

The unfreedom of the human will and its influence on the law

Abstract

This thesis addresses the question of the existence of freedom of human will and moral responsibility and their influence on law and legal theory. The aim of the thesis is not to prove the non-existence or existence of free will, but rather a general presentation of the problem and then its theoretical application on law and legal theory. The first part of the thesis contains definitions of basic terms such as moral responsibility or determinism. The most important part, however, is the distinction between compatibilist and incompatibilist definitions of free will.

The second part provides a brief classification and characterization of the different philosophical positions and their approach to the question of free will. First, the positions are divided into incompatibilism and compatibilism. Incompatibilism is then further divided into libertarianism, hard determinism, and hard incompatibilism. For each movement there are included their basic arguments and historical representatives.

The third part contains two recent scientific findings that are relevant to the question of the existence of free will. First are the experiments of neuroscientist Benjamin Libet, which help understanding the workings of the human brain in the decision-making process. The second is psychologist Daniel Wegner's theory of apparent mental causation, which attempts to explain why we experience the sensation of conscious decision-making.

The fourth and final part applies the problem of free will to Czech law and legal theory. In this part the absence of human free will and moral responsibility is assumed. First, I apply these conclusions to private law. I first assess their consistency with legal conduct, then with private law responsibility and its functions.

In the second half of part four, I consider the consistency of these conclusions with public law. I first examine the concept of freedom of will in criminal law. Then, the consistency of the absence of moral responsibility and the punishment of man. I briefly introduce the two main theories of punishment, namely retributive and utilitarian theories, and assess their consistency with the absence of human freedom of will. Finally, I then theorize about the possibilities of imposing punitive sanctions in a world without moral responsibility.

Key words

Free Will, Moral Responsibility, Determinism