Philosophies of Rights: Liberty and Redistribution

It works in practice, but will it work in theory?

To protect markets, a constitution can guarantee the rights of property and contract that keep markets free. Alternatively, to assure minimal welfare for everyone, a constitution can guarantee welfare rights such as medical care and housing. In practice, implementing welfare rights involves regulating markets and redistributing income, so liberty rights and welfare rights trade off with each other. The poles of the trade-off span the rival political philosophies of the right and left that figure prominently in modern political disputes.

Whether the aim is free markets or minimum welfare, a constitutional commitment can deflect redistributive contests away from the most wasteful and destructive ends and means that impoverish a nation. An effective constitution removes certain ends and means from ordinary politics. Instead of pursuing the special politics of constitutional interpretation and revision, politicians may change their ends or means. To illustrate, effective constitutional protection of private property blocks politicians from expropriating other peoples’ wealth, thus diverting the politics of redistribution into less virulent forms than expropriation, such as state subsidies or regulations.

In many countries, constitutional rights work in practice to dampen redistributive contests, but people disagree sharply over how to explain and justify constitutional commitments. Do constitutional commitments arbitrarily empower one philosophy over its rivals? In this book I view the constitution as a mechanism to satisfy the preferences of citizens, and in this chapter I apply this perspective to the trade-off between free markets and redistribution. By doing so, I try to explain how some effective constitutional practices can work in theory. This chapter addresses such questions as the following:

Example 1: In addition to traditional liberties such as freedom of speech and freedom of religion, some people assert a right to education, health care, housing, and other benefits. What is the connection between these rights and the maximization of welfare?

Example 2: Some judges and philosophers refuse to sacrifice liberty for wealth. Do these beliefs contravene the preferences of ordinary people?

Example 3: Courts discuss ethical values whereas politicians pursue power.
DISTRIBUTIVE IDEALS

The preceding chapter contrasted maximizing wealth and welfare. Figure 11-1 uses a diagram from public finance to depict the full range of appealing distributive ideals. To simplify, the figure assumes that society consists of two types of people. I will discuss representatives of each type, whom I call person A and person B. Person A, whose income is shown on the vertical axis in figure 11-1, has relatively low earning ability. In contrast, person B, whose income is shown on the horizontal axis, has relatively high earning ability. “Earning ability” means such things as quick intelligence and good judgment as required for business. If the state does not redistribute income, then A will have less income than B.

The state can use taxes and subsidies to redistribute wealth between the two people. The figure assumes that any tax subsidy must be based on income. For example, the state can tax high incomes and subsidize low incomes, which favors A and disfavors B. Alternatively the state can tax low incomes and subsidize high incomes, which favors B and disfavors A.

Assume that the state announces a schedule of taxes and subsidies based on income. A and B respond to the announcement by deciding how many hours to work. The state then applies the announced schedule to collect taxes from A and B, as well as to pay them subsidies. The result is after-tax-and-subsidy income levels of A and B. A feasible tax-subsidy system collects as much in taxes as it pays out in subsidies. In figure 11-1 the “feasibility frontier” depicts all the feasible after-tax-and-subsidy levels of income for A and B.

If A and B have similar tastes for leisure, then B inevitably ends up with at least as much money after taxes as does A. Seeing why is not hard. Since the tax subsidy is based on income, the person with greater earning ability always has the option of earning exactly as much as the person with lower earning ability, thus paying the same tax and receiving the same subsidy. So B can
always enjoy at least as much after-tax-and-subsidy income as A. Furthermore, B normally chooses to work enough to earn more money than A does. B will choose to earn more than A so long as they have similar preferences regarding work and leisure.

A feature of figure 11-1 depicts this fact. The 45° line corresponds to all the points where A’s after-tax income equals B’s. The only feasible point of strictly equal income occurs at the origin of the graph, where taxes are so punitive that neither party earns any income. All the other feasible points lie below the 45° line, thus indicating that B enjoys more after-tax income than does A.

