

THE MORAL HIGH GROUND

AN ANTHOLOGY OF SPEECHES

FROM THE

FIRST ANNUAL
NEW YORK STATE CONFERENCE

ON

PRIVATE PROPERTY RIGHTS

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ARE PROPERTY RIGHTS OPPOSED TO ENVIRONMENTAL PROTECTION?

ROGER PILON, PH.D., J.D.

Director, CATO Institute Center for Constitutional Studies

Senator Owen Johnson opened our conference this morning by surveying the condition of property rights over the breadth of the Empire State. Before doing that, however, he gave a warm thank you to our conference director, Carol LaGrasse, for the outstanding job she's been doing shedding light on the political and legal problems New York's property owners are facing.

As we move into the second half of these proceedings and take up the condition of property rights across the nation, it seems only fitting to pay our respects once again to Carol for the tremendous work she's done in putting this conference together. Events like this don't just happen. This event reflects nothing as much as the prodigious work that has gone into organizing it. Thank you, Carol.

I want to begin this afternoon on a personal note, by saying what a pleasure it is to be out of Washington and back here in upstate New York. You see, I grew up not far from here, in a little town called Galway, population 150, some 50 miles to the northwest in Saratoga County. Actually, we lived five miles outside of town, so I know something firsthand about the issue of property rights, even if that learning took place longer ago than I care now to admit. It's good to be back home -- and especially good to see so many of you joining the growing movement across the nation to protect property rights.

I expect that many of you have seen the press release the Audubon Society issued about this conference, warning its members, in essence, that if they thought the dreaded property rights movement was making inroads only in the West, wake up, because it's moving East -- even to New York State. As I said to Carol at lunch, your organization can't buy publicity like that!

As the organization grows, however, it's important to stay focused on why you organized in the first place, which is why Carol has asked me to talk to you about some of the larger issues that surround the movement, a few of which came up this morning. In fact, I was flattered earlier when Bob Wieboldt of the New York State Builders Association mentioned the debate I had yesterday with a man I understand has been quite a thorn in your side, Assemblyman Richard Brodsky. In that debate before the lawyers division of the Federalist Society in Albany, I opened much as I will in a moment, whereupon Mr. Brodsky made the mistake of likening himself to the poor country mouse -- from the upscale suburb of Scarsdale, let me note -- up against the city mouse -- not knowing, of course, that I hailed originally not from Washington but from that great megalopolis to the north, Galway, New York!

Well, it was all downhill for Mr. Brodsky from there. But the point I want to note is that in response to Bob Wieboldt's question to him yesterday about whether property owners ought to be compensated under the Fifth Amendment's compensation requirement when they suf-

fer losses in order to save some endangered species the public wants saved, Mr. Brodsky said, "Well, that's a tough one. I think we're going to have to give compensation in that kind of case." So, if he backs away from that conclusion in the future, remember, you heard it here. Let's hold his feet to the fire on that one -- and on much else as well.

This morning, Senator Johnson spoke about the moral high ground. It is often thought that environmentalists occupy that ground while we who defend property rights occupy the "low" ground of "grubby economic gain," "profit," and all the rest that goes with "mere commercial life." Let me say here and now that in the struggle that joins us all it is we, not the environmental zealots, who occupy the moral high ground.

It is absolutely essential, therefore, not to give the other side an inch on that point. But to do that we have to be clear about some of the particulars, some of the finer points, which I want to outline this afternoon.

Property Rights and Environmental Protection

The question before us, then, is this: Are property rights opposed to environmental protection? And the answer is a flat-out no. The protection of property rights, properly understood, is not only not opposed to environmental protection but is the best guarantee of environmental protection. After all, who can be expected to be a better steward of the environment than he who owns it? To paraphrase the great economist and Nobel laureate, Milton Friedman, whom I had the privilege of studying under at the University of Chicago, just as no one spends someone else's money as carefully as he spends his own, so too no one tends to someone else's property as carefully as he tends to his own.

Put that property in public hands, however, and watch the degradation begin. Indeed, we have simply to look around the world to those nations that have given virtually no protection to private property -- the nations of the former Soviet Empire, for example -- to see environmental degradation going hand-in-hand with the loss of property rights. Quite apart from moral or constitutional reasons, then, there are powerful environmental reasons, too, for protecting property rights.

