE and VPE can be illustrated by class actions. CPE endorses class actions as cost-effective litigation because the fixed costs of litigating are spread over a large number of litigants. VPE is less enthusiastic, noting that lawyers bringing class actions can be concerned either with promoting the interests of a class or with promoting their own social visions. Where members of a class can be added to litigation without any indication of interest on their part, class actions become low-cost means for lawyers to pursue their own ends.

Within the VPE framework, Rowley analyses the legal-services market in the US, in particular the Legal Services Corporation that President Nixon established in 1974 to provide the poor with equal access to civil justice. After examining the evidence, Rowley concludes that 'the individual's right to justice has been subverted into collectivist law reform' (p.315). This has happened as lawyers use legal tactics such as class actions as instruments for furthering their own goals. Rowley documents attacks upon the family (which is important to liberty by 'furnishing independent and self-reliant citizens upon which a limited form of government is de-

pendent' (p.331) and the institutions of capitalism. This agenda has been pursued, Rowley argues, at the expense of the poor who rely on those funds to gain access to civil justice.

Rowley also finds the Legal Services Corporation to be excessively bureaucratic and internally inefficient. To overcome the inefficiencies and to curb the politically motivated ambitions of those controlling the Corporation, Rowley proposes a voucher system to ensure that the poor gain some market power over funds intended for them. As Rowley puts it, 'A customer without purchasing power is defenceless against such program invasion [by rent-seeking coalitions]' (p.377). The voucher scheme is not spelt out in detail, but it is an interesting idea.

Although *The Right to Justice* is at times repetitious, particularly in defending VPE against CPE, it refreshingly combines history, economics, and institutional analysis in a way that provides a damning indictment of the way a government program can be subverted. Those most disadvantaged in society may end up as badly off, if not worse off, despite initial good intentions.

Apart from providing a salutary lesson for those concerned with improving access to civil justice, the book should appeal to those interested in modern political economy.

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