

The Proposition of Free Will in Jurisprudential Perspective

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Abstract: The proposition of free will has long been regarded as commonly held to be valid, but the truth of this proposition has not yet been determined. However, the design of the legal system is premised on the proposition of free will, so it is necessary to argue the proposition of free will from the perspective of law. The proposition of free will, examined through the concept of proof, can be a viable approach to addressing the issue of free will in legal science.

1. Introduction

Legal scholars often treat free will as a self-evident proposition. However, since ancient times, the question of human freedom of will has not been conclusively confirmed or falsified, but because the belief that human beings have freedom of will is more in line with our intuition and daily experience, legal theory regards it as an unproven truth premise. However, law and jurisprudence, as the foundation of rigorous logic, regard a proposition that has not been proven as true, and take it as an important basis for legal reasoning, so as to determine the attribution and assignment of legal responsibility, which is not only detrimental to the seriousness and rigor of the law, but also involves the evaluation and realization of social fairness and justice. Therefore, many issues in the theory of fault liability need to be effectively sorted out and demonstrated. This paper has three parts, the first part sorts out the arguments of the previous free will propositions, the second part is to connect free will with the concept of will in jurisprudence, and the third part proposes solutions and employs evidence to examine the propositions of free will within the legal framework.

2. Proof of the Proposition of Free Will and Its General Interpretation

According to classical Chinese philosophy, “will” is a conscious activity with a fixed moral direction, which is single, continuous and exclusive, while ‘intention’ is intent, which is the initiation of a new state, indicates the direction of consciousness, and implies the diversity of actions, though it does not emphasize choice, but rather it emphasizes action. Intention marks the beginning of a new action, indicating the direction of consciousness and implying the diversity of actions, while it does not primarily emphasize choice. ^[1] From this, we can see that the “will” in traditional Chinese thought is different from that in jurisprudence. In Western philosophy, Hegel

explains that “the will is a special kind of thinking, that is, the kind of thinking which transforms itself into a fixed being, as an impulse to reach a fixed state.”^[2] The difference between thinking and consciousness is a difference in attitude; thinking is a theoretical attitude, i.e., an attitude that understands the world in such a way that it eliminates alien existence, eliminates all opposition, and universalizes all things. The will, on the other hand, is a practical attitude, which begins with itself, expresses a separation, and engages in actions with the stipulation that it takes a differentiated approach. The will contains thinking and prescribes itself, and this prescribing is internal and expressed through imagination. The difference between human beings and animals is that animals do not possess the will; they act by instinct and are unable to imagine, and therefore do not think. The first origin of the concept of the will is found in the Stoic 'theory of approval'. This approval which you choose to give will constitute a will, and this will is the impulse which impels you to act in a certain way.” “This faculty and inclination can therefore be called 'will' because it expresses your willingness to will yourself to do anything.”^[3] Not only does Fred point to the initial source of the will, but he also points out that the will represents the capacity to choose, rather than being merely a consequence of that capacity. In this sense, the "will" of Western philosophy is similar to the "intention" of Chinese philosophy, but there is a difference between the two. Namely, the former points directly to choice and emphasizes it, while the latter points to unspecified diversity and does not emphasize the necessity of choice. However, both concepts ultimately point to the ability to choose.

If the will requires the ability to choose, it seems natural that choice requires freedom. There seems to be a certain consensus among scholars on this proposition. Hegel, from the level of philosophical discernment, believes that freedom is a fundamental provision of the will, and he uses the relationship between matter and weight as an analogy for the relationship between the will and freedom; matter loses its meaning apart from weight, and weight can only be used to constitute matter, and the relationship between the two is fundamental, as is the relationship between the will and freedom. Some other scholars argue for free will from an ethical point of view, arguing that free will is the ability of people to make open choices among "alternatives available" and that there is no crime if there is no choice. However, some scholars have argued that equating free will with openness to choice would eliminate the significance of responsibility.^[4] But whether free will is equivalent to open choice, if we decide based on consequentialism, it not only fails to clarify the relationship between the two, but also prematurely introduces another important concept: responsibility. Some scholars summarize the phenomena expressed as free will and break them down into the basic elements that are necessary. When these elemental phenomena are present, a constructive sense experience or impression is created - your choice contains multiple possibilities that are open to various outcomes, and this is the first step towards the realization of these elemental phenomena. This interpretation of multiple possibilities as authentic openness is not the only nor necessarily the best reading of freedom of will.^[5] This means that the relationship between freedom of possible will and openness to choice is not one of reciprocity, but of inclusion. Fei Xiao points out that while an authentic open multiplicity of possibilities will undoubtedly provide the experience of freedom of will, there is still another, superior reading - the negative functional reading. The advantage of such readings over selective-other-competence readings is that “they can arise from some cognitive mechanism compatible with causal certainty, one that incorporates a veto function.” It does not require the “freedom from external constraints” necessary for an alternative-competence reading, but rather the ability to veto a seemingly determined choice, despite strong external constraints, as an expression of freedom of will. The negative-functional reading and the alternative-capacity reading are in fact different perspectives on what constitutes "freedom" as well as differing in degree.

