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Liberty

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Abstract

Freedom is the power to do what I want to do. The laws of nature and/or human laws limit this power. The laws of nature impose necessities. I cannot choose the speed of my fall (law of gravitation). Here I can not have a physical meaning. Human laws limit also my power to choose, but in another meaning. They impose obligations. The law of adultery, for instance, forbids to have sexual relationships with its children. I must not in a moral sense. I do not have the right. So, human laws determine artificially the limits of my power to choose. They limit the infinite freedom of the will and leads to the study of conditions of concrete freedom possessed by human beings in society. Concrete freedom is limited by the will of others and expressed through law partially originates in a process of mutual recognition. Then, concrete freedom is based on consent.

Synonyms

[Freedom](#)

Definition

Freedom is “the power to do what I want to do.”

Liberty, Laws of Nature and Human Laws

Freedom puts the question to the relationship between human beings and nature by means of a question concerning determinism and, similarly with the relationship between one human being and another, by means of a question concerning duty or obligation. The response of human beings to the constraint that nature places upon the will is exemplified in technology. The response of human beings to the constraints that can be imposed by other human beings is exemplified by law.

What Is a Free Action?

In order to understand why the notion of freedom or liberty involves such questioning, we must look at our experience of action and the distinction freedom makes between an action performed under

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constraint and a free action. Freedom is the power to choose what action one carries out. Freedom characterizes a type of action. Fundamentally, a free action is something done that could have been done in a different way. It is distinguished from a reflex action. Let's take an example. I can close my eyes in order to avoid something thrown in my direction. I can open my eyes in order to admire a landscape. When I open my eyes for that purpose, I make a choice. However, when I close my eyes to keep from getting hit in the eye by something thrown at me, the movement of my eyelids, i.e., the change in the initial situation in this case, is not the result of a choice. I never had to form the intention of closing my eyes, but my body is so constituted that it reacts automatically to the approach of such a projectile, and my eyelids close. Even if I had wanted to keep from closing my eyes, I would not have been able to prevent them from reacting, because the movement of my eyelids is determined by the way my body's nervous system works. The other situation, in which I open my eyes to admire a landscape, is different. My eyes open because I decide to open them. I decide to open them because I have good reasons to want to do so. The movement of my eyelids in reaction to the approach of a projectile is not a free act. To the contrary, the movement of my eyelids when I open them in order to admire a landscape is indeed motivated by the desire to admire the landscape. Thus, this is the description of an action that is experienced as conscious and as free. At this point we can affirm that a free act or action has three characteristics: it is intentional (an act of will), it comes with a justification in the form of reasons for acting or motives (one wishes to enjoy looking at a landscape), and it is not the determinate result of some other act or action. This definition views human beings as responsible for their actions without requiring that actions all succeed in their purpose. Not all intentions are carried out.

Each of the three characteristics of free action calls for further explanation. Free actions are intentional. I open my eyes because I have the intention of admiring the landscape. My action is limited to carrying out this intention. My project, what I intend, is the "why" of me opening my eyes. In this sense an intention is part and parcel of reasons that justify or explain an action. Reasons for acting or motives for action are talked about in this explanation, instead of causes. An approaching projectile causes my eyelids to close together, but the beauty of the landscape is a motive or reason for my action, and not a cause. If we were speaking of final causes, beauty was the ultimate cause of my action. I can give myself a teleological explanation of the fact that I open my eyes to admire the landscape, but I give myself a physical (and ex post facto) explanation of the fact that I may be forced to shut my eyes in order to protect them from an approaching projectile. After the fact, I take note of the fact that something was flying toward my eye, which explains me flinching and closing my eyelids together. The explanation of a forced or determinate action is not like the explanation of a freely performed action. In one case a physical force moves a physical body. In the other case, a physical action that could not have been physically predicted is actually freely executed or motivated by a mental intention, which is further mediated by a predilection toward beauty. In the latter case, the free action is a cause of movement; in the former case, physical motion is the consequence of an external force. The cause of movement is the projectile, not the intention (Cowan 1994). The explanation of a reflex action is always ex post facto. I must have observed that something was going to hit my eye, and this caused me to react. The explanation of a free act is always ex ante. I justify my decision to look at the landscape ex ante, with reference to my taste in landscapes.

