

# Conditionalized Sovereignty: The Permission-Based Citizen and the Asymmetry of Legal Maturity

Elias Rubenstein

Independent Researcher, Fort Lauderdale, FL, USA, ORCID: 0009-0007-1956-653X

## Abstract

This article develops the concept of conditionalized sovereignty to explain how modern legal systems may preserve formal autonomy while conditioning its practical exercise through administrative, fiscal, medical, moral, institutional, historical, and ontological forms of conditioning. The article argues that modern law often attributes full maturity to citizens in domains of obligation, taxation, liability, punishment, labor, debt, and compliance, while granting only conditional maturity in domains of self-regarding autonomy such as body, health, property, consciousness, conscience, family life, existential self-direction, and risk. To analyze this asymmetry, it introduces the Sovereignty-Restriction Test, which evaluates regulation according to legal ontology, self-regarding versus other-regarding conduct, concrete harm, inherited bias, burden of justification, proportionality, and symmetry of legal maturity. Applied across illustrative domains, including taxation, property regulation, medical refusal, health governance, cognitive liberty, moral governance, and institutionally mediated freedom, the framework shows that legal systems become internally inconsistent when they demand full responsibility from citizens while denying equivalent sovereignty over self-regarding choices without concrete, proportional, publicly justifiable, and bias-aware harm prevention.

**Keywords:** Conditionalized Sovereignty, Legal Maturity, Autonomy, Cognitive Liberty, Legal Paternalism, Legal Ontology, Bodily Autonomy, Legal Bias

## 1. Introduction

Modern legal systems commonly describe the citizen as free, mature, property-holding, and bodily autonomous. The citizen may own property, enter contracts, work, pay taxes, bear liability, consent, vote, accept risk, be punished, and be held responsible for legal duties. In this formal sense, the citizen appears as a complete legal subject.

Yet the practical exercise of freedom, property, bodily autonomy, medical choice, consciousness, sexuality, family life, conscience, existential self-direction, economic activity, and risk-taking is often conditioned by administrative permission, fiscal attachment, medical authorization, moral governance, licensing, professional gatekeeping, or institutional recognition. The same citizen who is treated as fully mature for taxation, liability, punishment, labor, debt, and compliance may be treated as only conditionally mature when he claims practical authority over his body, health, property, substances, consciousness, therapy, family life, conscience, existential self-direction, or self-regarding risk.

This article develops the concept of conditionalized sovereignty to analyze this recurring legal structure. Conditionalized sovereignty describes a legal condition in which freedom, ownership, bodily autonomy, and legal maturity remain formally intact while their practical exercise becomes dependent on permission, compliance, fiscal visibility, medical legitimacy, moral acceptability, institutional recognition, inherited assumptions, and implicit legal views of the human subject.

The guiding question is:

Why is the citizen treated as fully mature for obligation but only conditionally mature for self-sovereignty?

This article contributes by showing that multiple legal domains share a single structure: formal recognition combined with practical conditioning. The article does not attempt to provide exhaustive doctrinal analysis of each field. Rather, taxation, property, medical refusal, cognitive liberty, moral governance, legal ontology, inherited bias, and institutional exemptions are treated as illustrative domains in which the shared structure of conditionalized sovereignty becomes visible.

The central claim is that modern law may construct two versions of the same legal person: the mature obligor and the conditionally autonomous subject. The citizen is mature enough to pay, obey, report, work, contract, accept debt, bear punishment, and face liability. Yet he may be considered insufficiently mature to decide freely about self-regarding matters such as medical refusal, bodily risk, pharmacological self-direction, altered states of consciousness, property use, sexuality, family arrangements, conscience-based conduct, existential self-direction, or non-standard therapy.

The article develops a harm-based, proportional, historically aware, and symmetrical standard for distinguishing legitimate protection from the conversion of autonomy into permission. Restrictions are strongest where conduct concretely harms others; they become harder to justify where they regulate competent adult self-regarding conduct primarily on the basis of morality, paternalism, inherited bias, administrative convenience, fiscal interest, institutional preference, system functionality, or a reduction of the human being to body, risk, productivity, or administrative legibility.

## 2. Related Research Work and Conceptual Background

The argument builds on several bodies of legal, philosophical, and socio-legal literature.

First, liberal theories of liberty and harm provide the foundation for distinguishing self-regarding conduct from conduct that injures others. Mill's harm principle remains the classic starting point for limiting coercion to the prevention of harm to others [27]. Feinberg later developed a more detailed account of harm, offense, paternalism, and legal moralism in the moral limits of criminal law [13, 14]. The Hart-Devlin debate further clarifies the tension between liberty-based limits on law and the enforcement of inherited moral order [8, 18]. Dworkin's work on paternalism is relevant because many legal restrictions are justified through claims that the citizen must be protected from his own choices [9, 10]. Rawls's account of public reason is also central because restrictions in pluralistic societies require publicly justifiable reasons rather than sectarian or inherited moral assumptions [29].

Second, fiscal sociology helps explain the citizen's relation to the state as a recurring fiscal subject. Schumpeter's theory of the tax state, Tilly's account of coercion and capital, Levi's work on rule and revenue, and the "new fiscal sociology" developed by Martin, Mehrotra, and Prasad show that taxation is not merely a financial mechanism. It also makes citizens administratively visible, classifiable, and structurally obligated [24, 25, 32, 35]. Scott's analysis of administrative legibility is especially important because modern governance often depends on making persons, property, income, territory, and conduct visible to state systems [33].

Third, property theory clarifies why ownership can remain formally intact while its practical incidents are regulated. Hohfeld's legal-relations framework, Honoré's analysis of the incidents of ownership, and later property theory by Waldron, Rose, Merrill, and Smith show that property is not a single absolute entitlement but a structured set of powers, claims, privileges, and immunities [19, 20, 26, 31, 36]. This literature supports the concept of permission-based property, in which title may remain while use, modification, transfer, exclusion, and economic benefit are increasingly conditioned by permission.