3. The Connection between Freedom of the Will and Behaviour

What does the “freedom” of the will actually entail? Since the will is similar to a “substance” in the mind, and the mind is “unknowable”, the state of the will must be observed and judged through some “medium”. This “medium” is generally considered to be the “act”. “Will and act are necessarily and innately linked, deducing the intention of one act analytically from the intention of the other, which is predetermined.”^[6] Fred has explained the direct relationship between will and act in this way, “In a crucial sense, our freedom boils down to the freedom of the mind, and particularly to the freedom of the will”. For, even if we choose to act in a certain way, we cannot ultimately decide whether or not we will succeed in bringing to fruition in the external world what the mind has decided to do. Therefore most scholars relate the freedom of the will to actions as a way of determining whether the will is free or not. In this regard, Kant says, “If the will refers only to merely a law, then this will can neither be said to be free nor unfree, for it has no direct relation to the act, but it provides a law for the norm of the act, and is therefore practical reason itself. Therefore, this will, as a faculty, is absolutely necessary in itself; it is not subject to any external compulsion. Therefore, only in the course of one's own conscious activity can that act of choice be called free.”^[7] That is, “Only when the subject is free from the entanglement of desires and interests does his will become free. So the free will legislates itself.” However, freedom of the will in the Kantian sense only exists in an ideal empire. In reality, members of society have two sets of conceptual systems that prevent them from moving towards Kant's ideal hall. One set is the concepts shared by the majority of society, which are shared in the form of social opinions, legal documents, and so on, and play a role in a certain geographic area and a certain stage of history. The other set is the concepts shared by members of the society as atomic individuals, which are affected by the level of knowledge, education and cognitive differences of individuals, and are reflected in the form of personal character, habits and values. Therefore, it is difficult for people in real life to realize “freedom of will” in the sense of Kant, and in the world of law, the most appropriate understanding is to equate the freedom of will with the freedom of action.

4. The Proposition of Free Will in the evidence-based view of proof

The scientific revolution has had a radical impact on the course of human history, and the concept of science has become so deeply rooted in people's minds that it seems that all phenomena in society can be explained by science. However, the current level of science does not provide an effective and complete chain of argumentation for “the will is not free”. As Prof. Fei Duoyi said, “There is a fundamental difference between experience at the individual level and neural activity at the sub individual level. Neuroscientists tend to limit free will to the excitation or reaction of actions, whereas free will states the possibility of behaviour at the individual level - the neural activity on which experience depends is a phenomenon at the sub individual level, and its content lacks the holistic and normative character to account for logical connections.”^[8] The two belong to different conceptual levels of understanding and do not prove or disprove each other, and to dismiss with conclusions at different conceptual levels is to make an inappropriate leap.

“The cognitive level of human beings is extremely limited. When cognitive level is not satisfied, how should we view the proposition of freedom of will in the field of law? In my opinion, the safest way is to adopt a more practicable and achievable ‘evidence-based view of proof’. This view of proof differs from the traditional ‘verification view of proof’, as the ‘verification view of proof’ cannot reach a definite and stable conclusion. Kun Chen points out that there are three differences between the ‘evidence-based view of proof’ and the ‘verification view of proof’. Firstly, the verification of the conclusion is irrevocable, whereas the conclusion based on evidence can be withdrawn. That is, the evidence-based view of proof involves a logical inclusion of the relationship

with the theory of annulment. Secondly, verification is one-way, proceeding only from the general nature of the premise to the unidirectional observation of propositions, whereas evidence is not directed towards unidirectional propositions as a prerequisite for general propositions leading to a conclusion. Thirdly, verification is 'all or nothing', only yes or no, with no difference in degree, whereas there is a difference in the strength of the degree of proof.^[9] Take the proposition of freedom of the will as an example. According to the current level of science and technology, the will being decided in advance or the will being free cannot be rigorously explained from a scientific perspective. If, according to the verification-type proof view, the conditions cannot be completely satisfied, then the theory of will determinism or the theory of freedom of the will cannot be established. The effect of this is that the question of whether the will is free is canceled, and it will no longer be a problem, leaving no space or meaning for discussion.” The proposition of freedom of the will under the evidentiary perspective, on the other hand, can skillfully avoid this danger. Under the evidential view of proof, when the proposition of freedom of will (proposition q) is evidenced through people's sensory experience, intuitive experience, embodied experience, etc. (experience p), and in the absence of other experiences or propositions (r) that are discovered and formulated, the supporting relation between experience p and proposition q still exists, and it remains in the state of evidencing. That is to say, experience p provides a defeasible rather than a conclusive reason for the establishment of proposition q. Once an experience or proposition r emerges, it cuts off the support of experience p for proposition q, returning proposition q to its unproven state. And as long as no empirical or propositional r has emerged that is indeed true, the proposition of freedom of will (proposition q) is at least temporarily accepted as true. This view allows free will propositions to survive in the cracks and can provide a buffering effect for the design of legal systems based on free will propositions.

5. Conclusions

The conclusion of this paper is to define the freedom of the will in jurisprudence as “autonomy” or “the ability to make decisions of its own”, and to conclude that the proposition of freedom of will is tentatively true until there is a definite and complete experience.

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