



Saul to Paul; Friedman to Keynes

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In the ever-expanding galaxy of American jurisprudence, few stars shine as brilliantly as Richard A. Posner, a judge on the U.S. Court of Appeals for the Seventh Circuit in Chicago.

Everything about Posner screams the best: Yale undergrad, Harvard Law, Supreme Court clerk, Stanford law professor, federal judge since 1981, author of more than 20 books, and, as John Cassidy notes in a Jan. 11 New Yorker story, "for decades... a leading figure in the conservative Chicago School of economics."

Yes, that Chicago School. Free markets. Free trade. Home of a dozen or more Nobel laureates in economics since Milton Friedman lit up the dismal science and the academic granite on which Posner built his judicial reputation.

In fact, Posner was such a stern disciple of the Chicago School that he became the intellectual godfather to today's laissez faire attitude in antitrust enforcement. Or, as the New Yorker's Cassidy explains, Posner "applied the maxims of free-market economics to the courtroom, arguing that economic efficiency ought to be the primary goal of judges."

And it was for nearly 30 years-until last September when Posner underwent the biggest conversion since Saul of Tarsus took a walk. In a nine-page story for The New Republic, Judge Markets Rock declared himself Judge Markets Reek and in one Michael Jordan-like move, Posner dumped Chicago and Friedman for England and John Maynard Keynes.

Before the American legal profession could snap back upright, Posner followed the article with a book titled "A Failure of Capitalism" that, noted the New Yorker, "argues that lax monetary policy and deregulation helped bring on the current slump."

Slump? More like crack-up, according to Posner who writes, "We are learning from it that we need a more active and intelligent government to keep our model of a capitalist economy from running off the rails."

Whoa. The most brilliant logician behind today's hands-off economic and antitrust legal philosophies is now a grab-the-throttle-before-all's-lost engineer? Wow.

Double wow because Posner's conversion to antitrust orthodoxy comes on the eve of the unprecedented U.S. Department of Agriculture-Department of Justice joint "Agriculture and Antitrust Enforcement" hearings around the nation. Having the pre-eminent antitrust scholar and jurist now firmly alongside beleaguered farmers and ranchers can't hurt, right?

It's far more than that, says Omaha attorney David Domina who led ranchers to a \$1.2 billion jury award in the Pickett case against Tyson Foods for alleged market manipulation.

"This is about as big as big gets in American legal circles," offers Domina, "because Judge Posner is a champion of moderation. Now he's saying that the Chicago School of thinking needs to be tossed for the good of the country. That's incredible; that's a wonderful sign for markets."

Domina strongly suspects Posner's economic back flip should "embolden the Department of Justice antitrust effort almost immediately" because Posner is "so brilliant that few ever challenged his rulings because maybe he saw something (in the law) no one else did." It was a reputation well-deserved, the attorney says.

"But then the system nearly collapsed and he saw that his logic had carried him to an illogical conclusion. That changed him because something was very wrong in his thinking. Give the man credit for that change."

While Domina says Posner's conversion is "fantastic for justice," he is quick to note this enormous change has yet to occur in Posner's courtroom or be written in a Posner appellate decision.

"But it does," he explains, "allow one to argue that the most formative antitrust mind in America has serious concerns about today's markets. I hope that means we now will see a bipartisan movement to clean up markets."

Everyone in agriculture should hope.

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