Fourth, medical ethics and law provide the background for bodily autonomy, informed consent, and refusal of treatment. Faden and Beauchamp's theory of informed consent, Beauchamp and Childress's principles of biomedical ethics, Appelbaum's work on competence, and *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261 (1990), all show that autonomy in medicine includes not only the right to agree to approved treatment but also the right to refuse intervention under conditions of competence and capacity [2, 3, 7, 11].

These legal examples are used as illustrative cases rather than as jurisdiction-specific foundations of the entire argument. Their relevance lies in the broader legal tension they reveal between bodily integrity, religious freedom, personal autonomy, and state control. Comparable tensions are also visible in other Western constitutional systems. In *Pretty v. United Kingdom*, the European Court of Human Rights addressed the relationship between personal autonomy, bodily integrity, private life, and end-of-life self-determination under Article 8 of the European Convention on Human Rights [37]. The case therefore provides a European parallel to the broader autonomy questions illustrated by *Cruzan v. Director* [7, 37].

Fifth, cognitive liberty scholarship is relevant because freedom of thought cannot be limited to belief-content alone. It also concerns the individual's relation to the conditions through which cognition and consciousness are shaped. Bublitz's account of cognitive liberty, Bublitz and Merkel's work on mental self-determination, Ienca and Andorno's proposal for new neuro-rights, and Farahany's work on cognitive freedom all support the idea that mental autonomy is an emerging legal and ethical issue [4, 5, 12, 22].

Sixth, legal anthropology and theories of legal personhood show that law does not merely regulate persons; it also constructs the kind of subject to whom rights, duties, and restrictions attach. Naffine's work on the legal person and Supiot's account of *homo juridicus* support the idea that law contains implicit anthropological and ontological assumptions about what the human being is [28, 34]. Kant's account of dignity and non-instrumentalization further supports the normative claim that a person should not be treated merely as a means to productivity, fiscal contribution, administrative functionality, or system management [23].

Seventh, scholarship on moral panic, overcriminalization, and cultures of control shows that legal categories may inherit assumptions that are not always grounded in concrete harm prevention. Cohen's account of moral panics shows how public fear can construct certain groups, behaviors, or practices as threats to social order [6]. Garland's work on crime and control shows how cultures of fear and control can reshape governance [16]. Husak's analysis of overcriminalization demonstrates how criminal law may expand beyond principled limits of harm prevention [21]. These sources support the article's use of inherited bias as a diagnostic element within the model of conditionalized sovereignty.

### 3. Research Methods

This article uses conceptual legal analysis. It does not present an empirical study, statistical dataset, or doctrinal survey of one specific jurisdiction. Instead, it develops an analytical framework for identifying a recurring legal structure across multiple domains of modern governance.

The method proceeds in four steps.

First, the article defines the central concept of conditionalized sovereignty as a condition in which formal autonomy remains intact while practical self-direction becomes dependent on permission, compliance, institutional recognition, administrative legibility, medical authorization, fiscal visibility, moral acceptability, inherited legal assumptions, or implicit definitions of the human subject.

Second, the article develops a conceptual framework consisting of seven core concepts: legal ontology, self-sovereignty, harm, inherited bias, property, bodily autonomy, and legal maturity.

Third, the article introduces the Sovereignty-Restriction Test as an analytical tool for distinguishing legitimate harm prevention from the conversion of autonomy into permission.

Fourth, the framework is applied across illustrative domains: taxation, property, bodily autonomy, health governance, cognitive liberty, moral governance, institutionally mediated freedom, inherited bias, and the normalization of permission-based freedom.

The article is therefore theoretical and normative. Its aim is not to claim that all regulation is illegitimate. Rather, it asks when regulation moves from concrete harm prevention into the conditioning of adult self-sovereignty.

#### **4. Conceptual Framework: Legal Ontology, Freedom, Harm, Property, Body, and Maturity**

The article rests on seven core concepts: legal ontology, self-sovereignty, harm, inherited bias, property, bodily autonomy, and legal maturity.

##### **4.1 Legal Ontology of the Human Subject**

A further premise of this article concerns the legal ontology of the human subject. Legal systems do not merely regulate human beings; they also presuppose what kind of being the human is. The human subject may be treated primarily as a body to be preserved, a consciousness to be respected, a rational agent to be held responsible, a spiritual or conscience-bearing subject to be granted religious freedom, a patient to be treated, a taxpayer to be assessed, a worker to be kept productive, a risk source to be managed, or a bearer of dignity to be protected from instrumentalization.

These ontological assumptions are not neutral. They determine which forms of regulation appear natural, which claims of autonomy appear credible, and which forms of state intervention appear legitimate. If the human being is treated mainly as a biological body, then health, safety, treatment, risk, and preservation become central regulatory concerns. If the human being is treated as consciousness, then freedom of thought, altered states, cognitive liberty, neurotechnology, and pharmacological self-direction become central. If the human being is treated as a spiritual or conscience-bearing subject, then religion, ritual, dying, healing, fasting, sacrament, and existential self-direction become legally significant. If the human being is treated mainly as a productive and taxable participant, then labor capacity, fiscal visibility, compliance, and administrative legibility become central.

Conditionalized sovereignty becomes possible when the human being is formally described as autonomous, yet practically governed as a taxable, medically manageable, morally regulable, administratively legible, and risk-bearing unit.

Legal ontology is therefore not a separate theme of the article, but the underlying premise that explains why certain forms of practical conditioning appear legally natural or justified.

