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Reasons for and scope of restrictions on personal autonomy in private agreements

I. Introduction

Autonomy, meaning “self-law”, is shaped by cultural and economic factors in private agreements. People prioritize self-interest, with morality and values learned over time. Economic principles should guide private decisions, while courts apply evolving legal norms. Legal clarity is challenged by exceptions and international standards, prompting more flexible, context-based approaches.

II. Self-Regulation

Our goals, shaped by culture and social status, drive our desires, which in turn guide our choices and contracts we conclude. Desire stems from primal instincts and reflects our pursuit of material and emotional benefits. True autonomy depends on understanding what we want, but it is unclear whether desire drives benefit-seeking or merely reflects deeper motivations.

A. Interests and choice

The first reason for limiting personal autonomy is, on the one hand, the avoidance of dissonance between a person’s interests based on his/her needs and beliefs, and, on the other hand, the choice of the ways and means of pursuing desires and achieving goals. Psychology is aware of cases where a person’s behaviour is unacceptable to him or her. However, this is due to unrealized consequences or undisclosed emotions and moral attitudes. In the following paragraphs, we outline the root cause of internal self-regulation. The key here is the positive conception of personal autonomy, which states

that a key part of personal autonomy is the ability to choose an acceptable pattern of attitudes, conceptions, and beliefs. It is the starting point for assessing perceived desires and incentives. The pattern is a template against which consequences and actions are “measured”, and their meaning is determined. Action requires intention and motivation. It is necessary to motivate behaviour and direct it towards a goal. Whether the goal is to exercise my autonomy – I do it because I can – or to perform a benefit-defined action – I do it because it is good for me, and I want to do it – is irrelevant to the situation at hand. It depends on how much I want the outcome. Intrinsic motivation is the basic set of incentives for a particular behaviour. Although it can often be said that we behave in one way or another because we are expected to behave in a particular way, motivation here also goes back to the starting point – the totality of a person’s conceptions of social belonging and the desire to avoid conflicts of interest. The main motivations for acting in one way or another are therefore intrinsic.

Intrinsic motivation-induced self-regulation involves the avoidance of conflicts between a person’s beliefs and the necessary actions to take. Synchronicity of actions and thoughts is a prerequisite for emotional comfort. The determination of what is beneficial must be made at the very first stage of the formation of desires or the perception of motivation, because it is the identification of the existence of benefits in each action (or inaction) that is the starting point for further deliberations – the choice of the nature of the action and the choice of means. Freedom of contract includes the choice of the parties to the contract and the terms of the contract. Human is an intelligent (rational) being, free to pursue his interests (based on his desires and understanding of necessity) by the means he chooses and without interference. Therefore, the internal stage of self-restraint is the most important, because otherwise – without deciding – its expression becomes impossible, and at the same time, the evaluation of the desired behaviour in terms of societal interests (the common good) loses its meaning (based on the criterion of societal morality). The key question in the study of intrinsic motivation in the context of self-regulation is whether people’s attitudes determine their actions or whether what people do shape their attitudes. Social pressure can affect the link we see between what we do and what we say.

B. Motivation

The fact that our decisions are based on desires proves that we are not completely free. This Kantian idea can be supported by modern psychological

theories. A. H. Maslow's pyramid of needs is not the basis of our discussion on desires; however, it is worth noting that the hierarchy of needs encompasses all physical and emotional needs, which are satisfied by shaping interests and realizing them through private law transactions¹. At the higher levels of the pyramid of needs, we find the needs for sexual satisfaction and for self-fulfilment and emotional satisfaction. Desires rooted in personal motivations spark debate, as their restriction – shaped by cultural and economic context – often violates individual autonomy, especially as cultural relativism fades with globalization.

The motive and the goal define the means to be chosen, regardless of whether the person in question is fully aware of the roads open to him. This option is the main subject of the restrictions. Initially, of course, our desires are seen in a moral context. The suppression of primary instincts is no longer within the competence of society, as recognizing the right to privacy, based on personal autonomy, means that actions disrupting the balance of an individual's relationships with other are controlled by the individuals themselves. The deliberate barriers we create set us apart from other forms of life on earth – human beings as we understand ourselves – are conditioned by the interplay between personal interests and personal morality. By weighing the benefits, we will gain from acting against the dissonance we will feel between our beliefs and the actions we take, we will find the best decision – one that remains to be performed.

