

Historical and philosophical analysis of free will as the genesis of understanding law

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Resumo

Um artigo científico examina a análise histórica e filosófica do livre arbítrio como gênese do entendimento do direito. O artigo considera as opiniões de cientistas proeminentes sobre a natureza jurídica do livre arbítrio. O artigo prova que, historicamente, o objetivo principal do direito era regular as relações sociais e o livre arbítrio. A evolução dos pontos de vista sobre o livre arbítrio no direito ao longo da Antiguidade, Idade Média, Reforma e compreensão moderna foi estudada. As ideias de Antístenes, Aristóteles, Sócrates, Platão, Cícero, Flaco, Orígenes, Aurélio Agostinho, Boécio, Bernardo de Clairvaux, Giordano Bruno, Giovanni Pico della Mirandola, Martinho Lutero, F. Suarez, M. de Molpino, 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 são explorados.

Palavras-chave

Livre arbítrio, compreensão do direito, direito civil, filosofia do direito, história do direito.

Historical and philosophical analysis of free will as the genesis of understanding law

Abstract

A scientific article examines the historical and philosophical analysis of free will as the genesis of understanding law. The article considers the views of prominent scientists on the legal nature of free will. The article proves that historically, the main purpose of law was to regulate social relations and free will. The evolution of views on free will in law through Antiquity, the Middle Ages, the Reformation 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, M. de Molpino, 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.

Keywords

Free will, understanding law, civil law, philosophy of law, history of law.

Sumário

Intro; Methodological framework; 1. Legal understanding of free will in Antiquity; 2. Legal understanding of free will during the Middle Ages and the Reformation; 3. Legal understanding of free will in modern philosophy of law; Conclusion; References.

Intro

The scientific article considers the historical and philosophical analysis of free will 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 certain 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, M. de Molpino, 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.

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

Historically, the main purpose of law was to regulate social relations. And it is important to understand that if we compare the legal regulation of relations in primitive society and in the most developed country of the XXI century, then its basic idea will not be variable. At all times, the law has existed to regulate relationships and determine "what is possible and what is not", "what is good and what is bad".

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

The central issue of law has always been the discussion of the definition of free will of a person or a free person in making his decisions and taking certain 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, namely: comparative law, formal-logical, system-structural, dialectical and other methods. The dialectical method of cognition allowed to study thoroughly the national civil legislation taking into account the international standards. The comparative legal method was used to determine the common and distinctive features. Formal-logical method contributed to the establishment of the conceptual apparatus and content of current legislation, highlighting the contradictions in 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, study of the structure and main stages of research, etc.

This scientific article is based on the legislation of Ukraine, the legislation of European and other countries, scientific research, and court decisions. Also, for this research article, we studied publications in the Ukrainian media and mass media of other countries.

1. Legal understanding of free will in Antiquity

Recognizing 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 law is the will, which is free, so freedom is its essence and concept, and the legal system is will, kingdom of freedom¹, it becomes clear the relevance of 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 activity and the behavior of the revival of reality².

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 classical German philosophy, in Western philosophy of the 20th century and in modern domestic philosophy to fully disclose the outlined issue.

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.

¹ Hegel G.V. F. (1990). *Philosophy of Law*. Thought.

² Blikhar V.S. (1990). Philosophical and legal interpretation of freedom of will. *Scientific Bulletin of Uzhhorod National University. Series LAW*, issue 34, volume 3, 149-152.

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 organization. Thus, the policy laid the foundations of the entire Western awareness of freedom - both the reality of freedom and its ideas³.

It is known that ancient times have given us a large number of philosophers and lawyers who have studied the fundamental ideas of law. First of all, attention should be paid to the doctrinal ideas 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 idea of the relationship between freedom of will and doom has been relevant at all times of human history and is reflected in the works of a huge number of scientists, philosophers, theologians and lawyers.

