Optimal Rights

**REEF CORAL** is the symbiosis of an animal (polyp) and a single-celled plant (*zooxanthellae*). The animal creates a shell around itself that protects the plants living within its flesh, and the plants produce most of the animal’s food and energy. Similarly, the liberal state protects individuals and private organizations that produce the goods for society. Protection comes from the rule of law and individual rights.

Earlier I defined democracy as popular competition for government. Many people also consider democracy to encompass individual rights. Having analyzed the allocation of power to officials in part 3, part 4 turns to the allocation of rights to persons. Individual rights proceed from a philosophical tradition emphasizing personal autonomy and political liberty. Autonomy and liberty encourage self-expression and self-fulfillment. Community life, however, demands cohesion and restraint. When individuals conflict with communities, constitutional rights tilt the scale of justice in favor of individuals. In a democracy, individual rights impose limits on the scope of government by removing certain issues from ordinary politics.

To illustrate, if amending the constitution is difficult, and if the constitution effectively protects private property, then the legislature cannot expropriate one group’s wealth for the benefit of another group. The constitution precludes such a battle for redistribution by removing expropriation from ordinary politics. Similarly, if the constitution effectively protects freedom of religion, then one religious community cannot use ordinary legislation to impose its practices on another religious community. In general, constitutional protection of individual rights dampens a group’s impulse to use politics to subordinate others.

Normative philosophy, not positive science, tends to dominate discussions of constitutional rights. In response to this fact, chapter 10 explains how economics values rights, and chapter 11 relates these valuations to central philosophical traditions. The next three chapters—chapters 12, 13, and 14—return to positive analysis and consider the consequences of alternative understandings of three particular rights—property rights, free speech, and civil rights.

The people who enjoy rights usually value them, and a good constitution responds to peoples’ valuation of rights. I will consider how to maximize the value of rights to the people who enjoy them. Chapter 12 explains how property rights, which belong to people as owners, give them liberty over material resources. Given liberty, the owners maximize the value of material resources. Chapter 13 explains how human rights, which belong to people as human beings, give liberty over nonmaterial aspects of life. Focusing on freedom of speech,
chapter 13 explains how a constitutional prohibition on the regulation of speech can maximize its value. Chapter 14 explains how civil rights, which belong to people as citizens, give people an equal right to participate in public life and the private economy. Under perfect competition, the injurers pay the costs of discrimination. Correcting imperfections in competition, consequently, protects victims against the harm caused by discrimination.