Start from the origin of figure 11-1 with strict equality and prohibitively high taxes. Allow taxes to fall and the parties begin working more and earning more, thus moving to the northeast in the figure. Continue moving northeast on the feasibility frontier to reach the highest point, which is labeled maximin. The maximin is the point where the relatively worse-off person (A) has as much income as feasible. In brief, the maximin is the point that maximizes the minimum income. Reaching the maximin typically requires taxing the relatively rich (B) at the rate yielding the largest subsidy for the relatively poor (A).

In A Theory of Justice (1971), Rawls argues that inequalities are only justified to the extent that they improve the well-being of the worst-off class of people. This argument leads him to favor the maximin as the redistributive ideal of a just state.

Going beyond the maximin on the feasibility frontier in figure 11-1 requires lowering taxes and subsidies, which benefits B at the expense of A. Figure 11-1 depicts several salient points achievable by lowering taxes. As discussed in the preceding chapter, the material welfare school assumes that poor people get more welfare from additional income than do rich people. This normative ideal requires redistribution from rich to poor in order to maximize the sum of utilities. Maximizing the sum of utilities, however, does not require as much redistribution as maximizing the minimum income. Consequently, I locate the point labeled “max welfare” in figure 11-1 beyond the maximin.

Next I consider maximizing wealth. An additional dollar earned by a rich person increases wealth by just as much as an additional dollar earned by a poor person. Consequently, the normative ideal of maximizing wealth gives equal weight to everyone’s earnings, regardless of whether they are rich or poor. Reaching the point labeled “max wealth” in figure 11-1 requires lowering taxes on the rich and going beyond “max welfare.” The point “max wealth” maximizes the sum of the incomes of A and B, as required by cost-benefit analysis.

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2 The maximin is introduced in chapter 2 section 11 of Rawls 1971 and subsequently discussed in a variety of passages in the book.

3 The precise location of the point of maximum welfare on this graph requires specifying how income translates into welfare. Depicting welfare in the graph requires social welfare curves analogous to those in figure 11-1.

4 The point “max wealth” is the point that maximizes the sum of the incomes of A and B, as required by cost-benefit analysis.
Going beyond wealth maximization in figure 11-1 eventually reaches the "maximax," which maximizes after-tax-and-subsidy income of the wealthiest person (B). The maximax is achieved by taxing the poor (A) and subsidizing the rich (B). Whereas the maximin implements egalitarianism, the maximax implements elitism.

In the twentieth century, public debate usually favors redistribution from rich to poor and overwhelmingly opposes redistribution from poor to rich. In practice, however, wealth goes with power. If the maximin is currently more favored in words than deeds, then the maximax is more favored in deeds than words. (How many heads of state have massive, secret accounts in foreign banks?)

In past centuries, however, the assumptions of public debate were different. For example, before the nineteenth century the English typically assumed that aristocracy was superior to democracy as a political ideal. According to the aristocratic ideal, some groups of people who embody superior values in their culture spend money better than others, and the people with superior tastes ought to enjoy more wealth than people with inferior tastes. Like merit goods, aristocracy assumes that some people have better preferences than others. This case for inequality rests on cultural values. The advance of democracy undermined the political power and the cultural values of the aristocracy.

Along the feasibility frontier between the maximin and the maximax in figure 11-1, one person's income cannot increase without diminishing another person's income. Thus the points on the feasibility frontier between the maximin and the maximax are Pareto efficient. Pareto efficiency is consistent with redistributive ideals ranging from radical egalitarianism to radical elitism (as well as with skepticism that eschews ideals and proceeds from the actual). Choosing among Pareto-efficient points requires a normative standard to identify the preferred distribution of income.

Questions

1. Explain the difference between the feasibility frontier and the Pareto frontier in figure 11-1.

2. How would a constitution implement the maximax? the maximin?

Actual versus Ideal

Aristotle argued that different types of societies would adopt different distributive principles. He thought that democracies would adopt the principle that everyone gets an equal share, so democracies tend toward egalitarianism. In contrast, he thought that aristocracies would adopt the principle that the best get more, so aristocracies tend toward elitism. In practice, the state takes wealth from groups with less political power and gives wealth to groups with more
political power. The alignment of power determines how the state redistributes wealth between rich and poor.