**Table 1: Legal Ontology of the Human Subject**

Ontology of the Human Subject	Regulatory Consequence
Human as body	Health, safety, medicine, treatment, risk, and preservation become central
Human as consciousness	Cognitive liberty, altered states, thought, neurotechnology, and mental autonomy become central
Human as spiritual or conscience-bearing subject	Religion, ritual, dying, healing, meaning, and spiritual discipline become central
Human as taxpayer or worker	Productivity, fiscal visibility, labor, debt, and compliance become central
Human as risk source	Surveillance, prevention, paternalism, and security become central
Human as bearer of dignity	Limits on instrumentalization, coercion, and reduction to function become central

This ontological dimension strengthens the article’s main argument. The issue is not only what the law permits or prohibits, but also what the law presumes the human being to be. The reference to dignity also connects to the Kantian idea that the person must not be treated merely as a means, a point that becomes relevant when the citizen is reduced to productivity, fiscal contribution, or administrative functionality [23]. Naffine’s work on legal personhood and Supiot’s account of homo juridicus further support the claim that law’s understanding of the human subject is neither neutral nor purely descriptive; it is constitutive of how rights, duties, and institutional expectations are organized [28, 34].

#### 4.2 Self-Sovereignty

Self-sovereignty refers to the practical authority of an adult individual over self-regarding choices. These choices include decisions concerning one’s body, health, medical treatment, property, consciousness, sexuality, family life, conscience, existential self-direction, and personal risk. Self-sovereignty is used here as an analytical term rather than as a claim of absolute autonomy. It denotes the presumptive authority of competent adults over self-regarding domains unless concrete harm to others justifies restriction.

#### 4.3 Harm

The article distinguishes three forms of harm.

Concrete harm refers to direct injury to others, including violence, coercion, fraud, infection, property damage, non-consensual interference, or direct deprivation of rights.

Probable risk of harm refers to a realistic and specific danger to others, such as driving while severely intoxicated, exposing others to serious contagious disease, creating hazardous emissions, or engaging in conduct that foreseeably threatens the bodily integrity or property of others.

Moralized harm refers to conduct characterized as harmful because it violates religious, cultural, moral, traditional, or majoritarian expectations. Moralized harm often transforms discomfort, taboo, inherited moral order, or public disapproval into a claimed public injury.

The distinction is essential because the strongest liberty-based accounts of legal coercion begin from the idea that coercion is most defensible when used to prevent harm to others [27]. Feinberg’s moral limits of the criminal law framework develops a more differentiated account of harm, offense, paternalism, and

legal moralism [13, 14]. Hart's response to Devlin further clarifies the tension between liberty-based limits on law and the enforcement of inherited moral order [8, 18].

#### **4.4 Inherited Bias and Historical Formation of Legal Categories**

A further concept is inherited bias. This term does not mean that every legal restriction is biased or invalid. It refers to the possibility that legal categories may be shaped by historical assumptions, moral panic, cultural prejudice, religious disapproval, medicalized stigma, political fear, administrative convenience, or status hierarchies before later appearing as neutral legal classifications.

This matters because codification can transform historically contingent assumptions into apparently objective legal necessity. Once a category is legalized, institutionalized, and repeated, its origins may disappear from view. A restriction may then be defended as ordinary law even when its formation was not primarily grounded in demonstrable harm prevention.

Scholarship on moral panic and criminalization is relevant here. Cohen's account of moral panics shows how public fear can construct certain groups, practices, or behaviors as threats to social order [6]. Garland's work on control and crime policy shows how cultures of fear and control can reshape governance [16]. Husak's analysis of overcriminalization further demonstrates that the expansion of criminal law may exceed principled limits of harm prevention [21].

Inherited bias therefore changes the burden of justification. It does not automatically invalidate a law, but it prevents legitimacy from being assumed merely because a restriction is old, familiar, or codified. Where a restriction has been shaped by inherited bias rather than concrete harm, contemporary legal justification must be renewed.

Inherited bias is therefore not a separate explanatory framework, but a diagnostic element within the broader model of conditionalized sovereignty. It helps identify cases in which practical conditioning is justified by inherited assumptions rather than by concrete harm prevention.

Conditionalized sovereignty is therefore fed by two different sources that must be analytically distinguished. The first consists of anachronistic residues: historical moral assumptions, religious judgments, cultural taboos, medicalized stigma, or political fears that have been codified and continue to operate after their original justification has weakened. The second consists of modern system rationality: the technocratic tendency to make citizens administratively legible, fiscally visible, medically manageable, economically productive, and institutionally classifiable. The first source preserves inherited moral categories; the second organizes the citizen according to functional needs of governance. Conditionalized sovereignty emerges where either of these sources, or both together, convert formal autonomy into permission-based self-direction.

#### **4.5 Property**

Property is treated as more than title. It is a bundle of practical powers, including possession, use, management, exclusion, transfer, sale, rental, inheritance, and economic benefit. Honoré's analysis of the incidents of ownership, Hohfeld's legal-relations framework, and later property-theory work by Waldron, Merrill, Smith, and Rose support the idea that property consists of structured powers and incidents rather than a single indivisible claim [19, 20, 26, 31, 36]. A legal system can preserve ownership as title while restricting the practical incidents that make ownership meaningful.

#### **4.6 Bodily Autonomy**

Bodily autonomy refers to authority over one's own body, including medical choice, treatment refusal, therapy selection, physical risk, and the personal meaning assigned to illness, pain, healing, disability,

decline, and life extension. Medical ethics and law, especially through the doctrines of informed consent and refusal of treatment, recognize that autonomy includes both agreement and refusal [2, 3, 7, 11].

**4.7 Legal Maturity**

Legal maturity refers to the law’s recognition of an individual as capable of responsibility. Modern systems often attribute maturity where the citizen must bear obligations: taxation, liability, punishment, contracts, labor, debt, and compliance. The central argument of this article is that this maturity is not always carried into domains of self-regarding authority.