In America, of course, we have not seen the outright denial of property rights, the wholesale confiscation of property, for the Fifth Amendment to the Constitution requires that when property is taken for public use, the owner must be given just compensation. What we have seen, however, is something that is much more subtle and, because of that, more sinister, more difficult to fight. It is the rise of regulatory takings, so-called, the takings that result not from outright condemnation and transfer of title to the state but from regulation -- the title remaining with the original owner.

With the rise of the regulatory state over the course of the 20th century, we have witnessed a steady erosion

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of property rights through such regulatory takings. Governments at every level -- federal, state, and local -- have sought to bring about an increasing array of public goods, from lovely views to historic sites to wildlife habitat, by imposing an increasing array of regulations on property owners, regulations that often deny those owners otherwise rightful uses of their property.

But under the Supreme Court precedents that have evolved, those owners are entitled to compensation for the economic losses that result only if the losses equal the entire value of the property -- which rarely happens. Owners who suffer losses of 50, 75, even 90 percent of previous value get nothing. They are made to pay -- literally and directly -- for the goods the public enjoys as a result of the regulations.

Needless to say, I don't have to tell this audience that there's something fundamentally wrong about that situation, for you're already part of a growing movement that's speaking out to correct it. What I want to do, therefore, is step back a bit and place the problem of regulatory takings against a basic background of first principles, the better to show how property rights and environmental protection do indeed go hand and hand.

First Principles

We are fortunate in America to have a set of documents, our founding documents, from which to derive those principles: the Declaration of Independence, the Constitution, the Bill of Rights, and the Civil War Amendments. Taken together, those documents speak at bottom to a single idea -- freedom, the right of each of us to plan and live his life as he pleases, provided only that we respect the equal rights of others to do the same.

We see that idea right in the Declaration of Independence, with the famous passage that begins, "We hold these truths to be self-evident." With that simple phrase alone, Thomas Jefferson was making a fundamental point. He was placing us in the natural law tradition, the tradition that holds that there is a higher law of right and wrong, from which to derive the positive law, and against which to judge the positive law at any point in time. Thus, the propositions that followed were asserted not as mere opinions but as "truths" -- "self-evident" truths, or truths of reason.

And what are those truths? They begin with a premise of moral equality -- "All men are created equal" -- then define that equality with reference to our rights to "life, liberty, and the pursuit of happiness." Notice that Jefferson did not mean that we are all equal in fact -- something he could hardly have believed. Each of us, rather, is unique. Indeed, no one is equal to anyone else *except* with respect to his equal moral rights, which means simply that no one has rights superior to those of anyone else. That was Jefferson's basic point.

Notice, too, that our rights to life, liberty, and the pursuit of happiness are essentially rights to be free -- the right to plan and live our own lives, free from the interference of others, provided only that we respect the equal rights of others to do the same. Among other things,

that means that each of us has a right to exercise his liberty -- which is his property -- by acquiring property in the world, either originally or through contract with another who acquired it originally or through contract. In fact, it is by going out into the world and acquiring and improving property, either alone or in association with others, that we create over time that complex institution we call civilization or civil society.

Notice finally that to this point Jefferson has said nothing at all about government, for the idea is that we have our rights not by government grant but "by nature." Government's purpose, then, is not to give us our rights but simply to secure the rights we already have, as Jefferson goes on immediately to say: "That to secure these rights, governments are instituted among men." Civil society comes first, government second. Indeed, whatever rights or powers government legitimately has arise only because we give it those powers. Government gets its legitimacy, thus, from the people, as Jefferson makes clear when he concludes his magnificent statement by saying that governments derive their "*just* powers from the *consent* of the governed."

Constitutional Incorporation

I will apply those principles to the issue of regulatory takings in a moment, but first we need to see how they were given concrete legal effect in the Constitution that was ratified some 13 years after the Declaration was signed by the Founders. As they sat down to draft a Constitution, the Framers had before them a basic problem: how to design a government strong enough to secure our rights yet not so strong as to violate those rights in the process. To accomplish that end the Framers employed the devices we are all familiar with: the division of powers between the federal and state governments; the separation of powers among the three branches of the federal government; the provision for periodic elections and for judicial review; the addition, two years later, of a bill of rights, and so forth.