A constitution can stabilize economic competition and protect the resulting distribution of income, whatever it may be. Alternatively, a constitution can recognize welfare rights that embody a concept of economic justice. In either case, effective constitutions help secure a distribution of wealth and income. To illustrate the difference, Cass Sunstein argues that Roosevelt’s New Deal in the 1930s changed the economic constitution of the United States. Originally, the common law gave the baseline for protecting the distribution of income under the U.S. Constitution. After the New Deal, the courts reinterpreted the U.S. Constitution as protecting a different baseline that allows redistribution in pursuit of ethical ideals (Sunstein 1987).

I will explain the connection between efficiency and distributive ideals in constitutions. To compare the efficiency of alternative laws, an economic model usually allows the laws under investigation to vary and holds other laws constant. No built-in limitations exist in such analyses concerning which rules vary and which rules remain constant.

The most popular style of analysis among economists, who are inclined to leave philosophy to others, evaluates changes in policy from the standpoint of the status quo. These models begin by characterizing equilibrium in an actual legal system and predicting the changes caused by modest legal reforms. To illustrate, an economic analysis might begin with existing guarantees of free speech and examine the consequences of redefining libel. The inherent conservatism of this approach lies in contemplating small changes in existing law.

Although economic analysis typically proceeds from the status quo, it need not. Alternatively, a model can begin with an idealized legal system that distributes rights according to a particular political or moral theory. To illustrate, an economic analysis might compare the consequences for defamation under alternative ideals of free speech, none of which characterizes actual legal systems. The inherent idealism of this approach lies in contemplating large changes in existing law.

Whether pragmatic or idealistic, an economic analysis usually asks whether changes increase or diminish the law’s efficiency. “Efficiency” might refer to the Pareto standard—whether a change in law can make someone better-off without making anyone worse-off. Alternatively, “efficiency” might refer to the cost-benefit standard—whether the winners from a change in law gain more wealth than the losers lose. Or “efficiency” might refer to a welfare standard—whether the winners from a change in law gain more welfare than the losers lose.

Is Wealth the End of the State?
of choice. According to the modern view, “utility” describes the way a rational individual trades off a variety of goals. Utility in modern economics is an analytical construct for characterizing trade-offs among goals, not a single goal that dominates all other goals. In microeconomics, consumers purchase the combination of goods that maximizes utility subject to the constraint that expenditures do not exceed wealth. Wealth is a constraint not an end, as expressed in the saying, “I don’t want money, I want the things money can buy.”

Unlike individuals who trade off various goals, however, microeconomics typically assumes that firms maximize profit. Profit is a single, overarching goal for firms. Under this assumption, firms do not trade off profits for other goals.

Should the state maximize wealth like firms do or trade off various goals like individuals do? Some prominent law and economics scholars regard maximizing national wealth as the proper goal of the state (Posner 1981). When the state maximizes the nation’s wealth, competitive politics provide citizens with public goods at low taxes. Plentiful public goods and low taxes increase the means for individuals to pursue their private ends. By providing individuals with means and not ends, the state remains neutral about the private goals that citizens ought to pursue. In general, the case for the state’s maximizing wealth rests not on the proposition that wealth is intrinsically valuable but on the proposition that wealth provides citizens with the means for pursuing their private ends, without the state’s favoring some private ends over others. Wealth is the end for the state and the means for individuals.

To illustrate, consider an imaginary state whose citizens work enough to satisfy their material needs and, after satisfying their material needs, they stop working in order to enjoy inexpensive activities such as playing the piano, cultivating orchids, reading books, walking in the park, watching television, and enjoying family life. Such people might want the state to maximize wealth so that citizens can maximize leisure. The citizens might object to public libraries or municipal orchestras that require the state to subsidize activities that some citizens value more than others.

Alternatively, consider another state where the citizens maximize consumption of market goods. In this state the citizens work long hours to earn money for large houses, luxurious cars, exotic trips, skiing, and fine dining. Such people might want the state to maximize wealth so that citizens can maximize consumption. As before, the citizens might object to the state’s subsidizing particular activities such as skiing or housing.

