

Solving the World's Problems

Reviewed by David R. Henderson

WHY POPCORN COSTS SO MUCH AT THE MOVIES: And Other Pricing Puzzles

By Richard McKenzie

328 pages; Copernicus Books, 2008

Have you ever wondered why the price of movie theater popcorn is so high, sometimes almost as high as the price of a movie ticket? Richard McKenzie has. McKenzie, an economist at the University of California, Irvine and a prolific writer of books and articles has written an entire book about pricing, *Why Popcorn Costs so Much at the Movies and Other Pricing Puzzles*. McKenzie uses clear economic reasoning to explain many aspects of pricing that are otherwise puzzling. He even uses reasoning about prices to show that the federal government's rules for getting on airplanes have caused more deaths than the terrorists caused on 9/11. In fact, McKenzie, a strong believer in economic freedom and limited government, has a number of insights about the harmful effects of other regulations besides those in airports.

POPCORN In his book, McKenzie devotes one chapter to popcorn prices; thus the title. Unfortunately, the popcorn chapter is the weakest in an otherwise solid book. Let's get it out of the way first.

The conventional wisdom about high popcorn prices is what McKenzie calls the "entrapment theory": moviegoers face a monopoly supplier of popcorn because they are trapped in the theater, so the theater owner charges supra-competitive prices. McKenzie claims a number of problems with that explanation. One is that popcorn is not so

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expensive when you consider the alternative of popping it yourself and smuggling it in, because the do-it-yourself alternative entails a large time cost. But this explanation doesn't quite work; indeed, entrapment theory advocates claim that the cost of do-it-yourself is part of what traps people. McKenzie comes close to noting another, more difficult problem with the entrapment theory (though he never quite fleshes it out): because customers value the bundle of popcorn and movies, if the theater charges less for popcorn, it will charge more on tickets.

So why do theaters charge so much for popcorn? McKenzie notes Steven Landsburg and David Friedman's explanation that different theatergoers have different demands for popcorn. By charging less than otherwise for tickets, the theater can price discriminate. It can charge relatively low ticket prices to those who do not value popcorn much and, that way, get them in the door, while collecting more from people who value highly the "movie and popcorn" experience.

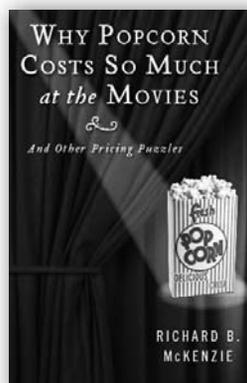
Another line that McKenzie pursues should be of special interest to *Regulation* readers: In its now-infamous, heavy-handed ruling in *United States v. Paramount*, the Supreme Court required movie studios to divest themselves of their theater chains. McKenzie shows that after the divestiture, ticket prices rose substantially relative to the consumer price index. He argues that this is due to the studios' substantial cost of monitoring theaters to make sure they're not hiding ticket sales. If vertical integration were allowed, he claims, prices of both tickets and popcorn would fall. He does not mention a competing explanation for the higher price of tickets: increasing real wages in the

relatively labor-intensive industry of popcorn making.

OTHER PRICE PROBLEMS One of McKenzie's best sections, which is standard economic fare but written particularly well, is on water in southern California. McKenzie writes that he asks his classes why there are water crises in southern California. When a student answers that it is because southern California does not receive much rain, McKenzie points out that it doesn't rain Mercedes-Benzes in southern California either, yet there is no Mercedes-Benz crisis there. The correct answer, he explains, is that the price of a Mercedes-Benz is set by market forces, whereas the price of water is fixed by government. When you have price controls, expect occasional shortages.

Two of Prof. McKenzie's strongest sections are on university-provided housing for faculty at UC Irvine and the effect of airport security measures on fatalities. Because UC Irvine did not want to pay enough to attract high-quality faculty, it built housing — University Hills —

and then sold it at the cost of construction to faculty members and leased the land to faculty members at below-market rents. But the university realized that if it simply allowed faculty members to sell the houses at market prices, many of the lucky first owners would do just that. Then many of the best faculty members, the ones that the university wanted to attract, would no longer have a good reason to stay. So, the university prohibited resale except at a price that adjusted the original price for inflation rather than for the much-higher increase in market value. Also, the university, worried that faculty members would rent their houses out long-term at market rates, prohibited rentals for any term longer than two years. Finally, faculty members must live in their homes for at least half of each year. Can you guess what happened next? The consequences, though unintended, are entirely predictable. First, as



faculty members' families grow up, the faculty members don't downsize. Second, faculty members hold onto their houses well after retirement — some faculty members jokingly call University Hills a retirement community. As the remaining land gets built out, perhaps in the next five years, writes McKenzie, University Hills will no longer serve its initial function of attracting non-geriatric high-quality faculty.