But the most important device was the simple limitation of power granted, known as the doctrine of enumerated powers. As the Tenth Amendment makes explicit, the federal government has only those powers that have been delegated to it by the people, as enumerated in the Constitution. If a power isn't found in the document, the federal government doesn't have it. Any such power belongs then to the states or to the people. The basic issue of political legitimacy is really no more complicated than that. And at the state level, involving the power of state government over the individual, the issue is exactly the same, however varied state constitutions may be.

Today, of course, that basic doctrine of enumerated powers, the centerpiece of the Constitution, has been all but forgotten as governments at all levels exercise powers nowhere found in their authorizing charters. Those powers are illegitimate, plain and simple. Yet today they are everywhere, running roughshod over our rights, including our property rights. How did we get to this state of affairs?

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The Demise of Limited, Constitutional Government

The answer is not all that complicated. In a nutshell, around the turn of the century we began asking government to solve all manner of social and economic problems, whether or not we had authorized it to do so through the Constitution. The political branches responded. And the Court, in time, stepped aside, re-writing the Constitution in the process -- not literally but through reinterpretation alone.

All of that took place over a relatively short period, during the 1930s, although the intellectual groundwork had been prepared well before. Still, the original design did hold, more or less, for our first 150 years, during which government was largely restrained. Following a long period of industrialization and urbanization after the Civil War, however, we started changing our view of government. No longer did we think of it as a "necessary evil," requiring restraint, as the Founders had done. Instead, the Progressive Era saw government as an engine of good, an instrument for solving the problems of modern life. Thus, we began asking and expecting government to do things for us, to solve our problems, which too many politicians of the era were only too willing to do.

Standing in the way of their exercising that power, however, was a Constitution for limited government, which the Supreme Court continued to enforce -- albeit, with increasing uncertainty. By the mid-1930s things were coming to a head as one New Deal program after another went down in constitutional flames. Faced with a body of recalcitrant jurists, Roosevelt threatened to pack the Court with six additional members -- his infamous Court-packing scheme. Not even Congress would go along with that. Nevertheless, the Court, now on notice, got the message and started stepping aside, finding powers never before found in the Constitution, ignoring rights plainly there. Under the reinterpreted Constitution, its doctrine of enumerated powers effectively eviscerated, the modern welfare state poured through, giving us the massive redistributive and regulatory programs we know and love so well today.

Many of the programs that run roughshod over the rights of property owners today are thus illegitimate simply because done without any constitutional authority -- neither federal nor state authority. What is more, not only do those programs proceed without constitutional authority but they violate explicit constitutional guarantees -- in particular, the Fifth Amendment's guarantee that private property not be taken for public use without just compensation for the owner.

Regulatory Takings

With this as background, then, let us return to the problem of regulatory takings and notice at the outset its two sides. First, government is doing countless things today that it has no authority to do, especially in the area of regulation. And second, government is ignoring our rights as it goes about doing what it has no business doing. And on both counts, the Court is failing to exercise its authority to restrain the government. It is failing to limit government's regulatory powers to those

found in the Constitution. And it is failing to secure the rights that are plainly in the document.

In truth, this second aspect of the problem had arisen even before the New Deal Court opened the floodgates afforded by the doctrine of enumerated powers. It arose, interestingly, with a pair of rent-control cases that reached the Supreme Court in 1921 from the cities of New York and Washington. Faced with a claim by landlords in those cities that, without compensation, war-time rent controls had taken their property -- the difference between market rents and controlled rents -- Justice Oliver Wendell Holmes found that "exigent circumstances" had justified the controls and so the landlords were made to bear the costs of the "public good" allegedly brought about by the controls. Rent controls are a blatant form of regulatory taking, of course. Nevertheless, in an era when legislation and law were increasingly justified not on principled but on policy grounds -- as the Progressive Era was -- the policy of "exigent circumstances" trumped principle.

A year later, however, Holmes went the other way in the famous *Pennsylvania Coal* case. The facts in that case are worth sketching because they've been repeated with a thousand variations ever since and help to explain why, as a policy matter, we have today so much regulation. It seems that coal companies in Pennsylvania had entered into contracts with landowners to mine under the owners' land, dividing the estates in three: the surface estates, which the owners would continue to own and use; the underlying mineral estates, which the coal companies would exploit over time; and the intermediate support estates. As was well understood by all the parties, if these support estates were mined they might and often did give way, causing the surface estates they supported to collapse with them. Thus, the question at contract was who would bear the risk and costs of collapse if the coal companies eventually mined the support estates, as they would want in time to do. By contract, the parties agreed that the surface owners would bear that risk, for which they were paid a significant premium.

