Economics of Constitutional Law

Volume I

The Structural Constitution

Edited by

Richard A. Epstein

James Parker Hall Distinguished Service Professor of Law University of Chicago; Peter and Kirsten Bedford Senior Fellow Hoover Institution; and Visiting Professor of Law New York University Law School, USA

ECONOMIC APPROACHES TO LAW

An Elgar Reference Collection Cheltenham, UK • Northampton, MA, USA

Contents

Acknowled Introductio	-	nts he Law and Economics of Constitutionalism Richard A. Epstein	vii ix
PART I	SEL 1. 2. 3.	F-INTEREST AND CONSTITUTIONS James Madison ([1787] 1961), 'The Federalist. No X. (The Union as a Safeguard Against Domestic Faction and Insurrection Continued)', in Alexander Hamilton, James Madison and John Jay, <i>The Federalist, or, The New Constitution,</i> London: John M. Dent and Sons, Ltd, 41-8 Cass R. Sunstein (1985), 'Interest Groups in American Public Law', <i>Stanford Law Review,</i> 38, November, 29-87 Robert Cooler (2002), 'Constitutional Consequentialism: Bargain Democracy versus Median Democracy', <i>Theoretical Inquiries in Law,</i> 3(1), January, 1-20	3 11 70
PART II	ТНЕ	E STRUCTURAL CONSTITUTION	
	A	Separation of Powers	
	 4. 5. 	Saul Levmore (1992-), 'Bicameralism: When are Two Decisions Better than One?', <i>International Review of Law and Economics</i> , 12 (2), June, 145-62 Susan Rose-Ackerman (1992),'Judicial Review and the Power of	95
	6.	the Purse', <i>International Review of Law and Economics</i> , 12 (2), June, 191-208 Eric R. Claeys (2004), 'Progressive Political Theory and Separation	113
	7.	of Powers on the Burger and Rehnquist Courts', <i>Constitutional Commentary</i> , 21, 405 ⁴ Jide Nzelibe (2006), 'A Positive Theory of the War-Powers	131
	В	Constitution', <i>Iowa Law Review</i> , 91, 993-1062 Federalism	171
	8.	Barry R. Weingast (1995), 'The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Development', <i>Journal of Law, Economics and Organization</i> , 11 (1), April 1.21 *	242
	9.	April, 1-31 * Richard A. Epstein (1987), 'The Proper Scope of the Commerce Power', <i>Virginia Law Review</i> , 73 (8), November, 1387-455	243274

Economics of Constitutional Law I

10.	Michael W. McConnell (1988), 'Contract Rights and Property	
	Rights: A Case Study in the Relationship Between Individual	
	Liberties and Constitutional Structure', California Law Review,	
	76 (2), March, 267-95	343
11.	J. Robert S: Prichard with Jamie Benedickson (1983), 'Securing the	
	Canadian Economic Union: Federalism and Internal Barriers to	
	Trade', in Michael J. Trebilcock, J. Robert S. Prichard, Thomas J.	
	Courchene and John Whalley (eds), Federalism and the Canadian	
	Economic Union, Chapter I, Toronto: University of Toronto Press	
	for the Ontario Economic Council, 3-50	372
12.	Jonathan H. Adler (2001), 'The Ducks Stop Here? The	
	Environmental Challenge to Federalism', Supreme Court Economic	
	Review, 9,205-41 "	420
13.	Jack L. Goldsmith and Alan O. Sykes (2001), 'The Internet and the	
	Dormant Commerce Clause', Yale Law Journal, 110 (5), March,	
	785-828 i •	457
С	Unconstitutional Conditions	
1.4	District A. Foreiro (1999). His constitutional Constitution Const	
14.	Richard A. Epstein (1988), 'Unconstitutional Conditions, State	502
	Power, and the Limits of Consent'. <i>Harvard Law Review</i> , 102 , 5-104	503

Economics of Constitutional Law

Volume II

Individual Rights

Edited by

Richard A. Epstein

James Parker Hall Distinguished Service Professor of Law University of Chicago; Peter and Kirsten Bedford Senior Fellow Hoover Institution; and. Visiting Professor of Law New York University Law School, USA

ECONOMIC APPROACHES TO LAW

An Elgar Reference Collection Cheltenham, UK • Northampton, MA, USA

Contents

Acknowledg An introdu		s by the editor to both volumes appears in Volume I	vii	
PART I	PROPERTY AND CONTRACT			
	1.	Richard A. Epstein (1986), 'An Outline of Takings', University of		
		Miami Law Review, 41, 3-19	3	
	2.	Margaret Jane Radin (1988), 'The Liberal Conception of Property:		
		Cross Currents in the Jurisprudence of Takings', Columbia Law		
		Review, 88 (8), December, 1667-96	20	
	3.	Daniel A. Farfcer (1992), 'Economic Analysis and Just		
		Compensation', International Review of Law and Economics,		
		12(2), June, 125-38	50	
	4.	William A. Fischel (1991), 'Exploring the Kozinski Paradox: Why		
		is More Efficient Regulation a Taking of Property?', Chicago-Kent		
		Law Review, 67, 865-912	64	
	5.	Thomas W. Merrill (1986), 'The Economics of Public Use', Cornell		
		Law Review, 72, 61-116	1 12	
	6.	Abraham Bell and Gideon Parchomovsky (2006), 'The Uselessness		
		of Public Use', Columbia Law Review, 106 (6), October, 1412-49	168	
	7.	William A. Fischel (1987), 'The Economics of Land Use Exactions:		
		A Property Rights Analysis'. Law and Contemporary Problems,		
		50(1), Winter 101-13	206	
	8.	Daniel R. Fischel and Alan O. Sykes (1999), 'Governmental		
		Liability for Breach of Contract', American Law and Economics	210	
		Review, 1 (1 & 2), Fall, 313-85	219	
	9.	Richard A. Epstein (1987), 'The Public Trust Doctrine', <i>Cato</i>	202	
		Journal, 7 (2) Fall, 411-30	292	
PART II	FRI	EEDOM OF SPEECH AND RELIGION		
		R.H. Coase (1977), 'Advertising and Free Speech', <i>Journal of Legal</i>		
	10.	Studies, VI (1), January, 1-34	315	
	11.	Fred S. McChesney (1988), 'A Positive Regulatory Theory of the	010	
	11.	First Amendment', Connecticut Law Review, 20, 355-82	349	
	12.	Michael W. McConnell and Richard A. Posner (1989), 'An	517	
		Economic Approach to Issues of Religious Freedom', <i>University of</i>		
		Chicago Law Review, 56 (1), Winter, 1-60	377	
	13-	Daniel A. Farber (1991), 'Free Speech without Romance: Public		
	-	Choice and the First Amendment', <i>Harvard Law Review</i> , 105 ,		
		554-83	437	

Economics of Constitutional Law II

PART III	I DUE PROCESS AND EQUAL PROTECTION	
	14. Cass R. Sunstein (1984), 'Naked Preferences and the	Constitution',

Columbia Law Review, 84 (7), November, 1689-732 469
15. Herbert Hovenkamp (1988), 'The Political Economy of Substantive Due Process', Stanford Law Review, 40, January, 379-447 513