

Historical and Philosophical Analysis of Free Will as the Genesis of Understanding Law

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The article considers the views of prominent scientists on the legal nature of free will. The article proves that historically, the primary purpose of the law was to regulate social relations and free will. The Author studied the evolution of views on free will in direction through Antiquity, the Middle Ages, the Reformation and modern understanding.

Keywords: free will, understanding Law, Civil Law, philosophy of Law, history of Law.

Istorinė ir filosofinė laisvos valios analizė kaip teisės supratimo genėzė

Straipsnyje nagrinėjamas žymių mokslininkų požiūris į laisvos valios teisinę prigimtį. Jame pagrindžiama, kad istoriškai pagrindinis įstatymo tikslas buvo reguliuoti visuomeninius santykius ir laisvą valią. Autorius nagrinėjo požiūrio į laisvą valią raidą antikoje, viduramžiais, reformacijos laikotarpiu ir šiuolaikinę jos sampratą.

Pagrindiniai žodžiai: laisva valia, teisės supratimas, civilinė teisė, teisės filosofija, teisės istorija.

Introduction

The scientific article considers free will's historical and philosophical analysis as the genesis of legal understanding. It has been proved that the central issue of law has always been the discussion of the definition of human freedom, whether a person is free to make decisions and take specific actions. Lawyers and philosophers have always been interested in the mechanism of human decision-making, the limits of the concept of 'freedom', and how it affects the Law. The article considers the views of prominent scientists on the legal nature of free will. The evolution of views on free will in law through Antiquity, the Middle Ages, the Reformation, the Renaissance and modern understanding has been studied. The ideas of Antisthenes, Aristotle, Socrates, Plato, Cicero, Flaccus, Origen, Aurelius Augustine, Boethius, Bernard of Clairvaux, Giordano Bruno, Giovanni Pico Della Mirandola, Martin Luther, F. Suarez, T. Spinoza, I. Fichte, G. Hegel, I. Kant, F. Schelling, Cohen, L. Feuerbach, A. Schopenhauer, J. Locke, G. Leibniz, K. Marx, F. Nietzsche, E. Mounier, M. Heidegger, K. Jaspers, J. Sartre, R. Kane are explored.

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Law is the basis of society. Through the law, we can distinguish between order and chaos, system and disorder. The law establishes rules of behaviour and the vector of development of society, defines the concept of 'good and evil', and acts as a measure of human actions.

Historically, the primary purpose of the Law was to regulate social relations. And it is essential to understand that if we compare the legal regulation of relations in a primitive society and the most developed country of the 21st century, then its basic idea will not be variable. The law has always existed to regulate relationships and determine 'what is possible and what is not' and 'what is good and what is bad'.

Over time, the Law became increasingly complex; industries, subsectors, and institutions appeared. But the question of understanding the legal nature of people's actions and their legal relations remained fundamental.

The central issue of the Law has always been the discussion of the definition of the free will of a person or a free person in making his decisions and taking specific actions. Lawyers and philosophers have always been interested in the mechanism of human decision-making, the limits of the concept of 'freedom', and how it affects the Law.

Methodological framework

The study used general and special scientific methods of cognition of legal phenomena: comparative law, formal-logical, system-structural, dialectical and other methods. The rational way of awareness allowed us to thoroughly study the national civil legislation taking international standards into account. The comparative legal process was used to determine the mean and distinctive features. Formal-logical method contributed to establishing the conceptual apparatus and content of current legislation, highlighting the contradictions in the current legislation. The system of human rights was studied by system-structural analysis. The above methods were used in their interdependence. The methodology includes information on philosophical aspects, methodological foundations of scientific cognition, the study of the structure and main stages of research, etc.

1. Legal understanding of free will in Antiquity

Recognising that the basis of law is freedom of will and agreeing with V.F. Hegel, who was the first to conclude that the starting point of the Law is the will, which is unrestricted, freedom is its essence and concept. The legal system is a will, the kingdom of freedom (Brooks, 2012); it becomes clear the relevance of the historical and philosophical analysis of free will as the genesis of understanding the law. Finally, philosophical and legal research indicates that the will is the transformation of subjectivity into objectivity, the unity of theoretical consciousness with practical activities, the activity and effectiveness of objectified consciousness, the purposeful regulation of training and the behaviour of the revival of reality (Blikhar, 1990).

