INTRODUCTION

THE TRANSFER SOCIETY

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> Today, when it is an accepted principle that the function of the state is to distribute wealth to everybody, it is natural that the state is held accountable for this commitment. To keep it, it multiplies taxes and produces more poverty than it cures.
>
> —Frederic Bastiat

Written in 1848, Bastiat's statement is as appropriate for the United States today as it was for France in the mid-19th century.[1] At the time Bastiat wrote, the United States still adhered to the principles of property and contract inherent in the Founders' Constitution. "There is no country in the world," said Bastiat ([1850] 1964, p. 59), "where the law confines itself more rigorously to its proper role, which is to guarantee everyone's liberty and property [than in the United States]. Accordingly, there is no country in which the social order seems to rest on a more stable foundation."[2]

The rise of the U.S. welfare state—the transfer society—followed from the attenuation of private property rights and freedom of contract that occurred during the last part of the 19th century and accelerated with the demise of substantive economic due process in the 1930s. The direct transfers that followed are well known today: welfare expenditures in the form of Social Security, Medicare, Medicaid,

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[1]Bastiat ([1848] 1964, p. 125).

[2]The two major exceptions to the protection of person and property that Bastiat ([1850] 1964, pp. 59–60) noted were slavery and tariffs: "Slavery is a violation, sanctioned by law, of the rights of the person. Protective tariffs are a violation, perpetrated by the law, of the right to property." These interventions, he thought, if unconstrained could "lead to the dissolution of the Union."

means-tested transfers such as Aid to Families with Dependent Children (AFDC), Food Stamps, and Supplemental Security Income (SSI), to name a few. Perhaps less well recognized, but as important, are the indirect transfers to businesses and middle- and upper-class individuals. These are generally couched in regulations that take the form of price controls, licensing, trade restrictions, tariffs, environmental regulation, zoning laws, and tax preferences.

To assess the various transfers that have arisen, especially in the postwar era, the **Florida State University Policy Sciences Program** sponsored its Second Annual Critical Issues Symposium, "The Political Economy of the Transfer Society," March 5–6, 1986, in Tallahassee. The conference papers published in this volume provide a wide-ranging discussion of the impact the growth of transfers has had on economic incentives and individual behavior. Understanding the effect of attenuating private property rights on wealth creation, as well as on individual freedom and responsibility, is critically important as we try to put our financial house in order, spur economic growth, and deal with the problems of poverty. Approaching the Constitution's bicentennial in 1987 also makes it an appropriate time to reflect on whether the modern welfare state is compatible with the principles of "life, liberty, and property" that were so revered by the Founders.[3]

[3]The importance that James Madison placed on the right to property (broadly defined) and its safeguarding by the state is clearly revealed in his essay "Property," written for the *National Gazette* in 1792:

> In its larger and juster meaning, it [property] embraces every thing to which a man may attach a value and have a right; and *which leaves to every one else the like advantage*. . . . [Thus] a man has a property in his opinions and the free communication of them. He has a property of peculiar value in his religious opinions, and in the profession and practice dictated by them. He has a property very dear to him in the safety and liberty of his person. He has an equal property in the free use of his faculties and free choice of the objects on which to employ them. In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights. . . .
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> Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses. This being the end of government, that alone is a *just* government, which *impartially* secures to every man, whatever is his *own*. . . .
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> That is not a just government, nor is property secure under it, where the property which a man has in his personal safety and personal liberty, is violated by arbitrary seizures of one class of citizens for the service of the rest.

Madison's view of property and the role of the state precludes the type of redistributive activities that are the trademark of the modern liberal state. His view of property was shared by his contemporaries (see Siegan 1980; Anderson and Hill 1980; Epstein 1985b).