What do the U.S. government's security checks at airports have to do with pricing? Here's what: One consequence of 9/11 is that the government beefed up security checks at airports, as anyone who has flown in the last seven years well knows. (McKenzie uses sloppy language, claiming that the terrorists "forced" the government to beef up those checks, but the government *chose* those policy measures.) The new security measures raised the time price of airline travel. McKenzie cites evidence that the measures reduced air travel by five percent, causing people to substitute driving for flying. That, in turn, led to about 1,200 more road deaths the first year after 9/11. Even if those road deaths tapered off because of a smoother adjustment in airports, more than seven years of increased road travel have gone by since 9/11. If the security measures caused even 430 more road deaths per year, they have killed more than the 3,000 people murdered on 9/11.

Of course, I have highlighted the issues in *Popcorn* that have most to do with regulation. But McKenzie addresses other pricing issues too, resolving a lot of puzzles in the process. He argues persuasively that it makes sense for sellers to price a good at \$9.99 rather than \$10.00, not because consumers are irrational, but because consumers are rational. Consumers, whose time, memories, and computing capacity are all in scarce supply, want information about prices. They know that the most important number in a price is the one furthest to the left and they pay less attention, therefore, to numbers furthest to the right. Sellers also know this and worry that if they priced a good at \$10.00 instead of \$9.99, some buyers, paying attention to the 1 and the 0, would just assume that the remaining numbers are 9 and 9, making the price \$10.99. Buyers would make this

assumption because they have become accustomed to prices ending in "99." So, sellers dare not round up for fear that buyers will overstate the true price. Whatever the origin of prices that end in "99," sellers are stuck with this consumer perception. McKenzie points out that sellers, in essence, are trapped in a prisoner's dilemma. If all sellers agreed to start rounding prices, consumers would quickly get used to this and would correctly estimate prices. But each seller individually has an incentive to stick with the current system.

The best-selling book *Freakonomics* got a lot of people interested in economics. But *Freakonomics* has one huge weakness: it pushes the view that sellers are out to get you and that there is a lot of fraud or near-fraudulent behavior in the market. Co-authors Stephen D. Levitt and Stephen J. Dubner scratch the surface on issues such as real estate agents, presenting evidence consistent with the view that real estate agents cheat

their customers, but also consistent with the view that real estate agents help their customers. When they find evidence that could be interpreted to support the cheating view, they rarely go beyond the evidence to ask if there are alternate explanations.

But McKenzie is a much more careful economist. He uses economics to analyze the issues deeply and presents a more balanced view of the incentives and motivations of sellers. In a chapter titled "Free Printers and Pricey Ink Cartridges," for example, after showing that both printer companies and printer users gain from the particular choices they make, McKenzie writes, "If both parties to the trades — printer companies and buyers — are gaining by the trades, who's to say who is exploiting whom? Put differently, both could be exploiting the other — and each loving being exploited." Because he goes so deeply into the issues, McKenzie's *Popcorn* is a welcome antidote to *Freakonomics*. **R**

Reconsidering Victimless Crime

Reviewed by George C. Leef

PROHIBITIONS

Edited by John Meadowcroft
269 pages; Institute of Economic Affairs, 2008

In one of those timeless "Peanuts" cartoons, Lucy frowns and holds up a sign reading "Help stamp out things that need stamping out!" The world is full of people like Lucy — people who are absolutely certain that others are doing things that ought to be stamped out.

Prohibitions is a timely book that examines both the motives of the prohibitionists and the consequences of their policies. Editor John Meadowcroft, a King's College lecturer, has assembled a dozen enlightening essays by opponents of prohibition. Cumulatively, they make

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a very strong case in favor of a laissez-faire policy on everything from gambling and pornography to drugs and human organ sales. Throughout, authoritarianism and paternalism take a drubbing.

