

# Freedom and Equality as fundamental pillars for the maintenance of Capitalism.

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**Abstract.** Freedom and equality are pillars for the construction of the majority types of modern ideologies, since the 1500ths. Law and Economics analyze those concepts in different ways, sometimes antagonists. Law scientists are in the duty to guarantee that all human being have equal rights and equal access to them. In cases of economic conflict, Law agents are responsible for protecting fundamental rights of all individuals, including economic freedom, political freedom, speech freedom, choice freedom and, above all, the human dignity. On the contrary, Economic scientists are focused on only one type of freedom: economic freedom, ignoring all other uncountable individuals' rights, in the name of the market's natural self-regulation. Capitalism ideology lies in the idea that all individuals are free to pursue their own egocentric interests, so the market voluntary cooperation will lead to satisfaction. This research paper supports the idea that the good function of Capitalism system in current developing societies depends on Law regulation and affirmative acts taken by the government.

**Keywords.** Freedom, equality, capitalism, law, regulation.

## 1. Introduction

Liberalism expresses the ideology that individual freedom is the most important value in a society [1], which deserves to be protected in every conflict. Individuals have been fighting for the right of freedom since the American Revolution in 1776 and French Revolution in 1789, its values of Equality, Freedom and Fraternity spread all around the world leading to the Independence of European Colonies in Latin America in the 1800ths, and the resistance of the Russian Revolution in 1917. Although the Illuminist ideology, that guided enforcement of the French Revolution's ideals, supports the right of Freedom and Equality, it is important to make it clear that those rights were only suitable to those who were already equal: white man.

Around 1690, an English philosopher named John Locke started to separate the values of Freedom from Equality. In chapter 5 of Locke's Second Treatise of Government, he legitimates inequality by defending the individual right to accumulate properties. [2] Although Locke defends the idea that all men have equal individual and political rights, it only included white free man. Also, this idea was created to defend those specific part of society from the authority of Absolutism. [3]

Throughout history, liberalism theorists created a lot

of explanations of why individual freedom, especially economic freedom, is important to maintain the stability of individual rights in society. However, it is important to emphasize that individuals do have nonpecuniary interests, as well as collective interests that they deserve to have the freedom to pursue. Those nonpecuniary interests are just as important as economic interests, and individuals should have same access to both.

Despite the constitutional principle that all human beings are equal and free, expressed in the 5<sup>th</sup> article of Brazilian Constitution of 1988 and Article 1 of the Charter of Fundamental Rights and Freedom of Czech and Slovak National Council, current societies still face unequal access to individual freedom. According to some liberal theorists like Milton Friedman, in some specific situations people have to sacrifice their individual freedom to support their deep beliefs [4]; on the other hand, Keynesians theorists may say that the government should propose affirmative actions in society in order to equalize the access to freedom; lastly, Marxist theorists may defend that the government must take all individual freedom and guarantee equal access to the State properties.

This research paper is not intended to take party in ideological discussions. The main objective of this paper is to entrench the idea that equality is a

fundamental feature of Capitalist system, as well as Freedom and that economic freedom is not the only individual freedom that should be guaranteed in capitalist societies.

## 2. Freedom, all of it.

As previously mentioned, liberal ideology defends that individual's economic freedom is essential to its survival in society and should be protected in every situation. According to Milton Friedman, freedom preservation is a reason that justifies the limitation and decentralization of governmental power, he legitimates this idea by supporting that all advancements in human civilization were never created during a centralized government. [5] Although this is an important feature of society to achieve the free market, essential for the capitalist system, some law authors may assume more complex positions.

Katya Assaf promotes the following idea: while capitalist ideology perceives people as exclusively self-interested and economically motivated actors, human personality has various aspects. [6] She upholds her position citing David Harvey's definition of neoliberalism: "a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets and free trade." [7] Also, she cites Hannah Arendt's statement that "freedom is a public phenomenon" because citizens are preoccupied with public interests as equality, justice, and solidarity [8], she reports that economic freedom is not the only value that should be guaranteed for individuals. To take the position that liberal idea of freedom is limited is nothing but logical once individual's rights of freedom go beyond economic issues.

