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The Pursuit of Justice: Law and Economics of Legal Institutions

Economics has a rich history of imperialism, in which the methodology of economics is applied to topics outside its traditional domain. The success of this phenomenon owes much to the insights said methodology provides.

One of the most successful examples of such imperialism is public choice, which notes that political actors are likely to maximize their own self-interest, rather than societal well-being. That is, political actors are unlikely to act as "benevolent dictators," and government failures are likely to emerge if this is not accounted for. The insights yielded by this research program have been, and continue to be, considerable. Given this remarkable success, it is natural to apply these same analytical tools to the legal system.

This volume seeks to do just that. It explores environments which relax the assumption that legal actors necessarily act in the public interest, and examines the consequences of self-interested judges, district attorneys, and so on. This book unambiguously increases our understanding of the inner workings of the legal system, while simultaneously highlighting the need for a great deal of additional research. I am pleased to highly recommend this volume to those with an interest in how legal institutions behave in practice. My only quibble is that some of the content, while interesting, seems out of place.

The volume begins with an excellent introduction by Edward López, which compares and contrasts public choice with law and economics in order to demonstrate the need for the application of the tools of public choice to legal institutions. Further motivation is provided by a description of recent legal trends which call for research of the type contained in the book. Many of these trends are not covered by subsequent chapters, which is suggestive of how much research is left to be done!

In Chapter 2, Nicholas Curott and Edward Stringham argue that the emergence of government-run legal institutions in England was largely driven by the fact that by imposing fines for wrongdoing, as opposed to allowing restitution through private institutions, kings were able to raise revenue. That is, these institutions were developed to serve the self-interest of the state.

Chapter 3, by Russell Sobel, Matt Ryan and Joshua Hall, provides a fascinating examination of how impending elec-

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tions influence legal outcomes. The authors find electoral cycles in wrongful conviction rates among elected district attorneys in New York. That is, directly before an election, wrongful conviction rates rise, and then fall after the election. The scarcity of reliable data of the sort utilized here highlights the value of this contribution, and hopefully it will encourage additional research. This chapter also presents a second result with regards to electoral pressures. When a U.S. state appoints judges, rather than electing them, a subjective survey measure of judicial quality increases.

Chapter 4, by Roger Koppl, advocates changes in how fingerprint evidence is verified in felony cases. In order to combat erroneous convictions on the basis of incorrect fingerprint analysis (resulting from honest mistakes or biased forensic scientists), the author advocates triplicate analysis of said evidence. He argues that the direct financial benefits (reduced incarceration costs of wrongful convictions) far outweigh the increase in costs.

Chapter 5, by Adriana Cordis, is an empirical analysis of the effect of judicial independence on corruption (measured by the number of public officials who are convicted of corruption). The author also investigates the effect of constitutional rigidity on corruption (using a country level index of perceived corruption). This chapter poses interesting and important questions, and suggests the need for additional research.

Chapter 6 is, in my view, the highlight of the book. In it, Aleksander Tomic and Jahn Hakes investigate the role of judicial selection in sentencing. Using a rich dataset, the authors find that the sentencing decisions of elected judges differ from those of appointed judges. In particular, the sentencing decisions of (county level) elected judges result in higher incarceration rates, but with shorter sentences, than their appointed counterparts. The authors argue that this may be explained by the fact that elected judges can pass the cost of crime deterrence to the state, as would be preferred by the voters they must face. Appointed judges, on the other hand, are subject to appointing boards who themselves are more sensitive to budgetary pressures. As a result, appointed judges have an incentive to reduce incarceration rates.

Chapter 7 and 8 both discuss government taking powers. Chapter 7, by Ilya Somin, examines the costs of using economic development as a rationale for such takings, and argues that it results in a classical government failure. Chapter 8, by John Brätland, argues that just compensation for government taking is impossible. Both of these chapters are interesting contributions in their own right.