C. Reputation

We would not dare to claim that the pursuit of justice is an innate, biologically determined need or inclination; however, internal motivations, shaped by cultural and socio-economic context, at – adulthood – become an inseparable part of personality. Thus, the law considers personal autonomy – the ability to make decisions, implement them, and take responsibility for the consequences – as something that naturally derives from human nature. Only the incentives that drive the desire to make a particular decision may have an emotional origin. However, the final decision is made only after weighing all the pros and cons – it is the result of self-regulation. If a person can assess his/her own needs and set goals, he/she must take responsibility for the actions that have served his/her interests. Legal capacity as a legal category here

1 Maslow, A., H., *Motivation and personality*, 2nd ed., New York, 1970.

simply defines the psychological-physiological state of mind that is the basis for considering a person's decisions as complete, independent, and based on reason. The criterion of rationality is essential in determining the status of individuals with limited or complete incapacity, therefore, a recognized and defensible decision must be made based on reason. It should be noted that the key here is to indicate the reason for the justification of self-regulation, i.e., the criterion of reasonableness reveals the legitimacy and validity of the rules that a person has created in relation to other persons.

Cultural differences are no longer a barrier that merchants of the 17th – 19th centuries had to cross. In our age, it is always possible to find information on the business traditions of one culture or another. Modern information tools allow for lengthy negotiations and the disclosure of the true objectives of what any reasonable and self-interested person, exercising the right of transaction based on the principle of freedom of contract, is interested in doing. M. J. Trebilcock argues for rejecting the criterion of “**insufficient information**”, which leads to mistakes and is widely used to invalidate transactions. Instead, he insists on proving that both parties will derive some form of benefit from the transaction. In this case, there are no formal grounds to refuse to fulfil the contract, as obtaining information is the right of each party, while providing accurate and relevant information upon request is the duty of the other party². In a system based on fundamental legal principles, it would be natural for humans to expect full information in relation to a transaction.

Reputation would be a key factor in ensuring goodwill. In the business world, contracts based on the principle of adhesion are becoming dominant. The terms and conditions offered differ little from each other as standard forms are gaining ground not only in international and wholesale trade in general, but also in insurance and other service markets. Tradition and reputation are what distinguish a company from others. We can therefore reject the arguments of incomplete information and bad faith as easily identifiable and unregulated by law – the court is competent to deal with disputes in which the reputation of the information received or to be received is decisive.

One of the most important components of reputation is the assessment of the good faith of the contracting party. An expressed intention to conclude a particular contract will be considered publicly if the expected consequences affect at least two people. This public deliberation may not start

2 Trebilcock, M., J., *The limits of Freedom of Contract*. Harvard University Press, 1993.

until the court date, but a conscious person who seeks to represent his or her interests, will also consider another reason, why a person's autonomy will have to be limited. This is, of course, the avoidance of the conflict between a person's beliefs, based on which they have already decided to engage in a certain transaction, and society's opinion about the transaction. Often, transactions are entered into which one or other member of society disapproves, but the essential criterion for conformity or vice versa is the public's sense of morality. This collective attitude provides a guideline for avoiding conflict, although sometimes condemnation or "blessing" may depend on the mood of the masses. The intelligent individual, even if not active in public life, will anticipate the possible consequences and will either try to avoid them or refuse to exercise his autonomy by limiting it in the public interest. This brings us to the second stage of the search for the reasons for limiting personal autonomy: the public interest, as guaranteed by social norms. Social morality and the individual's choice of decision are pitted against each other to evaluate the individual in terms of fairness and the public good.

III. Social norms

Beyond mental capacity, individual choices often reflect adaptive preferences shaped by social and economic influences, limiting true autonomy. Normative regulation, especially legal norms, has increasingly governed social relations. While people base lifestyle choices on personal values, external restrictions on autonomy are often justified by morality – understood as a sense of what is right and just. Though the distinction between justice and morality, as discussed by H. L. A. Hart, is relevant, the focus here is on morality as a standard for self-regulation³.