The views of the Stoics are well known, including the idea of a destiny that is higher than the gods and is the embodiment of immutable cosmic laws. According to the general understanding, destiny is a predetermined, 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, but which coexists with freedom of action. Socrates emphasized the existence of an "inner voice (daemon)," 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, showing free will⁴.

The ideas of Socrates were a continuation of Socratic schools. Cynics paid special 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

³ Jaspers K. (1994). *The meaning and purpose of history (2nd ed)*. Republic.

⁴ Stenzel J. (1922). *Paulys Realencyclopädie der classischen Altertumswissenschaft*. J.B. Metzler'sche Verlagsbuchhandlung.

actions⁵. Freedom of will began to be understood through ataraxia and the rejection of external dependencies, in particular, fate.

The development of Socrates' ideas of free will was continued by Plato, who spoke of the need to recognize the existence of three types of existence - eternal ideas, changing specific things and the space in which things exist⁶. Plato identified three principles in the soul: intelligent, affective and irrational (lustful). Freedom of will is aimed at conquering the irrational parts of the soul with the intelligent 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 lives⁷.

Aristotle expressed interesting ideas about the understanding of free will, who considered it relevant only for free people. This was due to the fact that slaves did not have the right to control even their own lives, and therefore, slaves did not have 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, to influence the formation of state will⁸. However, Aristotle did not consider freedom of will in the raw, distinguishing only between conscious and unconscious actions. Man, his "I" acts as 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 purpose, perfection is entelechy⁹.

Aristotle's idea of free will can be generalized as follows: human freedom is manifested in his actions aimed at achieving virtue. This is possible only when the mind is consistent with feelings. Aristotle also used the term "proiresis," which can be defined 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 the mind 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 is something special, separated from the usual nature¹⁰.

In understanding freedom of will, Cicero laid the idea that in the soul there is something independent from fate and prediction, due to which a person has the ability to think independently, make decisions and be responsible for them. He explained this by saying that the

⁵ Nakhov I.M. (1981). *Kinichal literature*. Science.

⁶ Plato. (2015). *Complete Works in one volume*. Alpha book.

⁷ Plato. (1999). *Collected works: in 4 volumes (Vol. 3)*. Mysl.

⁸ Aristotle. (2003). *Politics*. Osnovy.

⁹ Antyukhina A.V. (2001). *Freedom of will as a kind of determinism: socio-philosophical analysis*. Dis. Doctor of Philosophy, Pyatigorsk.

¹⁰ Cicero M.T. (1975). *On contempt for death. Selected Works*. Fiction.

soul that feels that it is moving, simultaneously feels that it is moving with its own, and not with someone else's power¹¹.

Cicero's views on understanding free will through the prism of passions and desires were recognized as progressive. In his study, M.V. Vidrigan summarizes this concept of Cicero, 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 desired is achieved - a person rejoices. So, the will is a stable and reasonable desire or desire for good, but if it's all very excited and not reasonable, then it's lust and evil¹². This confirms Cicero's statement that according to the laws of nature itself, all people reach for what is considered good for them and avoid the opposite, so if an object seems good, then nature itself tells to achieve it. If this attraction is stable and smart, then the Stoics call it *bulez*, and we call it will¹³.

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 the further development of the concept of free will. For example, they are united by E. Fromm's views that the only criterion for the realization of freedom - the active participation of the individual in determining their own destiny and society, not only by a formal act of voting, but also their own daily activities, their work, their relationships with other people¹⁴.

We must agree that the historical experience of ancient Greece is valuable primarily because it has accumulated a well-developed political and legal thought and a considerable legacy and legal practice that remain relevant today. Characteristically, these outstanding thinkers, who presented excellent approaches to understanding the boundaries of individual freedom and the boundaries of power of the institutional mechanisms of the state, appeared in the classical period of Greek democracy. This has already shown a direct connection between political freedom and human freedom, which can be realized as a citizen, individual, thinker, artist, and entrepreneur¹⁵.

