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► **To cite this version:**

François Facchini. Liberty. Encyclopedia of Law and Economics, 2022, pp.1-11. 10.1007/978-1-4614-7883-6_50-2 . hal-03453426

HAL Id: hal-03453426

<https://hal.science/hal-03453426v1>

Submitted on 10 Oct 2023

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Liberty



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Synonyms

[Freedom](#)

Definition

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

Liberty, Laws of Nature, and Human Laws

Freedom raises questions, on the one hand, about the relationship between human beings and nature (via the question of determinism) and, on the other hand, about the relationship between one human being and another (via the topics of duty and obligation). The response of human beings to the constraints 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 questions, we must look at our experience of action and the distinction freedom makes between an action performed under constraint and a free action. Freedom is the power to choose which 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 us 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, that is, 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 my eyes because I have good reasons for wanting to do so. The movement

of my eyelids in reaction to the approach of a projectile is not a free act. In contrast, the movement of my eyelids when I open them in order to admire a landscape is indeed motivated by my 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: (i) it is intentional (an act of will), (ii) it comes with a justification in the form of reasons for acting or motives (one wishes to enjoy looking at a landscape), and (iii) it is not the determinate result of some other act or action. Each of the three characteristics of free action calls for further explanation.

- (i) 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 the reasons that justify or explain an action.
- (ii) In this explanation, we are describing reasons for acting or motives for action 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.
- (iii) The explanation of a forced or determined 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 points to 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* (*On Free Choice of the Will*). God is not responsible for evil because, by the gift of free will, God has conferred on us the ability to do wrong and thus the responsibility of sin (*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).

Immanuel Kant ([1785] 2013, p. 54, Section 3) in the *Groundwork for the Metaphysics of Morals* writes, “Will is a kind of causality that living beings exert if they are rational, and when the will can be effective independent of outside causes acting on it, that would involve this causality’s property of freedom; just as natural necessity is the property of the causality of all non-rational beings, through which they are caused to act in specific ways by the influence of outside causes.”

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 can 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 (Locke [1690] 2017, Book II, Chapter 21, §5). 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.

This definition views human beings as responsible for their actions without requiring that actions all succeed in their purposes. 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 to regard 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. 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.

The Absence of Determinism Is the Condition of the Being of a Free Action

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 in which the action took place. Perhaps my reasons for acting or my motives in acting were, after all, determined by my conditions of existence. Thus, human beings and their actions become objects of nature, not subjects. As an object, human action has the same status as the movements of a rock, a plant, or an animal. It is determined by the conditions of our existence as living beings. *Determinism* develops this doctrine. Everything that happens must happen as it does and could not have happened any other way. The acts of the will are determined by antecedent causes. There are two kinds of determinism: *external* determinism and *internal* determinism.

- (i) **External determinism** sees the cause of behavior as being outside the individual in the form of God, the social environment, the family environment, or geography. The oldest of these is undoubtedly theological determinism.
 - (a) Theological determinism is the view that God determines every event that occurs in the history of the world.
 - (b) Sociological determinism focuses on social causes of individual choices. Science necessarily assumes some form of determinism (Durkheim 1975, p. 109). The model of causal, physical

relationships is basic to the sciences. Physical determinism is based on there being physical laws of nature. Sociological determinism tries to discover social laws, the laws of social reproduction. Pierre Bourdieu, for instance, does not explain success or failure at school by the merit or intelligence of schoolchildren (responsibility), but by a systematic and generalized mechanism of reproduction of the structure of inequalities in cultural capital. The school institution benefits the advantaged and harms the disadvantaged (Bourdieu and Passeron [1964] 1977).

- (c) Psychological determinism maintains that there are certain psychological laws enabling us to predict, usually on the basis of their experiences in early infancy, how people will respond to different situations throughout their later lives. Children become aggressive through observation and imitation of their violent parents, for instance.
 - (d) Geographic determinism, also called environmental or climatic determinism, maintains that the physical and biological environment of a society determines its development (Montesquieu, Part III, Book XIV, Chapter X). In his book *Guns, Germs, and Steel* (1997), Jared Diamond defends such a position. Jared Diamond points to geography as the answer to why certain States were able to grow and develop faster and thus become stronger than others. His theory cites the natural environment and raw materials a civilization was blessed with as factors for success, instead of popular centuries-old claims of racial and cultural superiority. Diamond says that these natural endowments began with the dawn of man and favored Eurasian civilizations due to their location along similar latitudes, suitable farming climate, and early animal domestication.
- (ii) **Internal determinism** sees the causes of behavior in evolution of human species and genetic inheritance of each individual. Human behaviors are triggered by neurological and hormonal processes within the body.
- (a) Sociobiology is a form of biological determinism or genetic determinism which argues that human social organization is constrained by genes that have been selected in evolution (Dawkins 1976). In particular, it regards male dominance, hierarchical society, entrepreneurial economic activity, territoriality, and aggression as consequences of human genes. It has been shown that sociobiological theory is carefully constructed to make it impossible to test, that it makes a number of fundamental errors in attempting to describe “human nature,” that there is no evidence for inheritance of human social traits, and that the evolutionary arguments used are merely fanciful, adaptive stories (Lewontin 1980).
 - (b) Neuro-existentialism (Pereboom 2002; Pereboom and Caruso 2002) uses certain findings of neuroscience and argues that free will is an illusion. If my arm goes up, it is because of well-defined and deterministic neurological processes. The mind is determined by a neural cognitive unconscious that by definition escapes consciousness. Conscious decision would no longer be the cause of voluntary action.
 - (c) Psychological egoism maintains that self-interest is the sole source of judgment, action, and affection. Human beings are motivated by the pursuit of pleasure and the avoidance of pain, and they have no free choice between good and evil. Thus, there is no such thing as natural or absolute right (Berlin 2002b, Chapter Helvetius). Human action is a response to circumstances under the law of optimization. This psychological egoism excludes the possibility of a genuine radical choice. Genuine choice, indeed, involves conscious selection from among alternatives (Buchanan [1969]