When one person's conduct does not entail any aggression against others, we ordinarily say that he should be free to do it. If the person sitting next to me on an airplane takes out and reads an obstreperously anti-market magazine, it would be legally wrong of me to snatch it out of his hands and tear it up, no matter how much the content bothers me. The law usually takes the approach that peaceful conduct is no one else's business — but not always. In the United States and elsewhere, governments have enacted an array of victimless crime laws that subject people to prosecution for doing things that others just don't like.

The book covers 10 instances where governments have enacted either com-

plete or partial prohibitions on products or conduct: recreational drugs, boxing, firearms, advertising, pornography, medical drugs and devices, prostitution, gambling, commerce in human body parts, and alcoholic beverages. Meadowcroft's writers are an international lineup of scholars, including economists, lawyers, political scientists, philosophers, and sociologists who never hesitate to challenge "sacred cow" beliefs.

VICTIMLESS CRIMES In his introductory essay, Meadowcroft defends individual liberty of action by citing John Stuart Mill's "On Liberty." Mill argued against legislation that impinges on peaceful human action, saying:

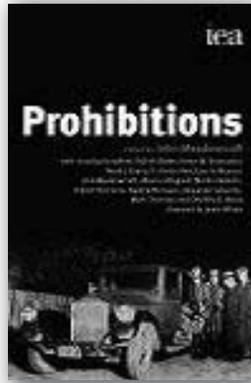
[T]he sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, whether physical or moral, is not a sufficient warrant.

Meadowcroft thus argues, "It is wrong to impose our preferences on others who may not share our assessment of the costs and benefits of different courses of action; to prevent other people from choosing their own ends is to deny their capacity for autonomous choice and ultimately to deny their very humanity." That is strongly worded, but in my view correct. Sadly, governments — even democratic and supposedly civilized ones — have decided to prohibit their citizens from doing many peaceful things they would choose to do.

Those who push for such laws seldom consider the secondary consequences. Meadowcroft points out that merely passing a law against something that you find offensive does not ensure that it will stop. Instead, the prohibition puts the business of supplying that thing into the hands of criminals, increases

the risks of engaging in it, turns peaceful people into law-breakers, diverts law enforcement resources away from truly criminal (i.e., rights-violating) activities, encourages the politicization of society, and may wind up *increasing* the thing that you want to curtail. In sum, prohibitions can impose large costs, both individual and societal, while producing little or no benefit.

LOOK INSIDE Advocates of prohibition often contend that many individuals do not understand where their long-run interest truly lies and therefore would be better off if government prevented them from engaging in behavior that is apt to prove harmful.



In their chapter, University of Buckingham economists Martin Ricketts and Geoffrey Wood argue that this view of government as an omniscient, benevolent parent guiding its weak-willed and short-sighted citizens is highly problematic. "Any prohibition introduced to protect one class of people from making a 'mistake' and

acting against their interests will simultaneously prevent another class from taking advantage of their greater local knowledge to improve their own welfare," they write. Government officials cannot possibly know whether the gains for some exceed the losses imposed on others, and they should not pretend that they do.

Mark Thornton of the Mises Institute and Simon Bowmaker of the University of Edinburgh tackle the emotion-laden issue of "the war on drugs." If you want to start a fight with the typical social conservative, try suggesting that we "surrender" in that war and allow a free market in drugs. Wouldn't that lead to a disastrous increase in drug use and the ruining of many lives? The authors argue that there would be no disaster because most people who currently abstain from drugs would continue to do so and most of those who would use drugs would do so responsibly. That is because the costs of irresponsible drug use are very high; for example, impairing one's job performance or driving under

the influence. Furthermore, legalization would take away the "forbidden fruit" aura that lures some rebellious types into drug usage. "With legalization," the authors write, "market behavior will look more like Budweiser, Marlboro, and Coca-Cola and less like Al Capone, *Miami Vice*, and *The Sopranos*."

The prohibition of firearms is an equally contentious issue. Advocates of gun bans, especially handguns, argue passionately that lives would be saved if only the "gun nuts" would stop obstructing the needed legislation. Firearms chapter author Gary Mauser of Simon Fraser University, however, maintains that this is just wishful thinking. The considerable experience we have with firearm prohibitions gives no reason to believe that gun bans are beneficial. In the United Kingdom, a few sensational crimes have led to draconian anti-gun laws. Rather than bringing about a decrease in criminal violence, however, the laws have coincided with a large increase — violent crime is up because people are less able to resist. American Second Amendment defenders who believe that gun control legislation is the entering wedge of a wholesale attack on firearm ownership rights will find strong support in Mauser's essay. In England, enforcement has "virtually destroyed" the legitimate sport shooting community. People who shot for sport or for food have been disarmed. They no longer have their guns for peaceful uses, but instead must pay higher taxes for an expanded firearms bureaucracy.

