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Private Property and the Constitution

Bruce Ackerman

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Private Property and the Constitution Bruce Ackerman
The proper construction of the compensation clause of the Constitution has emerged as the central legal issue of the environmental revolution, as property owners have challenged a steady stream of environmental statutes that have cut deeply into traditional notions of property rights. When may they justly demand that the state compensate them for the sacrifices they are called upon to make for the common good? Ackerman argues that there is more at stake in the present wave of litigation than even the future shape of environmental law in the United States. To frame an adequate response, lawyers must come to terms with an analytic conflict that implicates the nature of modern legal thought itself. Ackerman expresses this conflict in terms of two opposed ideal types---Scientific Policymaking and Ordinary Observing---and sketches the very different way in which these competing approaches understand the compensation question. He also tries to demonstrate that the confusion of current compensation doctrine is a product of the legal profession's failure to choose between these two modes of legal analysis. He concludes by exploring the large implications of such a choice---relating the conflict between Scientific Policymaking and Ordinary Observing to fundamental issues in economic analysis, political theory, metaethics, and the philosophy of language.

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