

University of Chicago Law School

Chicago Unbound

Journal Articles

Faculty Scholarship

1995

Introduction

Richard A. Epstein

Follow this and additional works at: https://chicagounbound.uchicago.edu/journal_articles



Part of the [Law Commons](#)

Recommended Citation

Richard A. Epstein, "Introduction," 15 Northern Illinois University Law Review 477 (1995).

This Article is brought to you for free and open access by the Faculty Scholarship at Chicago Unbound. It has been accepted for inclusion in Journal Articles by an authorized administrator of Chicago Unbound. For more information, please contact unbound@law.uchicago.edu.

Introduction

RICHARD A. EPSTEIN*

It is somewhat odd to publish an amicus brief submitted to the United States Supreme Court after the case has been decided. The proper focus of analysis is properly the decision itself, and it was to that task that my speech to the NIU Land-Use Symposium was directed. Nonetheless in this instance I was happy to accede to the Law Review's request to publish the brief side by side with the talk. The brief, which was written in cooperation with the Institute for Justice, tried to set out a philosophical overview of the entire issue of takings law, and how a precise reading of that clause is in fact reconciled with democratic institutions. The material in the brief covers some of the territory covered in the talk. Both address the relationship of the common law system of necessity to the ordinary rules of property rights, and both develop the argument that it is possible to find an efficiency explanation to undergird the common perception that certain offers should be regarded as "coercive": namely, that these offers force the individual property owner to compare the value of his improvement to the value of the property surrendered, when the correct social comparison should be between the gains to the state and the losses to the private owner. These points will, I trust, become clear from reading the talk or the brief, or preferably both. But since each is a self-contained entity, written in very different voices, I thought it best to present them as they were, notwithstanding their evident overlap. I did edit the talk to improve the flow, but chose not to burden it down with citations and quotations.

* B.A., Columbia College; B.A., Oxford University; LL.B., Yale Law School; James Parker Hall Distinguished Service Professor, University of Chicago.