The liberal definition of freedom is important to build the rational concept of what Professor Fabio Coelho called the "axiom of the free man" [9], that is a premise of veracity from where liberalists start the idea of the individual who is free to process its opportunities and make a rational decision, that depends only on its decision-making process. This concept gave birth to the *homo economicus*, a rational being who calculates utilities to makes the best rational decision [10]. He, the *homo economicus*, could never exist, not even in an equal democratic society, where individuals were totally free from prejudice, violence, and scarcity, because human beings are not rational and do not have fixed set of preferences. [11]

Liberals and the Chicago School support that, as *homo economicus*, consumers can identify illegal conducts taken by private agents in a market and shift their demand to other competitors who offer high quality products for lower prices. [12] From this idea, Friedman assumes that market is a decentralized and impersonal space that can work independently, where government action should be

limited [13], to ensure the best maintenance of the free market and the freedom of initiative.

Even if the *homo economicus* could exist, it wouldn't justify the absence of government intervention in economy. In Friedman's utopia, each family would pursue its private interest through the freedom of initiative, and the competition between them creates a market environment that is available to new players, once it is only based on merit. [14] This idea is oriented from the Kant premise: nobody's freedom can cost other's freedom. [15] In other words, free market and merit competition only works if everyone follows the game rules, that is to not interfere in other's freedom. However, most third world countries are still being affected by imperialism: its economy are ruled by dominant powered European and American companies, which takes advantage of the lack of development in their national industry. According to research from Vixtra, a Brazilian foreign trade fintech, based on data collected by the Economic Ministry: in 2022 Brazil exported and amount of US\$ 10 million of coffee to Switzerland, and imported US\$ 74 million of roasted coffee from the European country. [16] Also, private agents with high market share are likely to collude in cartel – agreements between economic agents to enable monopolist conditions in the relevant market. [17] These are only two examples that the game rules are not easy to be followed by private agents and that free market not always produce good results to all competitors, in a way that one's benefit can be achieved through the cost of other's harm. [18]

It is to ensure all individual's freedom and avoid that one's freedom harms other's that the Government must intervene in economy, to foster the well function of market. [19] In convergent statement, State economic regulation is fundamental to guarantee the enforcement of the premises of economic activity, which must be based on social justice – article 170 of Brazilian Federal Constitution of 1988 – to make free market and free initiative available to every individual. Also, it is necessary that governmental Authorities, like Antitrust Authorities, analyze the effects of all economic activities executed by private agents inside the market, to avoid the illicit exercise of freedom.

Liberal's axiom of the *homo economicus* can not be taken as true scientific facts in order to legitimate the absence of governmental intervention in economy. People are not rational decision-making beings, as stated by Katya Assaf: they don't have a fixed set of preferences, consequently, their actions and decisions are taken in a compartmental, cultural, environmental, and historical context. That is one of reasons why governments must take a more critical approach than the one taken from liberals, because it's their duty to guarantee individual's rights of justice, equality, and solidarity, as well as their freedom to pursue their nonpecuniary and collective interests. Furthermore, even if market could be regulated by the shift of demand from rational consumers, it is important to level minimally the competitive game rules, to make it clear that

economic agents must compete by merit and not by frauds and violence that causes unjustified harm to other players. [20]

### 3. Equality, for all of them.

As stated in the introduction, around 1690 Locke started to describe concepts of Freedom and Equality in a society. Although he legitimates the accumulation of properties in one's power, it is important to emphasize his attribution of moral features to properties, as utility and work, which lead to the conclusion that land acquisition should be in moderate proportions, so there would be available land to everyone. [21] In other words, the freedom to pursue one individual's right of property can't exceed the limit of equality.

Milton Friedman declare that the most important "ethical" problems are those faced from an individual in a free society: "what to do with your freedom?". [22] Although this is a relevant question to be considered by those who are already free, this is not a relevant question to be considered in an unequal society, like Brazil, an unstable society built under prejudice, with historical segregation, economic and government actions that tent to reinforce privileges, and statistics of more than 20 million people in food insecurity – according to the Food and Agriculture Organization of the United Nation [23].