A. A person is a member of society

As part of the same society and aware of its rules, a person will take measures to resolve conflicts of interest. People often boast of their appreciation of honesty but conceal it when filing tax declarations, confess their love for a partner by shouting at them, cherish their health even though they smoke. They also often forget how they feel and what they think. People's habits

3 Hart, H. L. A., *The Concept of Law*, Vilnius, 1997.

and beliefs are not expressed until they are reminded of their existence, when they are no longer suppressed by the social environment. The consequence of resistance to this suppression is the basis of many new transactions (same-sex marriages, abortions, euthanasia), but at the same time, the development of social relations, which is influenced by scientific and technological progress (surrogacy, cloning, the sale of human tissue and organs), is extremely important. The public good is the essential justified factor that limits autonomy. You do not need to be an expert in social contract theory to acknowledge that the benefits we receive from belonging to a certain society come at a cost. Consideration of collective rights is the price paid by the individual. Is this justified?

Complete isolation of the individual is impossible. Following the trend towards integration, at least in business, we can see it in economic globalization. This, as well as political and cultural integration – into families, tribes, states, regional unions, and global organizations – is evidence of the growing interdependence of individuals. Emotional dependence is harder to understand, while the implications of obvious economic dependence are felt in business. In general, the pursuit of private interests has become directly dependent on many external relationships, and the mere willingness and ability of the individual no longer determines the probability of survival. David Novak argues that each person is “involved” in at least a few multi-level relationships every day, therefore no one is truly autonomous. Only God has the capacity for *creatio ex nihilo*⁴. In this case, the social contract and the state established based on it create a secure foundation for ensuring individual good within the limits of public good.

But if human beings are equal in existence, as D. Novak argues, does one or a group of human beings have the right to limit the autonomy of the individual, even for the benefit of all⁵? Utilitarians claim that this is the fairest course of action, because, as the Oxford Dictionary points out, justice is possible when all the claims of those involved are considered. In this case, the transfer of personal interests to the public sphere is noticeable – social norms protect what is important not only to society, but also to each individual separately. However, the diversity of personalities determines that as needs develop and desires differentiate, relationships arise between two or more individuals that are not acceptable to the majority and contradict societal interests, even though they are suitable for the participants themselves.

⁴ Novak, David, *Suicide is Not a Private Choice*, 1997.

⁵ Novak, David, *Suicide is Not a Private Choice*, 1997.

The set of values and its formation basis is a scale of views that is not universal, as it depends on culture, economy, and even geographical position, but still has explicit tendencies that are universal. Therefore, the recognition of the inviolability of human life, although the understanding of the value of life itself differs, and the appreciation of the integrity of personality, an inseparable part of which is honour and dignity, does not differ in most countries of the world.

B. Ethics of tolerance

We have already mentioned that intention is a prerequisite for behaviour. The intentions of society as a whole and the intentions of the individual rarely coincide completely. The state model of “Majority rule, minority rights” applied in democratic countries and “performed” in some totalitarian ones, is a universal basis for the existence of the state – someone rules, someone must obey, and the United Nations takes care of the rights of the oppressed. But the rights and duties of those who rule are equally important. And the latter is the essence of this chapter: the duty of the state to safeguard the public interest and the individual happiness of everyone ...

Securing the greatest benefit for the largest number of people is no longer considered the primary criterion when evaluating the social value of decisions made or transactions concluded.

However, this criterion must be paired with assessing the state’s role in limiting contract freedom. As liberal societies prioritize individual rights over state interests (especially post-communist and colonialist), traditional moral foundations of public welfare – shaped by differing cultural views – are increasingly questioned, prompting a re-evaluation of values. However, another tendency is noticeable, as the state limits the autonomy of the individual in favour of the individual. Thus, the second source of personal autonomy, besides public good, is individual good, which states increasingly present as a justification for making unpopular and controversial decisions. Where does this come from? From economic globalization. Personal autonomy in commercial relationships manifests as the freedom to enter into contracts.

