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Book Review: The Right to Justice: The Political Economy of Legal Services in the United States

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BOOK REVIEW

THE RIGHT TO JUSTICE: THE POLITICAL ECONOMY OF LEGAL SERVICES IN THE UNITED STATES. By CHARLES R. ROWLEY. (Aldershot, England: Edward Elgar Publishing Ltd. 1992) pp. 269. \$49.95.

JANE M. PICKER¹

THE RIGHT TO JUSTICE² is a no holds-barred attack on the American legal services program, the American Bar Association, and lawyers in general. It seeks to find evidence to support various hypotheses derived from the Virginia political economy research program of public choice to prove that not only is the Legal Services Corporation not doing its job, but that it is institutionally incapable of doing so. Its conclusions, highly controversial, will be acclaimed by the conservative right as supporting proposals to abolish the Legal Services Corporation.

To support his case, the author creates dichotomies: "The right to justice" for poor people is considered to be a right of "access" to justice and a legitimate goal of the legal services program; it is contrasted with "law reform," which the legal service program is found guilty of supporting.³ "Access to justice," according to the author, involves assisting individuals to assert their rights under existing law while "law reform," ignoring the needs of the individual client, concentrates on group solutions.⁴ "Law reform" is said to seek a change in our political system of government, allegedly to redistribute wealth for the benefit of the poor, but in fact to lawyers themselves, even ultimately to those poorly paid legal services lawyers representing the poor who later achieve career advancement in the private sector after winning precedent setting law reform cases while employed by legal services.⁵

Various examples of "law reform" and "access to justice" are given. Assisting minorities in discrimination suits is "law reform" and wrongly viewed as a problem of the poor.⁶ Helping American Indians to assert their treaty rights is

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²CHARLES R. ROWLEY, THE RIGHT TO JUSTICE: THE POLITICAL ECONOMY OF LEGAL SERVICES IN THE UNITED STATES (1992).

³*Id.* at 230, 231.

⁴*Id.* at 230, 251-52.

⁵*Id.* at 230, 261.

⁶*Id.* at 204.

also critically cited.⁷ The very existence of redlining is doubted in an era when the Bush administration's Justice Department, after formally accusing a mortgage lender in Atlanta of racial bias, heralded the settlement of that suit as a possible model for a nationwide attack on redlining.⁸ Law reform "entrap[s] the non-poor into long-term, inter-generational poverty" and is also blamed for violence and drug addiction.⁹ "Legal services itself bears a significant responsibility for the human tragedy that has ensued."¹⁰

"Access to justice," on the other hand, includes more "mundane" assistance with day-to-day problems. Family law matters, indeed, are the single largest category of cases handled by legal services lawyers.¹¹ Family law and housing problems, taken together, occupy about half of their time.¹² These are considered to be in the "access to justice" category. Legal services lawyers, however, are faulted for not having prioritized the "feminization of poverty" which the author views as requiring individual rather than group solutions, perhaps because the problem is caused, at least in part, by the failure of mothers to be able to collect child support from absent fathers.¹³

Only in the next to the last chapter does the author admit that no absolute divide can be made between the right to justice and law reform. Here he states that even "strict construction constitutionalists" cannot "reasonably advance the case for an immutable system of laws" and that law must evolve in any society.¹⁴ Thus his approval, earlier in the book, of litigation to enforce constitutional rights established by *Brown v. Board of Education*¹⁵ need not be viewed as an inappropriate agenda for the legal services program.

The author's attitude towards constitutional litigation, however, is bewildering. Referring to "an independent research investigation" conducted during the fall of 1987 comparing the percentage of court cases brought as class actions by legal services attorneys with those brought by a control group of private attorneys, the author speaks of the class action as "an instrument directed more at government agencies and the constitution than at private organizations."¹⁶ Nowhere does the author explain how litigation can be aimed at the Constitution. Presumably he is referring to litigation in which constitutional claims are raised on behalf of plaintiffs.

⁷ROWLEY, *supra* note 2, at 204.

⁸See "U. S. Charges Mortgage Bias," N.Y. TIMES, Sept. 18, 1992, at C16.

⁹ROWLEY, *supra* note 2, at 266.

¹⁰*Id.*

¹¹*Id.* at 136.

¹²*Id.*

¹³*Id.* at 264-66.

¹⁴ROWLEY, *supra* note 2, at 321.

¹⁵347 U.S. 483 (1954), *supplemented by* 349 U.S. 294 (1955).

¹⁶ROWLEY, *supra* note 2, at 326.

Unlike the usual legal citation practice, this book provides reference only to sources, never to the page numbers in the source material referred to. However, this "independent research investigation," the overall results of which are displayed in various tables and which describes percentages of class actions as brought "against govt/constitution," is not identified at all.¹⁷

The author frequently singles out the class action, described as "an instrument of federally-funded social engineering" for which there is no real client, for particular criticism.¹⁸ Inconsistently, however, the author also critically cites tactical advice that legal services attorneys file numbers of individual lawsuits geographically dispersed.¹⁹

The avowed purpose of this book is to persuade bar associations, which are acknowledged to have persuasive powers over Congress (since members of Congress are likely to be lawyers themselves) to drop their support of funding the Legal Services Corporation and switch to the author's proposed system of *judicare*.²⁰ Deregulation of the bar is also supported.²¹ Bar examinations are viewed as intended to restrict the number of practicing lawyers in order to provide them high financial returns.²² Statutes prohibiting the unauthorized practice of law are cited as preventing legal services from being provided at lesser cost by non-lawyers.²³ Any analogy to the medical profession is not discussed.

The author's *judicare* proposal would provide vouchers to poor people to permit them to hire private lawyers (and presumably also paralegals or others not required to pass a bar examination) to represent them with respect to appropriate individualized concerns. While several studies are said to support the increased efficiency of the use of private lawyers over legal services attorneys, one problem is not dealt with: One of the same studies also found a much greater apparent reluctance on the part of the poor to use a *judicare* mechanism.²⁴ One third of the cases assigned to private attorneys in the study were closed as a result of the clients' failing to pick up their vouchers or keep their initial appointments.²⁵ In contrast, only six percent of the cases assigned to legal services attorneys had to be closed for such reasons.²⁶

¹⁷*Id.*

¹⁸*Id.* at 322.

¹⁹*Id.* at 325.

²⁰*Id.* at xi-xii.

²¹ROWLEY, *supra* note 2, at 369.

²²*Id.* at 273.

²³*Id.*

²⁴*Id.* at 319-21.

²⁵*Id.*

²⁶ROWLEY, *supra* note 2, at 319-21.

The author's obvious strong ideological bent, the book's internal inconsistencies, the lack of field studies, and the failure to provide information concerning the authorship of certain studies upon which the author draws to support important conclusions make this book suspect. A convincing portrait is drawn, however, of how bogged down in political controversy the provision of legal services has been and the internal chaos which has resulted. Allegedly improper behavior on the part of the Legal Services Corporation and its backup centers as it worked to survive various defunding attempts is painstakingly described.

Sadly, those ultimately most disadvantaged by the lack of political consensus concerning the Legal Services Corporation's programs are its intended beneficiaries, the nation's poor. Perhaps the Clinton Administration, with a First Lady whose prior experience includes service both as a member and as Chairperson of the Board of Directors of the Legal Services Corporation, may succeed in forging a better consensus with respect to the future role of legal services attorneys.