Together, these concepts establish the article’s normative basis: freedom, property, body, consciousness, conscience, and existential self-direction may be restricted where concrete harm or realistic danger to others is present. The state carries the burden of justification. The more a regulation moves away from concrete harm prevention and toward morality, paternalism, inherited bias, administrative convenience, fiscal interest, system functionality, or a reductive ontology of the human subject, the stronger that burden becomes.

**5. Analytical Framework: The Sovereignty-Restriction Test**

To distinguish legitimate protection from conditionalized sovereignty, this article introduces the Sovereignty-Restriction Test. The test provides a structured way to analyze whether a restriction protects others from concrete harm or transforms self-regarding autonomy into permission.

**Table 2: Sovereignty-Restriction Test**

Test Question	Function	Main Risk Identified
Ontology Question	Identifies the implicit legal image of the human subject	The human being is reduced to body, risk, productivity, or administrative function
Domain Question	Distinguishes self-regarding from other-regarding conduct	Self-regarding conduct is falsely publicized
Harm Question	Distinguishes concrete harm from moralized, abstract, or biased harm claims	Moral disapproval or inherited bias is treated as public injury
Burden Question	Identifies who must justify the restriction	The presumption of liberty is reversed
Proportionality Question	Tests necessity and least-restrictive means	Regulation becomes broader than harm prevention
Maturity Question	Tests symmetrical legal maturity	The citizen is mature for obligation but immature for sovereignty

First, the Ontology Question asks what image of the human subject is presupposed by the regulation. Is the person treated as a self-governing subject, a body to be preserved, a risk to be managed, a patient to be corrected, a taxpayer to be retained, a worker to be kept productive, a spiritual or conscience-bearing subject, or a bearer of dignity?

Second, the Domain Question asks whether the regulated conduct primarily concerns the individual himself or concretely affects other persons. A self-regarding act begins with a stronger presumption of autonomy.

Third, the Harm Question asks whether there is concrete harm or probable risk of harm to others, or

whether the justification rests on morality, tradition, inherited bias, abstract danger, public discomfort, administrative convenience, fiscal interest, or system functionality.

Fourth, the Burden Question asks whether the state carries the burden of justifying restriction or whether the citizen is effectively forced to justify the exercise of freedom. A legal order based on liberty places the justificatory burden on the institution that restricts freedom.

Fifth, the Proportionality Question asks whether the intervention is necessary, proportionate, and the least restrictive available means. A regulation may pursue a legitimate purpose while exceeding what is required.

Sixth, the Maturity Question asks whether the citizen is treated with the same maturity in self-regarding autonomy as he is in taxation, liability, punishment, labor, debt, and legal obligation.

The test identifies the threshold at which regulation shifts from protection into the conditioning of sovereignty.

## **6. Discussion and Analysis**

### **6.1 The Asymmetry of Legal Maturity**

The first major manifestation of conditionalized sovereignty is the asymmetry of legal maturity.

Modern law frequently treats the citizen as fully mature in domains of obligation. He may be taxed, fined, sued, punished, imprisoned, bound by contract, responsible for debt, liable for damages, required to comply with reporting duties, and held accountable for consequences. In these domains, the legal system assumes maturity, responsibility, and capacity.

Yet the same citizen may be treated as only conditionally mature in domains of self-sovereignty. He may be restricted in decisions about medical treatment, bodily risk, self-medication, controlled substances, altered states of consciousness, property use, sexual conduct, family arrangements, conscience-based conduct, non-standard therapies, and forms of personal life that primarily concern himself.

This produces the article's central formula:

The citizen is burdened with adult obligations while denied equivalent adult sovereignty.

The law thereby constructs two versions of the same person: the mature obligor and the conditionally autonomous subject. The mature obligor is capable of taxation, liability, punishment, compliance, debt, and work. The conditionally autonomous subject is not fully trusted to govern his own body, consciousness, health, property, risk, conscience-based conduct, or self-regarding conduct without institutional mediation.

This asymmetry creates a significant internal tension. If the citizen is mature enough to bear the full burdens of law, restrictions on his self-regarding autonomy require especially strong justification. A legal order cannot coherently treat the same individual as fully responsible where the system demands obligation, yet only conditionally sovereign where personal self-direction is claimed.

### **6.2 Fiscal Attachment and the Taxable Citizen**

Taxation is commonly understood as the financial basis of public institutions. It funds infrastructure, administration, courts, defense, public programs, and social services. Fiscal sociology, however, shows that taxation also illuminates deeper relationships between state formation, institutional capacity, public authority, and social order. Taxation is not merely fiscal extraction. It is also a mechanism through which states classify, document, assess, enforce, and organize relations with populations [24, 25, 32, 35].

For the purposes of this article, taxation matters because it makes the citizen fiscally visible, administratively legible, and structurally obligated. Income, property, transactions, inheritance, business

activity, employment, and consumption become documented and measurable. Scott's notion of administrative legibility is especially useful here: taxation and documentation make citizens visible to state systems in ways that enable monitoring, assessment, classification, and intervention [33].

The citizen is therefore not merely a rights-bearing subject; he is also a recurring fiscal participant. This does not make taxation illegitimate. The argument is structural. A state that depends on taxable citizens has an institutional interest in citizens remaining productive, visible, compliant, and administratively available. The citizen becomes linked to the state not only through rights, but through recurring obligation. Here the legal ontology of the human subject becomes important. The more the citizen is defined through fiscal participation and productivity, the easier it becomes to treat autonomy as conditional upon systemic contribution. The taxpayer is not merely a person with obligations; he is a financially legible unit within a recurring structure of assessment and extraction.

Fiscal attachment reinforces the asymmetry of legal maturity. The citizen is presumed mature enough to pay, report, comply, and face penalties for non-compliance. Yet his maturity may be narrowed in other domains, including property use, bodily choice, health decisions, pharmacological self-direction, conscience-based conduct, and risk.

