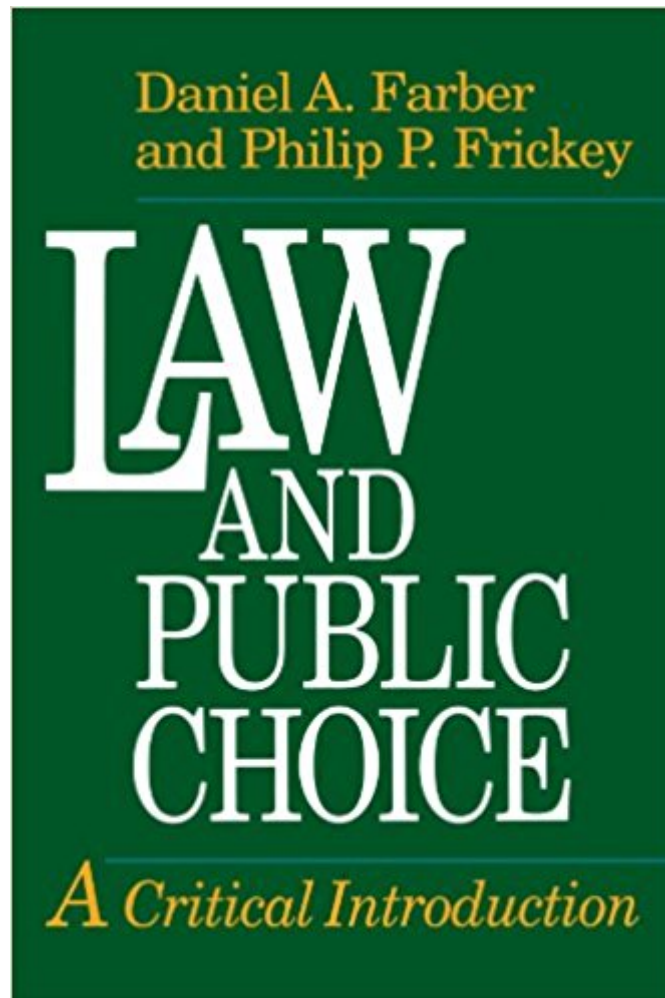




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Law And Public Choice: A Critical Introduction



Synopsis

In *Law and Public Choice*, Daniel Farber and Philip Frickey present a remarkably rich and accessible introduction to the driving principles of public choice. In this, the first systematic look at the implications of social choice for legal doctrine, Farber and Frickey carefully review both the empirical and theoretical literature about interest group influence and provide a nonmathematical introduction to formal models of legislative action. Ideal for course use, this volume offers a balanced and perceptive analysis and critique of an approach which, within limits, can illuminate the dynamics of government decision-making. *Law and Public Choice* is a most valuable contribution to the burgeoning literature. It should be of great interest to lawyers, political scientists, and all others interested in issues at the intersection of government and law.

—Cass R. Sunstein, University of Chicago Law School

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The focus of public law is legislation. Constitutional law studies the limits on legislative power; administrative law studies how statutes are implemented by agencies; fields like discrimination law and environmental law focus on how to apply particular federal statutes. Yet, even though legislation is central to public law, legal scholars have only recently begun to devote serious attention to the legislative process. This book is intended to help fill that gap, by considering how some of the 'new learning' from the social sciences can illuminate issues of public law.

Daniel A. Farber is the Henry J. Fletcher Professor of Law at the University of Minnesota. Philip P.

Frickey is professor of law at the University of Minnesota.

This book, written by two law professors, offers an outstanding critique of Public Choice theory. PC theory is the application of the methods of economics to legal and political processes. That is, it analyzes voters, judges, legislators, etc. as self-interested rational decisionmakers; rather than pursuing the public good or moral ideals, in this cynical worldview it's every man for himself, each person trying to get as much as he can in remorseless competition with others. Some of the famous theorems in PC theory attempt to show that democracy, when conceived in this manner, is inherently "impossible"; there is no rational method of aggregating preferences to find the true public good. Farber and Frickey carefully and systematically demonstrate that the PC assumptions are deeply faulty. People do not act in ruthless self-interests; voters and legislators and judges, while they are not of course pure altruists, nonetheless do take their public responsibilities seriously and often sacrifice self-interest to the greater good. In other words, the model created by PC is empirically inadequate; it fails to make sense of human behavior. It is, as the authors claim, empirically falsified, and its predictions of chaotic and unpredictable electoral results is easily shown to be mistaken. Its view of democracy is simplistic; democracy is not reducible to mere majority rule, but aims to promote the public interest with attention to the good of all, including minorities. Hence the radical and sweeping claims of PC theory must be rejected. F & F are careful to say that there is still some important use for the theory; it can make contributions to law and politics in a modest way. But the idea that it provides a radical and revolutionary new perspective that will overturn our basic conceptions of politics and human nature is sheer nonsense. This book is written in a clear, accessible, jargon-free style, and though the authors are well-versed in the mathematical aspects, they keep it to a minimum in their presentation.

It's a Good non-technical Review on the intersection between law & economics .. A bit boring nevertheless useful for professional policymaking discourses

This book purports to be an introduction to public choice theory as it interacts with the law. Public choice theory is a framework that analyzes the behavior of public structures under the assumption that all relevant actors try to maximize their self-interest. This book uses public choice theory to analyze (i.) interest groups, (ii.) the democratic process, (iii.) economic regulation, (iv.) statutory interpretation and (v.) public law. While readable and engaging, Farber and Frickey's text suffers from several defects. The defects are representative of its lacking as an introductory text. First,

while this book packs a lot of information into roughly 150 pages, it is not comprehensive by any stretch of the imagination. Topics in areas such as torts, and law and economics are saliently missing. Second, this book aims to be a "critical introduction," which means that it is a biased introduction. Clear and intentional bias defeats the purpose of an introductory text, which is presumably geared towards promoting understanding rather than agenda. The authors obviously have qualms with public choice theory's widespread application in libertarian thought, and thus they try argue against mainstream public choice arguments for the textualist readings of statutes, criticism of democracy and the inefficiency of economic regulation. What irked me about this was not the criticisms per se, but the excessive straw-man-building employed by the authors. The political nature of this book is quite simply: to make the reader realize that mainstream public choice theorists' skepticism of governmental inefficiency is badly misguided, if not false. Thus, this book lacks comprehensiveness, objectivity, and an introductory feel. With that said, however, I learned quite a bit once I got past the political posturing. Lucidly written, the book demonstrates public choice theory's flexibility in handling complicated theoretical issues in political science and law. This book might serve a better purpose as a complement to a more general introduction to public choice theory.

Law and Public Choice aims to be an introduction to economic models of rational behavior to explain the workings of political institutions in modern democracies. The book summarizes the strand of research in public and collective choice (or positive political theory, as American political scientists would rather say), that is, the fact that democracies require people to organize themselves to decide by voting how to allocate resources to public goods. Of course, the task is much more complicate than individuals have to face when to decide whether to buy cornflakes or Nasdaq stocks. Thus understood, the book leaves out the law and economics, and the comparative law and economics traditions. The book was released in 1991 and is now a little outdated and focuses too much on the American system. It is not a comprehensive text. For that the reader should consider Muller's Public Choice III or Cooter's Strategic Constitution, which are updated, comprehensive and devoted to students. Despite its caveats, this book is well written and engaging.

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