ORGAN MARKETS A prohibition that, unlike those just discussed, has never occasioned much controversy is that against the sale of human organs. That is unfortunate because it is a deadly prohibition. Mark Cherry, a bioethicist at St. Edward's University in Austin, Texas, does his best to stir up controversy with his essay. (He has also authored a book on the subject, *Kidney for Sale by Owner*, which goes into detail on the genesis of the law against human organ sales.) Tens of thousands of people die every year because organs that would have saved them were not available, he points out. In the United States, it is legal to donate organs, but not to

contract for them. Cherry makes the obvious point that with financial incentives, we would have a considerable increase in organ availability. Adam Smith's comment that it is not from benevolence that we get our dinner from the butcher, baker, and brewer is certainly applicable here. The profit motive beats benevolence when it comes to getting scarce goods.

Cherry proceeds to unleash a crushing assault on the supposed moral superiority of organ donation rather than sale. Responding to the common notion that if money is involved, an act becomes morally tainted, he writes, "We accept paid rescue workers who risk their lives to save others in many areas of life (ski rescue teams, firefighters, and so forth). To be sure, intentionally obstructing a life-saving rescue attempt is typically judged as morally blameworthy, and frequently legally culpable. Why not in organ transplantation?" To be compared to people who get in the way of rescue attempts is a strong but entirely deserved rebuke to those who insist that organ selling must be kept illegal. But what about the often-heard claim that the poor would be exploited if we allowed organ sales? Cherry brilliantly turns the tables by observing that "it may be that by offering to sell organs the poor would be exploiting the illness, suffering, and fear of death of the rich for personal gain."

I have to regard this essay as my favorite because of its many sharp and logically devastating arguments against the people who whine about the "commodification" of organs and the superior moral virtue of pure altruism. That costs people their lives.

CONCLUSION Unfortunately, there is not enough space here to discuss all of the pieces included in the book. They are all sharp.

Prohibitions would be an excellent choice of reading material for an upper-level undergraduate or grad school public policy course. Colleges and universities these days make much ado about their commitment to developing "critical thinking" among their students. Mostly, I'm afraid, that is just hot air, as "critical thinking" generally means uncritical acceptance of a set of anti-

market dogmas. Reading and discussing this book, however, really would engender some critical thinking because it challenges, both empirically and philosophically, so many prevailing beliefs about government policies. The bright student will find plenty of reasons to question not only the specific prohibitions that are investigated, but a wide

array of other regulations.

Getting people to question the efficacy of government is central to the mission of the book's publisher, the Institute for Economic Affairs. We can say that this book is another successful effort, and all the more so because it attacks both "leftist" and "rightist" misconceptions about the proper role of the state. **R**

A Modest Offering

Reviewed by David R. Henderson

THE BEST BOOK ON THE MARKET:

How to Stop Worrying and Love the Free Economy

by Eamonn Butler

160 pages; Capstone, 2008

Whatever else you can accuse British economist Eamonn Butler of, modesty is not on the list. He claims, with his title, to have produced the best book on the market. His clever title is, of course, a double entendre: this is the best book written about the free market, or so Butler says. I will not go that far, but I do think that it is one of the best books on the market to come along in decades. Written with a breezy, humorous style, *The Best Book on the Market* covers many of the ideas we believers in the free market would like people to understand: how exchange makes both parties better off, how free market prices communicate valuable information, and why markets do so much better than governments, to name three.

Most readers of this review, I suspect, understand much of what Butler's book communicates. But what makes the book stand out is his writing, which is full of fresh metaphors and examples. He also treads old ground with new insights. This

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is a great book to give friends, relatives, and students who do not share free market views but who want a quick, enjoyable way to understand them.