Professor Fabio Coelho states that the "free man" doesn't exist, because he is an abstraction, an axioma. For him, there are "freer people" and "less free people". The freest individuals are those who have the bigger number of alternatives of what to decide. [24] Concrete equality is equalization of freedom, achieved through two ways: either increasing the quantity of alternatives opened to decisions for those less free or decreasing the alternatives opened for those more free. [25]

The French succeed when they fought for *liberté* and *égalité* in the French Revolution, in 1789. They succeed in their duty to make every European man equal and free: by 1819 there were no slaves in European countries anymore. Although, the majority of European countries were benefited from slavery in their American colonies, which economy highly depended on the slave work. [26] In 1891 Constant declare "there are no more slaves in European nations" [27], in 1748 Montesquieu claim it was impossible for Africans to be considered "man" [28], and in 1835 Tocqueville admitted not to recognize in black people the "general features of humanity" [29]. To say that in 1779 society succeed in the duty to make individuals free and equal is a lie. *Liberté* and *égalité* were achieved for those who were considered "people" – white European man. However, once French economy was built under slavery and colonial domination, to abolish slavery was to take values of freedom, equality, and fraternity a way too far, because it could undermine the French State economically and militarily. [30] Therefore, it was logical and comfortable to say that *liberté* and *égalité* did not apply for every individual simply because they were considered "not people". [31]

This historical digression is in the way to conclude

that slavery made everyone racist, and colonialism made Latin American nation less confident, condemned to perpetuate the stigma of delay and failure. [32] Also, it is to emphasize the inequality features of nowadays societies, which lead to a lack of freedom. Therefore, the most "ethical" problem is: how to make everyone equally free? As stated from Isaiah Berlin: "to offer political rights or safeguards against state intervention to half-naked, illiterate, malnourished and sick men is to mock their condition: they need medical support or education before they can understand or enjoy an increase in their freedom." [33]

Divergently then what Friedman supports: that advancements in society depends on the decentralization of the government, Amartya Sen affirms that economic development depends on the removal of obstacles for freedom, as hunger, lack of access to health care, drinking water, basic sanitation, education, and social security. According to her, only free and equal people can create economic development. [34]

Therefore, if the only way to guarantee individual freedom to everyone is by making everyone equal, it is clearly that actions must be taken to mitigate inequality. The proposal of a Democratic State of Law that find in democracy a solution to administrate tensions between freedom and equality is a powerful approach to mitigating inequality. [35] In this organizational system, it's the State's duty to secure equal access to fundamental rights, and to build a free, fair and solidary society, to guarantee the national development and eradicate poverty and marginalization, to mitigate social inequalities and promote the well-being of all citizens – as stated in article 3 of Brazilian Federal Constitution of 1988.

Through the Democratic State of Law, government can promote affirmative acts aiming to increase equality. It's through the state intervention that those nonpecuniary interests of individuals, as justice, equality, and solidarity, will be available to everyone. Once all individuals are free and equal, market freedom and initiative freedom will be perfectly achieved, because only then market competition will be based on merit.

### 4. Conclusion

Liberal concept of freedom is reductionist. As previously mentioned, the freedom to pursue one's pecuniary interests is not the only type of freedom individuals need to survive in society. People's freedom to pursue their nonpecuniary interests and to seek to discover and advance the public good should be guaranteed in capitalist societies. After the fallacy of the *homo economicus*, once human beings do not have a fixed set of preferences, it's logical to take the approach that government actions need to be taken to protect market's players from the illicit exercise of other player's freedom.

Also, individual's freedom to pursue their pecuniary and nonpecuniary interests must be guaranteed to everyone, not just to those who consider themselves equal. Equalization is the process to achieve concrete equality, where every individual has equal quantities

of alternatives when to decide. During this process, it's essential that the government intervenes in societal and economic issues, to guarantee the fundamental rights of all individuals. This is the only way of how to make people equally free.

Reciting Amartya Sen: only free and equal people can create economic development. In other words, only when the pillars of freedom and equality are guaranteed for everyone, the society will develop to a healthy capitalist system.

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