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Foreword

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Foreword

The *University of Miami Law Review* is exceptionally pleased and honored to publish the Proceedings of the Conference on Takings of Property and the Constitution. The Conference was held in January 1986 at the University of San Diego School of Law and centered on Professor Richard Epstein's book, *Takings: Private Property and the Power of Eminent Domain*. We have devoted this issue exclusively to a Symposium on Professor Epstein's book. In addition to the Proceedings, this issue includes a slightly expanded version of the paper Professor Thomas Grey submitted to the Conference. Those unfamiliar with *Takings* can evaluate the force of the participants' critiques for themselves, because Professor Epstein has written an introduction that summarizes the book's main arguments. Several participants also have chosen to write Comments on the Conference. Professor Epstein responds to these Comments with what he rather optimistically calls a "last word."

The transcript of the Conference published in this Symposium is not a verbatim account of the participants' remarks. In addition to the *Review's* editorial changes, the participants also edited their own remarks to ensure that the full meaning and substance of their comments at the Conference properly translated into written form. The words published in this Symposium, however, are for the most part, the same ones the participants uttered at the Conference, and the *Review* strove to assure that they did not use these changes to fire an additional salvo not launched at the Conference itself. Where we were unable to identify a handful of the participants' remarks, we attributed those comments to "Speaker." The footnotes to the Conference are largely the *Review's* additions, except Professor Epstein chose to extensively footnote his own remarks. Finally, Professor Joseph Sax participated in the Conference, but declined to publish his comments.

The circumstances surrounding the *Review's* publication of this Symposium provide evidence of the Conference's importance. Thane

Rosenbaum, the prior Editor-in-Chief, was convinced that at least one of the nation's leading constitutional law professors would desire to write a review of Professor Epstein's provocative and controversial book. But after contacting several of the most prominent scholars, he was dismayed to discover that while they were interested in reviewing *Takings*, they were all committed to other projects. An anonymous source soon supplied the explanation: these same professors were preparing to participate in a little-known, invitation-only Conference on Professor Epstein's book. Thane immediately informed the Conference's organizer, a very surprised Professor Larry Alexander, that he was excited about the Conference on *Takings* and that we wished to publish the proceedings. While certainly very many fine academics were unable to participate in this Conference, few would disagree that those who did participate are all at the very pinnacle of their profession.

In addition to the noteworthy character of the Conference's participants, the *Review* also was interested in publishing this Symposium because it addresses a topic sure to become only more important in the decades ahead. Whatever the mechanism, through a constitutional convention or appointments to the federal judiciary, it is clear that our Constitution is undergoing a process of redefinition. The political and economic consequences of this struggle will leave America a very different place. Some would describe Professor Epstein and others as attempting to shore up "Lockean" property rights before the inevitable class struggle once America's middle class becomes a thing of history. An equally unflattering response to that description might be that so-called "Crits" of Marxist political orientation only debase the Constitution because, properly interpreted, it is a genuine obstacle to their political agenda. The hardening of each camp's position places the future of comfortable American centrist politics in grave doubt. Theoretical consistency assumes a premium over political stability. Whatever the merits to any of these contentions, the materials that follow should prove invaluable to those genuinely concerned about the relationship between Americans and their Constitution.

Kevin Dorse
Symposium Editor