The idea of ensuring individual good is not new. *Lasses fair* already pointed out that the state has the role of “night watchman”. Personal autonomy, especially in business, meant complete freedom of contract. The courts were the institution that protected the party’s interest if it were truly deceived, but exclusively non-compliance with the agreement, lack of infor-

mation, or the party's difficult economic situation could not provide grounds to demand that the court declare the transaction void. Market forces play a decisive role here, and the aim of public policy should be, as Sir George Jessel argued in 1875, to ensure that men of adult age and competence have complete freedom to enter into contracts, and that contracts concluded freely and voluntarily by them are sacred and enforced by the courts of justice. In this case, unequal bargaining power is a constraint caused by market forces, but that is beyond the scope of this work.

A prudent, contractual person who seeks to pursue and promote his or her own interests checks the regulation of the social relations he or she is about to conclude before deciding to take any action. In some cases, for example, transactions between family members in Great Britain are not considered to be contracts enforceable by law. The performance of obligations and the exercise of rights under such contracts are governed by the moral norms of duty and conscience discussed above. However, in the US, the 1980s gave greater freedom to conclude contracts of a personal nature with a variety of content, which were recognized by the courts as valid. In doing so, the courts developed the law governing the terms of maintenance and property division agreements between unmarried partners. The tendency to restrict freedom of contract discussed above has only been more pronounced in contracts of a personal nature in surrogacy cases.

C. Reasonableness criterion

Thoughtful, rational decisions result in transactions. The main criterion – reasonableness – must therefore be applied to the concluded contracts. Rationality is tangibly reflected in the content of the contract, as the person determines its form and selects the appropriate party to implement their interests. This expression is a sufficient basis for the law to take effect. No additional criterion or factor is required. Even in the absence of a dispute, the law, as a set of societal behaviour rules, applies to all social groups within that society, influences social relations, and does not require a material expression for this purpose. Self-regulation and the influence of moral norms do not cease before and after the performance of the contract. The moment of an idea is controlled by self-regulation, while its consequences and the performance of the contract are governed by social norms and law as an integral part of these norms.

The public good, as far as it relates to individual autonomy or the “**public interest sphere**”, includes the protection of individuals from coercion, the

provision of public health, and the use of taxes to provide public services⁶. The concept of public good – the greatest benefit for the greatest majority. Social welfare is much more important than allowing individuals to experience moral responsibility. Otherwise, becoming a mature, responsible adult would be just as important as providing social security.

In the context of individualistic Western culture, the social democratic approach to the relationship between society and the individual is becoming less and less relevant. Individuals, relying on the theory of natural rights, increasingly prioritize their own interests over social interests. This tendency is also forcing a change in public policy.

It is evident that the court, when delivering a judgment in the name of the state and thus its citizens, justifies the imposed punishments or the consequences of a civil dispute resolution based on certain interests. Therefore, it expresses the will of society and reflects the overall structure of thinking and understanding of the world. In civil law, the primary focus is on determining the true intentions of the parties and the legality of the rights and obligations arising from transactions. However, it is noteworthy that considering public opinion is essential: citizens must trust the courts, which are declared an independent institution, although the implementation of politics, distances this ideal. A trustworthy court is a court that determines the will of the people and protects the public interest. These utilitarian theories, modified by the realists, reflect the last century's attitude to law enforcement authorities in general. Recently, many decisions of the European Court of Justice have caused a lot of noise. Individualistic tendencies in Europe have been driven by the effectiveness of human rights activist actions. Sometimes decisions are reached that are incomprehensible and clearly unjust from the perspective of society, yet individual rights and freedoms are increasingly taking a more important role in various concepts of justice. Thus, by drawing a parallel between the restriction of personal autonomy in private transactions and the success of human rights, we can trace the tendency of placing the individual above society. In civil relations, the state no longer justifies the restriction of personal autonomy by the guarantee of the public good, as was popularly argued a little earlier, but by the value of the individual's own interests. The personal good is now defined through the prism of human rights, and although there is no common interest, a certain template – the European Convention on Human Rights – exists. Admiration for the Scandinavian approach to income balancing is fading, and more investments are

6 Kurtz, Paul, *The Limits of Tolerance*. Free inquiry magazine, Volume 16, Number 1, 1995–1996.

flowing from countries where freedom of contract is restricted (of course, these restrictions are directly related to the limitation of personal autonomy, as it is no longer market laws but laws determining taxes and business priorities that limit the freedom of individuals to choose the contracting party and agree on desired terms).