It is necessary to consider the understanding of free will in the philosophy of Antiquity, the Middle Ages and the Renaissance, in the doctrines of the New Age and the classical German philosophy, in the Western philosophy of the 20th century and in modern domestic philosophy to disclose the outlined issue fully.

Such an analysis will make it possible to trace the changes in the determination and paradigm of understanding free will in different historical periods and its impact on the law.

The philosophy of Antiquity laid the foundations for understanding free will. K. Jaspers noted that the West is aware of the idea of political freedom. In Greece, although not for long, there was a

freedom that did not arise anywhere else. The Commonwealth of Free People withstood the onslaught of universal despotism, a totalitarian organisation. Thus, the policy laid the foundations of the entire Western awareness of freedom – the reality of freedom and its ideas (Jaspers, 2011).

It is known that ancient times gave us many philosophers and lawyers who studied the fundamental ideas of the Law. First, attention should be paid to the doctrinal statements of Socrates, who began to consider man as the main object of study when considering the question of free will.

The flourishing of slave-owning democracy led to the development of views on personal independence and the choice of action. At the same time, the idea of inevitable rock, a fate that leads a person to restrict freedom of will, has been preserved. In general, the concept of the relationship between freedom of will and doom has been relevant at all times in human history. It is reflected in the works of many scientists, philosophers, theologians and lawyers.

The views of the Stoics are well known, including the idea of a destiny higher than the gods and the embodiment of immutable cosmic laws. According to the general understanding, destiny is a pre-determined, inevitable destiny, a mysterious force that supposedly determines the destiny of everything that exists. Antiquity proclaims the immeasurability of fate, but nowhere is it said that a person must obey the will of the gods. These two approaches have created a single philosophy, according to which a person must act at the behest of fate but independently decide whether to accept them or not.

Thus, the initial understanding of free will assumed the existence of fate, which coexists with freedom of action. Socrates emphasised the existence of an ‘inner voice (demon)’ which a person hears all his life and which helps him make choices. One of the most striking examples of free will is Socrates’s voluntary acceptance of the death penalty. Therefore, he refused the opportunity to escape from Athens, thus showing free will (Stenzel, 1922).

The ideas of Socrates found continuation in Socratic schools. Cynics paid particular attention to the issue of freedom of will. The founder of the school of cynicism is considered to be Antisthenes, a student of Socrates, who associated free will with knowledge and willed actions (Nakhov, 1981). Freedom of will began to be understood through *ataraxia* and the rejection of external dependencies, particularly fate.

The development of Socrates’ ideas of free will was continued by Plato, who spoke of the need to recognise the existence of three types of existence – eternal ideas, changing specific things and the space in which things exist (Cooper, 1997). Plato identified three principles in the soul: intelligent, affective and irrational. Freedom of will is aimed at conquering the irrational parts of the soul with the intellectual part. According to the philosopher, the soul is not endowed with true freedom of will and obeys the world of ideas. He also interpreted freedom itself as the responsibility of a person to the state in which he lives (Cooper, 1997).

Aristotle expressed interesting ideas about understanding the free will and considered it relevant only to free people. This was because enslaved people did not have the right to control even their own lives; therefore, they did not have the freedom of will and the ability to make legal decisions. Aristotle also saw freedom as an opportunity to take turns with others to participate in power and influence state will formation (Aristotle, 2009). However, Aristotle did not consider freedom of will in the raw, distinguishing only between conscious and unconscious actions. Man, his ‘I’ is a reasonable driving force of arbitrary action. Spontaneous acts are carried out spontaneously, without a clearly understood purpose, or are caused by external circumstances that a person is powerless to resist. Aristotle’s internal desire for meaning and perfection is entelechy (Antyukhina, 2001).

Aristotle’s idea of free will can be generalised as follows: human freedom is manifested in his actions to achieve virtue. This is possible only when the mind is consistent with feelings. Aristotle also used the term ‘progress’ as a conscious choice.

Slightly different views are found in the philosophical treatises of Cicero. The idea of free will in the thoughts of Cicero derives from his analysis of the phenomenon of soul and mind. In his writings, he noted that reason with its memory, thinking and imagination allows a person to preserve the past, predict the future, comprehend the present – and only this can be called divine, and come to people from nowhere but from God. Thus, the nature and essence of the soul are something special, separated from the usual nature (Cicero, 2010).