One of Butler's best metaphors is of prices as instant messengers. Prices typically adjust quickly in response to shifts in supply and demand, thus sending messages to buyers and sellers that prompt them to respond. Butler's point is not new, but his way of saying it is. Another of his

fresh thoughts is that, whereas we economics professors often teach our students that companies face a demand curve, what they actually face, given their limited information, is a "demand fog." That is, sellers do not know the exact amount that will be demanded at each price. Rather, they have some idea, but they are often wrong.

That is why, writes Butler, the market is a discovery process. Sellers often discover new demands that they were previously unaware of and they also often discover that there is much less demand for their products than they thought.

TRADE AND MONEY Butler points out that many people understand that both sides gain from an exchange when they barter one good for another. But, he notes, they seem to lose their understanding when money is involved. Why? Butler has an answer that I had not thought of: people tend to think of money as wealth, so they think that the seller gets wealthy while the buyer, who gives up money, is worse off.

Even successful businessmen make



this mistake. Shortly after Butler's book was published, oilman T. Boone Pickens went on television claiming that the money we Americans spend on foreign oil is a huge wealth transfer to foreigners. Pickens forgets that we would not spend \$140 on a barrel of foreign oil if we did not value the oil at more than \$140. So the foreigners who sell the oil are better off, but so are we buyers.

Here's a test, though, of the strength of Butler's explanation: Most of us sell our labor services for money. Our employer gets the services and we get the money. But if people apply the above assumption that money alone is wealth, then they will perceive the employees as gaining and the employers as losing. Do they? I don't think so. This does not mean that Butler's explanation is incorrect, but it is less general than one might think.

OTHER TOPICS In making his case, Butler often gives evidence and stories that even the most informed free marketers will find fresh. In an excellent discussion of the damage done by legal prohibitions on markets, for example, Butler talks about how, under Prohibition in the United States, illegally produced liquor had a rough taste. That is not new, but what was new to me was Butler's claim that the poor-quality liquor led to the rise of the cocktail — to disguise the harsh taste. Also, I did not know, until reading *The Best Book*, that Britain's Royal National Lifeboat Institution, which was created in 1824 and does not take government money, maintains over 300 lifeboats and rescues about 6,000 people a year. Butler tells this story to point out that the "free-rider problem," one of the main justifications most economists (including this one) give for government intervention, is not as much of a problem as is commonly supposed.

And consider this way of noting the futility of government-set prices: "You can't control prices any more than you can control the weather. You can pass a law saying that every day will be sunny, but don't expect people to come out in their shorts when it's actually snowing."

Many economists have made the point that inflation distorts price signals because it makes almost all prices rise and, thus, confuses both buyers and sellers. But few have done it as succinct-

ly as Butler. He writes, "[T]he *signal* of scarcity or surplus is lost amid the *noise* of prices rising all over the place."

Butler's humor, too, is a lot fun. For example, in discussing how comparative advantage leads people to specialize, he writes:

Someone with big strong hands might make a good builder but a poor watchmaker. A shy person might make a conscientious office clerk, but a bad politician. So the builder who needs a watch repair goes to the neat-fingered specialist; and the office clerk who needs a politician.... Well, bad example, but you see the point.

At one point, though, Butler chooses humor over clarity. He writes, "*Blank* paper you could at least write on, but governments manage to make it completely worthless by printing pictures of dead presidents on it." That's a great line, but it's false. I would not fear that it would mislead people if I had not been

hearing serious commentators say similar things lately about the U.S. dollar. If you think his claim is true, then please contact the publisher for my address and send me all of your bills with pictures of dead presidents on them, especially the ones with pictures of Ulysses S. Grant. (I will even accept the ones with pictures of Benjamin Franklin, although he was not a president.) In return, I will send you an equal weight of blank paper. I promise.

In short, *The Best Book on the Market* is one of the best books on the market. And I have not mentioned one of its most appealing features: the pages are small, the type is the right size for 50-year-old eyes, and there are only 160 pages. This means that a moderately fast reader can breeze through it in one to two hours. George Mason University economist Tyler Cowen could do it in five minutes. But doesn't that mean you are not getting as much value as you would from a longer book? Not necessarily. Most books are too long. What are you — a believer in the pages theory of value? **R**

Unpleasant Truths Behind the 'Myth'