The difference between a physical (instrumental) cause and a teleological (final) cause indicates the singular nature of free actions. Free action is an action that has its own cause; it determines itself. The result of this is that one may impute an action to a person or assign responsibility for the action to its "author." This is the origin of the concept of free will as developed by Saint Augustine (Augustine of Hippo) in his treatise *De libero arbitrio*. God is not responsible for evil; human beings are, since "*Dieu a conféré à sa créature, avec le libre arbitre, la capacité de mal agir et par-là même, la*

responsabilité du péché” (*De libero arbitrio*, I, 16, 35). In this regard, the will is what makes an action one's own, placing the burden of responsibility on the one performing the action (*De Libero Arbitrio* I.11). Human beings, on another hand, are not responsible for their eyes shutting when a projectile appears to be heading toward their heads. They are responsible for the act of opening their eyes to look at the landscape. In this sense, a free action involves the individual as moral person, the one who is able to respond by saying, I am the one who did this or that action. The individual is the subject who chooses or decides to look at the landscape. Freedom makes human beings into actors; they are not like stones, which cannot act but only be acted upon (Voltaire 1987, Chapitre 13, tome 62, p. 44). Voltaire makes use of Locke's theory of freedom. Freedom here is synonymous with power. This concept is distinguished from the freedom of the free will, which only has to do with the power of self-determination. A moral action is free if its consequences can be imputed to the person who chooses to do it. Inversely, an action under constraint makes human beings into objects that are acted on by forces they do not control.

In neither case is the success of the action guaranteed. Though my eyes shut reflexively, they may still be damaged by the projectile; the landscape I open my eyes is not guaranteed to be beautiful. Freedom does not protect individuals against errors in judgment that may involve the means chosen to carry out one's projects, in order to fulfill one's intentions. And the errors committed in the one and the other case are quite different. I would not blame my own reflexes if something flew up and damaged my eye, but rather my own carelessness, or perhaps mere accident; the manner in which my body reflexively moves to avoid an external threat is not a matter of my free choice. It is a given. But a human actor can modify either a project or the means he or she mobilizes to realize the project, following an initial failure. Human beings learn from failure because they fear it. This may seem an obvious point, but it is important because it moves us away from any definition of freedom as the “maximum expansion of my personality” (Berlin 2002a, p. 179) or as itself a means for the realization of projects (Sen 1999, pp. 14–15, p. 37). Such definitions in fact confuse a free action with an action that is successfully performed or carried out. The result of a free action is not determined. This does not mean that I cannot judge freedom by its results. I can, for example, try to find out if a free society is more prosperous than the one that is not free. But such a judgment is not a definition of freedom itself or of the conditions under which it may exist.

Under What Conditions Can a Free Action Exist?

The Absence of Determinism

Regarding free action, as we have just characterized it: it is not immediately certain that it exists in reality. Human existence confirms intentionality, the existence of reasons for acting, the feeling of responsibility, and the possibility of failure. But it is not certain that the act of will that led me to open my eyes upon a landscape was not itself determined by some characteristics of the environment (of the action). Perhaps my reasons for acting or my motives in acting were after all determined by my conditions of existence. If I am not the master of my own actions, my acts are constrained in the sense that they have been determined by the conditions of my existence. Thus, human beings and their actions become again objects of nature, not subjects.

As an object, human action has the same status as a rock, a plant, or an animal. It is determined by the conditions of our existence as living beings. Genes have a desire to reproduce themselves (the law of egoistic genes, to sociobiological determinism of (Dawkins 1976)), human beings have physical needs (sleep, nutrition, etc., indicating physiological determinism), there is a law of natural selection operating (the social Darwinism of Herbert Spencer), the law of egoism or the

maximization of utility (social physics), the nature of soils and climates (geographical determinism, Montesquieu, 3^e partie, Livre XIV, chap. X.; Diamond 1997), laws of the unconscious (psychological determinism, Plato and Freud), income levels (economic determinism or materialism), and/or membership in a social class (historical determinism). The free action would thus be an illusion, because the conditions of its being accomplished are not all present. This illusion stems from the fact that human beings are conscious of their actions, but not of the causes that determine that they will act. Thus, the only freedom human beings have is that they can know that they have acted in accordance with the necessity associated with their nature (Spinoza *Ethica* IV, Proposition 68). Freedom would be the recognition of necessity (Berlin 2002b, Chapitre Hegel). If I want to build an airplane, it would be suicidal to attempt to violate any of the laws of aerodynamics. Fatalism is the moral (prescriptive) consequence of this definition of freedom which associates determinism and freedom as the recognition of necessity.