In understanding the freedom of will, Cicero laid the idea that, in the soul, there is something independent from fate and prediction, due to which a person can think independently, make decisions and be responsible for them. He explained this by saying that the soul that is moving simultaneously feels it is moving on its own and not with someone else's power (Cicero, 2010).

Cicero's views on understanding free will through the prism of passions and desires were progressive. In his study, M.V. Vidrikan summarises this concept of Cicero by noting that desire and joy come out of our understanding of good, so what seems good to us becomes the goal of achievement. Readiness, mastering a person, becomes the driving force in achieving goals and the impetus for action. When the desire is completed – a person rejoices. So, the will is a stable and reasonable desire or desire for good, but if it's all fascinating and not helpful, then it's lust and evil (Vidrikan, 2018). This confirms Cicero's statement that according to the laws of nature itself, all people reach for what is considered suitable for them and avoid the opposite, so if an object seems reasonable, then nature itself tells us to achieve it. If this attraction is stable and intelligent, the Stoics call it *blues*, and we call it will (Cicero, 1991).

The period of Antiquity was a great impetus for the development of philosophical and legal thought, in particular, the establishment of original ideas about free will. The ideas laid down by the leading thinkers of Antiquity became the basis for further developing the concept of the free will. For example, they are united by E. Fromm's views that the only criterion for the realisation of freedom – is the active participation of the individual in determining their destiny and society, not only by a formal act of voting but also by their daily activities, their work, their relationships with other people (Fromm, 2011).

We must agree that the historical experience of ancient Greece is valuable primarily because it has accumulated well-developed political and legal thought and a considerable legacy and practice that remain relevant today. These outstanding thinkers, who presented excellent approaches to understanding the boundaries of individual freedom and the limits of the power of the institutional mechanisms of the state, appeared in the classical period of Greek democracy. This already showed a direct connection between the political and human freedom, which can be realised as a citizen, individual, thinker, artist, and entrepreneur (Vdovychyn, 2013).

The ideas of Antiquity about the free will can be generalised by the poetic views of Quintus Horatius Flaccus, who recognised the omnipotence of Fortune and still left operated the right to free choice, it means that a man must be responsible for his actions, and this is the originality of Horatius's vision of fate in human life. One of the reasons for the disfavour of the future man, the poet saw in human passions and sins, so his calls to get rid of defects and moral improvement of man today are very important (Hasanov, 2018).

The idea of free will was laid down in Antiquity and developed in the Middle Ages and the Renaissance. At one time, the Stoics took the first steps to distinguish between the concepts of prediction, destiny and their relationship to the free will. But, in the Middle Ages, the concepts of predictability and freedom of will went through detailed development at the level of religion. Medieval Christianity was accustomed to the dilemma: from the point of view of reason – freedom of will exists, and therefore the man is responsible for his actions; from the position of faith – there is complete submission to the Divine will, which limits the ability to make decisions independently and be responsible for them.

A special place in the transition from the views of Antiquity to medieval Christianity is occupied by the ideas of Origen, the Greek Christian theologian, philosopher, scientist, the founder of biblical philology and the author of the term ‘Godman’.

Origen paid considerable attention to the question of the free will which is transformed depending on human actions. Thus, in the beginning, the freedom of will of a rational being is complete; after committing a sin, the freedom of will is limited; in particular, man, being in body, is exposed to a specific influence. After all, the end is associated with preserving the free will in its original form. Then the cycle is endless, or everything ends in God, which requires a qualitative change of the free will (Eremina, 2011).

The works of Aurelius Augustine were of paramount importance for understanding the free will. His work *De libero arbitrio*, which focuses on philosophy about the relationship between the free will and the divine will, deserves special attention. He emphasised that everything created by God is somehow involved in the absolute good – the All-Good: because the Almighty, carrying out creations, depicted in the made a certain measure, weight and order, establishing an extraterrestrial image and meaning. How is good done in nature, in people, and society? He noted that any character that can get better is good (Augustinus). Thus, Augustine delved into the idea of theodicy, recognising the impossibility of the existence of evil without good and God’s influence on the will of men.

