Greed, Chaos, and Governance: Using Public Choice to Improve Public Law. By Jerry L. Mashaw. New Haven, CT: Yale University Press, 1997. 231p. $28.00.

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For well over a year now, political scientists have been engaged in a serious debate over the value of rational choice theory for the study of law and courts. On the one extreme are those who assert that it can be of enormous use in helping us to unravel the complexities of judicial decisions. On the other are scholars who suggest that it holds little promise in enabling us to develop plausible insights, explanations, and predictions.

This intelligent volume promises to play an important role in these debates. Mashaw views rational choice as neither a panacea nor a dismal failure. Rather, he "*attempts*" to "claim and hold elusive middle ground between public choice's champions and its detractors—to demonstrate in a series of public law settings both the insights that spring from taking public choice ideas seriously and the necessity for maintaining a critical distance from theoretical enthusiasms that sometimes lack internal coherence, not to mention empirical support" (p. viii).

If *Greed, Chaos, and Governance* did nothing more than "attempt" to stake this middle ground, it would make an important contribution. But Mashaw more than succeeds: He ably demonstrates—through the force of logic, coupled with a remarkable grasp of many literatures—why ardent supporters ought to temper their enthusiasm or at least redirect it and why hardcore detractors should reconsider some of the lessons choice theory has offered.

His chapter on judicial review ("Public Choice and Rationality Review") provides substantial evidence of my claim. As Mashaw rightfully notes, scholars and judges have spent decades, really centuries, trying to tell a "persuasive" story that would justify the judicial invalidation of actions taken by elected officials. Could public choice prove useful in helping to establish such an account? To this Mashaw replies, as he does to many other such questions throughout the volume, with a "yes but." The "yes" is as follows: Because public choice theory provides certain insights into how legislatures produce laws—mainly through greed (that is, as the result of private interest deals) or through chaos (that is, as artifacts of voting procedures)—it may help us to identify the circumstances that warrant active and serious monitoring. The "but" is equally straightforward: We should not necessarily equate lessons to learn with ideas to adopt or arguments to use. As Mashaw puts it, "perspectives from the public choice tool kit are useful in thinking about constitutional doctrine. But each must be labeled 'Handle with care' " (p. 52).

To drive home these points Mashaw delineates and critiques the positions of analysts advocating and opposing active judicial monitoring of legislatures. First there are the "true believers," those public choice theorists who argue that laws come about mainly through greed or chaos and, thus, see the need for aggressive judicial review. Mashaw clearly sympathizes with these views: He thinks that courts have taken the countermajoritarian "problem" too seriously, leading them to avoid judicial review in circumstances in which it may be warranted. But he also sees the flaws with this approach, primarily that the mere recognition that we live in a "highly compromised form of democracy" does not provide a good answer to the question about how courts should exercise judicial review. Next there are the "proceduralists," those scholars who agree that many laws are not well designed but believe that the remedy is procedural in nature: Legislatures should revamp their procedures to make better laws (that is, to become something of quasi-judicial bodies), with the job of judges mainly to police these procedures. While Mashaw acknowledges the value of this approach, namely, that it can be useful in helping to identify patently arbitrary abuses of power, he also points out a significant deficit: It ignores the lessons of greed accounts of the legislative process. Finally, there are the conventionalists, those who either take direct aim at the true believer view by arguing that it greatly exaggerates the problems of the legislative process or that it will lead judges to strike down virtually all legislation, thereby returning us to the days of *Lochner*. But this approach, as Mashaw points out, also ignores some of the central insights of the public choice literature; and, in some sense, it begs basic questions of how and how much courts should invoke judicial review.

In short, Mashaw's perspective is that the true believers overstate their case, while the proceduralists and conventionalists do not take the public choice story seriously enough. To put it another way, the public choice literature has "sounded an alarm" about the legislative process (albeit one that may be excessively loud), which other approaches have been hesitant to heed at least in part out of a fear that judges will respond with a *Lochneresque* zeal. But is this necessarily so? Can these visions be reconciled? Drawing on key insights of all three approaches (as well basic ideas embodied in the Constitution), while taking into account their deficiencies, Mashaw provides an answer: "public regardingness," which turns on both substantive and process concerns. Or, as the author puts it:

> I would have courts look for a combination of substantive and decision-process "danger signals" that together suggest that legislation is essentially private-regarding—that it benefits some group in ways that cannot convincingly be explained in terms of a broad range of possible public purposes, or in terms of a well-functioning democratic process. Methodologically, the argument is for viewing both the Constitution and constitutional cases whole; for taking seriously . . . the complicated as well as simple-minded ways in which legislation fails in it most basic function—to pursue the public welfare (p. 79).

How would this approach work? What will courts consider a "public purpose"? Mashaw leaves these and many other specific questions open, but to me the important lesson of this chapter and the others is a far more general one: A middle ground between the champions of public choice and its critics does exist, and Mashaw has managed to locate it by taking account of both the strengths and weaknesses of the theory.

In fact, my only concern with this volume is that political scientists who study law and courts will read it. Surely, it houses something for everyone: the advocates of public choice; the detractors; and even those who want to learn more about the theory, for Mashaw does a masterful job in explaining some of its key insights. At the same time, though, he does not invoke much in the way of quantitative evidence—a potential turnoff to members of this rather observationally oriented group.

But to ignore *Greed, Chaos*, and *Governance* on this ground would be to miss out on a great read. And on a volume that could not be more relevant to current debates within the field.