

Takings

Private Property and the
Power of Eminent Domain

RICHARD A. EPSTEIN

Takings Private Property And The Power Of Eminent Domain

Robin Paul Malloy



Takings Private Property And The Power Of Eminent Domain:

Takings Richard A. Epstein, 1985-01-01 If legal scholar Richard Epstein is right then the New Deal is wrong if not unconstitutional Epstein reaches this sweeping conclusion after making a detailed analysis of the eminent domain or takings clause of the Constitution which states that private property shall not be taken for public use without just compensation In contrast to the other guarantees in the Bill of Rights the eminent domain clause has been interpreted narrowly It has been invoked to force the government to compensate a citizen when his land is taken to build a post office but not when its value is diminished by a comprehensive zoning ordinance Epstein argues that this narrow interpretation is inconsistent with the language of the takings clause and the political theory that animates it He develops a coherent normative theory that permits us to distinguish between permissible takings for public use and impermissible ones He then examines a wide range of government regulations and taxes under a single comprehensive theory He asks four questions What constitutes a taking of private property When is that taking justified without compensation under the police power When is a taking for public use And when is a taking compensated in cash or in kind Zoning rent control progressive and special taxes workers compensation and bankruptcy are only a few of the programs analyzed within this framework Epstein's theory casts doubt upon the established view today that the redistribution of wealth is a proper function of government Throughout the book he uses recent developments in law and economics and the theory of collective choice to find in the eminent domain clause a theory of political obligation that he claims is superior to any of its modern rivals

A History of Water Rights at Common Law Joshua Getzler, 2004 This volume describes how the courts created rights for land owners and users competing to appropriate water for factories town supply drainage and transport It covers the period from early times to the late nineteenth century illustrating the changing common law of property and tort and throwing new light on the growth of the economy and the social and legal dimensions of technological innovation

A Companion to Contemporary Political Philosophy Robert E. Goodin, Philip Pettit, Thomas W. Pogge, 2009-02-17 This new edition of *A Companion to Contemporary Political Philosophy* has been extended significantly to include 55 chapters across two volumes written by some of today's most distinguished scholars New contributors include some of today's most distinguished scholars among them Thomas Pogge Charles Beitz and Michael Doyle Provides in depth coverage of contemporary philosophical debate in all major related disciplines such as economics history law political science international relations and sociology Presents analysis of key political ideologies including new chapters on Cosmopolitanism and Fundamentalism Includes detailed discussions of major concepts in political philosophy including virtue power human rights and just war

Law of Property Rights Protection Jan Laitos, 2023

Research Handbook on the Economics of Property Law Kenneth Ayotte, Henry E. Smith, 2011-01-01 Leading scholars in the field of law and economics contribute their original theoretical and empirical research to this major Handbook Each chapter analyzes the basic architecture and important features of the institutions of property law from an economic point of view while also

providing an introduction to the issues and literature Property rights and property systems vary along a large number of dimensions and economics has proven very conducive to analyzing these patterns and even the nature of property itself The contributions found here lend fresh perspectives to the current body of literature examining topics including initial acquisition the commons anticommons and semicommons intellectual property public rights abandonment and destruction standardization of property property and firms marital property bankruptcy as property titling systems land surveying covenants nuisance the political economy of property and takings The contributors employ a variety of methods and perspectives demonstrating the fruitfulness of economic modeling empirical methods and institutional analysis for the study of both new and familiar problems in property Legal scholars economists and other social scientists interested in property will find this Handbook an often referenced addition to their libraries

Property Rights in the Colonial Era and Early Republic James W. Ely, 1997

Indigenous Peoples' Land Rights under International Law Jérémie Gilbert, 2016-06-21

This book addresses the right of indigenous peoples to live own and use their traditional territories and analyses how international law addresses this Through its meticulous examination of the interaction between international law and indigenous peoples land rights the work explores several burning issues such as collective rights self determination property rights cultural rights and restitution of land It delves into the notion of past violations and the role of international law in providing for remedies reparation and restitution It also argues that there is a new phase in the relationship between States indigenous peoples and private actors such as corporations in the making of territorial agreements The first edition of this ground breaking book was published in 2006 at the time the negotiations for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples UNDRIP were still underway The adoption of the Declaration in 2007 marks an important moment not only in terms of law making but also represents the achievement of long decades of lobbying and advocacy from indigenous peoples representatives This fully revised new edition reflects on the 10 years which have followed the adoption of the UNDRIP and examines its impact regarding indigenous peoples land rights Its aim is not only to assess the importance of the UNDRIP in terms of international standards but also to reflect on the maturing of international law in relation to indigenous peoples land rights Over the last 10 years these have reached a new level of visibility and a voluminous new jurisprudence and doctrine have been developed Praise for the first edition Gilbert s passion for his subject is palpable and illuminates every page as do his zeal to expose international law s complicity in indigenous peoples loss of their territories and tentative hope that international law might now provide some protection of indigenous peoples lands The choice of topic is also to be applauded There are few texts that examine indigenous peoples land rights in such depth Claire Charters Associate Professor University of Auckland New Zealand in *International and Comparative Law Quarterly* ICLQ Gilbert s gaze is firmly fixed on the future and the question how international law will reflect *lex ferenda* on indigenous land rights His interpretation of international law must be seen in this light He is looking beyond the current controversies in the rights

discourse towards a more conciliatory phase in state indigenous relations International law undoubtedly has an important role to play in his vision but its primary function is to facilitate dialogue rather than as a combative and adversarial mechanism Gilbert s book is a tour de force on indigenous territoriality Stephen Allen Senior Lecturer in Law Queen Mary University London United Kingdom in International Journal on Minority and Group Rights

Seasoned Judgments Leonard W. Levy, Leonard Levy s new book a compendium of his law review articles book chapters and basic shorter writings on themes with which he has long been identified is a treasure chest of sound and reasonable analysis of American constitutional history As one reviewer of the manuscript put matters There is not a clinker amongst them For anyone who thinks that liberal analysis has grown soft and flabby a good dose of Levy s book should set the record straight Seasoned Judgments is divided into three parts Rights Constitutional History and The Marshall Court In this progression from the general to the concrete Levy never ignores the context as well as the content of the judicial process Indeed it is this linkage that separates him from nearly all other commentators and writers on the subjects covered Whether discussing why the original Constitution lacked a Bill of Rights or why the Fourth Amendment uses the imperative form shall not rather than the conditional form ought not the reader enters a world of explanation rich in detail and careful scholarly elaboration Well known as editor in chief of the multivolumed Encyclopedia of the American Constitution this new volume extracts some of Levy s own contributions to that effort As a result one can for the first time gain a clear sense of the author s own profound sense of the major issues confronting American law from the founding fathers to the present The analysis of such still unresolved issues as flag desecration the exclusionary rule testimonial compulsion taxation without representation and the nature of the Constitution itself will be of tremendous appeal to historians and political scientists as well as attorneys and judges

Land Use Law and Disability Robin Paul Malloy, 2015 This book argues that communities need better planning to be safely navigated by people with mobility impairment and to facilitate intergenerational aging in place

Bargaining with the State Richard A. Epstein, 1995-01-09 Bargaining with the State examines the threats to liberty that arise through the power of government selectively to distribute benefits and favors to its citizens For Richard Epstein the preservation of individual liberty against government contractual power advances not only the short term interest of the individual citizen but also the long term overall social welfare

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