The ideas of Antiquity about free will can be generalized by the poetic views of Quintus Horatius Flaccus, who recognizing the omnipotence of Fortune, still left man 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 disfavor of fate to man, the poet

¹¹ Cicero M.T. (1975). *On contempt for death. Selected Works*. Fiction.

¹² Vidrigan M.V. (2018). Reflections on freedom of freedom in Cicero's philosophical treatments. *Visnyk of Cherkasy University*, issue № 1, 13 – 18.

¹³ Cicero M.T. (1985). *About fate*. Nauka.

¹⁴ Fromm E. (1990). *Escape from freedom*. Progress.

¹⁵ Vdovychyn I. Y. (2013). *Realization of personal freedom in Ancient Greece (political and legal ideas and state and legal mechanisms)*. Actual problems of politics.

saw in human passions, sins, so his calls to get rid of defects and moral improvement of man today are very important¹⁶.

The idea of free will was laid down in Antiquity, 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 free will. But it was in the Middle Ages that 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 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, founder of biblical philology and author of the term «Godman».

Origen paid considerable attention to the question of free will, which is transformed depending on human actions. Thus, in the beginning, the freedom of will of a rational being is full, after committing sin, freedom of will is limited, in particular, man, being in body, is exposed to a certain influence. After all, the end is associated either with the preservation of free will in its original form and then the cycle is endless, or everything ends in God, which requires a qualitative change of free will¹⁷.

The works of Aurelius Augustine were of paramount importance for understanding free will. His work «*Deliberioarbitrio*», in which he focuses on philosophy about the relationship between free will and divine will, deserves special attention. He emphasized that everything created by God is somehow involved in the absolute good - the All-Good: because the Almighty, carrying out creations, depicted in the created a certain measure, weight and order, establishing an extraterrestrial image and meaning. How good is done in nature, in people, in society. He noted that any nature that can get better is good¹⁸. Thus, Augustine delved into the idea of theodicy, recognizing 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 rational

¹⁶ Hasanov I.A. (2018). Free will and whims of fortune in the poetry of Quintus Horace Flacca.

Wschodnioeuropejskie Czasopismo Naukowe (East European Scientific Journal), issue 5 (33), 67-70

¹⁷ Eremina A.V. (2011). *The doctrine of free will in Origen's treatise "On the Principles"*. Electronic repository. <https://cyberleninka.ru/article/n/uchenie-o-svobode-voli-v-traktate-origena-o-nachalah>

¹⁸ *Sanctus Aurelius Augustinus De libero arbitrio*. Electronic repository.

https://web.archive.org/web/20070716185902/http://www.philosophy.ru/library/august/de_libero_arbitrio.rus.html

part of the soul. In this regard, he emphasizes 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 matters of faith and complete reliance on divine grace and the will of God¹⁹.

Similar ideas can be seen in the writings of Boethius, who emphasized the endowment of man with reason and the ability to distinguish between what should be desired and what should be avoided. If there was 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 will²⁰.

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 emphasized 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 recognized as the basis of the existence of free will and dominates it. Using a completely logical method of research, Thomas Aquinas concludes that freedom of choice is necessary, because without it a person cannot be responsible for their actions, without it there can be no sin and virtue, punishment and reward. But a person can be free only when the source of free will is reality, if his intellect really reflects the objective need²¹.

Aquinas' views were improved in the religious mysticism of Bernard Clairvaux, who defined freedom as the ability of the soul to follow its own will, which does not depend on external coercion. In his work, he emphasizes the existence of evil in human use precisely because he has free will, which was born of original sin²².

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 is related to freedom from sin and is called "freedom of grace." The third type of freedom gives a person the opportunity to overcome their desires and sins and this is freedom from

¹⁹ Potsyurko M. (2018). *Evolution of ideas about freedom of freedom and predestination from ancient times to the reformation*. Electronic repository. <https://doi.org/10.21272/wpr.2018.13.21>

²⁰ Boethius. (1990). *"Consolation of Philosophy" and other treatises*. Nauka.