Reviewed by George C. Leef

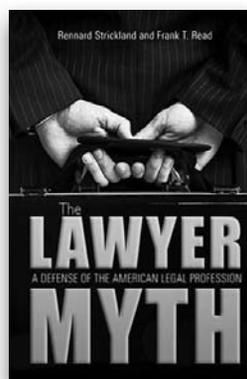
THE LAWYER MYTH: A Defense of the American Legal Profession

by Rennard Strickland and Frank T. Read
152 pages; Swallow Press, 2008

In 1999, a book entitled *Approaching the Qur'an: the Early Revelations* was published. I would never have heard about it except that, in 2002, the University of North Carolina at Chapel Hill selected the book as its summer reading assignment for incoming freshmen. It was a controversial choice, to say the least. Among other criticisms, those who found it a poor selection noted that the author included none of

the passages calling for violence against infidels. If you read only that book, you would think that Islam was untainted by the spilling of blood.

Just as *Approaching the Qur'an* white-washed Islam, so *The Lawyer Myth* white-washes the legal profession. Authors Rennard Strickland and Frank Read, both law school deans, announce, as in the movie *Network*, that they are "mad as hell and won't take it any longer." What they're mad about is the opprobrium that is so often dished out to their profession. Not just the lawyer jokes, but the public perception that lawyers are mostly leeches who manipulate the system to live well at the expense of everyone else. And they are especially angry at commentators and politi-



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cians who try to score points with glib, misinformed people by pushing for reforms in the legal system.

To hear Strickland and Read tell it, the legal profession has been viciously and unfairly attacked. Lawyers are not leeches; they do great things. They deserve to be held in the highest regard, not maligned.

I know of no one who is foolish enough to believe that the entire legal profession is rotten and that lawyers never do any good, but that is the straw man the authors rip apart. They inform us that lawyers often defend those who have been wrongly accused. Yes, and bravo. They argue that lawyers help to solve difficult societal issues, and indeed sometimes they do. They observe that lawyers are instrumental in keeping the wheels of commerce turning. That is correct — well-written contracts are very important.

No serious person denies that many lawyers do beneficial work. The problem with *The Lawyer Myth* is that the authors try to create the impression that no lawyer ever does anything bad. That is demonstrably untrue, but just as the “kill the infidels” passages in the Quran never darken the pages of *Approaching the Qur’an*, neither does any of the reprehensible, vicious, and greedy conduct of lawyers and bar associations ever show up in *The Lawyer Myth*.

TORT Let’s start with tort law. Strickland and Read go to considerable lengths to show that one of the most infamous recent tort cases (the McDonald’s hot coffee case) is misunderstood and actually praiseworthy when properly analyzed. And they make a pretty persuasive case. The trouble is that after dispatching with that and a few other cases commonly cited as justifying the urgency of reforming the tort system, the authors want readers to conclude that the whole tort reform movement is bogus.

Hardly. There are many, many cases where lawyers have extracted enormous amounts of wealth over absurdly trivial complaints. One of the most egregious was a class-action suit against Toshiba in the late-1990s, alleging that a design flaw could cause users of a Toshiba laptop computer to lose data when transferring

it to a floppy disk. No computer owner had complained about this actually happening, much less claimed significant damage from the theoretical defect. But digging around for a case to file, a Texas trial lawyer learned about the malfunction’s possibility and ginned up the class-action suit. Wishing to avoid a potentially devastating jury trial in an unfriendly venue, Toshiba agreed to pay the two named plaintiffs \$25,000 each and gave coupons worth a small amount toward the purchase of a new computer to anyone else in the class who wanted in on the settlement. Naturally, the law firm pocketed a huge windfall — \$147 million.

The authors make much of the fact that in cases where there are oversized damage awards, judges can reduce them to a rea-

The problem with the book is that its authors try to create the impression that no lawyer ever does anything bad.

sonable amount. That can happen, but it does not always. Moreover, what does it tell us about lawyers who try to extort sums vastly in excess of any damage suffered?

And there are cases worse than mere greed. In 2005, federal judge Janis Jack, sitting in an asbestos case, became suspicious about the medical evidence that the plaintiffs’ lawyers were using in a mass tort case. She investigated and found that doctors had been paid to come up with diagnoses of harm to patients they had barely examined, if at all. The cases were thrown out and the lawyers sanctioned. If you only read *The Lawyer Myth*, you would never know that lawyers are capable of deception to win cases.