Applied to the institutions of human societies, to morality and law, this may mean that human beings are able to want to change their society's institutions, but there is a natural order which is imposed on human beings by institutions. Human beings may desire to change their institutions and not be able to do it. They find themselves in the position of someone who would like to alter the speed at which he is falling. The universal law of gravitation discovered by Isaac Newton states that two bodies in the universe attract each other with a force that is directly proportional to the product of their masses and inversely proportional to the square of the distance between them. Human beings do not choose the values of physical constants. In an analogous manner, all the laws of nature that are the basis of different forms of determinism (as mentioned above) place human beings in this world of necessity. The projects and intentions they conceive are always determined from outside. There is always something that motivates people to do what they do. In this sense, this position is fundamentally empirical. Reasons for acting are externally determined. There is a necessity attached even to the projects expressed in action. Freedom consists precisely in knowing this. Thus, it is only a single step, which takes us from the consciousness of our being subject to necessity, to cynicism.

The Consequences of Determinism With Regard To the Identification of the Conditions of Free Action

Freedom as the Power to Choose The first consequence of determinism is that freedom is defined as opposed to the absence of choice. I have not the choice of speed when I fall. Nor do I have the power to choose not to nourish myself or not to sleep, assuming I want to stay alive. In the world we live in, life only sustains itself by fighting against death (Boulgakov 1912, 2000, Chapter I, II). Basic needs (for sleep and food) must be satisfied; these are conditions of human beings' biological existence. Human beings are in a sense slaves to their own bodies, which have to be looked after. Staying alive is a choice that determines action. One must choose to live in order to choose a particular project of action. The project of survival is conditioned by work, labor, inasmuch as it is a condition of life from an economic point of view. Work is the result of the threat that nature poses to human beings. It is a necessity. It places human beings in a state of needfulness (poverty). This is Adam's curse. But since work allows human beings to get control of basic necessities, it is also the means of extricating oneself from it. Work is a source of redemption, not of enslavement.

The Power to Choose and Social Physics in the Economics of Institutions The second consequence of determinism is that it leads to the denial of the existence of non-necessitating purposes ("ends," as in Aristotle), in other words the fact that things might be otherwise than they are. In the economics of law and of institutions, this turns out to have important consequences with regard to the way institutional dynamics are modeled. At first, there is a tendency on the part of the theory of

cultural evolution to accept a Panglossian economics (Whitman 1998). In such perspective, which is, is rational and what is rational is efficient. In such a world, there is no place for change or for the change agent, the entrepreneur. The same discussion can take place when we apply the law of egoism or the principle of the maximization of profit in order to explain law. Without law, human beings are not at liberty to desire something other than the maximization of profit. This is a given, but not a variable. That which varies is the manner in which individuals exercise their ability to calculate, rather than the objective aimed at by the calculation. The entire art of legislation, as Helvétius had already said (Berlin 2002b, Chapitre Helvétius), is therefore “*de faire que l'individu trouve plus d'intérêt à suivre la loi qu'à la violer.*” The entire contribution to the theory of inducements to the legislator is to suppose that the economist can furnish legislators with the means to predict what individuals will do if the rules of the game are changed, that is, if the incentive structure is manipulated, and the division of costs and benefits for each alternative. Such an ambition supposes that the law of egoism always applies and that altruism and disinterested acts are only illusions.

The theory of action teaches us to consider free acts as determinate acts. A free act is founded upon the existence of non-necessitating ends or purposes. Only ends of this type allow human beings to remain entirely free (Gilson 1997, p. 315). The law of gravitation cannot be broken, but human laws, moral or legal, can be involved in a choice. A human law, in fact, is obligatory without being necessary.

