

Contents

<i>Preface</i>	<i>page xi</i>
Introduction	1
PART I AUTONOMY AS A CONTRACT VALUE	17
1 The Challenge of Autonomy	19
Caveats and Lessons	19
Fried's Contribution	20
Internal Challenge	22
External Challenge	23
2 Promise Theory	25
Stakes of Promise Theory	25
Morality of Promise	26
Promise and Transfer	27
Normative Implications	28
Transfer Theory Roots of Promise Theory Reforms	29
Digression on Philosophy of Promise	30
3 Transfer Theory	33
What Does Contract Transfer?	33
Three Shared Features	34
Contract and Property	36
Duty and Power	37
Normative Failure	39
4 Recovering Autonomy	41
From Independence to Self-Determination	41
Instrumental, Intrinsic, and Ultimate Values	43

	Affirmative Duties in Private Law	45
	Affirmative Duties in Contract Law	46
	PART II THE GOODS OF CONTRACT	49
5	Utility	51
	Internal and External Values	51
	Utility and Autonomy	52
	Business Contracts	53
	Limits of the Business Contracts Example	55
6	Community	58
	Value of “Community”	58
	Different “Relations”	59
	Thick Community	60
	Thin Community	61
	Limits of Thick and Thin Theories	63
	PART III THE CHOICE THEORY OF CONTRACTS	65
7	Contractual Freedom	67
	Roadmap	67
	From Autonomy to Choice	68
	Intra-Sphere Multiplicity	69
	Employment and Consumers	70
	State Obligations	72
	Law’s Role	72
	Culture	74
	Regulation	76
8	How Contract Values Relate	79
	Horizontal Coexistence	79
	Consumer Transactions Revisited	80
	Voluntariness as Common Denominator	82
	Freestanding Contracting	84
	Autonomy as Side Constraint	84
	Relational Equality	86
	Challenge of Neutrality	88
	Price of Freedom for Efficiency Analysts	90

Contents ix

9	Contract Spheres	93
	False Core	93
	Three Motivating Examples	93
	Role of Spheres	95
	Four Spheres	96
	Two Instrumental Roles	97
	Sub-Spheres of Commerce	98
	Obligation to Support Low-Demand Types	99
	State Contracts	100
10	Contract Types	102
	Local Values	102
	Tailoring Law	103
	Mid-Game and End-Game Dramas	105
	Adequate Range of Types	106
	Two Wrinkles	108
	Mandatory Rules and Sticky Defaults	109
	How Mandatory Rules Can Enhance Autonomy	111
11	The Market for New Types	114
	Markets Come First	114
	State's Obligation of Multiplicity	115
	Employment	116
	Families	119
	Homeownership	122
	European Pluralism	124
12	Choice Theory in Practice	127
	A Happy Fantasy?	127
	Substantive Limits	128
	Institutional Concerns	130
	Conclusion	135
	Taking Stock and Next Steps	135
	Beyond Williston	136
	Beyond Fried	137
	<i>Acknowledgments</i>	139
	<i>Notes</i>	141
	<i>Index</i>	175