Well, not surprisingly, when that risk began eventually to materialize, the surface owners, having more votes than the coal companies, went to the Pennsylvania legislature to get a bill to prohibit the companies from mining the support estates. The bill was passed -- effectively abrogating the contracts -- and the companies sued, eventually reaching the Supreme Court and Justice Holmes. Rather than focus on the contractual issues, however, and reaching a result rooted in principle, Holmes issued his famous statement that if a regulation goes "too far" -- and this one did, he said -- it constitutes a taking requiring compensation under the Fifth Amendment's Takings Clause. The coal companies won, rightly, but the law ever after has been a giant muddle.

In fact, armed with that "bright line" test -- "too far" -- the Court has given us what Justice Antonin Scalia recently called 70-odd years of ad hoc regulatory takings jurisprudence, with no one ever sure really where he stands. As in Pennsylvania, legislatures around the country respond to popular pressures -- often ephemeral, even

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more often from special interests -- and those who must forbear using their property in order to satisfy such demands are made to pay for the goods the legislatures deliver -- unless, of course, the regulations go "too far."

Perhaps the recent case of David Lucas, which the Supreme Court decided in 1992, will help to put the issue in its current perspective. In 1986 Mr. Lucas paid nearly a million dollars for two lots on the outer banks near Charleston, South Carolina, with the idea of building a home for himself on one and a home to sell on the other. His plans were hardly extraordinary: in fact, there were already homes on both sides of each lot. Before building began, however, the South Carolina legislature passed a Beachfront Management Act -- not to protect any private or public rights but to promote tourism, preserve habitat, and provide for several other public goods.

The effect of the Act on Mr. Lucas was to render his lots all but useless. He could picnic on them, pitch a tent, pay the taxes and insurance, but that was about it. Faced with that, and holding a mortgage of nearly a million dollars on lots that were now almost worthless, Lucas did what every red-blooded American would do -- he sued. He won at trial, but on appeal was reversed, 3 to 2, by the South Carolina Supreme Court. Fortunately, the U.S. Supreme Court agreed to hear his case and, by a vote of 5 to 4, it reversed the South Carolina Supreme Court, finding that the South Carolina Act had indeed effected a taking of the property.

Two things bear mentioning here, however. First, but for a single vote on the U.S. Supreme Court, Mr. Lucas would have been forced, in effect, to dedicate a million dollars of his own money to promoting tourism, preserving habitat, and providing the various other goods the South Carolina legislature thought the citizens of the state should enjoy -- but not at their own expense. And second, Mr. Lucas prevailed only because the Act effectively wiped him out. Had his loss been less than 100 percent, as the Court all but said, he would have had to bear that loss himself. "You can take a man's property," the Court effectively tells legislatures across the country, "just so long as you don't go 'too far,' just so long as you leave him a little." Thus stands the Fifth Amendment's Takings Clause today!

If a thief says, "Your money or your life," and you bargain him down to half your money, none of us would have any difficulty saying that he'd taken your money. But let that thief be called the U.S. Government or the New York State legislature and we say, "Sorry, no taking here, you've still got half your property." That's the bizarre state of affairs today. Indeed, the gap between the Constitution and modern constitutional law -- on this as on so many other constitutional questions -- is so yawning that only those paid to see a connection can do so.

Returning to Principle

What, then, are we to do? How are we to straighten this situation out and draw a sharper picture, the better to bring some reason to the question of when owners should be compensated for losses they suffer as a result of regulations that restrict the uses they

can make of their property?

The answer, as always, is to return to first principles. Only so will we sort the issues out and shed light on the problem. What that means, in particular, is that we have to get clear about the relationship between two fundamental powers of government, the police power, which is the basic power of government, and the power of eminent domain, which is implicit in the Fifth Amendment's Takings Clause. We have to relate those two powers -- not by "balancing" them, as is too often thought, but by explicating their justifications and then relating them in a principled way. That isn't a matter of balancing values, so called, but of discovering and applying principles.

The police power, government's basic power, is the power to secure our rights. John Locke, the philosophical father of the American Revolution and the Declaration of Independence, put it well: the police power is the "executive power" that each of us has to secure his rights in the state of nature, prior to the creation of government. When we come together to create government -- the ratification of a constitution being the closest thing to that -- we yield that power up to government to exercise on our behalf.