In his early works, Augustine believed that reason and wisdom are a worthy path to a blissful life, which is the liberation of the soul from bodily defilement and living according to the soul’s rational part. In this regard, he emphasises that the free decision of the will is not subject to natural causality, and providence does not eliminate the autonomy of the will. Later he took the position of fideism, affirming the imperfection of the human mind in faith and complete reliance on divine grace and the will of God (Potsyurko, 2018).

Similar ideas can be seen in the writings of Boethius, who emphasised the endowment of man with reason and the ability to distinguish between what should be desired and what should be avoided. If there were no free will, it would not make sense to reward good, to punish evil because all this would not be the result of free choice dependent on one’s own will (Boethius, 1999).

2. Legal understanding of free will during the Middle Ages and the Reformation

Further development of ideas about free will can be seen in the works of Thomas Aquinas, who defined man’s desire for freedom as its characteristic feature. He emphasised that man is endowed with an intelligent soul and free will, so he chooses his actions and is responsible for them. It is the mind that is recognised as the basis of the existence of free will and dominates it. Using a logical research method, Thomas Aquinas concludes that freedom of choice is necessary because, without it, a person cannot be responsible for their actions; there can be no sin and virtue, punishment and reward. But a person can be accessible only when the source of free will is reality if his intellect reflects the objective need (Aquinas).

The religious mysticism of Bernard Clairvaux improved Aquinas’ views. The latter defined freedom as the ability of the soul to follow its own will, which does not depend on external coercion. In his work, he emphasises the existence of evil in human use precisely because he has the free will which was born of the original sin (Claraevallensis, 1620).

Analysis of individual works by Bernard Clairvaux allows us to identify three types of freedom in his concept of freedom of will. The first type of freedom distinguishes man as a unique being with mind and soul. Man is endowed with this freedom by nature. The second type of freedom relates to

the freedom from sin and is called 'freedom of grace'. The third type of freedom allows a person to overcome their desires and sins, which is the freedom from suffering or the freedom of life (Clairvaux, 1987). So, Clairvaux speaks of the free will as the ability to make decisions with one's mind in the form of the mind's struggle against sin and desire. If we remove the religious component, we will see that modern concepts of understanding free will are based on similar principles. This will be reflected in more detail in the following paragraphs of this paper.

The religious constants of the Middle Ages began to take a progressive form with the advent of the Renaissance and the beginning of the Reformation, which was based on Giordano Bruno's idea about the freedom of thought and the right to doubt religious dogmas, reflected in work *One hundred and sixty theses against mathematicians and philosophers* (Saiber, 2003). However, the ideas of Giordano Bruno, to a certain extent, continued the concept of his predecessor Giovanni Pico Della Mirandola. In his *Speech on the Dignity of Man*, Mirandola reflects on the free will which gives man the opportunity to draw closer to God or become a slave to passions. The difference between man and other beings lies in them being not endowed with the free will (Shestakov, 1981). Thus, we again see the thesis of the free will as a measure of possible behaviour based on conscious choice of action.

At the same time, the Reformation gave rise to new theological approaches to the free will. Thus, Martin Luther emphasised the impossibility of rational theodicy, not linking the possibility of salvation for man with his purposeful actions. He justified this by saying that only those who are utterly disappointed in themselves do not choose anything but expect what the Lord will do and have the opportunity to be happy in the future because the highest degree of faith is to believe that God is merciful when he saves not many. And He condemns many to consider it only when He makes us inevitably worthy of condemnation of His free will. If we understood all this, faith would be unnecessary. If salvation depends on man, then where is the place of God's grace? Thus, Luther deprived the Church of its historical role and gave it individuality (Potsyurko, 2018).

Views of F. Suarez, who speaks about the influence of God on human acts and his will only when *gratia efficiens* can take place without the restriction of freedom of the person, are essential (Suárez, 2011). These ideas became the basis for the theory of congruism.

Another vector of understanding of free will during the Reformation could be seen in the church course of France in the late 17th – early 18th century – a controversy about quietism. The Spanish mystic M. de Molinos in his *Spiritual Guide* proclaimed the doctrine of inner or spiritual prayer, which expressed the highest, most perfect degree of Christian perfection. It consists of the complete passivity of the human soul, the full knowledge of the will of God and the complete levelling of the human will. Such improvement excluded any will action, even those aimed at everlasting good or unity with God (Potsyurko, 2018). This view completely denied the opposite approaches and hindered the existence of the human free will, which contradicted the concepts of other religious and philosophical figures.

