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PREFACE

**Approaching Democracy:
A New Legal Order for Eastern Europe**

As long as people are people, democracy, in the full sense of the word, will always be no more than an ideal. One may approach it as one would the horizon in ways that may be better or worse, but it can never be fully attained. In this sense, you, too, are merely approaching democracy But you have one great advantage: You have been approaching democracy uninterruptedly for more than 200 years, and your journey toward the horizon has never been disrupted by a totalitarian system

. . . We must all learn many things from you, from how to educate our offspring, how to elect our representatives, all the way to how to organize our economic life so that it will lead to prosperity and not to poverty. But it doesn't have to be merely assistance from the well-educated, powerful and wealthy to someone who has nothing and therefore has nothing to offer in return.

We, too, can offer something to you: our experience and the knowledge that has come from it.¹

Many facets of the revolutions that shook Eastern Europe in 1989 lend themselves to scholarly legal analysis; two in particular

¹ Vaclav Havel, President of the Czech and Slovak Federative Republic, Speech to Joint Session of Congress, as reprinted in Wash Post A28 (Feb 22, 1990).

prompted us to begin planning this special issue. First, many of the countries involved moved immediately to delete from their constitutions the leading role of the Communist Party. Second, voices in American politics and journalism claimed that the events in Eastern Europe signaled a worldwide embrace of the American approach to government. The former development demonstrated an inspiring optimism—perhaps too much optimism—about the power of written constitutions to protect liberty and promote prosperity. The latter suggested a belief that Eastern Europe would now simply follow the American example.

President Havel's words to Congress serve as a useful corrective to whatever misperceptions these developments embodied. As liberty (in its constitutional, legal and economic forms) begins to take root in Eastern Europe, it is important to remember that the process of reform will never end, certainly not in the clear-cut way that the communist regimes ended; that Eastern Europe must consult many models, not just the American, as it goes about the business of constitution-making; and that America may have as much to learn from Eastern Europe as Eastern Europe has to learn from America. In this spirit, we invited the authors represented in this issue to describe and comment upon the most active period of constitution-making that the modern world has known.

We thank our faculty for all their help in making this issue possible, and extend special thanks to Provost Gerhard Casper and to Professors Anne-Marie Burley, David Currie, Michael McConnell, Geoffrey Miller, and Cass Sunstein.

The Editors