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INTRODUCTION¹

Freedom of contract plays a key role in many of our legal and public debates, but its meaning is rarely explicitly interrogated. Often it is simply assumed that freedom of contract stands for the idea that the law should just enforce private deals and otherwise get out of the way. This conventional association of freedom of contract with negative liberty may explain why it typically ranks high in the list of arguments summoned by libertarians. It is likewise evident when liberal egalitarians fend off these arguments by claiming that public values must override parties' freedom of contract.

My aim in this Lecture is to upset this seemingly obvious understanding of freedom of contract and to offer an alternative. I argue that contract is a power-conferring institution, with autonomy as its grounding principle, its *telos*. Contract's crucial contribution to people's self-determination implies an obligation to instantiate contract in law; it is also the ultimate justification for recruiting law's coercive power for contract enforcement. But these propositions imply that contract law must be designed in line with the requirements of its autonomy-enhancing *telos*. Specifically, this liberal *telos* prescribes the proper boundaries of contract's jurisdiction.

Freedom of contract is the freedom to use contract within the boundaries of its legitimate jurisdiction. Attempts to enlist the law in the service of an agreement that seeks to cross these boundaries – to use contract in clearly autonomy-reducing ways – must thus be summarily rejected as abuses of the idea of contract. This means that rather than an intervention in people's freedom of contract, guarding contract's boundaries along these lines must be understood as a necessary means for securing the integrity of contract and thus ensuring its continued legitimacy.

My first task in this Lecture is descriptive. Part I outlines the libertarian understanding of freedom of contract, which is shared by both friends and foes of a laissez-faire vision of the law.² Using two timely work-law debates – dealing with the proper scope of workers' inalienable rights and of employee non-compete agreements – Part I also demonstrates how this libertarian understanding of freedom of contract obscures the inner limits of contract's jurisdiction. My second task is conceptual and normative. Part II shows that the view of contract implicit in the conventional understanding of

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² The term laissez-faire is misleading since, like any other economic system, it necessarily relies on a robust legal infrastructure. See Hanoch Dagan et al., *The Law of the Market*, 83 L. & CONTEMP. PROBS. i (2020).

freedom of contract is conceptually unnecessary and normatively impoverished. Building on my previous work in contract theory, it then goes on to develop the alternative, genuinely liberal conception of freedom of contract. Properly understood, I argue, freedom of contract is intrinsically bounded by liberal contract's commitment to relational justice (that is: reciprocal respect for self-determination and substantive equality) and to the autonomy of the parties' future selves. My third and final task is prescriptive and reformist. Part III applies the liberal conception of freedom of contract to the debates over workers' rights and non-compete agreements. The intrinsic boundaries of the liberal conception of freedom of contract, I argue, entail both the entrenchment of workers' rights and the careful limitations of non-competes.