A pure wealth maximizer has no values of its own apart from market values. In contrast, economic theory assumes that a consumer’s tastes exist independently from market prices. An autonomous person creates or discovers his own values. For an autonomous person, markets provide constraints, not preferences. Lower prices imply less constraint. Instead of having values of its own, the wealth-maximizing state reduces the constraint on citizens.
Autonomy is a virtue in people and a danger in states. Autonomous people subordinate the state, whereas an autonomous state subordinates its people. The “autonomy argument” provides the most compelling reason why states should act like firms, which maximize wealth, and not act like individuals, who maximize utility.

Wealth maximization by the state implies cost-benefit analysis of constitutional rights. To illustrate, cost-benefit analysis values liberty according to the actual price that people will pay for it. By applying cost-benefit analysis, the state respects individual values and refuses to guide decisions by its own values.

**IS WELFARE THE END OF THE STATE?**

Now I turn from wealth to welfare as a possible goal of the state. The preceding chapter described a long tradition in economics known as the “material welfare school” that uses welfare to guide public policy. According to this tradition, a person’s welfare depends on the satisfaction of needs such as food, clothing, housing, and medical care. These needs form a hierarchy. Most people have the same hierarchy of needs, broadly defined, so comparing the level of satisfaction of the same needs by different people permits interpersonal comparisons of welfare.

After the second World War many governments created welfare states by extending the range of social benefits offered to citizens. The United Nation’s Universal Declaration of Human Rights, adopted in 1948, raised these benefits to the level of rights:

> Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood beyond his control. 8

Implementing welfare rights requires vast government expenditures to subsidize necessities and transfer wealth from rich to poor. In contrast, implementing liberty rights mostly requires government restraint. For this reason, a famous essay describes welfare rights as “positive” and liberty rights as “negative” (Berlin 1969). A rich country can implement both kinds of rights, whereas a poor country can implement liberty rights and not welfare rights. To illustrate, Denmark implements positive and negative liberties, whereas India implements negative liberties and not positive liberties.

According to the material welfare school, “needs” are well defined at low levels of income and undefined at high levels of income. At the lowest levels of income, people need material goods for survival, such as food, clothes, shelter, and medicine. Survival needs are relatively uncontroversial. At slightly higher
car. As wealth increases, however, all material needs get satisfied, so material needs recede as the basis for comparing the welfare of different people. Comparing the welfare of different people becomes increasingly difficult as their incomes rise.

To illustrate, a hungry person clearly needs food more than a bored person needs entertainment. It is unclear, however, whether one bored person needs to go to the opera more than another bored person needs to go bowling. With opera and bowling, the language of “needs” seems less appropriate than the language of “wants.” Thus material welfare, which provides a clear basis for comparing welfare among very poor people, loses its relevance as wealth rises and poverty passes into affluence.

The case for redistribution among relatively affluent people rests not on material needs, but on equality. Utilitarians have argued that the marginal utility of income declines as people become richer, which implies that transferring a dollar from a person with relatively high income to a person with relatively low income increases society’s total utility. In spite of several ingenious proposals, no method has gained general acceptance for measuring the rate at which the marginal utility of income declines. General acceptance of a particular method would presumably imply a most unlikely event—the end to disagreements about political ideals of distribution.

As explained above, the public goal of maximizing wealth directs the state to help autonomous citizens pursue their private goals. In this respect, does the public goal of maximizing wealth differ from maximizing welfare? Does the state that adopts the public goal of maximizing welfare reduce the autonomy of citizens below the level achieved by maximizing wealth?

In principle, a state that redistributes income can remain neutral about how citizens spend their money. To illustrate using figure 11-1 the state can aim for any point on the feasibility frontier while allowing individuals to spend their money as they please. In particular, the state can use taxes for redistribution, and the state can refuse to use taxes to favor some consumer goods over others. For example, Rawls argues that a just state would pursue the maximin and remain neutral about how citizens use their wealth.