Transfers as Takings

The basic characteristic of government transfers, including both welfare and regulatory transfers, is their coercive nature. In contrast to voluntary transfers, which depend on the consent of the donors, government transfers attenuate private property rights and reduce individual freedom. This is as true for land use regulation and wage and price controls as it is for welfare payments (see Epstein 1985b, ch. 17). As such, the redistributive state is incompatible with Madison's concept of a just state, namely, one that protects the property right, broadly understood as the protection of one's life, liberty, and possessions (supra, n. 3).

Economic legislation, catering to special interests, and entitlement programs ("welfare rights") fail the nondiscrimination test: those individuals and groups who are politically powerful are able to use the force of law to confer benefits on themselves at the expense of other citizens. When seen in this light, the modern democratic state is nothing but an agent for special interests seeking to take private property without the consent of the rightful owners. As such, Bastiat's term "legal plunder" seems appropriate to describe the forced redistributions and regulatory transfers that occur through the law-making process in democracies with virtually unlimited majoritarian rule.[4]

Unlike the older classical concept of justice as a *process*—commutative justice—characterized by voluntary consent (unanimity) and mutual gain, the modern concept of distributive or social justice is an *end-state* concept that is inconsistent with private property rights and individual freedom. Instead of affording individuals equal protection under the law, the modern liberal state uses the democratic process to control prices, restrict entry, and redistribute property according to popular sentiment.[5] And instead of individuals voluntarily accepting the *negative* obligation to refrain from coercion except in the defense of property, social justice imposes a *positive* legal obligation to redistribute one's property to lower income groups. Welfare rights therefore are incompatible with private property rights,

[4]By "legal plunder" Bastiat ([1850] 1964, p. 61) understood an illegitimate use of force—the law—to redistribute property rather than protect it. To recognize legal plunder, one has only to "see whether the law takes from some what belongs to them in order to give it to others to whom it does not belong."

[5]Popular sovereignty should not be confused with private sovereignty—the former extends state power while the latter limits it to protection of person and property (see Pilon 1985). Without constitutional limits on government taking, there is no limit to the extent of redistribution that can be "justified" in the "public interest."

that is, with an individual's fundamental right to noninterference which lies at the core of a free society.[6]

Fleshing out the logic of this position, Pilon (1979a, p. 148) argues:

> It is only by eliminating the right to welfare, then, at least in the various forms in which it entails positive obligations, that we can have a world of nonconflicting rights . . . , a world in which we can at all times enjoy whichever exemplifications of our right to noninterference [i.e., to property in the Madisonian sense] we choose to enjoy, subject only to the restrictions we incur as a result of our own actions.

A world of consistent and equal rights, in effect, implies a world of maximum freedom in which all those rights that can be exercised without interfering with the equal rights of others are passed on to individuals and safeguarded by the state.[7]

From this perspective, the state has no right to take the property of some for the benefit of others, for there is no contractual obligation to help the poor (or the nonpoor who receive the bulk of government transfers). Yet, it is not inconsistent to say that from an ethical viewpoint we *ought* to help those individuals who legitimately cannot support themselves. Only *voluntary* transfers, however, are consistent with the real meaning of charity. Such transfers do not violate the right to noninterference, which implies the correlative obligation

[6]See Nozick (1974, pp. 153–60) on the distinction between procedural and end-state justice; see Hayek (1976) on the distinction between the classical concept of a just process under a rule of law and social justice; see Pilon (1979b, pp. 1340–41) on the basic right to noninterference that characterizes a free society and its inconsistency with modern "welfare rights."

Epstein (1985b, especially chs. 17 and 19) views regulatory transfers and welfare rights as takings. With respect to welfare payments (so-called entitlements), he notes: "The basic rules of private property are inconsistent with any form of welfare benefits" (p. 322).

[7]In "a world of consistent rights," says Pilon (1979a, p. 148), "everyone can enjoy whichever of his rights he chooses to enjoy at the same time and in the same respect that everyone else does, and the negative obligations correlative to these rights can be satisfied by everyone at the same time and in the same respect that he enjoys his own rights to noninterference." Consequently, Pilon (1983, p. 175) reasons:

> [T]he free society is a society of equal *rights:* stated most broadly, the right to be left alone in one's person and property, the right to pursue one's ends provided the equal rights of others are respected in the process, all of which is more precisely defined by reference to the property foundations of those rights and the basic proscription against taking that property. And the free society is also a society of equal *freedom,* at least insofar as that term connotes the freedom from interference that is described by our equal rights.