3. Legal understanding of free will in modern philosophy of Law

All this has led to the flourishing of ideas about human free will in the modern philosophy and Law. The philosophical approach of rational determinism of will is inextricably linked with the views of T. Hobbes, B. Spinoza, I. Kant, I. Fichte and G. Hegel. The latter understood the will of thinking, realised in human activity, while the will and thinking are, respectively, the practical and theoretical side of a single spirit.

Thomas Hobbes developed a whole system of views on the free will, which became the basis for numerous studies. His idea of the free will was based on the prejudice that every object is free if its

essential nature does not contain obstacles to movement; in other words, he is always free when he acts by his inner regularity. Water, for example, has the freedom to flow along the river but does not have the 'freedom' that would allow it to rise (Antyukhina, 2001). Thus, the free will exists within the real possibility of choosing behaviour. For example, a person has the freedom to walk, but if he is deprived of his legs, he will not be able to walk physically, and his freedom will also be limited. Thus, all material objects have the status of freedom because their existence is inherent in necessity. The same is true in human practice. The actions of man arising from his will, are free, and at the same time, they are necessary because they are caused by reasons independent of the subject. Like all other natural phenomena, human actions are subject to the universal law of mechanical necessity, which is compatible with freedom (Antyukhina, 2001).

The ideas of T. Hobbes were continued by B. Spinoza who wrote about the possibility of a man being free only when he lives by the prescription of mind, not guided by fear of death, desires good, seeks action, to live, maintains their existence based on their interests (Spinoza, 1933). Thus, B. Spinoza defines freedom as a known necessity.

Descartes referred to the will in the think the world of man, emphasising the existence of free will as a possibility to choose what to agree with and what not (Descartes, 1985).

Thanks to the classical German philosophy, there is a deep understanding of the free will not only through the prism of philosophy but also from the standpoint of Law. Thus, Kant proves the existence of a direct connection between legal freedom and the mindfulness of will in general. Based on the formal principle of action, only one can ensure the moral quality of the movement. What concerns the mind, in my opinion, Kant is subject to its law, which means it is autonomous and legitimate (Brovko, 2007).

I. Kant finds the manifestation of the free will in how man endows his actions. If a person were indifferent to his choice, his actions would be random, which would be the end of all freedom. Subsequently, these ideas evolved within the metaphysical concept of transcendental freedom. I. Kant defined the free will as such, which can manifest itself independently of sensual impulses (Kant, 1999).

The relationship between freedom of will and law can be distinguished separately. Kant also emphasised the independence of the will from any direction except the law of morality (Kant, 2017). From this, it can be concluded that external factors, such as the Law, cannot restrict free will because the measure of free will is only one's mind. Today, in Civil Law, this can be illustrated by an example: the Law establishes the mandatory written form of the contract of sale of real estate, but the parties, knowing this, deliberately conclude the contract orally. Thus, the external influence of the Law could not force individuals to obey the Law. Free expression of will gave the parties the right to break the Law deliberately. If the parties comply with the Law, they also do so at their discretion, guided by morality.

In concluding the analysis of Kant's works on the free will, it should be noted that his ideas became the basis for further research by representatives of the classical German philosophy.

The classic Hegelian thesis announces that the starting point of Law is will, which is unrestricted. Therefore, freedom is its substance and concept, and the legal system is the sphere of realised freedom (Hegel, 2000). It was Hegel who laid the foundations of the free will in the understanding of the Law, emphasising the impossibility of the existence of the Law without the free will. Today this idea is at the centre of the system of Natural Law.

The dialectic of the free will gives rise to a system of forms and degrees of Law, which determines the ambiguity of the concept of 'Law', which is used in Hegel's philosophy of Law in the following basic meanings: law as freedom, the law as a degree and form of freedom, the Law as a statute. At the same time, all stages of the development of the objective spirit are determined by the idea of freedom. This sphere is the realisation of freedom in the forms, methods and institutions of human coexistence (Brovko, 2007).