The source and ultimate justification of government's police power, then, is found in the individual's right to protect himself, to secure his own rights. But that foundation also marks the *limits* of the police power. None of us, that is, has a right to secure rights he doesn't have, to take the liberties of others, for example, if those others are violating no rights of ours. We may not like what our neighbor is doing, but if he is violating no rights of ours, if he is taking nothing that belongs free and clear to us, then we must tolerate his doing it. Our executive power is bounded, in short, by our rights and his. It is not a power to do anything we want, however noble our motives might be in a given case.

But there are times, presumably, when we want government to do more than it can do legitimately under the police power alone -- limited as that power properly is by the rights of the individual. For that reason, the Framers recognized the power of eminent domain -- "the despotic power," as it was called, the power to condemn and thus take private property for public use. Because it was a despotic power, however, because eminent domain enabled government to take what didn't belong to it, the only way to mitigate that wrong -- to preserve some measure of legitimacy -- was to make the owner-victim whole, to compensate him for his loss. Thus the just compensation requirement as found in the Fifth Amendment.

Under the power of eminent domain, then, government may pursue various public ends, provided only that it compensate those whose property it needs to take in the process. On one hand, public projects can go forward. On the other hand, the just compensation requirement protects both property owners, who are left whole, and the public, which will not have to pay extortionate compensation to gain title to any property that might be needed. Armed thus with both the police power and the power of eminent domain, government may secure not

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only our rights but various public goods as well -- again, provided only that owners are compensated in the course of pursuing those goods.

Resolving the Takings Issue

As we see, then, once the police power and the power of eminent domain are properly related -- through the theory of rights -- the problem of regulatory takings is largely solved. Since no one has a right to use his property in ways that harm or violate the rights of his neighbors or the public, government may exercise its police power to prohibit such uses through regulation and owners are entitled to no compensation because those uses were wrong to begin with. By contrast, if government wants not simply to prohibit harms but to provide the public with public goods, and those goods can be provided only by prohibiting property owners from doing what they would otherwise have a perfect right to do, then regulations prohibiting such activities must be enacted not under the police power but under the power of eminent domain, for they take the legitimate property of the owners -- the uses those owners would otherwise have every right to make of their property.

Protecting property rights, then, is not only perfectly consistent with protecting the environment but is absolutely required if we are going to protect the environment. After all, the prohibition of harmful uses -- uses that violate the property rights of others -- is the very essence of environmental protection. Thus, nuisance law, as derived from the theory of rights, and that part of environmental law that is nuisance law writ large are rightly enforced under the police power. And when property owners have their activities restricted in a genuine effort to protect the environment, they have no ground for complaining and no ground for asking to be compensated for not doing what they have no right to do to begin with.

There are close questions, to be sure, about whether many such efforts at environmental protection are indeed genuine. Too often, in fact, the environmental zealots who frequently occupy our regulatory agencies are utterly oblivious to costs and benefits when they draw the line where one man's right to the active use of his property ends and another man's right to the quiet enjoyment of his begins. Still, the principle of the matter is perfectly clear: property owners have no right to use their property in ways that violate the rights of other property owners.

Making the Public Pay

When we go beyond protecting the environment, however, that's when we leave the domain of the police power and enter the domain of eminent domain. And here we have to be very careful to preserve the principle. Environmental protection, strictly speaking, has to do with protecting both private and public *rights*, not private or public *goods*. There are many things in the world that many of us think good, and many disagreements about what is and is not good. But only some of those things are held, free and clear, by right. I may

enjoy and think good the view that runs over your property, but if I want to make that view mine, by right, I'd better buy an easement from you that stops you from building or otherwise blocking that view -- if you are willing to sell me one.

When the public wants that view, however, all too often it simply takes it -- by passing a law prohibiting you from doing anything on your property that would block "its" view. Never mind that the view does not belong to the public. Never mind that the property and the right to use it belong to you. All that matters to the legislator is that he can provide the voting public with a free good -- at your expense. That, in a nutshell, is how the modern regulatory taking arises.

Once it is allowed to arise, however, there is no end to the matter. For when government pursues public ends on the cheap, when it drives the costs of those goods "off budget," making them fall on individual property owners, fiscal discipline goes out the window. As economics 101 teaches, when the cost of something is zero, the demand is infinite. It's no accident, therefore, that regulations to provide the public with such "free goods" have grown and grown: they're costing the public nothing. Indeed, because the costs are off budget, we have no idea whatever, as a public matter, whether a given view or historic site or subspecies is worth saving. If it's "free," save it!