### **6.3 Permission-Based Property**

Property provides another field in which conditionalized sovereignty appears. Ownership is usually understood as a core element of individual freedom. Yet property is meaningful not only because a title exists, but because the owner has practical powers over what is owned.

These powers include possession, use, management, alteration, sale, rental, exclusion, transfer, inheritance, and economic benefit. The bundle of rights view of property helps clarify why property can be reduced without formally abolishing title [19, 20, 26]. A legal system may preserve formal ownership while narrowing specific incidents of ownership.

This produces permission-based property.

A person may own land but need permission to build, farm, rent, subdivide, modify, or sell under particular conditions. A person may own a business but need licenses, approvals, tax registration, compliance structures, and professional permissions to operate. A person may own money but face reporting duties, transaction monitoring, tax obligations, or restrictions on use. A person may own a home but face regulatory limits on rental, occupancy, renovation, or transfer.

Some restrictions are justified by concrete harm prevention: toxic emissions, dangerous construction, fraud, nuisance, fire risk, environmental damage, or direct harm to neighbors. The relevant issue is not whether ownership may be regulated, but when the incidents of ownership become so dependent on permission that ownership functions less as dominion and more as conditional use-authorization.

The central claim is:

A legal system may preserve formal ownership while progressively eroding the practical powers that make ownership meaningful.

### **6.4 Bodily Autonomy, Medical Refusal, and Functional Health Governance**

The body is the most immediate domain of self-sovereignty. A person's body is not merely an object of public concern; it is the physical basis of personal existence. Bodily autonomy therefore includes more than the right to receive approved treatment. It includes the right to refuse treatment, select therapy, reject life-prolonging intervention, interpret illness religiously or philosophically, and decide how much value to place on preservation, optimization, or repair.

The central principle is:

If bodily autonomy is real, it must include the right not to optimize, preserve, repair, or prolong the body according to state-approved standards.

Medical ethics and law strongly connect informed consent with patient autonomy [2, 3, 11]. A right to consent without a corresponding right to refuse would reduce autonomy to medical cooperation. *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261 (1990), also illustrates the legal importance of refusal and bodily self-determination in medical decision-making [7].

Health must be understood in two ways. First, health is an individual good. It concerns dignity, quality of life, pain, suffering, religious meaning, personal purpose, and the individual's hierarchy of values. A person may value health as the highest practical good. Another may value faith, non-intervention, family, spiritual discipline, dignity, or acceptance of death more highly than bodily preservation.

Second, health can become a systemic functionality concern. Healthy citizens are productive, insurable, taxable, administratively available, and less costly to public systems. A legal system may therefore regulate health not only to protect the individual, but also to preserve workforce participation, tax contribution, insurance stability, cost control, and administrative functionality.

This is the logic of functional health governance:

When productivity, insurability, cost containment, and administrative availability become dominant regulatory concerns, health governance may shift from protecting personal welfare toward preserving system-relevant functionality.

The legal ontology of the human subject is decisive here. Medical refusal appears irrational only if the human being is reduced to biological preservation. It becomes intelligible when the person is understood as a bearer of meaning, conscience, dignity, existential orientation, and self-directed value.

### **6.5 Cognitive Liberty and Pharmacological Self-Direction**

The regulation of consciousness is one of the clearest tests of conditionalized sovereignty. Legal systems often protect thought, belief, conscience, and religion. Yet they also restrict access to substances, practices, medications, technologies, and altered states that shape cognition and consciousness.

The key question is:

Does freedom of thought protect only the content of belief, or also the individual's authority over the conditions through which cognition and consciousness are shaped?

This article approaches the issue through cognitive liberty and pharmacological self-direction. Cognitive liberty concerns mental self-determination, including the relation between the individual and his own mental processes, states, and capacities [4, 5, 12, 22].

This section includes psychoactive substances, controlled drugs, enhancement medication, neurotechnology, religious altered states, therapeutic self-experimentation, and mental self-sovereignty. The argument is not limited to drug policy. It concerns the broader legal status of self-directed consciousness.

The central claim is:

Freedom of thought is incomplete if it protects beliefs but not the individual's self-directed relation to the conditions of thought, cognition, and consciousness.

The regulation of altered states depends on whether consciousness is treated as a protected dimension of personhood or merely as a neurochemical condition to be normalized. If the human being is treated primarily as body, intoxication appears mainly as poisoning, danger, or disorder. If the human being is treated as consciousness, altered states raise questions of mental autonomy, inner experience, conscience, existential self-direction, and self-directed cognition.

Inherited bias is also relevant to this domain. Drug policy, intoxication law, and restrictions on altered states are not always formed by neutral assessments of concrete harm. They may be shaped by moral panic, cultural suspicion, medicalized stigma, religious disapproval, or political fear [6, 16, 21]. This does not mean that all restrictions are illegitimate, but it requires contemporary justification based on concrete harm, necessity, and proportionality rather than inherited narratives of deviance or disorder.

Legal systems may restrict altered states where there is concrete harm to others: impaired driving, violence, coercion, public danger, distribution to minors, or fraud. Yet where the conduct is self-regarding, competent, informed, and not directed toward harm, restrictions require a stronger justification than moral disapproval, generalized discomfort with altered consciousness, inherited bias, or administrative preference for ordinary cognition.

**6.6 Institutionally Mediated Freedom**

A particularly revealing feature of modern regulation is that the same act may change legal meaning depending on institutional framing. This article calls this institutionally mediated freedom.

Institutionally mediated freedom describes the paradox that a self-regarding act may be prohibited when performed as an individual exercise of autonomy, yet permitted when mediated through a recognized religious, medical, scientific, or administrative framework.

The core principle is:

The legality of an act may depend less on the act itself than on whether it is mediated through a recognized institutional channel.