The important question here is “why”. Why does the state have the right to prohibit same-sex marriage? Why does the state have the right to prevent a mother from carrying a baby that is not hers? Why is it not possible for a person to conclude a contract for his or her life? Why can’t a contract be concluded to end the life of an unborn being who is completely dependent on the contracting party? Why can a contract for sexual services be legal? Here, D. Novak recognizes that we have the right to be autonomous from the state in certain respects, which, according to the author, concerns the privacy of relationships between family and friends⁷. However, the main connotations here are those of public opinion on such contracts and the limits of the public sphere of interest, which have a direct impact on the restriction of personal autonomy.

P. S. Atiyah pointed out that the importance of contracts to the economy is declining. In parallel, we should look at the decline in the role of law in the legal system. The role of the courts and arbitration institutions is increasing, as the parties have the freedom to choose the system of rules and even the body that will decide on a dispute. The role of the state as an institution that protects interests through laws and ensures an independent and impartial judiciary is diminishing: the dynamism of private relations has led to the establishment of standard forms and the successful unification of contract principles at the international level in binding documents. For positivists this is a challenge, as the mere fact that international documents such as the UNIDROIT Principles of Commercial Contracts, which are of a recommendatory nature, and the 1980 Vienna Convention on Contracts for the International Sale of Goods, which is mandatory for international trade contracts, rely on general principles where norms no longer reach, proves the global processes are taking place, making the victory of personal autonomy over state regulation inevitable.

Morality, as an internal (psychological) and external (social) phenomenon, is the main factor limiting the autonomy in the first stage of self-determination. Assessing the situation – the actions and their impact on public and personal good – is enabled by an individual’s internal understanding of

7 Novak, David, *Suicide is Not a Private Choice*, 1997.

what conforms to moral norms and what does not. It should be noted that internal attitudes may not align with external, i. e. societal requirements. This is particularly relevant for individuals lacking intercultural experience. Some explicit prohibitions may seem meaningless from a foreigner's point of view when determining the content of contracts, however they are protected by social norms and do not need justification or legal reinforcement within a given country. This phenomenon, known as cultural relativism, is discussed, and referred to in the context of the reasons for limiting personal autonomy as one of the external factors limiting personal autonomy (freedom of choice and exercise).

Autonomy is the ability to make and exercise your own decisions. Autonomy indicates that we have the right to decide and demand others to respect this right. But the theory goes beyond the freedom of self-determination/choice, although this is the definition that best fits the context of freedom of contract. The most important thing is that individuality (the ethics of tolerance) is respected, and human worth is recognized.

IV. Law

David Novak, in his essay *Suicide Is Not a Private Choice*, reiterates that law is the last step in the social regulation cascade⁸. The law is the last step that makes the contract valid or abrogates them one by one, because, after taking into account the effects of all the remaining social norms, the last step, the assessment of the regulation of the law, is what must be taken into account if the contract is to be protected by the law. It is argued that this final ultimate step in the contracting process should be avoided. The restriction of personal autonomy in the name of the state for the sake of public and personal good should not be enshrined in laws, which, due to their instability and clumsiness, do not reflect rapidly evolving relationships. The three fundamental principles – reasonableness, fairness, and justice – as unchanging, yet flexible criteria, are precisely the means that can be justified.

Why is the content of certain contracts restricted – a certain form is required, a certain subject matter cannot be chosen, other prohibitions imposed by law must be considered? The reasons for the restriction are rooted in the objectives of the State, and the problem is understanding and assessing those objectives. There are two objectives here: firstly, to select social

