

subject to the uses of the public and as such, when for public purposes a change [was] necessary, it may be done without entitling the party to compensation.”⁹

Taney’s argument signaled a repudiation of the idea of a natural right to property and evinced a utilitarian understanding of property. In contrast to the liberal republican orthodoxy, this utilitarian conception was premised upon the belief that property rights did not originate in any pre-political status, but were derived exclusively from the determination and allowance of the civil society. It is important to note that the utilitarian conception was not a departure from a rights-based understanding of property or even the notion of an individual right to property. But, as Taney’s comments made clear, utilitarian ideas emphasized that the special rights of individuals were subject to and limited by a greater, general right to property that belonged to all citizens. Property rights were expressed through positive laws, which were subject to changes or reforms at the whim of a popular will that manifested itself through its institutional organ, the state legislature.¹⁰ Correspondingly, any propriety functions associated with property transferred from the individual to the body politic as well. Thus the exercise of the state’s eminent domain powers could now be envisioned as serving the public good and the conceptualization of necessity, the grounds upon which these powers were traditionally justified, could be expanded to include public works. Within the context of post-Enlightenment, Romantic notions of social progress, property assumed an instrumental role in the historically driven development of the polity (or state). Property was valued

⁹ *Notes*, 155, 157.

¹⁰ Taney’s argument had a history. The critique of the natural right of property was explicated in the political writings of Jean-Jacques Rousseau, Joseph Priestly, and Jeremy Bentham. For elaboration of H. L. A. Hart’s distinction between special rights and general rights see Jeremy Waldron, *The Right to Private Property* (Oxford: 1988).