Compare Jensen and Meckling (1985) on the definition of maximum freedom, and Meckling and Jensen (1980) on the nature of rights, which they classify as "scarce rights" and "non-scarce rights."

not to take from others what is rightfully theirs—their life, liberty, and possessions.[8] When the state engages in taking private property for redistributive activities, including regulatory transfers, it is not engaging in private charity but in legal plunder.

The Rise of Rent Seeking

By straying from the principles of property and justice as understood by the Founders, the modern liberal state has seen the erosion of private property rights, the demise of the rule of law, and the rise of "rent seeking." In the absence of effective constitutional protection for private property rights and freedom of contract—protection the Founders envisioned but the courts have eroded—the modern welfare state has increased uncertainty regarding the tenure of ownership claims. By deferring to the legislative will in the area of economic rights, the judiciary has paved the way for special interest groups to work to capture the political branches with adverse effects for individual freedom (see Pilon 1985). Lobbying for political favors and special interest legislation—rent seeking—has become the dominant game in the nation's capital.

Rent seeking is the natural outcome of the interventionist, neomercantilist state. It is only when the state goes beyond protecting property to redistributing it at will that it becomes profitable to divert resources to actively seek political favors. Self-interested politicians in a democratic setting and operating within a common property regime will be led to those activities that increase the chance of being elected. Conditioned by the expectation that the judiciary will not overturn economic legislation attenuating private property rights if it appears to be in the "public interest," legislators will respond forcefully to the wishes of those special interest groups that command strong political support. And those will be the groups that expect large benefits for themselves and are able to disperse and hide the real costs of their programs.

Property rights theory is useful in deriving the implications of alternative rights structures on incentives and behavior, and public choice theory helps explain why government decision makers have especially strong incentives to deviate from wealth maximization in

[8]See Pilon (1979b, pp. 1341–44) for a discussion of the difference between ought and obligation in the context of a rational theory of rights and the problem of justification. Also see Epstein (1985b, ch. 19) where he explains that although no one has a legal obligation to aid the less fortunate, this is not to say that there is no moral duty to do so. The duty, however, must be accompanied by a spontaneous giving rather than by a deliberate taking. In a free society, individuals cannot be compelled to charitable behavior without destroying the true meaning of charity.

allocating resources; that is, why it pays politicians and bureaucrats to divert resources from those uses that would maximize the value of output to consumers, voters, and taxpayers. The fact that the present transfer society is inefficient in this sense should not surprise us; nor should it surprise us that giving public officials better information about how to increase efficiency in government will not necessarily change their behavior. Behavior will change only if the underlying cost-reward structure is changed so that decision makers within government bear more of the costs of their inefficient decisions and can capture more of the benefits of increased efficiency (see McKean 1972).

The rise of rent seeking is a case of government failure, in this instance a failure to afford property rights and economic liberties the same protection as First Amendment rights. Once it became generally accepted in the late 1930s that the Supreme Court would no longer apply substantive due process to economic legislation, the door was opened for all sorts of legislative mischief in the name of social justice.[9] The resulting politicization of private (voluntary) transfers then became inevitable. As Epstein (1985b, p. 322) notes:

> The short truth is that if the state had never undertaken welfare programs, the demand for them would be a tiny fraction of what it is today. . . . The higher the level of benefits, the greater the demand, until the political dynamic—rent seeking again—produces an aggregate demand that the system itself can meet only with great cost to its productive capacities.

