

the best way to limit concentrations of power, and he maintains that the constitutional provisions needed to implement this idea would necessarily be subject to interpretation and would open the door to increased domination by governmental regulatory agencies themselves. He goes on to suggest that market freedoms are best protected by procedural rules for political decision-making, rather than by constitutional guarantees of property rights. Constitutional guarantees of rights are typically vague and subject to debate regarding their proper extent and limits; they are therefore prone to manipulation by politicians and bureaucrats seeking to expand their own power. In contrast, procedural rules may be less subject to manipulation. Pincione concludes by sketching procedural rules that he believes would be likely to lead to the maintenance of a free market. These would include (1) a supermajority voting rule in the national legislature, which would increase the costs for interest groups seeking subsidies and special favors, and (2) a federal constitutional system in which state governments set most tax and spending policies and are forced to compete with one another by tailoring their policies to attract investment and citizens.

Richard A. Epstein defends a Lockean, limited-government model of constitutional design in the collection's final essay, "Can We Design an Optimal Constitution? Of Structural Ambiguity and Rights Clarity." Epstein begins with the assumption that individuals and groups are self-interested, and that in a world of scarce resources they will seek to use the power of the state to pursue their own advantage. In order to counter this tendency, a constitution should provide for a separation of powers among the various branches of government, along with a system of checks and balances, so that special interest groups will find it more difficult to use governmental power to impose their will on others. Epstein allows that the optimal structure of the government will vary from case to case, depending on the size of the nation, its level of economic development, and the existence of ethnic divisions within it. Nonetheless, he argues that any constitution should provide strong protections for individual rights, including both personal liberties (e.g., freedom of speech and religion, and freedom from invidious discrimination) and economic liberties (e.g., property rights and freedom of contract). Epstein maintains that the protection of these negative rights will tend to reduce the level of conflict within a society, whereas attempts to provide for positive rights (e.g., entitlements to housing, jobs, health care, or welfare payments) will tend to increase conflict. Efforts to create systems of positive entitlements are bound to fail, on his view, because of their detrimental effects on wealth creation and because of the difficulty involved in defining and limiting the scope of such entitlements. Epstein concludes that the best strategy for constitutional designers is to limit the number of decisions that government must make by emphasizing the state's role in preventing coercion, fraud, and the development of monopolies, while at the same time shying away from the redistribution of wealth and the creation of positive rights.

The proper organization of a nation's government is a central issue in political philosophy—and one with profound implications in practice. The essays in this volume address essential questions concerning constitutional theory and constitutional design.

Larry Alexander is Warren Distinguished Professor at the University of San Diego School of Law. He is the author, coauthor, or editor of eleven books and more than 170 published essays on various topics in jurisprudence, constitutional law, criminal law, and moral/social philosophy. His most recent books are *Crime and Culpability: A Theory of Criminal Law* (with K. K. Ferzan, 2009), *Demystifying Legal Reasoning* (with E. Sherwin, 2008), and *Is There a Right of Freedom of Expression?* (2005). John David Lewis is Visiting Associate Professor in the Philosophy, Politics, and