However, Cohen is controversial with Kant's ideas and proposes to abolish the concept of free will and use the concept of autonomy instead. Autonomy has a different meaning in Cohen's philosophy than in Kant's philosophy. It is not legislation that gives itself a metaphysical 'I' but legislation in which the moral 'I' first arises not as a given but as a pure task. The concept of autonomy is similar to free will in that both allow actions to be attributed to a moral subject. Cohen writes about responsibility as one of the stages in developing the concept of autonomy (Cohen, 1919).

Feuerbach paid particular attention to this issue (Feuerbach, 1986). At this time, the philosopher has not yet overcome the contemplation of knowledge and has not reached a materialist understanding of social life. His ideas about free will were detailed through the knowledge of Criminal Law. They were about recognising the existence of the free will because the person independently decides to commit a crime. He stressed the possibility of prosecuting only a person who freely committed a crime. The idea of not being charged when someone voluntarily refuses to commit a crime was important. However, today, in the context of this issue, we have to talk about the moment of such a refusal, which will affect the classification of the crime.

The most complete, theoretically complete concept of freedom as the basis of existence was first formulated in the 19th century by A. Schopenhauer (Schopenhauer, 1995). Schopenhauer called the observed changes in reality 'objectification'. According to Schopenhauer, the objectification of the will is the basis of all existence. Within this general ontological will, there are several successive objectification of the intention of different levels, and at the primary level, there is initially no significant observer endowed with reason.

It is impossible to speak of free will as the genesis of legal understanding without mentioning the ideas of J. Locke. He argued that only a person who has a mind and acts on his instructions could be free; there can be no freedom where there is no thought (Locke, 1824). So, we are talking again about the direct connection between the freedom of will and the mind as the primary mechanism of its existence. Leibniz developed the ideas of J. Locke, introducing the concept of the existence of determinations of mental activity which indicate the need for cognitive processes only as a forced or mechanical impulse. The leading German philosopher G. Leibniz laid down the principle of established harmony by presenting the problem of the freedom of will. He refused to acknowledge the premonition of every human action. He came into his conflict: everything is based on harmony, and man is endowed with the free will, which leads to chaos and destroys balance. Therefore, he concluded that freedom is the initiative of a rational subject, guided by more real motives. The more motivated, sensible actions we take, the more freedom we get.

At the end of the study of the ideas of modern philosophers on free will, Marx should be noted, who believed in freedom through law and rights. He saw freedom as one based on and outside the Law. The law must protect freedom. He wrote that laws are general norms in which freedom acquires impersonal, theoretical, and independent of the arbitrariness of individual existence (Marx, Engels, 1987).

The modern philosophical idea has tried to clarify many aspects of the problem of freedom, linking them with the data of experiential knowledge. However, new issues arose that began to cause difficulties for pure empiricists and rationalist metaphysicians.

Further historical and philosophical analysis of the free will as the genesis of legal understanding should be conducted within the views of leading ideas of philosophers of the 20th century.

The eminent German philosopher Friedrich Nietzsche developed Schopenhauer's ideas of free will and set out his vision in *Thus Spoke Zarathustra, Beyond Good and Evil*, etc. (Nietzsche, 2020). His understanding of freedom, through which the freedom of will was determined, was reduced to the concept of the will of power. Schopenhauer's and Nietzsche's concepts of the relation between necessity

and freedom, conditioned by their origin and development by antagonism and declining tendencies in the development of the bourgeois world, are voluntaristic and irrational. They became the source and forerunner of irrationalism, common in modern Western philosophy. At the same time, the voluntarism of Schopenhauer and Nietzsche testified to a kind of deadlock in the development of the idealistic tendency to understand the relationship between necessity and freedom (Antyukhina, 2001).

Carl Jaspers expressed similar ideas when considering freedom of will about cognition, internal law and arbitrariness. Jaspers derived the understanding of free will through the obligatory connection with guilt. In «The Question of Guilt», the philosopher speaks of freedom as overcoming arbitrariness and the impossibility of exercising divine or evil will. He writes about freedom of decision, law and freedom of choice, and the existence of being (Jaspers, 2000).

The development of ideas about free will is also found in the works of Sartre. In his work *Being and Nothingness*, he identifies freedom of will and ‘absolute freedom’ (Sartre, 2021). He emphasises that since everyone is endowed with a mind, free will is inherent in every person as an opportunity to choose his actions. Thus, the freedom of will is again reduced to the ability to make decisions independently from the point of view of their own subjective beliefs.