[9]Tumlir (1985, p. 14) states: "If we are to explain the rise of rent seeking to a dominant form of democratic politics, we must focus on the change in constitutional interpretation." The undermining of private property rights and freedom of contract was a lengthy process beginning in earnest with Munn v. Illinois (1877) and continuing with the demise of substantive economic due process in Nebbia v. New York (1934), West Coast Hotel v. Parrish (1937), and United States v. Carolene Products Co. (1938). Together with the Court's decision in United States v. Butler (1936), which effectively removed the limit on direct federal transfers under Article I, section 8, these cases paved the way for the modern welfare state. For a fuller discussion, see Anderson and Hill (1980), Niskanen (1985), Siegan (1980). The Court's more recent record in failing to protect economic liberties is discussed in Aranson (1985) and Epstein (1985a, 1985b).

According to Tumlir (1985, p. 14), the ushering in of the rational basis test of the Carolene Products case not only effectively terminated substantive due process for economic legislation, it also "discontinued the central element of any meaningful procedural review, namely the scrutiny of the conditions on which Congress delegates legislative power to the executive." This termination of the delegation doctrine, says Tumlir, "changed the nature of the legislative function and introduced a new form of politics"—rent seeking.

Thus, with fewer and fewer effective constraints on government taking, the rent-seeking process feeds on itself with a consequent growth of the transfer society.

The Growth of Transfers

The birth and growth of the transfer society was not due fundamentally to rent seeking; it was the predictable outcome of the lack of resolve on the part of the judiciary to protect economic rights; it was the crumbling of the rule of law (see Tumlir 1985, p. 16). For nearly a century after the Constitution's ratification, the lack of any effective provision for federal transfer programs and the widespread acceptance of the Founders' intent to limit the state to protection of property (broadly conceived) strictly limited redistributive programs. Even as late as 1929, direct federal transfer payments were less than 1 percent of GNP.[10]

The cracking of the constitutional foundation supporting property rights and freedom of contract became serious with the New Deal era and the demise of substantive due process in reviewing economic legislation. The Great Society programs of the 1960s and the socioeconomic regulations of the 1970s spurred the postwar growth of the transfer society. Thus, from virtual nonexistence in 1929, federal government transfer payments to persons as a share of GNP increased to 4.2 percent in 1964—one year before the War on Poverty was initiated—and more than doubled by 1984 to 9 percent. Expressed as a percent of disposable (after-tax) income, the federal transfer share increased from 6.1 percent in 1964 to 12.8 percent in 1984. At all levels of government, transfer payments to persons increased from about 6 percent of GNP in 1964 to nearly 12 percent in 1984, paralleling the growth of federal transfers (*Economic Report* 1986, app. B). If the increase in regulatory transfers were included in these figures, the resources diverted through transfers would be even greater.

Although real means-tested entitlement costs increased by 7.4 percent per annum for the 1970–81 period, they are scheduled to fall by −2.5 percent per annum for the 1981–88 period. However, the overall entitlement claim on GNP for federal transfers (including Social Security, Medicare, and Medicaid) is expected to climb to 10.1 percent by 1988 (Executive Office 1983, p. 3-27). Unless the Court returns to its original role of protecting property rights and freedom of contract from abuse by the political branches, or until effective

[10]See Niskanen (1985, pp. 1–8).

constitutional constraints are imposed on the tax and transfer powers of government, the redistributive activities and rent seeking are unlikely to be curtailed.

The Political Economy of Transfers

The transfer society is inexorably linked to the democratic-majoritarian political process in which the principle of nondiscrimination or equality before the law is no longer binding (see Tumlir 1985, pp. 70–71). Any serious attempt to understand the growth of transfers must therefore consider the *political economy* of welfare and rent seeking. In this endeavor the role of the political entrepreneur is of special importance. This role has been noted by Allen Wallis (Tobin and Wallis 1968, p. 47):

> The task of the political entrepreneur . . . is to identify services which are being purchased by substantial and identifiable blocs of his electorate and to devise means by which the cost of these services will be transferred to the public. . . . Only if fairly large numbers of voters are already paying for the service will the offer to relieve them of the cost be likely to influence their votes.