²¹ *Corpus Thomisticum: S. Thomae de Aquino Opera Omnia — Complete Works of Thomas Aquinas*. Electronic repository.

<https://web.archive.org/web/20131011213125/http://www.corpusthomisticum.org/iopera.html>.

²² *Opera omnia Sancti Bernardi Claraevallensis (Complete Works of St. Bernard of Clairvaux)*. Electronic repository. <http://www.binetti.ru/bernardus>.

suffering or freedom of life²³. So, Clairvaux speaks of free will as the ability to make decisions with one's own 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 dissertation.

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 freedom of thought and the right to doubt religious dogmas, reflected in the work «One hundred and sixty theses against mathematicians and philosophers»²⁴. 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 free will, which gives man the opportunity to draw closer to God or become a slave to passions. This is the difference between man and other beings that are not endowed with free will²⁵. Thus, we again see the thesis of free will as a measure of possible behavior based on conscious choice of action.

At the same time, the Reformation gave rise to new theological approaches to free will. Thus, Martin Luther emphasized 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 completely disappointed in themselves do not choose anything, but expect what the Lord will do, have the opportunity to be happy in the future, because the highest degree of faith to believe that God is merciful when he saves not many. And He condemns many to consider it only when, of His own free will, He makes us inevitably worthy of condemnation. If we understood all this, faith would be unnecessary. If salvation depends on man, then where is the place of God's grace. Thus, in fact, Luther deprives the church of its historical role and gives it individuality²⁶.

Views of F. Suarez who speaks about influence of God on human acts and his will only when *gratia efficiens* can take place without restriction of freedom of the person are important²⁷. 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 XVII - early XVIII 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 in the complete passivity of the human soul, in the complete knowledge of the will of God and in the

²³ Bernard of Clairvaux (1987). *Selected Works: Classics of Western Spirituality*. Ser. Paulist Press.

²⁴ Giordano Bruno. *Articuli centum et sexaginta adversus huius tempestatis mathematicos atque Philosophos*. Electronic repository. <https://biography.wikireading.ru/50661>

²⁵ Shestakov V.P. (1981). *Aesthetics of the Renaissance: An Anthology*. In 2 volumes. (Vol. 1). Art.

²⁶ Potsyurko M. (2018). *Evolution of ideas about freedom of freedom and predestination from ancient times to the reformation*. Electronic repository. <https://doi.org/10.21272/wpr.2018.13.21>

²⁷ Francisco Suárez. (2011). *De Divina Gratia*. Nabu Press.

complete leveling of the human will. Such improvement excluded any action of the will, even those aimed at everlasting good or unity with God²⁸. This view completely denied the opposite approaches and hindered the existence of 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 modern philosophy and law. The philosophical approach of rational determinism of will is inextricably linked with the ideas of T. Hobbes, B. Spinoza, I. Kant, I. Fichte and G. Hegel. The latter understood the will of thinking, which is realized in human activity, while the will and thinking are respectively the practical and theoretical side of a single spirit.

Thomas Hobbes developed a fundamental system of views on free will, which became the basis for numerous studies. His idea of 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 virtue of 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 rise²⁹. Thus, free will exists within the real possibility of choosing behavior. 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 of will 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. Human actions, like all other natural phenomena, are subject to the universal law of mechanical necessity, which, however, is compatible with freedom³⁰.

The ideas of T. Hobbes were continued by B. Spinoza, who wrote about the possibility of man to be free only when he lives by the prescription of mind, not guided by fear of death, desires good, seeks action, to live, maintain their existence based on their own interests³¹. Thus, B. Spinoza defines freedom as a known necessity.

Descartes referred the will to the thinking world of man, emphasizing the existence of free will as a possibility to choose what to agree with and what not³².

²⁸ Potsyurko M. (2018). *Evolution of ideas about freedom of freedom and predestination from ancient times to the reformation*. Electronic repository. <https://doi.org/10.21272/wpr.2018.13.21>.