Particular attention should be paid to the concept of free will in the libertarian interpretation. R. Kane wrote that actions that shape the personality are carried out in difficult moments of life when we are torn between conflicting views on what to do and whom to become. At such moments, the tension and uncertainty in our minds about what to do are reflected in some of the neural processes themselves, ‘excited’ by the conflict in our will (Kane, 2016).

Conclusion

1. The definition of the free will has developed from antiquity to the present day, undergoing a gradual evolution of views and finally reflected in Law. In ancient times, the freedom of will was inextricably linked to fate.
2. In the Middle Ages, there were several different concepts of understanding the freedom of speech, but they were all closely related to divinity. The question of the free will, raised in the dogmatic debates of Christian theologians, migrated to the classical philosophy of modern times, in which it received a vague understanding.
3. Will was recognised as an essential ability of man as an intelligent being, without which his mind cannot understand itself in time and space. On the other hand, the freedom of will was significantly limited by the assumption of physical and metaphysical laws governing human activity as a subject. Determinism had either a religious nature or took the form of a biological or mechanistic cause of phenomena.
4. The number of scientists and philosophers who have studied the free will is much greater than those described in this study. However, the analysis is sufficient and allows us to see the evolution of views on the free will and its undeniable impact on the Law.

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Historical and Philosophical Analysis of Free will as the Genesis of Understanding Law

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S u m m a r y

Scientific research examines the free will as the genesis of understanding Law by employing historical and philosophical analysis. The article considers the views of prominent scientists on the legal nature of free will. The article proves that historically, the primary purpose of the law was to regulate social relations and free will. The author studied the evolution of views on free will in direction through Antiquity, the Middle Ages, the Reformation and modern understanding. The Author clarifies the ideas of Antisthenes, Aristotle, Socrates, Plato, Cicero, Flaccus, Origen, Aurelius Augustine, Boethius, Bernard of Clairvaux, Giordano Bruno, Giovanni Pico Della Mirandola, Martin Luther, F. Suarez, M. de Molino, T. Spinoza, I. Fichte, G. Hegel, I. Kant, F. Schelling, Cohen, L. Feuerbach, A. Schopenhauer, J. Locke, G. Leibniz, K. Marx, F. Nietzsche, E. Mounier, M. Heidegger, K. Jaspers, J. Sartre, R. Kane. The definition of the free will has developed from antiquity to the present day, while undergoing a gradual evolution of views, and it got finally reflected in the Law. In ancient times, the freedom of will was inextricably linked to fate. The author concludes that the free will undeniably impacts the Law, thus proving that the free will is a fundamental part of Civil Law.

Istorinė ir filosofinė laisvos valios analizė kaip teisės supratimo genezė

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S a n t r a u k a

Moksliniai tyrimai nagrinėja laisvos valios istorinę ir filosofinę analizę kaip teisės supratimo genezę. Straipsnyje nagrinėjamas žymių mokslininkų požiūris į laisvos valios teisinę prigimtį. Jame įrodoma, kad istoriškai pagrindinis įstatymo tikslas buvo reguliuoti visuomeninius santykius ir laisvą valią. Nagrinėjama požiūrio į laisvą valią raida antikoje, viduramžiais, reformacijos laikotarpiu ir šiuolaikinėje jos samprata. Autorius patikslina Antisteno, Aristotelio, Sokrato, Platono, Cicerono, Flako, Origeno, Aurelijaus Augustino, Boetijaus, Bernardo Klerviečio, Džordano Bruno, Džoviano Piko Della Mirandolos, Martino Liuterio, F. Suarezo, M. de Molino, T. Spinozos, I. Fichte' s, G. Hegelio, I. Kanto, F. Schellingo, Coheno, L. Feuerbacho, A. Schopenhauerio, J. Locke' o, G. Leibnico, K. Marxo, F. Nietzsche' s, E. Mouniero, M. Heideggerio, K. Jasperso, J. Sartre' o, R. Kane' o idėjas. Laisvos valios apibrėžtis vystėsi nuo antikos iki šių dienų, tolydžio keitėsi pažiūros ir galiausiai atsispindėjo teisėje. Senovėje laisva valia buvo neatsiejamai susijusi su likimu. Autorius daro išvadą, kad laisva valia neabejotinai daro įtaką įstatymui, yra esminė civilinės teisės dalis.

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