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Editor's Introduction

Robert D. Cooter

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In the eighteenth century, immigrants who first applied European farming techniques to American soil produced a cornucopia. Similarly, the first application of economic techniques to the law of torts, property, contracts, crimes, and corporations in the 1970s and 1980s yielded a rich harvest of scholarship. Cultivation proceeded first in the easiest areas where simple tools sufficed; now that diminishing returns have set in, a good yield requires new tools.

"Constitutional law and economics"—used here to indicate the application of methods of economics and positive political theory (PPT) to constitutions and related public laws—remains one of the few relatively uncultivated areas. PPT, in spite of its flourishing, has not been applied to questions central to legal scholarship on constitutions. PPT's general, abstract approach must be adapted to these specialized concerns. To promote this project, we organized a conference on constitutional law and economics. Instead of selecting topics and commissioning papers, we identified top scholars in the field of constitutional law and economics and invited them to choose their own paper topic or to comment on someone else's. The result in this volume is quality but not balance.

Constitutions generally allocate powers to governments and rights to people. Only one paper in this volume directly concerns rights—Farber's paper on takings. A broad inquiry into the economic analysis of constitutional rights remains on the agenda for future meetings. The other papers concern governmental powers, especially those of the courts. Judicial discretion, review, and interpretation are analyzed in detail. While these papers do not descend often enough to the level of cases, they all concern what courts do.

PPT originally focused on problems paralleling those of price theory, such as aggregating the demands of citizens to predict the winning political platform. These aggregation models are used by Levmore in this volume to analyze bicameralism and by Kornhauser to analyze majority rule on judicial panels. The other papers in this volume draw upon newer methods of game theory focusing on incentive structures and strategic interactions rather than the aggregation of demands. Several papers investigate the process of statutory interpretation. Susan Rose-Ackerman takes a hard look at the appropriations process and asks about the role of the courts in interpreting this legislation. Daniel Rodriguez investigates the adaptation of elected officials to the canons of interpretation used by courts, notably the attempt by Reagan and Bush to introduce presidential signing statements as part of the legislative history. Legislation results from collective choice, not individual choice, and Shepsle raises the significance of this fact for statutory interpretation. Ferejohn and Weingast provide a positive theory of statutory interpretation, showing how the jurisprudential underpinnings of statutory interpretation affect legislative decisions. The volume

closes with a discussion of this new area's future: What are the limitations of the approaches taken in these papers? What new topics must be treated?

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