None of this is to argue, of course, against saving views or historic sites or subspecies or whatever. Rather, it is to say simply that if the public wants those things, it should *pay* for them, like any ordinary person would have to do. In fact, the entire property rights movement today can be reduced to a simple phrase: "Stop stealing our property. Pay for it."

Right and Wrong

In all of this, then, what we need to do is restore these basic principles of right and wrong. Ideally, this should be done by the courts, but the courts, as indicated earlier, have failed to do the job. That's why property owners are turning increasingly to their legislators, to try to persuade them to bring some measure of reason and principle to this matter. In this effort, however, we should not delude ourselves: the opposition is organized, rich, and powerful; they reach legislatures, the media, and corporate America with ease; and they have shown themselves again and again to be willing to play fast and loose with the truth.

Environmentalists repeatedly claim, for example, that the property rights bills that are currently before the 104th Congress will result in the public's having to pay polluters not to pollute. Nothing could be further from the truth. Rather, what those bills provide, stated most generally, is that if we want to prohibit environmental harms, we have to pay property owners nothing, whereas if we want to provide environmental goods, we have to pay for them.

The *real* concern of environmentalists, of course, is that if those goods are placed on budget, if their costs are brought to light and the public is made to pay for them,

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demand will go down. What a surprise! People demand less of something if they have to pay for it. In fact, that issue came up earlier this year in the House of Representatives, during testimony I was giving in support of property rights legislation. "Mr. Pilon," intoned Barney Frank, a staunch opponent of such legislation, "how much is this bill going to cost the taxpayer?" Touched by his late devotion for the taxpayer, I answered: "Mr. Frank, that's entirely up to you. If you go on regulating the way you've been regulating over the course of this century, it's going to cost the taxpayer a lot. But if you can discipline your appetite for public goods, it's going to cost only as much as the public is willing to pay."

That wasn't quite the answer Mr. Frank was looking for, of course, but it's the right answer. We will see that kind of discipline, however, only if we secure in law the principles that require it. Once we put public goods on budget, we will know what they cost. Once we know that, we can decide whether they're worth it.

Reclaiming the Moral High Ground

Let me conclude, then, by drawing together and summarizing these several points, adding a few refinements in the process.

First, the demise of property rights has gone hand in hand with the rise of the modern redistributive, regulatory state, a state that has grown well beyond its constitutional limits. The courts should have been the ultimate institutional bulwark against that growth in government, but they can withstand only so much political pressure. In the end, therefore, it is we who must right the wrongs that have been brought about through our endless demands for public goods and services. As others have said, a government big enough to give us everything we want is a government strong enough to take away everything we have.

Second, to restore the protection for property rights that the Fifth Amendment affords, we need to be clear about the principles of the matter -- and we need to be clear, in particular, about how the protection of property

and the protection of the environment go hand in hand. Indeed, as a practical matter, it is particularly important that defenders of property rights be seen as protectors of the environment as well. That's what we are. Let's say it.

Third, it is crucial to distinguish between environmental harms -- defined as violations of property rights -- and environmental goods. Government does not have to compensate property owners when it prohibits them from using their property in ways that violate the rights of others. But when regulations are aimed at providing public goods, and they do so by prohibiting property owners from doing what they would otherwise have a right to do with their property, thereby reducing the value of that property, government does have to compensate those owners.

Fourth, and finally, not every regulation affecting property should lead to compensation for the owner. The owner should not be compensated (a) when he has no independent right to do what the regulation prohibits him from doing, as just noted; (b) when the regulation has the effect of reducing property values without denying any uses -- say, if a government agency downsizes, leading to a reduction in property values in a community; and (c) if the owner can show no loss -- say, if a particular zoning restriction actually raises property values.

With those principles in view, we need to go forward from here and press our cause in every arena we can, for the principles at issue are nothing less than the principles on which this nation was founded: individual liberty, individual responsibility, private property, and public accountability. As I said at the outset, those who defend property rights, properly understood, are those who defend the environment as well. It is we who occupy the moral high ground. Let us say so, and hold it. Thank you. ♦

Editors Note: Please see Appendix A for the Model State Statute or State Constitutional Amendment Concerning Compensation for Takings of Private Property, prepared by Roger Pilon.

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