This mechanism appears in several forms.

**Table 3: Forms of Institutional Mediation**

<b>Form of Institutional Mediation</b>	<b>How Legitimacy Is Produced</b>
Religious exemption	A prohibited act becomes protected through recognized religious practice
Medical authorization	A substance or intervention becomes lawful through physician or clinical authority
Scientific authorization	Restricted conduct becomes permissible within approved research
Administrative licensing	Economic or property activity becomes lawful through state permission
Therapeutic classification	A bodily or mental intervention becomes acceptable as treatment
Professional gatekeeping	A citizen’s action becomes legitimate when mediated by certified experts
Property-use permitting	Ownership becomes exercisable through zoning, permits, or regulatory approval

Religious exemptions for controlled substances provide a clear example. In *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418 (2006), the United States (U.S.) Supreme Court held that the federal government had not shown a sufficient compelling interest under the Religious Freedom Restoration Act to bar a religious group’s sacramental use of an N,N-dimethyltryptamine (DMT)-containing tea [17, 30]. The decision is especially relevant because it shows how a controlled substance may be treated differently when embedded within a recognized religious framework. Existing peyote

exemptions and the American Indian Religious Freedom Act Amendments of 1994 provide an additional example of institutionally mediated legality [1].

The paradox is not limited to religion. A substance may be illegal as private self-use but permitted as medical treatment. An altered state may be criminalized as intoxication but accepted as therapy, research, or ritual. A bodily intervention may be viewed as self-harm privately but legitimate when medically classified. A property use may be forbidden when independently undertaken but lawful after administrative approval. An economic activity may be impermissible without licensing and legitimate once institutionally registered.

This reveals a key element of conditionalized sovereignty: individual autonomy alone is often not treated as a sufficient source of legal legitimacy. Individual autonomy becomes legally effective when routed through recognized channels.

### **6.7 Moral Governance, Religion, and Existential Self-Direction**

Moral governance is another domain in which formal freedom may coexist with practical conditioning. Religion and morality must be treated with precision. Religion can be a source of conscience, identity, discipline, spiritual meaning, and resistance to state or medical control. At the same time, institutionalized religious morality has historically shaped norms surrounding sexuality, marriage, reproduction, family order, purity, guilt, obedience, intoxication, and social conformity.

The central question is when moral norms become legal or quasi-legal expectations that condition self-regarding autonomy without concrete harm to others.

Rawls's account of public reason is useful here. In a pluralistic legal order, restrictions on self-regarding liberty require public reasons rather than inherited moral, religious, or cultural disapproval [29]. A state may protect people from coercion, abuse, fraud, violence, and exploitation. It may protect children and those unable to consent. But where adult self-regarding choices are restricted because they offend inherited moral codes, the legal justification becomes weaker.

The legal ontology of the human subject also changes the status of religion. Where the human being is understood as a spiritual or conscience-bearing subject, religion cannot be reduced to belief-content. It becomes a mode of existential self-direction. Ritual, fasting, sacrament, healing, death, conscience, and spiritual discipline concern the way the person understands his own being. In such cases, legal interference touches not only external conduct but the person's deepest self-relation.

Inherited bias is also relevant here because moralized regulation often survives by presenting historically contingent religious, cultural, or majoritarian expectations as legal neutrality. Such norms may once have been justified through inherited assumptions about purity, family order, sexuality, intoxication, obedience, or social conformity. Once codified, these assumptions can appear as ordinary law rather than contested moral inheritance. A pluralistic legal order must therefore ask whether contemporary restrictions are grounded in public reason and concrete harm prevention, not merely inherited disapproval.

This applies especially to sexuality, family, reproductive decisions, marital norms, separation, alternative household structures, and conscience-based practices. These domains are often described as private, yet they remain shaped by moral and institutional histories.

### **6.8 From Liberty to Permission: The Normalization of Conditional Freedom**

Regulation does not merely restrict conduct. Over time, it also reshapes how citizens imagine freedom itself.

When regulation becomes extensive and long-lasting, self-evident freedom may be psychologically transformed into permission. The citizen no longer begins from the question:

Why may the state prohibit this?

He begins from the question:

Why should the state allow this?

This shift is central. It shows that conditionalized sovereignty is not only legal but cultural. Law teaches expectations. Administrative systems shape habits. Repeated permission structures alter the baseline of what citizens perceive as naturally theirs. At this point, law functions not only as command but as consciousness-shaping infrastructure: it trains the citizen to experience permission as the ordinary form of freedom.

This can occur with property, medicine, substances, speech, business, family, health, conscience-based conduct, movement, and personal risk. Once enough areas of life are mediated by permission, freedom is no longer experienced as original authority. It is experienced as the remainder left after regulation.

Foucault's analysis of governmentality and Scott's analysis of administrative legibility help clarify this process. Modern power often works not only by prohibiting acts but by structuring fields of action, making populations legible, and shaping the conditions under which individuals understand themselves as governed subjects [15, 33].

## 7. Objections and Limits

A serious theory of conditionalized sovereignty must address limits and objections. The argument recognizes legitimate regulation. It identifies the point at which regulation requires stronger justification. State intervention is strongest where there is concrete harm to others, realistic danger to others, fraud, coercion, exploitation, infectious disease, emergency, lack of informed consent, children, or lack of decision-making capacity. These cases involve others in ways that exceed self-regarding autonomy.

The most important objection is that self-regarding choices can create indirect social costs. Drug use may affect public health systems. Refusal of treatment may burden families. Risk-taking may affect insurance pools. Property use may affect neighbors. Poor health may reduce productivity. These concerns are real, but they cannot automatically justify broad coercion.

