

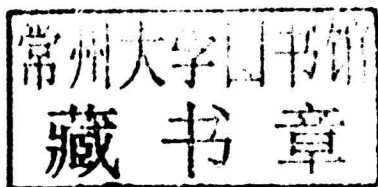
OXFORD

THE ECONOMIC CONSTITUTION

Tony Prosser

The Economic Constitution

TONY PROSSER



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Preface

In this book I have attempted to perform two tasks. The first is to provide coverage of areas of the constitution which have been neglected in the major public law texts and in other forms of academic study; those which are concerned with economic management. This should fill a major gap; issues such as the allocation of public funds and monetary policy are too important to be overlooked, especially in the current times of financial crises. Direct economic management by government has also been relatively neglected in the regulation literature, and I hope that some of the lessons derived from that literature can be applied successfully to it. An inspiration is Sabino Cassese's book *La Nuova Costituzione Economica*, now in its fifth edition and widely available in Italy. There is no UK equivalent, and casting light on the workings of the economic constitution will, I hope, in itself justify the publication of this book.

The second task is a more critical one. In Chapter 1 I set out various meanings of the term 'economic constitution'; these are drawn from legal and social theory and European Union (EU) law and politics rather than from the UK itself, but nevertheless are of value for suggesting possible ways of understanding our own constitutional arrangements. They also raise the question of the relationship between an economic constitution and democratic politics; does such a constitution operate as a straitjacket on governments, restricting political choices and so casting economic policy from a single mould? I return to this point in my conclusion, where I begin to develop the concept of a plural constitution, plural in both its ideological bases and in its arrangements for institutional scrutiny. This has both advantages in openness and disadvantages in lack of coordination. This book is thus both normative and critical.

Choosing to address both these tasks imposes limitations on the full achievement of each. Thus the coverage of areas of economic management cannot be fully comprehensive, though I hope that I have managed to treat the most important areas and so to give a more general feel for the way in which the economy is managed in the UK. In view of the substantial coverage elsewhere, I have omitted substantive competition law (despite its importance in the origins of the idea of an economic constitution) and sectoral regulation of the utilities; there is only brief coverage of the role of local government. A particular problem has been to achieve a balance between long-standing practices and those introduced as responses to the economic crises of recent

years; much has changed since 2008. I hope that the balance I have found is a reasonable one which is up-to-date yet not too reliant on passing political and institutional fads.

The more normative approach is given in outline, especially in Chapters 1 and 10 but also as a base for the discussion of the substantive areas which I cover. Given the constraints of a general account of this kind, there has not been room for either full theoretical development of the constitutional and regulatory approach I take, nor for detailed comparative accounts of other economic constitutions; I hope to remedy both these gaps through future work.

I am grateful for intellectual and personal support without which, of course, this book could not have been written. The idea originated when I worked in the Centre for Socio-Legal Studies at the University of Sheffield, a uniquely stimulating environment for work of this kind, and was developed further at the University of Glasgow where I picked up a viewpoint which was both Scottish and more European. The University of Bristol has supported me not just intellectually but through its generous policy of research leave.

Once more, my greatest thanks go to Charlotte, Amelia, and Laurie for their tolerance and support.

The law is stated as at 1 October 2013.

Tony Prosser

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Abbreviations

AME	Annually Managed Expenditure
ARROW	Advanced Risk-Responsive Operating Framework
BEAPFF	Bank of England Asset Purchase Facility Fund Limited
BIS	Department for Business, Innovation and Skills
BRE	Better Regulation Executive (within BIS)
CSR	Comprehensive Spending Review
DE&S	Defence Equipment and Support
DEL	Departmental Spending Limits
DMO	Debt Management Office
EBA	European Banking Authority
ECB	European Central Bank
ECJ	European Court of Justice
ECOFIN	Economic and Financial Affairs Council
EIOPA	European Insurance and Occupational Pensions Authority
EMIR	European Market Infrastructure Regulation
ESCB	European System of Central Banks
ESFS	European System of Financial Supervision
ESMA	European Securities and Markets Authority
EU	European Union
FCA	Financial Conduct Authority
FPC	Financial Policy Committee (of the Bank of England)
FSA	Financial Services Authority
FSB	Financial Stability Board
GAAP	generally accepted accounting practice
GATS	General Agreement on Trade and Services
GATT	General Agreement on Tariffs and Trade
GPA	Agreement on Government Procurement
HBOS	Halifax Bank of Scotland
HMRC	HM Revenue & Customs
IASB	International Accounting Standards Board
IFRS	International Financial Reporting Standards Board
IMF	International Monetary Fund
LEC	local enterprise company

LEP	local enterprise partnership
MPC	Monetary Policy Committee (of the Bank of England)
NAO	National Audit Office
NAPNOC	no acceptable price, no contract
NGO	non-governmental organization
NS&I	National Savings & Investments
OECD	Organisation for Economic Co-operation and Development
OGC	Office of Government Commerce (of the Cabinet Office)
PAC	Public Accounts Committee
PEX	Public Expenditure Committee
PFI	Private Finance Initiative
PRA	Prudential Regulation Authority
PSA	public service agreements
RAB	resource accounting and budgeting
RBS	Royal Bank of Scotland
SMEs	small and medium-sized enterprises
SR	Spending Review
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TSB	(Lloyds) Trustee Savings Bank
TSC	Treasury Select Committee
UKFI	UK Financial Investments Limited
WTO	World Trade Organization

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