

The Economics of Representing the Poor: Debunking the Assumptions Behind Posner's "Free Lawyer" Problem

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Abstract

While it is generally accepted that "there are economic arguments for governmental efforts to reduce [the] gross inequality (in a wealthy society) that we call poverty," how those efforts are shaped remains a fruitful topic for scholarly debate. Judge Richard Posner avers, for instance, that the Legal Services Corporation "may actually prevent many poor people from achieving their most efficient pattern of consumption." The logic behind this reasoning is because "the lawyer is free, they [the poor] will use him unless the value of his services exceeds the (often slight) value of their time in dealing with him." Therefore, the social costs exceed the social benefits and the end result is economic waste. Judge Posner favors an alternative system that gives the eligible recipient an unrestricted cash transfer in lieu of funding the current Legal Services Corporation. This cash transfer could be used for legal services or other essentials the recipient may value more highly (e.g., food, housing, medicine, education, etc). This theory, however, relies upon several problematic assumptions. What follows is an analysis and discussion of these assumptions leading to the conclusion that--as a practical matter-- the unrestricted cash transfer is not currently a feasible substitute for the Legal Services Corporation. However, there are ways in which the unrestricted cash transfer theory could benefit the current system of delivering legal services to the poor and lower middle class.

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