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Ronald Dworkin

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CORRESPONDENCE

To the Editors:

I was unable to review my contribution, *Why Efficiency?*,¹ to your recent symposium² after it was set in print. I now find that what should have been the last two sentences of the postscript, beginning on page 572, were actually set forth at the end of the essay, on page 590. I hope readers were not confused.

I also believe that I may have misunderstood two remarks in Professor Posner's symposium contribution,³ by taking them to be more powerful claims than they were, and so criticized them wrongly. My misunderstandings in no way affect the argument I made against Posner's account of the moral bases of efficiency, but might be irritating nonetheless. I argued that Posner had confused the different concepts of self-interest and consent, and then I suggested (entirely independently of that argument) that some explanation of why he was confused about this might be found in his claim that if someone buys a lottery ticket and loses he has consented to the loss.⁴ I made heavy weather of this last claim, suggesting that someone who bets does not consent to losing. But what Posner must have meant (as I now see) was only that someone who buys a ticket consents (if he knows what he is doing) to have the question whether he wins or loses decided in accordance with particular rules, namely the rules of the lottery.⁵ If so, then I withdraw my objection to his statement (though I become more puzzled why he thought that that unexceptionable statement figured in his argument about hypothetical consent) and fall back on the other suggestions I made about why he was led to the deeper confusion between consent and self-interest.

In the same context, I considered Posner's statement that if someone buys land which falls in value because a large plant moves from the town, he has been compensated in advance for the loss because it was reflected in the purchase price.⁶ I thought that this was an argument why the law should allow the loss to fall on the buyer in that case, and I said it was a poor argument to that effect.⁷ But perhaps Posner meant only that since

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1. Dworkin, *Why Efficiency?*, 8 HOFSTRA L. REV. 563 (1980).
 2. *Symposium on Efficiency as a Legal Concern*, 8 HOFSTRA L. REV. 485 (1980).
 3. Posner, *The Ethical and Political Basis of the Efficiency Norm in Common Law Adjudication*, 8 HOFSTRA L. REV. 487 (1980).
 4. Dworkin, *supra* note 1, at 574-77.
 5. See Posner, *supra* note 3, at 491-92.
 6. See Posner, *supra* note 3, at 492.
 7. Dworkin, *supra* note 1, at 576.

everyone assumes that the law is settled that the buyer must bear the loss if it occurs, the purchase price reflects the buyer's risk of that loss. Once again, I am puzzled about the bearing of his point, if that interpretation is correct, on his larger argument as a whole, but I withdraw my objection to the point itself.

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