Would it be piling on to note that the inventors of the “strike suit,” whereby start-up firms were socked with lawsuits when their earnings did not match projections on the ground that the investors had been defrauded, are now in jail for having paid people to be their plaintiffs? That and other recent ethical embarrassments for the legal profession are ignored.

CARTEL A disturbing feature of the book is the way the authors try to carry their arguments with *ex cathedra* pronounce-

ments. At one point, for example, they simply declare, “The bar is not a closed guild whose primary function is to protect its members.” No less a legal scholar than federal judge and University of Chicago Law School professor Richard Posner disagrees. In a 1993 article published in the *Indiana Law Journal*, Posner likened the organized bar to a medieval guild, writing, “Government regulations designed to secure the cartel against competition and new entry from without, and centrifugal, disintegrative pressures from within, held the cartel together against the dangers that beset and would ordinarily destroy a cartel of so many members.”

What Posner is talking about is the high barriers to entry into the profession (the requirement of graduating from a law school, plus passage of a bar exam) and the laws against competition from outsiders (“unauthorized practice of law” statutes) that the bar insists on. Lawyers may actually believe that those measures are necessary for consumer protection,

but they stifle competition and keep lawyers’ earnings up. Some of the vilest actions that bar associations undertake are to bring unauthorized practice lawsuits to destroy small legal service businesses that have occasionally tried to compete. Staffed with paralegals and legal secretaries who know what they’re doing, such businesses have capably assisted individuals with routine legal matters.

Under the smokescreen of consumer protection, however, the bar annihilates competition from lower-priced service providers who do not have the formal credentials for bar membership. The fact that these cases are almost always brought by bar associations rather than aggrieved consumers is telling. In some cases, not only have the businesses been shut down, but their founders have been compelled to compensate the bar for its expenses in putting an end to their enterprises. And in a few instances, the miscreants have even been put behind bars as a warning to other would-be interlopers.

It is not surprising that Strickland and Read have nothing to say about such actions, as doing so would throw a huge wrench into their “lawyers as social heroes” line. They mention the fact that

lawyers enjoy monopoly licensing, but instead of questioning the social benefits of that, they argue that because many people cannot afford legal services, the bar should step in and do much more pro bono work. They also favor more government subsidies so the poor and middle class can afford legal services.

Those are, to put it charitably, poor ideas. Consumers are better off with affordable services they pay for, thereby creating the strongest incentives for providers to do good work, than with charitable work that is often grudgingly performed. And as for governmental subsidies, there is no reason for them because a free market in legal services would bring the cost of services down so that less-affluent people could afford them. Apropos of that, a story:

In 1987, President Ronald Reagan appointed Michigan lawyer Clark Durant to be the head of the Legal Services Corporation (LSC), a federal monstrosity with roots in Lyndon Johnson's "Great Society." The LSC is supposed to help make

legal services available to the poor, but a lot of its spending ends up in leftist advocacy. Durant was scheduled to give an address to the American Bar Association's annual convention, but did not make public the text of his remarks beforehand for fear that he would be disinvited if they knew what he planned to say. In his speech, Durant said that there would be no need for the LSC if bar associations would stop acting like cartels and suppressing competition. Durant told me that after he was done, "You could have heard a pin drop." The next day, the president of the American Bar Association fired off a letter to Reagan demanding that Durant be fired because he was obviously nuts to hold such beliefs.

CONCLUSION Like most lawyers, Strickland and Read underestimate (or fail to consider at all) the efficiency of the free market. Does the bar exam, for instance, protect consumers against incompetence or simply act as an entry barrier? Lawyer Douglas Kern, writing

on the website *TCS Daily* on June 22, 2004, blew the whistle on the notion that all the expensive preparation demanded by the legal profession is socially useful. He wrote, "Many an affluent lawyer would sink into the doldrums of mere middle-class comfort if the public learned the dirtiest secret of all: any intelligent, educated adult with a little exposure to the practice of law can perform about 60-75% of the legal tasks that lawyers now charge a fortune to perform."

How disappointing to read a book on the legal profession that tries to paint those who suggest that we need to reform the tort system (especially class-actions) as crass political opportunists, but absolutely ignores the waste and harm caused by the efforts of the profession to maintain its guild-like status. There are, as the authors say, lawyers who do great work, but unfortunately they are often doing it in opposition to nasty efforts by other lawyers. Instead of this smiley-face drawing, the legal profession needs a "warts and all" portrait. **R**