²⁹ Antyukhina A.V. (2001). *Freedom of will as a kind of determinism: socio-philosophical analysis*. Dis. Doctor of Philosophy, Pyatigorsk.

³⁰ Antyukhina A.V. (2001). *Freedom of will as a kind of determinism: socio-philosophical analysis*. Dis. Doctor of Philosophy, Pyatigorsk.

³¹ Spinoza B. (1933). *Ethics proved in geometric order and divided into five parts, in which ...* Sotsekiz.

³² Descartes R.D. (1989). *Works: in 2 volumes (v.1)*. Mysl.

Thanks to classical German philosophy, there is a deep understanding of 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, which, based on the formal principle of action, only one can ensure the moral quality of action. The mind, according to I. Kant, is subject to its own law, which means that it is autonomous and legitimate for itself³³.

I. Kant finds the manifestation of free will in the sense in which man endows his actions. If a person were indifferent to his choice, his actions would be random, and this would be the end of all freedom. Subsequently, these ideas evolved within the metaphysical concept of transcendental freedom. I. Kant defined free will as such, which can manifest itself independently of sensual impulses³⁴.

The relationship between freedom of will and law can be distinguished separately. Kant also emphasized the independence of the will from any law except the law of morality³⁵. 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 own 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 deliberately break the law. If the parties comply with the law, they also do so at their own discretion, guided by morality.

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

The classic Hegel's thesis announces that the starting point of law is will, which is free, therefore freedom is its substance and concept, and the legal system is the sphere of realized freedom³⁶. It was Hegel who laid the foundations of free will in the understanding of law, emphasizing the impossibility of the existence of law without free will. Today this idea is in the centre of the system of natural law.

The dialectic of 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, law as degree and form of freedom, law as statute. At

³³ Brovko N.I. (2007). *Personal freedom of the individual as a form of realization of the idea of freedom of will in the philosophy of law GVF Hegel*. Electronic repository. <http://elar.naiau.kiev.ua/jspui/handle/123456789/6498>.

³⁴ Kant I. (1999). *Critique of Pure Reason*. Phoenix.

³⁵ Kant I. (2017). *Critique of practical reason*. Publishing house "E".

³⁶ Hegel Georg Wilhelm Friedrich (2000). *Fundamentals of philosophy of law, or Natural Law and Political Science*. Universe.

the same time, all stages of the development of the objective spirit are determined by the idea of freedom, and this sphere itself is the realization of freedom in the forms, methods and institutions of human coexistence³⁷.

However, Cohen enters into a controversy with Kant's ideas and proposes to abolish the concept of free will and use instead the concept of autonomy. 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 but not as a given but as a pure task. The concept of autonomy is similar to the concept of free will in that they both allow actions to be attributed to a moral subject. Cohen writes about responsibility as one of the stages in the development of the concept of autonomy³⁸.

L. Feuerbach goes as far as a materialist can go in the development of this problem, who has not yet overcome the contemplation of knowledge and has not reached a materialist understanding of social life³⁹. His ideas about free will were detailed through the understanding of criminal law and were about to the recognition of the existence of 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 prosecuted when a person 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 XIX century by A. Schopenhauer. Schopenhauer called the observed changes in reality "objectification." According to Schopenhauer, the objectification of the will is the basis of all existence. Within this ontological general will, there are a number of successive objectifications of the will of different levels, and at the basic level there is initially no significant observer endowed with reason⁴⁰.

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 can be free, there can be no freedom where there is no thought⁴¹. So, we are talking again about the direct connection between freedom of will and mind, as the main mechanism of its existence.

³⁷ Brovko N.I. (2007). *Personal freedom of the individual as a form of realization of the idea of freedom of will in the philosophy of law GVF Hegel*. Electronic repository. <http://elar.naiau.kiev.ua/jspui/handle/123456789/6498>.