1979, p. 40). Crime is the consequence of calculation. If the expected benefits outweigh the costs, a person kills. Murder is the consequence of the incentive structure, the law. A large part of the economics of law in the neo-classical approach comes under this form of determinism.

Determinism in its various forms rejects “free will” and autonomy as prescientific ideas and argues that environmental stimuli condition and control all action. Human beings are not free, their sense of freedom consists simply in the fact that they are conscious of their actions but ignorant of the causes that determined those actions (Spinoza *Ethica*, Part IV), that is, ignorant of the causes which would explain their choices. Human beings are not born free, but they can become free in another sense, by seeking a certain degree of autonomy through adequate knowledge. They can know that they have acted in accordance with the necessity associated with their nature. Freedom is this recognition of necessity. If I want to build an airplane, it would be suicidal to attempt to violate any of the laws of aerodynamics. If I want to prevent murders, I have (as legislator) to increase the cost and reduce the anticipated profit of committing murder. Changing the environmental stimuli will change the associated conduct (Skinner 1971). The law can limit the effect of selfishness but not exclude it. In this *compatibilist* or “soft” determinist position, free will and determinism are mutually compatible.

For liberals (also called *free-will libertarians* in this context) and “hard” determinists, free will and determinism are incompatible. The consequence of hard determinism is the rejection of any notion of moral responsibility. Hard *incompatibilism* amounts to a rejection of both compatibilism and free-will libertarianism. It maintains that the sort of free will required for moral responsibility is incompatible with causal determination. There is no conscience, no liability, and no accountability.

Free-will libertarians agree that determinism leaves no room for free will (van Inwagen 1999), but develop the idea that people are always morally responsible because they have the choice

between two or more possible alternatives (Buchanan [1969] 1979, p. 40). Moral responsibility is impossible without free will – without the ability to do otherwise (van Inwagen 1999). Soft and hard determinism turn human beings into robots. Human beings have no capacity to make moral judgments and cannot freely progress.

Free-will libertarianism focuses also on indeterminism. People are the causes of their own conduct. The incentive structure (institution) does not determine a person’s choices because laws and social norms must be interpreted. Interpretation (hermeneutic) opens up room for genuine, moral choice. The choice in question is not merely the choice of one solution among several (the “optimal” solution). Human beings have the capacity to forge their character within the constraints imposed by human biology, evolution, climate, psychology, etc. What is important is not what happens to us or the constraints placed upon us, but how we respond to what happens to us and how we manage the constraints. Free-will libertarianism insists on choice while compatibilists focus on knowledge of the constraints on choices. Freedom is the consequence of indeterminacy and interpretation. It is also the consequence of the choice of rules.

The Consequences of Determinism

Determinism has three consequences: (i) The opposite of the absence of choice is freedom; (ii) determinism denies the being of “non-necessitating ends,” and the role of free will, entrepreneurialism and imagination in the explanation of human behavior; and (iii) if freedom does not exist, the law does not need to protect it.

The first consequence of determinism is that freedom is defined as against the absence of choice. I cannot choose the speed at which 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 (Bulgakov [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 and 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 the curse. Work is a source of redemption, not of enslavement.

The second consequence of determinism is that it leads to the denial of the existence of non-necessitating ends (Aristotle), in other words the fact that things might be otherwise than they are. A free act is founded upon the existence of non-necessitating ends. 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.

In the economics of law, this turns out to have important consequences for the way institutional dynamics are modeled.

- (i) First of all, there is a tendency on the part of the theory of cultural evolution to accept a Panglossian economics (Whitman 1998). In such a perspective, whatever is rational, and whatever is rational is efficient. In such a world, there is no place for the agent of change, that is, the *entrepreneur*.
- (ii) Second, the entire art of legislation is directed towards making the individual more interested in following the law than in violating it. The murderer is not responsible. The only one responsible is the legislator, if he or she has not made the cost of murder prohibitive. Yet, the law makes the murderer responsible and not the legislator. Therefore, the law chooses freedom over determinism.
- (iii) Third, the legislator or social scientist can predict what individuals will do if the rules of the game change. Such an ambition assumes the validity of the approach we

have called psychological egoism, according to which selfless altruism is only an illusion. It is also based on the belief that the law can be managed by a wise elite with legislators micromanaging the details of people's lives.