In practice, however, states that pursue egalitarian ideals typically impose paternalistic restrictions on private contracts and regulate markets. To illustrate, original proponents of the material welfare school like Pigou argued in the 1920s for the state to invest in the health and education of workers, not merely give them money. Similarly, the material welfare approach easily leads to subsidies for necessities, such as food stamps and medicaid provided to very poor people by the U.S. government. Redistribution and regulation often go together as political goals. In practice, the state that adopts the public goal of maximizing welfare usually reduces the autonomy of citizens below the level achieved by maximizing wealth.
Questions

1. Give some examples of alleged rights that the constitution of your country does not recognize.

2. Discuss the advantages and disadvantages of including welfare rights in a constitution without implementing them by creating a welfare state.

3. Besides liberty rights and welfare rights, political discussion has turned to “third-generation rights,” which encompass minority languages, national self-determination, the integrity of cultures, and environmental values. Discuss whether these rights resemble commodities, merit goods, or trumps.

Does Liberty Have Social Value?

In the preceding chapter I discussed valuing rights as commodities, welfare, and merit goods. Wealth maximization values rights as commodities, and welfare maximization values rights as a source of welfare. Insofar as the state recognizes merit, it abandons the passive role of aggregating values and assumes the active role of shaping values. The state shapes individual values by subsidizing merit and taxing demerit. Treating liberties as merit goods thus promotes liberty beyond the actual preferences of citizens.

Some defenders of liberty apparently believe that it should trump other values, not trade off with them. For example, libertarians and classical liberals, who achieved their greatest influence in Britain and the United States during the nineteenth century, believe that the state should protect liberty and not do much else. Specifically, the state should not maximize the nation’s wealth or welfare. This philosophy minimizes the state. Another philosophy treats liberty as the first goal of the state and recognizes other secondary goals. In the formulation of Rawls, the state’s first goal is maximum equal liberty. In other words, the state should provide people with the maximum liberty that can be made available to everyone. The liberty goal is “lexically prior” to other goals of the state, which means that liberty never trades off with welfare or wealth.

I have discussed wealth and welfare as possible goals of the state. In the next section I try to inject realism into these discussions and arrive at a more convincing account of the relationships among wealth, welfare, and liberty.

Wealth, Welfare, and Liberty Related to the Hierarchy of Needs

Citizens need liberty and wealth to pursue their private ends. Left-wing critics often argue that negative liberties such as those in the U.S. Bill of Rights have little value to people outside the circles of power. In general, a choice of whether or not to exercise a right requires the right to x and the means to x. The political left asserts that citizens need to have the resources to have the opportunity to exercise any liberty.
I will graph the connection between wealth and the value of liberty. Figure 11-2 depicts wealth on the vertical axis. Beginning with affluence, a continuous decline in wealth passes through moderate prosperity and eventually reaches desperate poverty. Declining wealth eventually reaches the point where basic material needs go unsatisfied. For analytical simplicity, I assign a boundary on the dimension of wealth separating prosperity and poverty, as depicted on the vertical axis in figure 11-2. Above this boundary lies moderate prosperity, where basic material needs are satisfied. Below this boundary lies desperate poverty, where basic material needs are unsatisfied.

Similarly, I assume that people distinguish between basic and marginal liberties. Given a choice, people secure basic liberties before securing marginal liberties. The horizontal axis in figure 11-2 represents the extent of liberty. For analytical simplicity, I assign a boundary on the horizontal axis between basic liberties and marginal liberties.

The two boundaries divide figure 11-2 into zones labeled I, II, III, and IV. A person who suffers desperate poverty occupies zone I or IV, where the utility curves become almost horizontal. This fact indicates that the person strongly prefers more wealth rather than more liberty. For example, the person in zone I prefers to escape desperate poverty more than political tyranny.

A person who suffers political tyranny occupies zone I or II. In zone II, where the person escapes poverty, the utility curves become almost vertical. This fact indicates that the person strongly prefers more liberty rather than more wealth. As depicted in figure 11-2, moderate wealth makes a person prefer basic liberty rather than additional wealth.
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Wealth

basic liberty

worthless liberty

Fig. 11-3 Stylized Hierarchy

goods in microeconomics. As depicted in figure 11-2, moderate wealth and more than basic liberty makes a person trade off wealth and liberty like ordinary consumer goods.