The significance of this point for explaining the growth of government transfers often has been overlooked.

As empirical support for his insight, Wallis (pp. 44–47) offered the examples of education and health care. These services were purchased privately by a large number of people prior to the government's involvement. What the government did was to socialize the costs of these services via taxation and then hide the true cost via subsidies. Making education and health care appear as free goods was politically appealing and hence passed the vote-getting test of the political entrepreneur. With respect to health care, Wallis observed that at the time Medicaid was enacted 72 percent of the civilian population were already covered by private health insurance and that proportion was accelerating.

Pursuing Wallis's line of argument, one could reason that the general acceptance of social justice as a state goal made it politically profitable to have the state socialize and politicize specific private transfers. Yet state transfers are a prime example of government failure, as noted: namely, the failure to protect private property from the will of the majority, that is, from the will of those special interest groups that can command a majority vote in the legislature. The increased substitution of public takings for voluntary exchanges—of which private charity is a specific example—has proven to be an inefficient way to help the poor. The incentive structure facing government decision makers has resulted in a tax and transfer system that provides disincentives to work, save, and invest; a system characterized by rent seeking and horizontal as well as vertical transfers. Moreover, in attenuating private property rights and individual initiative, the government has dampened the most effective, long-run antipoverty program—economic growth. These and other aspects of the political economy of transfers were the subject of the Florida State University conference, the papers from which will now be summarized.

Two years after his provocative book *Losing Ground* (1984), Charles Murray points out in his paper that the existence of a large underclass is no longer questioned. Although many of the poor are transitory, there is still a sizable number who are permanent wards of the state. These individuals, who lack the marketable skills and work ethic necessary for self-sufficiency, remain testimony to the inherent problems of the welfare state. What concerns Murray now is that prospective reforms of the transfer society may miss the mark. Requiring work-for-welfare and child support by absent fathers under AFDC may marginally improve the welfare system, but such reforms are unlikely to have a significant, long-run effect on reducing welfare dependency. Recipients will have an incentive to adjust their behavior to evade new rules and the welfare bureaucracy will have little incentive to enforce rules that could injure their business. If the new welfare reforms unfold in this manner, Murray warns that the older racism may reappear, stigmatizing the poor. He foresees an era in which we begin to repeat old mistakes and asks how social scientists might prevent this. In general, Murray would like to see more emphasis placed on the white underclass to demonstrate that behavioral responses to welfare are universal rather than specific to poor minorities. He also recommends greater use of direct observation and qualitative data in studying the causal link between poverty and welfare. Finally, Murray would like social scientists to widen the scope of their regression models and rethink the definitions of their dependent variables—for example, whether the poverty variable should include only pretransfer income, as he has recommended.

Greg Duncan and Saul Hoffman question the argument first proffered by Murray in *Losing Ground*: namely, that the War on Poverty programs exacerbated rather than reduced poverty. The use of longitudinal as opposed to cross-sectional data shows that welfare programs generally have not been injurious to the poor. Those on welfare are typically on it for a short duration and do not become permanently dependent on the state. The authors therefore see the welfare system as a means of providing insurance against temporary poverty and not as a major source of long-term dependency. Nevertheless, they note the existence of several million hard-core poor who persistently look to the state for their livelihood. Whether welfare increases divorce rates and out-of-wedlock births while discouraging marriage, however, are unresolved questions that await better data and improved research methods.

June O'Neill cites welfare as one of several factors that affect individual choices regarding family status and work incentives, and notes the difficulties with econometric studies of the impact of welfare on poverty. What is clear, however, is that the major determinant of poverty is the state of the economy; that intergenerational transfers have reduced the elderly poor but at a very high cost; that the nonelderly poor have not been made appreciably better off as a result of transfers; and that "need" is the result of voluntary decisions regarding work, fertility, and marital status. In the past decade, for example, as real AFDC benefits have decreased, the rise of AFDC caseloads has been halted, there has been a slowdown in the number of female-headed households and a stabilization of the out-of-wedlock birth rate. O'Neill recommends some marginal reforms for AFDC that could help constrain the welfare state: limit the duration of AFDC, remove the no male-headed household requirement, and require absent fathers to provide child support to qualify for welfare.