A more precise way to describe this objection is the language of negative externalities. Self-regarding choices may generate costs that are partly transferred to others through public healthcare systems, insurance pools, family dependency, lost productivity, or welfare structures. This objection must be taken seriously. However, not every externality is sufficient to justify coercive restriction. A distinction must be drawn between concrete externalities that impose direct, specific, and preventable harm on others and merely fiscal externalities that increase system costs in an indirect or generalized way. If merely fiscal externalities were enough to justify coercion, then the protection of the public budget could become a general warrant for regulating diet, sleep, exercise, reproduction, emotional life, travel, leisure, and medical risk. At that point, the citizen would be governed less as a rights-bearing subject than as a cost factor within an administrative system. Fiscal impact may justify public policy, taxation, education, insurance design, or non-coercive regulation, but it should not by itself override core domains of dignity, bodily autonomy, consciousness, conscience, and self-regarding liberty.

For this reason, indirect social cost cannot be treated as a sufficient basis for coercive regulation. Otherwise, the distinction between public protection and total administration would become unstable.

A further limit concerns the historical formation of legal categories. Some restrictions may appear neutral once codified, although their origins lie partly in moral panic, cultural bias, religious disapproval, medicalized stigma, political fear, status hierarchy, or administrative convenience rather than

demonstrable harm prevention. This does not automatically invalidate such laws, but it changes the burden of justification. Where a restriction has been shaped by inherited bias rather than concrete harm, contemporary legal justification must be renewed rather than assumed. Otherwise, historically contingent assumptions may acquire the appearance of legal necessity simply because they have been codified.

The proper standard is therefore not whether a personal choice has any social effect. Nearly all choices do. The standard is whether the state can demonstrate concrete harm prevention, necessity, proportionality, public justification, and justification independent of merely inherited bias.

The central claim is:

The farther a regulation moves away from concrete harm prevention, the stronger the state’s burden of justification becomes.

This standard allows regulation where genuinely necessary while preserving the presumption of self-sovereignty in adult self-regarding domains.

### 8. Synthesis

Conditionalized sovereignty explains why apparently separate legal domains display a similar structure: formal legal status remains stable while practical sovereignty becomes conditional.

**Table 4: Domains of Conditionalized Sovereignty**

Domain	Formal Recognition	Practical Conditioning and Central Discrepancy
Legal ontology	Human formally recognized as person	The human subject is defined before autonomy is granted through classifications that treat him as body, risk, taxpayer, patient, worker, or administrative unit.
Freedom	The citizen is formally free	Freedom becomes permission through permissions, prohibitions, licenses, and administrative recognition.
Property	Ownership title remains	Ownership becomes administered when use, transfer, exclusion, and benefit depend on regulatory approval.
Body	Bodily autonomy is recognized	The body becomes system-relevant when treatment, medication, and intervention are regulated through medicine, state systems, or insurers.
Health	Health is a personal good	Health can become functionality when productivity, insurability, cost control, and administrative availability dominate.
Consciousness	Thought is protected	Mental autonomy is channeled when substances, intoxication, enhancement, and altered states depend on religion, medicine, or research.
Taxation	The citizen is a rights-bearing subject	The citizen becomes a recurring fiscal participant through fiscal visibility and obligation.
Religion and morality	Conscience is protected	Morality becomes governance when sexuality, family, purity, obedience, or conformity are normed through religious or moral institutions.
Inherited bias	Law appears neutral once codified	Bias becomes legal normality when historical assumptions persist as legal categories.

Substance use	The same act may be self-regarding	The act matters less than the frame when legal status changes by institutional context.
---------------	------------------------------------	---

The concept does not reduce law to domination, nor does it deny the legitimacy of public protection. It identifies a structure in which formal autonomy survives while practical sovereignty becomes dependent on recognized permission systems.

The permission-based citizen is therefore not simply deprived of freedom, property, or bodily autonomy. Rather, these remain formally recognized while their exercise becomes conditional upon institutional recognition, administrative legibility, inherited legal categories, and functional definitions of the human subject.

### 9. Conclusion

This article has argued that modern legal systems often preserve freedom, property, bodily autonomy, and maturity as formal categories while conditioning their practical exercise through administrative permission, fiscal attachment, medical regulation, moral governance, legal ontology, inherited bias, and institutional recognition.

The central inconsistency lies in the asymmetry of legal maturity. The citizen is treated as fully mature where the system demands obligation: taxation, liability, punishment, labor, debt, contracts, and compliance. Yet the same citizen is often treated as only conditionally mature in domains of self-regarding autonomy: body, health, property, consciousness, sexuality, family, substances, therapy, conscience, existential self-direction, and risk.

The article introduced the Sovereignty-Restriction Test to distinguish legitimate protection from the conversion of autonomy into permission. The test asks what image of the human subject a regulation presupposes, whether the conduct is self-regarding or other-regarding, whether concrete harm is present, whether the restriction rests on inherited bias, who bears the burden of justification, whether the intervention is proportionate, and whether the citizen is treated with symmetrical legal maturity.

The contribution of this article is not a critique of any single regulatory domain, but a model for identifying how formal autonomy can coexist with practical dependency across multiple fields of law. Conditionalized sovereignty explains how formal legal status can remain intact while practical sovereignty becomes dependent on permission, institutional recognition, administrative legibility, medical authorization, fiscal visibility, moral acceptability, inherited legal assumptions, and the legal definition of the human subject.

At a deeper level, the argument is ontological and historical as much as regulatory. The treatment of autonomy depends not only on current legal rules, but also on whether the human being is understood primarily as a body to be preserved, a consciousness to be respected, a spiritual or conscience-bearing subject, a productive participant, a taxpayer, a risk source, or a bearer of dignity. It also depends on whether legal categories have inherited moral, cultural, medical, or political biases that continue to shape what appears normal, necessary, or dangerous.

The argument calls for symmetry. If individual freedom ends where concrete harm to others begins, then state power must also end where it invades individual self-sovereignty without concrete, proportional, publicly justifiable, and bias-aware harm prevention.