³⁸ Kovrov A.E. (2012). *Modern strategies for justifying free will. Abstract of the dissertation*. Moscow.

³⁹ Elez J. (1971). *The problem of being and thinking in the philosophy of Ludwig Feuerbach*. Moscow.

⁴⁰ Samoilov I.D. (2016). *The phenomena of power and will in society. Abstract of the dissertation*. Chelyabinsk.

⁴¹ Locke J. (1985). *Works: in 3 volumes. (Vol. 1)*. Moscow.

Leibniz developed the ideas of J. Locke, introducing the idea of the existence of determinations of mental activity, which indicate the need for mental processes only as a forced or mechanical impulse. The leading German philosopher G. Leibniz laid down the principle of established harmony with the presentation of the problem of freedom of will. He refused to acknowledge the premonition of every human action and came into his own conflict: everything is based on harmony, man is endowed with free will, but it leads to chaos and destroys harmony. 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 on the basis of 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 existence⁴².

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

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

The eminent German philosopher Friedrich Nietzsche developed Schopenhauer's ideas of free will and set out his own vision in «Thus Spoke Zarathustra», «Beyond Good and Evil» etc⁴³. His understanding of freedom, through which 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, so 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 freedom⁴⁴.

⁴² Marx K., Engels F. (1965). *Works: in 30 volumes (Vol. 23)*. Derzhpolitvydav USSR.

⁴³ Friedrich Nietzsche (2020). *Bibliothèque nationale de France*. Electronic repository. https://data.bnf.fr/en/11917712/friedrich_nietzsche/.

⁴⁴ Antyukhina A.V. (2001). *Freedom of will as a kind of determinism: socio-philosophical analysis*. Dis. Doctor of Philosophy, Pyatigorsk.

Martin Heidegger set out his vision of free will in «Sein und Zeit». His concept was based on the idea that free will is based on fear⁴⁵.

Carl Jaspers expressed similar ideas when considering freedom of will in its relation to 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, writes about freedom of decision, law and freedom of choice, the existence of being⁴⁶.

Development of ideas about free will is also found in the works of Sartre. In particular, in his work «Being and Nothingness» he identifies freedom of will and «absolute freedom»⁴⁷. He emphasizes that since everyone is endowed with mind, free will is inherent in every person as an opportunity to choose his actions. Thus, 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 who to become. At such moments, the tension and uncertainty in our mind about what to do are reflected in some uncertainty of the neural processes themselves, "excited" by the conflict in our will⁴⁸.

Conclusion

The definition of free will has developed from antiquity to the present day, undergoing a gradual evolution of views and finally reflected in law. In ancient times, freedom of will was inextricably linked to fate. In the Middle Ages, there were several different concepts of understanding freedom of speech, but they were all closely related to divinity. The question of free will, raised in the dogmatic debates of Christian theologians, migrated to the classical philosophy of modern times, in which it received an ambiguous understanding. Will was recognized as an integral ability of man as an intelligent being, without which his mind is unable to understand itself in time and space. On the other hand, 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 physical or mechanistic cause of phenomena.

⁴⁵ Akhutin A. V. (1998). "Being and Time" by Martin Heidegger in the philosophy of the XX century: Materials of discussion: A. V. Akhutin, V. I. Molchanov, T. V. Vasilieva and others. *Questions philosophy*, No. 1., 110-121.

⁴⁶ Jaspers K. (1999). *The question of guilt*. Progress.

⁴⁷ Sartre J. P. (2000). *Being and Nothing: An Experience of Phenomenological Ontology*. Republic.

⁴⁸ Kane R. (2016). Doing "of your own free will": modern reflections on an ancient philosophical problem. *Logos. There is free will*, issue 5, 103-130.

For sure, the number of scientists and philosophers who have studied free will is much greater than those described in this study. However, the analysis is considered sufficient and allows us to see the evolution of views on free will and its undeniable impact on the law.

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