Edgar Browning and William Johnson argue that the debate over whether the elimination of welfare would reduce poverty is misplaced; the relevant question is not whether total or average welfare spending affects poverty but whether a small change in welfare spending significantly affects poverty.[11] It is the *marginal cost* of the tax and transfer system that is important for policy reform. Browning and Johnson estimate the marginal cost of increasing the income of the poor and find that this cost is likely to be quite large, given the current level of tax and transfer programs. Indeed, further increases in redistributive tax and transfer programs are likely to be counterproductive, especially in the long run. The adverse effects of taxes and transfers on labor-supply decisions and saving and investment plans account for the high marginal cost of the tax and transfer system on the nonpoor. A much less costly way to help the poor would be to achieve higher rates of economic growth. Real transfer payments then could increase without increasing taxes, while transfers as a percent of national income remained constant.

[11]The Browning and Johnson paper was not originally presented at the Florida State University conference.

James Gwartney and Richard Stroup take a public choice perspective in viewing the transfer society. They see a complex relationship between transfers and poverty but point to the nonegalitarian results that often accompany the existing tax and transfer system. The high implicit marginal tax rate on recipients of means-tested transfers, if they increase their market income, has a perverse work incentive effect. As such, a significant amount of the poor's transfer income may simply be replacement income rather than a net gain from welfare. In addition, the authors note that the lack of work experience adversely affects the long-run skill levels of those on welfare, reducing the value of their human capital. Without persistent employment, skills depreciate. Welfare programs, in effect, have fostered adverse economic incentives that harm the poor's long-run interests and have encouraged wasteful rent seeking. And even if some transfers are egalitarian, the rate of return equalization theorem tells us that the gains will be transitional. The authors further note that public aid has tended to crowd out private aid; that annual cash income has not been a satisfactory measure of well-being; that rationing transfers by linking them to asset ownership, specific behavior, or status causes predictable problems; and that the bulk of transfers go to the nonpoor. The overall success of the War on Poverty is therefore in doubt, especially in light of the fact that the official poverty rate for the nonelderly increased after 1968 even as spending on means-tested transfers rose dramatically.

Gordon Tullock uses the regulation of oil prices and the provision of public education as specific examples of income and wealth transfers. He explains why the state opts for a system of inefficient transitional transfers instead of transferring all the potential gains to citizens or selected subgroups via direct cash transfers or the creation of transferable shares. Tullock ascribes the waste inherent in existing transfer schemes to ignorance—the cost of acquiring information about real wealth positions—and to the nature of the political process. In a majoritarian democracy, direct cash transfers are too obvious a subsidy and would not secure congressional approval. Economic advisers therefore have little incentive to promote efficient transfers. The result is a political process characterized by inefficient (but hidden) transfers, rent seeking, and transitional gains. As long as government officials find in-kind transfers politically rewarding, better information about the costs of these inefficient transfers will not alter their behavior. Finally, even if transfers were more efficient, rent seeking could well increase as national income and the size of the pie to be redistributed increased. We therefore get what might be called Tullock's law of democratic rent seeking: "If there is more money to be obtained, more resources will be put into seeking it" (p. 154).

Richard Wagner applies public choice theory to help explain the welfare state as one form of a rent-seeking polity, which he argues is the natural outcome of an unlimited democratic state subject to majority rule. Unless the rules of the game are changed so that the same rules apply to both government and private sector behavior, and the rules limit the government to the protection of private property and freedom of contract, the growth of the welfare state is unlikely to be constrained. As such, entitlement and status increasingly will replace property and contract as the guiding principles for social organization, and individual freedom will diminish with the reduction of private options. Wagner notes, for example, that affirmative action is inconsistent with equal opportunity; it does not allow self-selection to operate spontaneously as it does in an equal opportunity regime based on private property rights. Differences in self-motivation and talent, then, will not propel the high achievers to the head of the pack and society will lose wealth in the process. An entitlement regime based on status ignores the principle of comparative advantage only at its own peril.