Affirming the existence of nonnecessitating ends has therefore several consequences. Each of these consequences explains the originality of non-empirical approaches to the law and institutions.

- (i) The existence of nonnecessitating 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 certain authors insist on noninterference (Carter 1999, p. 237) or the absence of domination (Petit 2001, p. 132).
- (ii) The existence of nonnecessitating ends has the consequence of restoring the entrepreneur to his or her 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 the origin of his or her own movement. Entrepreneurs act, they do not react.
- (iii) Nonnecessitating ends rehabilitate human beings' responsibility within history. Determinism means that human choices make no difference to anything that happens because earlier causes have predetermined our entire future. Free will, on the other hand, modifies a person'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).
- (iv) More generally, the entrepreneur now has space in which to manoeuvre 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 nonnecessitating end). In this world of duty, passions and emotions no longer enslave human beings. In the face of danger, soldiers necessarily have a feeling of fear, but it is their duty to fight. They must overcome their fear and refuse to flee or hide. The will allows us to overcome inner constraints. The will also allow 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).

- (v) The other 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 create a necessary connection 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. The fact that I can leave my own country to escape the oppression of a dictator or taxes does not mean that the law protects my power to choose. The word "power" changes its meaning here. In the case of the law of gravitation, "I cannot" 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] 1991, § 4, §30).

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] 1991) 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, recognizes 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 each other while taking into account the wills of others. Law limits the power to choose. It exercises a constraint without, for all that, violating the principle of self-determination. 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 changes 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 self-determination 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 ones who produce the law are

free. For my own happiness, they subject me to their will (paternalism) or if it is for their own happiness, they are tyrants.

The tyrant is a bad person in Pascal's sense ([1650] 1982, p. 125). The bad person has power and uses force to impose his or her will on others. The confrontation of wills can no longer 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 to begin with, there is no agreement about the rights of each person; rather, there is a 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 genuinely 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. The law supports the freedoms of some but oppresses the freedoms of others.

The legislator can also assume the form of a benevolent parent. The strong ruler ceases to be a tyrant. The ruler places his or her power in the service of The Good.

- (i) The original form of paternalism consists in helping individuals to keep their promises, that is, to make the will of the weak-willed stronger. 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 a stronger person. The intervention will be like the chains holding Ulysses to the

mast as the Sirens sing, in Homer (Elster 1984).

- (ii) 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 person who wishes to be in good health should not smoke. The strong person can justify constraint with reference to the incontinence of the weak person. The weak person will not be allowed to smoke, as a means of helping that person reach their personal goals.
- (iii) A third form of paternalism, soft paternalism, prohibits nothing and uses no force but tells weak or poorly informed people about the risks associated with various behaviors. They remain free to do as they like, but they are obliged to hear out the morality of the strong.
- (iv) A fourth, hard paternalism, is moral. It determines the ends of action not because the strong wants it that way, but because what is good can be objectively determined. The strong know what is good and seek to promote it through politics, in which the ultimate aim is the happiness of people in society (Humboldt [1851] 1969, 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 benevolent tyrant can act in the name of freedom. He or she may want to liberate people who wish to be slaves. That explains why we can be libertarian and against the free sale of alcohol or drugs. Free sale of alcohol or drugs involves the risk of slavery. People become slaves to certain practices. They are no longer guided by their will, but by their senses, their feelings. Drunkards sell their freedom for a glass of alcohol. A drunk person is no longer free. Their words and actions are determined by their nerves and glands. Drunkenness deprives the individual of the use of reason, of freedom. Only the moral law can protect people against this deprivation of liberty which can lead them to act against themselves. The moral law

protects freedom because it prevents people from being determined by their passions or impulses. The driver of a car has the freedom to accelerate in a mountain bend, but takes the risk of an accident and is deprived of all freedom if the result is that they lose the use of their legs. The moral law therefore protects people from slavery, from dependence on addictive substances, just as the law forbids people to sell themselves as slaves, to sell their right of ownership over themselves. The prohibition to consume drugs is, in this sense, very similar to the prohibition to sell oneself as a slave.

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 nondomination 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 to be 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 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 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, on 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 decide at any moment 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 his or her 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, 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. It is “the great fiction through which everybody endeavours to live at the expense of everyone else” (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 by the application of such 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 minimal when it ensures the enforceability of contracts against external enemies 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 levels of taxation, rules of allocation, and the people who will manage everything.

Cross-References

- ▶ [Causation](#)
- ▶ [Entrepreneurship](#)
- ▶ [Friedrich August von](#)
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- ▶ [Neuro law and economics](#)
- ▶ [Property rights](#)
- ▶ [Rationality](#)
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