In Chapter 9, Benjamin Barton offers support for the so-called "lawyer-judge hypothesis," which states that "if there is a clear advantage or disadvantage to the legal profession in any given question of law, judges will choose the route that benefits the profession as a whole" (p. 169). This hypothesis is intriguing, but it must be said that the support for the hypothesis offered here is anecdotal; this chapter is an interesting first step and invites more rigorous empirics.

Chapter 10, by Jeffrey Haymond, argues that the threat of certain class-action lawsuits allows politicians to extort private institutions. The author offers anecdotal support for this hypothesis, and finds empirical support for the claim that tobacco settlement money from the 1990's was diverted from anti-smoking

programs (which is consistent with a rent-extraction story of this famous lawsuit).

In Chapter 11, Charles Keckler provides a fascinating look at what happens to money that is either unclaimed in class-action lawsuit awards, or administrative costs are sufficient as to make it infeasible to allocate the award directly to the class. In principle, judges should allocate "the unclaimed fund to its next best compensation use, e.g., for the aggregate, indirect, prospective benefit of the class."[1] This chapter argues that judges often allocate this money in ways that benefit the legal profession, and that other legal conventions have evolved to increase the likelihood of this event. As evidence, the author uses *Price v. Phillip Morris* as a case study and notes that it was announced that 91 % of a $5.3 billion fund would be awarded to the legal profession, and the remaining 9 % would go to the American Cancer Society.

Chapter 12, by Adam Summers, is the last chapter in the book, and it discusses the myriad ways in which the legal profession has sought to erect barriers to entry to the legal profession. While these barriers are ostensibly a way to ensure quality control of legal services in an environment where asymmetric information is high, the author argues that the real reasons are anticompetitive.

In my view, the biggest weakness of this book is that the various chapters represent wildly divergent topics and methodologies, perhaps because this research agenda is so new. López has ordered the chapters in such a way as to minimize the discontinuities, but it is hard not to feel that the book would have benefited from a narrower focus. For example, the historical discussion of the emergence of government legal institutions beginning in 9th century England (Chapter 2) is followed by an econometric analysis of the effects of electoral pressures on wrongful conviction rates and judicial quality (Chapter 3).

Further, while the majority of the chapters examine the consequences of legal institutions on the behavior of legal actors, a few chapters diverge from this theme and thus seem out of place. For instance, Chapter 4 is, for the most part, a cost-benefit analysis of the proposal for "triplicate examination of fingerprint evidence of all felony cases going to trial in the United States" (p. 60). The chapter does include a discussion of the incentive structure faced by forensic scientists who are directly employed by law enforcement agencies, which relates to the book's theme, but this discussion is only a small part of the chapter.

More egregious examples can be found in Chapters 7 and 8. Chapter 7 analyzes the problems with using economic development as a rationale for government taking and notes that the emergence of this rationale has implications for interest groups and politicians. Chapter 8 (convincingly) argues that it is impossible for the victims of government takings to be justly compensated if the taking is involuntary. While both of these papers are valuable in and of themselves, it is not clear how they relate to the stated aims of this volume. While it was a ruling of the U.S. Supreme Court which brought this issue to prominence (*Kelo v. City of New London*), this ruling simply upheld the actions of political actors (the city councilmen of New London), and it is politicians who decide to initiate government takings. As such, the examination of gov-

[1]Herbert Newberg and Alba Conte, *Newberg on Class Actions*, 4th ed. (2002), §10.17.

ernment takings seems squarely within the realm of public choice, and out of place in this volume.

This book has a promising premise: that legal actors and institutions ought to be analyzed in the same way as their economic and political counterparts. Fortunately, most of the individual chapters deliver on this promise, and each one of them represents a valuable contribution to this emerging (and hopefully burgeoning) research agenda. (Those that do not are, nonetheless, interesting and worthwhile endeavors.) The authors are to be commended, and I hope that the publication of this volume will spur further research in this, as yet, underdeveloped area.

I highly recommend this book to anyone with an interest in public choice or law and economics. At $25.50, it is too good a bargain to pass up.