Robert Crandall emphasizes the point that recent deregulation in the airline and trucking industries was not the result of better information about the adverse effects of regulation; rather, it was the result of a favorable realignment of political forces. The fact that there has been no corresponding reduction of social regulation—as it effects the environment, health, and safety—is explained by the existence of large economic rents to the relevant interest groups. Rent seeking has been especially visible in the area of environmental regulation. In the legislative process the benefits flowing to industries in the Northeast and Midwest from more lenient pollution standards make it difficult for congressmen from these states to favor regulatory reform that would lead to an improved environment, since the present rules give their states a comparative cost advantage over high-growth industries in the Sun Belt. Environmental legislation, therefore, can be seen as a form of protectionism for the older, slower-growth industrial areas of the country. The rents accruing to well-organized special interest groups from the current maze of environmental, health, and safety regulation, in effect, act as an effective barrier to deregulation. Unless the political costs and benefits change, we should not expect the success of deregulation in the airline and trucking industries to spread to social regulation.

Peter Ferrara has been a persistent critic of Social Security and Medicare, which are by far the largest federal transfer programs, comprising over half of federal domestic spending and one-third of total federal spending. The growth of Social Security has paralleled the growth of the transfer society. To stem this growth Ferrara would privatize our costly Social Security program in its entirety. His Super-IRA plan would convert the present pay-as-you-go system of social insurance to a fully funded private system designed to promote individual responsibility, capital accumulation, economic growth, and higher returns to younger workers than they now can expect under Social Security. Ferrara argues that the transition to a private system will not harm the current beneficiaries and that his Super-IRA plan is a politically feasible solution to the inherently crisis-ridden Social Security system.

Anna Kondratas traces the recent history of workfare and applies economic theory to derive some implications of the proposed work-for-welfare plan. Although workfare and work-for-welfare may not reduce welfare costs, they may be marginally useful if they instill the work ethic and foster individual responsibility. Real reform, however, requires a fundamental change in the nature of the entitlement programs that now make it advantageous for the marginally poor to choose welfare rather than work. The notion that certain individuals are *entitled* to welfare by meeting specified criteria is not changed by making "work" one of those measures. The dependency, irresponsibility, and fraud accompanying the current system are unlikely to change much if work requirements are introduced. If the minimum wage and other impediments to employment for low-skilled workers remain intact, and if the starting wage for the workers is such that welfare is an attractive option, then it is probable that work-for-welfare will not significantly affect the tax and transfer system. The welfare program will remain subject to political pressures and if a person chose welfare initially, there is strong reason to expect him to adjust his behavior to qualify for welfare without choosing work under the new set of rules. Thus, the welfare state is flawed, says Kondratas, not because of the absence of a work requirement but because of the entitlement itself.

The paper by Bruce Gardner and the one by Bruce Benson and M. D. Faminow offer examples of rent seeking in agriculture. Gardner shows that farm commodity programs in the United States transfer large amounts of income to the nonpoor. The concentrated benefits and dispersed costs of these transfers assure their continued political support. Benson and Faminow carry the public choice analysis of agriculture to the case of supply management in Canadian poultry markets, showing why this type of regulatory transfer arose in Canada but not in the United States. Exploring different theories of regulation, the authors offer the interest group theory of regulation as the most useful approach to explain the difference in Canadian/U.S. agricultural policy. But they also rely on the theory of bureaucracy and differences in political institutions to help explain agricultural policy differences. The relatively larger size of Canada's agricultural bureaucracy and the parliamentary system point toward the relative importance of supply management in Canadian poultry markets.

