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## Fidelity in Constitutional Theory: Editors' Foreword

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## SYMPOSIUM

### FIDELITY IN CONSTITUTIONAL THEORY *EDITORS' FOREWORD*

Most constitutional theorists rely on or presuppose a conception of fidelity to the Constitution. The central question for this Symposium is: What is the best conception of fidelity in constitutional interpretation? Some prominent answers include: following the rules laid down (e.g., Justice Antonin Scalia); giving effect to relatively specific original understanding (e.g., Judge Robert Bork); keeping faith with the Founders' vision (e.g., Professor Jack Rakove); synthesis of constitutional periods (e.g., Professor Bruce Ackerman); translation across generations (e.g., Professor Lawrence Lessig); and pursuing integrity with the moral reading of the Constitution (e.g., Professor Ronald Dworkin).

These conceptions of fidelity in turn raise further questions. For example, if one embraces Professor Ackerman's approach, what should be the criteria for privileging certain constitutional periods over others, and for identifying the principles for which a selected period stands? If one adopts a translation model, how does one decide which commitments from a prior generation are worthy of being preserved, and how does one figure out the appropriate way to preserve those commitments today? If one accepts Professor Dworkin's argument that the best interpretation has two dimensions—fit and justification—is fidelity purely a matter of fit with historical materials or is it also a matter of justification in political theory? More generally, in the quest for fidelity, what is the appropriate use of history and of political theory? Does fidelity to principles embodied in the Constitution require us to disregard or criticize certain aspects of our history? Does the Constitution deserve our fidelity?

The Symposium on "Fidelity in Constitutional Theory" began on Wednesday, September 18, 1996 with Professor Ronald Dworkin's eloquent and illuminating Robert L. Levine Distinguished Lecture, entitled *The Moral Reading of the Constitution*.<sup>1</sup> On Friday, September 20, 1996, and Saturday, September 21, 1996, twenty-six of the nation's most renowned constitutional theorists exchanged their views on the meaning of fidelity to the Constitution. This Symposium was a unique and thought-provoking event that we are honored to have hosted, and that we are very happy to be publishing.

For this Symposium, each panel's primary speaker prepared a principal paper, to which the remaining panelists prepared response arti-

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1. The substance of Professor Dworkin's Levine Lecture is encapsulated in his principal paper in this issue, *The Arduous Virtue of Fidelity: Originalism, Scalia, Tribe, and Nerve*, 65 *Fordham L. Rev.* 1249 (1997).

cles. This issue consists of the articles prepared for the Symposium, along with edited versions of the commentary that took place among the panelists and the audience after each panel. The panels appear in the order that they occurred at the Symposium, and the commentary for each panel follows the papers of that panel. The Symposium concludes with a reply from Professor Dworkin.

We would like to thank Dean John D. Feerick for the support he gave us in connection with the Symposium. We would also like to thank the Fordham University School of Law Office of Academic Programs, especially Helen Herman and Scott Lilly, for their outstanding effort in planning and operating the Symposium. Additionally, we are grateful to D. Benjamin Barros and Lawrence J. Restieri, Jr. for conceiving the idea of holding a symposium in constitutional theory.

We also extend our deepest gratitude to the five co-organizers of the Symposium from the faculty of Fordham University School of Law: Professor Martin S. Flaherty, Professor James E. Fleming, Professor Abner S. Greene, Professor Robert J. Kaczorowski, and Professor William Michael Treanor. We would especially like to thank Professors Fleming and Greene for their leadership and coordination throughout this entire project.

We hope that you enjoy this most distinguished and enlightening Symposium.