

HISTORICAL AND PHILOSOPHICAL ANALYSIS OF FREE WILL AS THE GENESIS OF UNDERSTANDING LAW

UMA ANÁLISE HISTÓRICA E FILOSÓFICA DO LIVRE-ARBITRÍO COMO BASE PARA A COMPREENSÃO DO DIREITO

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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,

RESUMO: Este artigo científico tem por objeto uma análise histórica e filosófica do livre-arbitrário como fundamento para a compreensão do fenômeno jurídico, baseando-se em conceitos de pesquisadores e filósofos sobre a natureza jurídica do livre-arbitrário. O artigo visa demonstrar que, historicamente, o objetivo principal do direito era o de regular as relações sociais e o livre-arbitrário, ao longo da Antiguidade, Idade Média, Reforma e período moderno. Como marco teórico, são exploradas as ideias de Antístenes, Aristóteles, Sócrates, Platão, Cicero, Flaco, Orígenes, Aurélio Agostinho, Boécio, Bernardo de Clairvaux, Giordano Bruno, Giovanni Pico della Mirandola, Martinho Lutero, F. Suarez, M. de Molpino, T. Spinoza,

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 – Legal understanding – Civil law – Philosophy of law – History of law.

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 e R. Kane.

PALAVRAS-CHAVE: Livre-arbítrio – Compreensão do direito – Direito civil – Filosofia do direito – História do direito.

SUMÁRIO: Introduction. 1. Methodological framework. 2. Legal understanding of free will in Antiquity. 3. Legal understanding of free will during the Middle Ages and the Reformation. 4. Legal understanding of free will in modern philosophy of law. Conclusion.

INTRODUCTION

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.