Gary Fournier and David Rasmussen use the case of targeted business capital subsidies to illustrate the impact of one particular welfare program. Legislated aid to specific industries in the form of capital subsidies creates an opportunity for rent seeking. Targeted business capital subsidies also are a less efficient transfer than direct cash grants, but the reasons for their use should be clear from Tullock's paper.

Terry Anderson and Peter J. Hill emphasize the close link between effective constitutional reform and prior ideological consensus for limited government. They argue that the natural rights position of the Founding Fathers helped shape their choice of a constitutional government—one that narrowly limited redistribution and protected property rights. If most people agree on the basic ethical principles concerning the right to private property and freedom of contract, the costs of monitoring a limited government or constitutional regime will be lower than without such an ideological consensus. The erosion of private property rights in the modern welfare state has been accompanied by a decline in respect for the rule of law and, hence, for an individual's right to his property (broadly conceived). Unless the traditional principles of property and contract are restored, constitutional constraints are unlikely to be instituted, or if instituted, unenforced. The implementation and maintenance of a constitutional regime, therefore, will ultimately depend on the ideological basis of society.

In the final paper, William Niskanen takes a constitutional approach to the tax and transfer system, and attempts to answer the question of what constitutes a "fair" system. The criterion for a fair system or "game" is that there be a consensus on the rules of the game without knowing the specific outcomes. Using this rules-based approach, Niskanen illustrates the effect of alternative distribution schemes for unearned and earned income. With respect to the former, he demonstrates that the level of transfers would be influenced by the degree of uncertainty about the various outcomes, and that constitutional limits determine the range of taxes and transfers but may not determine the specific amounts. He models the redistribution of earned income to demonstrate the characteristics of an optimal tax and transfer system. The most important conclusion of this model is that the effective marginal tax rate should *decline* over the whole income distribution. By considering other conditions (for example, post-constitutional rent seeking, provision for protective services, and rights of emigration and secession), Niskanen arrives at a model for a constitutional regime that may allow little scope for redistribution. In this regard, he notes that the U.S. Constitution itself made no explicit provision for transfer payments. This changed in the 1930s, of course, with the *Butler* decision and the demise of substantive economic due process. The fundamental difficulty today, says Niskanen, is the absence of any effective constitutional limitation on the type or amount of government transfers.

Constitutional Limits on Transfers

Many of the papers in this volume suggest marginal reforms that would make the current tax and transfer system more efficient. The property rights and public choice perspectives, however, point toward the need for more fundamental constitutional reform—if the transfer society is to be constrained and ultimately replaced by a regime characterized by secure rights of property and contract. One important area for research is to reassess the role of the judiciary in protecting economic rights (which do not include positive "welfare rights").[12]

It is also important to consider the implementation and maintenance problems accompanying constitutional limits on the redistributive state. A closer examination of the cost-reward structure affecting government decision makers is important in this regard. Complementing such research would be a more thorough discussion of the effect of ideology on institutional change (along the lines of the Anderson and Hill paper), as well as a grounding of the ethical arguments for limited government in a more consistent, rational theory of rights (along the lines of Pilon's and Epstein's recent work).

The question of whether public aid is effective in reducing inequality and poverty is superseded by a more basic question that is often overlooked in public debate: whether it would be appropriate for the state to take private property for redistributive activities, *even if* such transfers were "efficient." Further, if empirical evidence points to the inefficiency of the transfer society in promoting private wealth creation, should we try to make the state as a redistributive agent more efficient or push the state out of this area entirely? These are important questions whose answers will ultimately depend on the

[12]See "Economic Liberties and the Judiciary," a special issue of the *Cato Journal* 4 (Winter 1985).

desire of individuals for freedom from government coercion used to redistribute income in the name of social justice *plus* their knowledge of the effects of attenuated private property rights on wealth creation. The papers in this volume are an appropriate starting point for a rational discussion of the economic and ethical implications of alternative institutional regimes—as they affect wealth and freedom—and should pave the way for future research.

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