BOOK REVIEW

THE POOR IN COURT

BY
SUSAN E. LAWRENCE

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Reviewed by Vincent Luizzi*

Until the mid-1960's, legal aid societies functioning as private, charitable institutions were the primary providers of legal services to the poor. In 1965, the federal government stepped in and established the Legal Services Program (LSP), a project to provide legal representation to indigents in civil cases.

The LSP lasted nine years and was replaced by the Legal Services Corporation to shift these services from the executive branch's Office of Economic Opportunity to an independent corporation. The LSP's extraordinary success in its dealings with the United States Supreme Court is what Susan Lawrence seeks to explain in her book THE POOR IN COURT.

The LSP's success at the Supreme Court, as well as with other levels of appellate review, resulted in the development of poverty law as a "distinct legal subfield" (p. 9) not to mention the further development of the Court's due process and equal protection jurisprudence. (p. 125) During the LSP's nine year tenure, seven per cent of the Court's written opinions addressed cases brought by the LSP (p. 123) with the LSP prevailing in 62 per cent of those cases. Usual guidelines for predicting success suggest victory in only 53 per cent of cases. (p. 99) There were additional victories, including the LSP making 164 requests for review with the Supreme Court, which accepted 118 and gave 80 of those plenary consideration. General review rates suggest that the Court would have accepted only 64 of those 164 requests and given only 14 plenary consideration. (p. 70)

The first factor that Lawrence offers to explain these accomplishments is that the LSP, through its merging of "client service and reform" roles for the "newly enfranchised litigants" (p. 112) provided opportunities for decision-making that were not forthcoming with prior efforts to assist the poor. Before the LSP, legal aid societies primarily occupied a client service role or one which focused on the immediate needs of the client. That sort of orientation contrasts with a reform role usually occupied by interest groups that are pri-

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marily seeking certain policy goals and are much less concerned with furthering the interests of the individual clients. Lawrence explains that the LSP's Supreme Court litigation was the product of the Program's blending of the client service and reform roles, providing 'delegate' representation in the Court. It was not the product of the kind of 'trustee' representation interest groups provide when they emphasize achieving policy goals through reform litigation. The distinctive development and operation of the LSP produced a program that presented the Supreme Court with opportunities to decide the "cases of, rather than for, the poor." (p. 38)

Another important factor accounting for the LSP's success centers on the justices; more specifically on how they perceived their role, which, in part, Lawrence argues, was shaped by the political climate of the times. Lawrence begins by characterizing the justices as thinking of themselves as performing their duties responsibly when they chose to review cases that affected large numbers of people beyond the parties before the court, cases that were related to pending or anticipated cases, and those that involved high stakes. And it was the LSP that brought such cases to the Supreme Court. "The LSP's success rate is partly attributable to its serendipitous sponsorship of cases that fit the Court's conception of its proper role." (p. 86) Furthermore, "it is likely that the rediscovery of poverty and its emergence on the nation's political agenda . . . also affected the justices. Poverty claims came to be incorporated into the justices' conception of the 'proper' work of the Court." (p. 92)

Lawrence suggests that theories that turn on some single factor, like "the organizational structure of group litigants" (p. 120) or "judicial values and behavior" (p. 120) are inadequate to account for the Supreme Court's decisions. Depicting her broader account as drawing on a "confluence of factors," (p. 121) Lawrence sums up:

> Thinking of Supreme Court decisions and doctrinal development as precipitated by a confluence of litigant claims, available legal basis, and judicial sympathy joined by a hospitable political climate, has several advantages. Unlike accounts that focus on the organizational attributes of group litigants, this confluence picture suggests additional factors that influence litigant success, and, more important, it incorporates group litigation efforts into a comprehensive description of the judicial decision-making process by revealing the importance of the opportunities for decision presented to the Court. In contrast to accounts that focus solely on judicial values and behavior, this description of a confluence of factors reminds us that the justices are powerless to act without a case. (p. 120)

Lawrence's confluence thesis is plausible and convincing as we assess its considerable relevance in accounting for the LSP's success with the Supreme Court between 1965 and 1974. But a few words need to be said about the scope of the thesis and its competition with rival hypotheses concerning judicial decision-making. First, we have too little evidence to accept that this thesis would explain or allow us to predict future activities of the Supreme Court. That would require an evidentiary base which illustrates how the political winds of the time, the justices' conceptions of themselves, and the models

employed for representation are all needed to explain the decisions. This may be true, but it needs to be established, and without the additional evidence all we have is a thesis that accounts for a particular phenomenon at a particular time. As such, we should not think we are being offered a new, general theory of judicial decision-making.

Furthermore, Lawrence leads us to believe that her thesis has only two rivals in the judicial decision-making world — the organizational theory and the values theory. That world is, in fact, much more heavily populated than Lawrence would have us believe. What about Dworkin's theory focusing on how principles and rules guide the judge's decision, as well as how the thinking of prior judges influence current decisions? There is also Wasserstrom's rule utilitarian approach. If Lawrence's thesis is a general theory at all, it needs to be located in a context that adequately examines its competitors and then shows its superiority.

Finally, a word should be said about Lawrence's writing style. The work is relatively jargon free. It is difficult to discern what, if any, disciplinary perspective Lawrence represents. The work restates major insights, theses, and sub-theses in such a way that the reader is able to finish the work with a clear understanding of what it represents without having to go back to review or piece together its claims. As such, Lawrence's work is a model of lucidity. Overall, THE POOR IN COURT is a good book when its claims are properly restricted.