Figure 11-3 stylizes the indifference curves in figure 11-2 by making almost horizontal indifference curves perfectly horizontal and making almost vertical indifference curves perfectly vertical. Consider a possible journey through the zones of figure 11-3. Beginning in zone I, desperate poverty gives wealth absolute priority over liberty. Stylizing the preferences of very poor people in zone I yields the socialist valuation of liberty. Now suppose wealth increases to a level of moderate prosperity, but a tyrant deprives the person of basic liberty. In zone II, the person prefers a small increase in liberty rather than a large increase in wealth, so liberty is priceless. Stylizing the preferences of people who enjoy moderate wealth and suffer political tyranny leads to the conclusion that liberty trumps wealth, as stressed by libertarians and some contractarians like Rawls. Finally, suppose the person secures more than basic liberty and enjoys moderate wealth. In zone III, marginal liberty and wealth trade off, so liberty has a price as stressed by economists.

Figure 11-2 presumably depicts the actual preferences of many people with respect to liberty and wealth, whereas figure 11-3 depicts the way some philosophers and judges talk about liberty and wealth. Many socialists talk as if policymakers should presume that society is in zone I, and many libertarians or Rawlsians talk as if society were in zone II, whereas economists talk as if society were in zone III. Each group has part of the truth insofar as liberty has little value to desperately poor people, paramount value to moderately affluent people living in tyranny, and ordinary value to people living in affluent democracies.
increase wealth? Does wealth increase liberty? Empirical evidence from developing countries suggests that property rights and enforceable contracts promote development (North 1995; Olson 1992). Freedom of the press apparently articulates political needs with various beneficial effects such as averting famine (Dreze and Sen 1989; Sen 1994). Cross-country evidence, however, yields ambiguous results concerning the overall contribution of human rights and democracy to economic development (Trebilcock 1995).

Questions

1. In economics, a “necessity” is a good that everyone must have and a “superior” good is one for which demand increases more than proportionately with wealth. Discuss the extent to which the following resemble necessities or superior goods: (i) freedom of religion, (ii) freedom to travel, and (iii) privacy.

2. People value goods differently according to their wealth. Why should the state give equal rights to people who have unequal incomes?

DAMPENING CONTENTION OVER DISTRIBUTION

As noted, majority-rule games of distribution have no core, so a contest for distribution aggravates the problems of democracy. Embedding rights in the constitution distances them from democratic politics, especially when constitutional courts display independence from politics. A constitution committed to a particular distribution can dampen disputes over redistribution by removing them from ordinary politics.

To illustrate, redistribution from rich to poor requires heavy taxation. Many historical constitutions restricted voting to property owners, thus ensuring political domination by relatively wealthy people who prefer low taxes on high incomes. In the United States, courts blocked the implementation of income taxation on constitutional grounds until the Constitution was amended. In recent years, however, new constitutions in some new nations guarantee welfare rights, which apparently commit the state to redistributing in favor of the poor.

Effective constitutional rights, when difficult to change, can channel behavior away from conflict and into cooperation. Specifically, constitutional rights of property direct transactions away from politics and into voluntary exchange. The phrase “transaction structure” refers to the way that people interact with each other in allocating resources. By imposing a voluntary transaction structure on the allocation of resources, constitutions dampen conflict.

To illustrate, consider the difference between protecting land ownership by a constitutional right or protecting it by legislation. Sometimes the state needs private land for a public purpose, such as building a highway or creating a park. Constitutional protection prevents compensation negotiations, whereas legislation allows the state to pay for the land.
then the government may propose to revise the statute and expropriate private land without compensation. Given the instability of majorities, citizens may waste large resources contending over this legislation. Conversely, if the constitution guarantees compensation of expropriated landowners at market prices, and if revising the constitution requires a super majority of voters, a government program to take private land without compensation is probably infeasible politically. The constitutional provision against takings minimizes resources wasted on contending over public land acquisition.