8 Novak, David, *Suicide is Not a Private Choice*, 1997.

norms that will enshrine socially desirable outcomes in the decision; and secondly, to allow the parties to plan their behaviour. Recent efforts in this area have sought to justify the operation of the law in the context of political, moral, and institutional problem-solving. The process of separating private individual contract freedom from the public sphere of state regulation in the United States until 1940 resulted in the complete establishment of the freedom of contracting parties. Thus, individual autonomy, which consisted in the ability to choose whether and with whom to conclude a contract, and how to perform it, came to dominate the field. The binding nature of the contract was thus self-evidently justified and no longer subject to proof other than its validity. Thus, at least in theory, everything was controlled by the free will of the parties. For realists, it was important to define the limits of state power, more precisely, to narrow them by allowing minimal control over the market⁹. Formalism is to be rejected as untenable because it applies rules and exceptions, distancing from reality those relations which the law is intended to regulate. And although realists sought to ensure desirable social outcomes through law created by the courts, however, they came closest to modern tendencies, which indicate that the limitation of personal autonomy is a living relationship, a consequence of natural justice. The reasons for these restrictions are the avoidance of dissonance between internal beliefs and behaviour caused by self-regulation; the avoidance of conflicts between social norms that protect the public good and the autonomous personal perspective schemes on which the formation of a contract is based; and objectively justified attempts to avoid “disagreements” with the law, which is the ultimate basis for assessing the utility and feasibility of behaviour and one of the greatest barriers to effective social control.

Recently, the most controversial issues have been personal contracts that involve actions related to the integrity of the human body and the significance of human life – contracts for euthanasia, abortion, surrogacy, and the trade of human tissues and organs. Among them, the contract for providing sexual services stands out, as well as only one civil act that has been recognized as legal and having legal consequences by only a few countries so far – same-sex marriages. There is a need to differentiate between collectively attainable goals and their motives, and individual goals and the means to be chosen. Personal autonomy must therefore remain within the sphere of natural human rights. Transactions which concern the individual himself must be regulated by the State itself, with the State providing the only means

9 Singer, W., Joseph; Kalman, L., Legal realism nos. Review, California Law Review, 1988.

of protecting his interests: the courts, which in turn would not be guided by a statutory basis, but by living law, reflected in the rules which prevail, and consistently recorded in judicial decisions. These would provide a basis for “treating the same cases alike and different cases differently” but would not restrict the court’s discretion to decide a case solely based on the principles of reasonableness, fairness, and justice¹⁰. This does not distort the concept of freedom of contracts or the essence of personal autonomy within it, as the universality of these principles forces the individual to carefully consider all possible consequences and to conclude transactions that comply with these principles; otherwise, they will not be recognized by the courts as transactions or will be declared invalid.

Law determines how power and wealth are distributed and used. It is important because it covers much of our social life and defines our basic political values. In terms of personal autonomy, the regulation of social life – societal relationships – has a decisive influence on the application and implementation tendencies of the principle of freedom of contracts. The theories of social contract and natural rights provide a solid foundation for the necessity to consider societal interests when forming both conventional and unique or new contracts. The factors of self-regulation and the recognition of the importance of the public good are reflected in law as the ultimate instrument for the exercise of the rights and obligations arising from contracts. Additionally, in exercising their freedoms, people use both defined and established rights, as well as the boundaries of complete freedom purposefully defined by proponents of the theory of natural rights, i.e., the freedom of another individual. The main goal is to reveal the reasons for the limitation of the right to freely conclude contracts by determining mutual rights and obligations at their discretion, ... provided that this does not contradict the law (Art. 6.156 of the Civil Code of the Republic of Lithuania). The most important thing is that the law, created by people for people, is not an independent superstructure of social relations, but a dynamic tool for regulating these relations. The principles of legal regulation of civil relations, defined in Art. 1.2 of the Civil Code of the Republic of Lithuania, provide a necessary and sufficient basis to compare legal and moral norms, indicating only some minor differences between them, and to express the belief that social regulation is merely reflected in legal norms. Therefore, it can be argued that by utilizing the flexibility of the former, the most effective result in regulating contractual relations can be achieved (regulation is not necessary, as the

10 Boyle, James, *Legal realism and the Social Contract: Fuller’s Public Jurisprudence of For Private Jurisprudence of Substance*, 1992.

direct application of principles opens opportunities for courts to be more flexible, to consider societal needs and the realities of economic life). Thus, the principle of personal autonomy or freedom of contract should be limited only by other principles.

V. Conclusion

Self-regulation limits autonomy to avoid conflict between personal values and consequences. People may reject beneficial contracts that violate their beliefs. As globalization challenges cultural relativism – especially in commerce – rationality and public good become key limits on autonomy. Principles like fairness, reasonableness, and justice provide a stable basis for these limits, ensuring both moral and legal integrity.

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