The Power to Choose and Nonempirical Approaches in the Economics of Institutions Affirming the existence of non-necessitating ends has therefore several consequences. Each of these consequences explains the originality of nonempirical approaches to the law and institutions. (1) The existence of non-necessitating ends first of all restores the determination of the self by the self. This self-determination is a characteristic of the free act. It explains why a certain number of authors insist on the absence of domination (Petit 2001, p. 132) or noninterference (Carter 1999, p. 237) in the definition of freedom. (2) The existence of non-necessitating ends also has the consequence of restoring the entrepreneur to his place as a change agent in the analysis of the dynamics of institutions. The institutional entrepreneur (Yu 2001) does not react to the evolution of constraints (transaction costs), but is at the beginning of his own movement. He acts, he does not react. (3) Non-necessitating ends also rehabilitate human beings' responsibility within history. They modify people's attitude toward reality. When I believe I am responsible for my own destiny and develop a strong feeling of personal effectiveness (*self-efficiency*), I have a tendency to become a change agent (Harper 2003). (4) More generally, the entrepreneur now has space in which to maneuver regarding all the laws that do not establish necessitating ends. If human laws, that is, morality and law, have this characteristic, then human beings can liberate themselves from laws that constrain them by refusing to apply them. They have the power to stand apart from their conditioning. They can overcome internal obstacles to freedom, such as addictive behavior (to tobacco, alcohol, coffee, morphine, opium, cocaine, sexual activity, even tyranny (de la Boétie 1549)). To be free is to be capable of subordinating one's action to the law of duty (a non-necessitating end). In this world of duty, passions and emotions no longer enslave human beings. In the face of danger, a soldier necessarily has a feeling of fear. It is his duty to fight. He must overcome his fear and refuse to flee or hide. The will allows us to overcome inner constraints. The will also allows us to go beyond external constraints, that is, we are able to choose whether or not to have recourse to the formal or informal institutions that structure the social order. These institutions limit a world of possibilities, but they only define obligations. They are not necessary. It is always possible for people to avoid them or to disobey them (*civil disobedience*) (Thoreau 1849). (5) The

last consequence of the existence of such ends is that law and moral rules are not similar to the laws of gravitation, although they claim to be as much in force. So laws that forbid stoning an adulterous woman artificially institute a necessity between two events that are not at all connected in nature. They artificially create determinations by instituting obligations. The fact that it is possible not to conform to them does not make them any less destructive of liberty. It is not because I can leave my own country to escape the oppression of a dictator or taxes that the law protects my power to choose. The word “power” changes its meaning here. In the case of the law of gravitation, “I can not” has a physical meaning. In the case of the law on adultery, “I must not” in a moral sense. I do not have the right. The law artificially determines the limits of my power to choose. It limits the infinite freedom of the will and leads to the study of the concrete freedom possessed by human beings in society (Hegel 1821, §4, §30).

Respect for the Principle of Self-Determination by the Self

The Ideal of Contractual Law

It is not only laws of nature that limit freedom. There are also human laws, morality, and the law of the courts. The origin of this limit has to do with a confrontation between two wills. The infinity of free will, that is, the possibility of willing, even the impossible becomes concrete freedom when two wills (Hegel 1821) or two individual claims (*pretesa/pretesan*, Léoni 1961) oppose each other. This explains why possession becomes property and takes on a legal character to the extent that the other, or all others, recognize that a thing I have made mine is mine, as I recognize others' possessions as their own. Concrete freedom that is expressed through law partially originates in a process of mutual recognition (Facchini 2002), the other part dealing with connections of a contractual type. Law guarantees the conditions of the free will if it is the result of that confrontation of wills, which accept the task of mutually limiting one another all in taking account of the wills of others. Law limits the power to choose. It exercises a constraint without for all that violating the principle of self-determination by the self. This represents the fact that human beings can limit their own power to choose through laws that they freely support and which they apply thanks to the implementation of trust rules and solidarity rules (Vanberg and Buchanan 1990). These laws constitute an order based on rules (order of rules, Hayek 1973) that change as a function of the relationships between the wills of different members of a group. Concrete freedom is based on consent. Outside the contract, law becomes the death of liberty, for it is imposed against the will of human beings.

Freedom, Tyranny, and Paternalism

In the great conflict of wills, the other may also decide on a constraint for me to labor under. The law, here, is chosen against my will by another will than mine. The principle of determination of self by self is no longer being respected. Law is no longer creating the conditions necessary for the existence of a free act recognized as such by everyone. Only the one who produces the law is free. For my own happiness, he subjects me to his will (paternalism) – or if it is for his own happiness, he is a tyrant.

The tyrant has the face of a bad person in Pascal's sense (1650, 1982, p. 125). The bad person has power and uses his force to impose his will on me. The confrontation of wills no longer can be solved through contracts, but only through the application of the law of strength, of the stronger party. The stronger party will oppress the weaker (Pascal 1650, 1982, p. 127). This transforms a factual situation into a law. What the strong possess is transformed into property rights. This means that at the beginning there is no agreement about the rights of each, but there is usurpation (Pascal 1650, 1982, p. 125). The law makes the strong free and places the weak in a situation of necessity, because freedom without power is impotent. Under these conditions the infinite freedom of the will of the weak will never receive a proper concrete expression in the law. The weak can band together to

overthrow the strong and impose their own laws, but they will never be liberated unless they reverse the relationships of force, making yesterday's strong people the weak and the oppressed of yesterday the strong. The law is necessarily that of the strongest, if without force the will is powerless. The social and political conditions of a free society will never all be present. The infinite freedom of the will is therefore only an illusion, since law is always the law of the stronger. He supports the freedoms of some but oppresses the freedom of others.