The final claim is therefore:

The state may restrict liberty, property, bodily autonomy, health decisions, consciousness, conscience, or existential self-direction only where it can demonstrate concrete harm prevention, necessity,

proportionality, public justification, and justification independent of merely inherited bias. Without that burden of justification, formal autonomy may survive while practical sovereignty is reduced to permission-based governance.

### Acknowledgement

No external funding was received for this article. The author is solely responsible for the conception, analysis, writing, and final approval of the manuscript. Artificial intelligence (AI)-assisted tools were used for language editing, structural refinement, and readability improvement. The author reviewed, revised, and approved the final manuscript and takes full responsibility for its content.

### References

1. American Indian Religious Freedom Act Amendments of 1994, Pub. L. No. 103-344, 108 Stat. 3125, 1994.
2. Paul S. Appelbaum, “Assessment of Patients’ Competence to Consent to Treatment”, *The New England Journal of Medicine*, 2007, 357 (18), 1834-1840. <https://doi.org/10.1056/NEJMcp074045>
3. Tom L. Beauchamp, James F. Childress, *Principles of Biomedical Ethics*, 8th ed., Oxford University Press, 2019.
4. Jan C. Bublitz, “My Mind Is Mine!?! Cognitive Liberty as a Legal Concept”, in Elisabeth Hildt, Andreas G. Franke (eds.), *Cognitive Enhancement: An Interdisciplinary Perspective*, Springer, 2013, 233-264.
5. Jan C. Bublitz, Reinhard Merkel, “Crimes Against Minds: On Mental Manipulations, Harms and a Human Right to Mental Self-Determination”, *Criminal Law and Philosophy*, 2014, 8 (1), 51-77. <https://doi.org/10.1007/s11572-012-9172-y>
6. Stanley Cohen, *Folk Devils and Moral Panics*, MacGibbon & Kee, 1972.
7. *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261, 1990.
8. Patrick Devlin, *The Enforcement of Morals*, Oxford University Press, 1965.
9. Gerald Dworkin, “Paternalism”, *The Monist*, 1972, 56 (1), 64-84. <https://doi.org/10.5840/monist197256119>
10. Gerald Dworkin, “Paternalism”, in Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy*, Stanford University, 2020. <https://plato.stanford.edu/entries/paternalism/>
11. Ruth R. Faden, Tom L. Beauchamp, *A History and Theory of Informed Consent*, Oxford University Press, 1986.
12. Nita A. Farahany, *The Battle for Your Brain: Defending the Right to Think Freely in the Age of Neurotechnology*, St. Martin’s Press, 2023.
13. Joel Feinberg, *Harm to Others: The Moral Limits of the Criminal Law*, Oxford University Press, 1984.
14. Joel Feinberg, *Offense to Others: The Moral Limits of the Criminal Law*, Oxford University Press, 1985.
15. Michel Foucault, “Governmentality”, in Graham Burchell, Colin Gordon, Peter Miller (eds.), *The Foucault Effect: Studies in Governmentality*, University of Chicago Press, 1978.
16. David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society*, University of Chicago Press, 2001.
17. *Gonzales v. O Centro Espirita Beneficente União do Vegetal*, 546 U.S. 418, 2006.
18. H.L.A. Hart, *Law, Liberty and Morality*, Stanford University Press, 1963.

19. Wesley N. Hohfeld, "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning", Yale Law Journal, 1913, 23 (1), 16-59. <https://doi.org/10.2307/785533>
20. Antony M. Honoré, "Ownership", in Arthur G. Guest (ed.), Oxford Essays in Jurisprudence, Oxford University Press, 1961, 107-147.
21. Douglas Husak, Overcriminalization: The Limits of the Criminal Law, Oxford University Press, 2008.
22. Marcello Ienca, Roberto Andorno, "Towards New Human Rights in the Age of Neuroscience and Neurotechnology", Life Sciences, Society and Policy, 2017, 13, Article 5. <https://doi.org/10.1186/s40504-017-0050-1>
23. Immanuel Kant, Groundwork of the Metaphysics of Morals, translated by Mary J. Gregor, Cambridge University Press, 1996. Original work published 1785.
24. Margaret Levi, Of Rule and Revenue, University of California Press, 1988.
25. Isaac William Martin, Ajay K. Mehrotra, Monica Prasad (eds.), The New Fiscal Sociology: Taxation in Comparative and Historical Perspective, Cambridge University Press, 2009.
26. Thomas W. Merrill, Henry E. Smith, "What Happened to Property in Law and Economics?", Yale Law Journal, 2001, 111 (2), 357-398.
27. John Stuart Mill, On Liberty, John W. Parker and Son, 1859.
28. Ngaire Naffine, Law's Meaning of Life: Philosophy, Religion, Darwin and the Legal Person, Hart Publishing, 2009.
29. John Rawls, Political Liberalism, Columbia University Press, 1993.
30. Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb-2000bb-4, 1993.
31. Carol M. Rose, Property and Persuasion: Essays on the History, Theory, and Rhetoric of Ownership, Westview Press, 1994.
32. Joseph A. Schumpeter, "The Crisis of the Tax State", in Richard Swedberg (ed.), The Economics and Sociology of Capitalism, Princeton University Press, 1991, 99-140. Original work published 1918.
33. James C. Scott, Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed, Yale University Press, 1998.
34. Alain Supiot, Homo Juridicus: On the Anthropological Function of the Law, translated by Saskia Brown, Verso, 2007.
35. Charles Tilly, Coercion, Capital, and European States, AD 990-1992, Blackwell, 1992.
36. Jeremy Waldron, The Right to Private Property, Clarendon Press, 1988.
37. Pretty v. United Kingdom, European Court of Human Rights, Application No. 2346/02, 2002.