Most constitutions distinguish the taking of private property from the regulation of it. Although the U.S. Constitution severely limits the power of government to take private property, twentieth-century courts allow extensive land-use regulations to effect property values. Political disputes are thus deflected from takings to regulations. To illustrate, environmentalists need not waste their efforts promoting the expropriation of ecologically sensitive lands, nor need developers defend against expropriation, but developers and environmentalists spend a lot of money lobbying at cross-purposes to influence regulations on land use. The next chapter discusses these facts in detail.

**CONSTITUTION AS HYPOTHETICAL CONTRACT**

After debate and bargains, the United States acquired its constitution by agreement among representatives of the states. Similarly, after debate and bargains, the European Union acquired its fundamental laws by treaties among the European nations. In these cases, the process of creating a constitution resembles the process of creating a contract. To justify state power, a great tradition in political philosophy conceives of *every* constitution as a hypothetical contract. Even without an actual bargain, the constitution resembles a contract insofar as its terms are the ones that rational people would have agreed to if they had bargained together.

By tracing the binding force of a constitution to an actual or hypothetical agreement among rational people, contractarianism rationalizes three of democracy's essential features. First, it captures the idea that state power derives from the consent of the governed. A "meeting of the minds" thus makes a state as well as a contract. Second, contractarianism views the state as serving people, not as people serving the state. Just as people freely enter contracts to improve their condition, not to worsen it, so the state should benefit everyone. Third, by acknowledging that people are free by nature, contractarianism provides a rationale for constitutional rights of individuals. Rational people will want to preserve their liberties when forming a state, so the constitution arising from contract will recognize individual rights.

The economic theory of bargaining can sharpen the logic of contractarianism.
TABLE 11.3
Civil Society of Locke

<table>
<thead>
<tr>
<th>Threat Value</th>
<th>Share of Surplus</th>
<th>Consumption</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>50</td>
<td>50</td>
</tr>
<tr>
<td>B</td>
<td>150</td>
<td>50</td>
</tr>
<tr>
<td>Totals</td>
<td>200</td>
<td>100</td>
</tr>
</tbody>
</table>

Notice that the more efficient thief (A) benefits relatively more from the contract after Hobbes, which allows unequal thievery to cause unequal distribution. In contrast, the more efficient producer (B) benefits relatively more from the contract after Locke, which allows unequal production to cause unequal distribution.

Another alternative, not depicted in the figures, prevents any threats from influencing distribution in civil society, including the threat of noncooperation. According to Rawls, the social contract should be just, and justice denies the principle “to each according to his threat value.” Rawls only allows maximin inequality, which gives more to the more able people only insofar as they produce more taxes to benefit the least able people.

A constitution built in the spirit of Hobbes allocates individual rights in response to natural powers of the social groups forming the state. A constitution built in the spirit of Locke allocates individual rights in response to the shared morality of the groups forming the state. Finally, a constitution built in the spirit of Rawls recognizes the welfare rights of the least able citizens. Each approach presumably leads to a different point on the welfare frontier in figure 11-1.

CONCLUSION

This chapter uses economic analysis to clarify constitutional philosophies of wealth, distribution, and liberty. By maximizing its value, a private firm maximizes the money available for stockholders to use as they please. Similarly, by maximizing wealth, a state maximizes the money available for citizens to use as they please. Maximizing wealth is the end of a state that seeks to minimize constraints on the available means for citizens.

A state can aim to redistribute wealth in pursuit of an ethical ideal as represented by point on the Pareto frontier. While disputes over ethical ideals permanently engage political debate, people who enjoy political power usually redistribute wealth to themselves. A constitution can dampen wasteful disputes by creating rights that limit the ends and means of redistribution.

Instead of pursuing wealth or its redistribution, a state can adopt a constitution that gives individuals the right to the fruits of their labor, which is the essence of Locke's moral theory of property and of his vision of rights and political liberty.
maximizing liberty, citizens of an affluent country presumably prefer to secure basic liberty and trade off marginal liberties with other values. The people who enjoy constitutional rights value them, and a good constitution responds to peoples’ valuation of their rights. In the next three chapters, I will consider how to maximize the value of property rights, free speech, and civil rights to the people who enjoy them.