The legislator can also assume the form of a benevolent father. The strong man ceases to be a tyrant. He places his power in the service of the Good. The original form of paternalism consists in helping individuals to keep their promises, that is, to make the will of the weak-willed strong. Let us suppose that a weak person does not permit himself to commit adultery, but through the weakness of his will, he succumbs to temptation just the same. Such a situation may justify intervention on the part of the strong man. His intervention will be like the chains holding Ulysses to the mast as the Sirens sing, in Homer (Elster 1984). A second form of paternalism consists in deciding on the extent of the means that individuals give themselves in order to realize their goals. A man who wishes to be in good health should not smoke. The strong person can justify constraint with reference to the incoherence of the weak person. The weak person will not be allowed to smoke, as a means of helping that person reach their personal goals. A third form of paternalism, *soft paternalism*, prohibits nothing and uses no force but tells weak or poorly informed people about the risks various behaviors are associated with. They remain free to do as they like. But they are obliged to hear out the morality of the strong. A fourth, hard paternalism, is moral. It determines the ends of action not because the strong man wants it that way, but because the good can be objectively determined. The strong man knows what is good and seeks to promote it through politics, in which the ultimate aim is the happiness of men in society (Humboldt 1851, III). In the name of this principle, this stance gives itself the freedom to act as a tyrant in the name of the Good. Thus, we have here to do with a benevolent tyrant.

The Ideal of Contractual Law and the Role of the State

The introduction of the figure of the strong person in a contest of wills is equivalent to a consideration of the role of the State in the formation of law and the protection of individual liberty (freedom).

The law that is generated by the benevolent attitude of the strong person changes as a function of the strong person's knowledge of that which is good. It establishes the strong person as a legislator and exposes society to two kinds of risk. Happiness from this perspective dominates the principle of non-domination of one individual by another. The legal conditions of a free act are not guaranteed. The law of the legislator then risks becoming unstable because it evolves as a function of what the legislator learns concerning what is to be done or not done in order to bring about the happiness of human beings in society. This instability of the law reduces the quality of what agents are able to anticipate and increases the cost of their coordination. It opens the door to higher costs for political transactions, since everyone is attempting to influence the decisions of the legislator and to impose their own conception of the Good. The law of the legislator, in addition, no longer mobilizes the group of kinds of tacit knowledge that agents have when they are constrained only on a contractual basis. The law therefore has a good chance of being poorly adapted to many particular situations and for this very non-applied reason.

The law of the tyrant serves the tyrant's will. It includes the tyrant's conceptions of the Good. Therefore, it also has an unstable, arbitrary, and incomplete nature.

The law of a contractual nature is to the contrary freely consented to and based upon the tacit knowledge of agents. It may nonetheless be unstable, because it is never certain that one of the

parties to a contract may not decide at one moment or other to refuse to keep his or her promises. A person may in fact decide that he or she is in a position of strength and that it is no longer in that person's interest to continue to be bound by agreements that were freely agreed to in earlier negotiations. This risk is real. It is normally limited by the existence of rules involving confidence and solidarity that are made specifically to prevent such behavior by instituting dissuasive mechanisms such as guilt, shame, a bad reputation, exclusion, and/or ostracism. All the individuals of the group band together against the deviant, that is, the individual who does not wish to keep his or her word. If these rules are sufficient, the State has no role. Its existence is nothing but a useless fiction through which the freedom of some people is extended to the detriment of others' freedom, that is, through which "*tout le monde s'efforce de vivre aux dépens de tout le monde*" (Bastiat 1863, Tome IV, pp. 327–341). Only when the State arrogates to itself a monopoly on violence and the production of the law (Léoni 1961) does law become the law of the strongest. If risk is not obviated through the application of these rules and mechanisms for imposing sanctions, human beings may have recourse to force, in other words may make agreements so that power ensures the maintenance of law and order. The State is a regal State. It ensures the enforceability of contracts against external enemies and/or internal strife (Humboldt 1851, 1969, IV, p. 45). This means taxation is one condition of a free society, for it is the condition for the financing of the operations of the police and for the defense of the State's boundaries. The financing of the police from this perspective is the single issue regarding political freedom. These freedoms guarantee to the individual the power to choose his level of taxation, his rules of allocation, and the people who will manage everything.

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