

Viktor Savchenko

FREE WILL IN CIVIL LAW

A Ukrainian Perspective



With a foreword by Thomas Douglas

Ukrainian Voices, vol. 104

ibidem

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Foreword

It is a pleasure to introduce this monograph by Dr. Viktor Savchenko, which is the culmination of research that he conducted during his time at the Uehiro Oxford Institute.

When Viktor joined the University of Oxford as a British Academy Fellow, I have had the privilege of serving as his academic mentor. During this period, I have seen his work evolve into an ambitious synthesis that touches on many different areas of law and also begins to bridge a significant divide between philosophy and civil law.

The timely publication of *Free Will in Civil Law: A Ukrainian Perspective* meets a growing global interest in Ukraine. While international attention often focuses on geopolitics, this book shifts the perspective toward the country's intellectual traditions, offering a sophisticated analysis of how free will is applied in Ukrainian law.

Savchenko's research addresses a significant gap in existing scholarship. While the philosophical debate over free will is vast, it often remains detached from the practicalities of private law. Conversely, legal scholarship sometimes treats free will as a merely procedural matter. This monograph unites these perspectives by examining the methodological principles for recognising freedom of the will across a broad spectrum of legal relations.

By examining how freedom of the will operates within different areas, Savchenko provides more than just legal commentary. He offers a window into the values of a legal system striving to align with European standards while maintaining its unique scholarly voice.

At a time when Ukraine's European future is being forged, understanding its legal and philosophical perspectives is more important than ever. This book makes a substantial contribution to that understanding, and I highly recommend it to scholars of law, philosophy, and Eastern European studies alike.

Professor Thomas Douglas
Uehiro Oxford Institute
University of Oxford

Introduction

This monograph is the first comprehensive study of the theoretical and practical problems of free will in civil law, with in-depth attention to the legal system of Ukraine. The work provides a thorough analysis of new ideas and contemporary international legal trends concerning the subject. The relevance of this research is underscored by the central importance of free will to all fields and institutions of civil law. This principle determines the logic and scope of the study, each section of which offers a detailed analysis of the significance of free will for a specific area of civil law. The study demonstrates how an understanding of this concept affects the resolution of contemporary challenges in civil law, analysing the relationship between free will, personal integrity, and compliance with legal requirements.

This monograph will be of value to academics, lecturers, doctoral candidates, students, legal practitioners, and the general public.

Civil law is based on constructs and principles that stem from the foundational ideas of the nature of law itself. It is fundamentally based on normatively enshrined principles, namely: (1) the inadmissibility of arbitrary interference in a person's private life; (2) the inadmissibility of the deprivation of property rights, except in cases established by law; (3) freedom of contract; (4) freedom of entrepreneurial activity not prohibited by law; (5) judicial protection of civil rights and interests; (6) the principles of justice, good faith, and reasonableness.

The essence of these principles suggests they are united by a profound legal idea: the concept of free will. Indeed, the notion of human freedom in action and decision-making underlies the entirety of civil law.

Free will is of central importance to all fields and institutions of civil law, a fact that determines the logic and relevance of this study. Each section, therefore, provides a detailed analysis of the significance of free will for a particular sub-branch of civil law. Furthermore, we demonstrate how understanding the legal nature of

free will impacts the resolution of contemporary problems in civil law. It finds undeniable reflection in personal non-property rights, in the right of ownership and property rights in the property of others, in the law of obligations, and in intellectual property and inheritance law.

Free will is the basis of civil legal relations, which are founded on the principles of dispositivity and autonomy of the will. Violations of these principles are grounds for declaring transactions invalid, classifying vitiating factors, and exempting from civil liability.

Despite this, legislation contains no formal definition of free will, nor does it delineate its boundaries and principles. Likewise, legal doctrine has not yet defined its concept or its place within the legal system.

Nevertheless, the concept of free will is applied across all areas of civil law, influencing the development of legislation and the formation of legal values, acting as a tacit benchmark for law-making. This study is primarily based on the Civil Code of Ukraine of 2003, which remained the governing legislation at the time of writing (early 2026). However, the relevance of the theoretical framework presented here extends well beyond existing legislation. On January 22, 2026, a new draft of the Civil Code was registered in the Verkhovna Rada of Ukraine. Notably, this prospective legislation closely aligns with the expanded concept of free will advanced in this monograph. The author submitted proposals regarding these issues to the Parliament, and the Verkhovna Rada has officially acknowledged the importance of this research for the ongoing legislative reform. Consequently, this work offers both an analysis of the established legal framework and a theoretical foundation for the future of Ukrainian civil law.

An analysis of civil legislation confirms the absence of direct normative contradictions to this legal idea. This provides grounds to assert that the concept of free will is fundamental to the entire branch of civil law and requires a deep and comprehensive analysis.

Some studies have addressed individual issues of free will in the context of legal philosophy, civil law, and criminal law. Still,

modern scientific research has primarily focused on specific principles and institutions. This subject has been addressed by scholars such as Ronald Dworkin (in his work on abortion and euthanasia), David McGoldrick (on the International Covenant on Civil and Political Rights), Lauri Hannikainen (on peremptory norms), Paul Gordon Lauren (on the evolution of human rights), and Johannes Morsink (on the origins of the Universal Declaration). H. L. A. Hart developed a doctrinal "Will Theory," which was countered by the "Interest Theory" proposed by Jeremy Bentham and Rudolf von Jhering. However, these scholars focused primarily on human rights without paying sufficient attention to civil law. More recently, Visa Kurki has investigated free will in the context of legal personhood.

Despite its fundamental importance, a comprehensive study of free will within civil law has not yet been conducted. Given its central role and the aforementioned lack of extensive research, the need for such an inquiry is clear.

The author expresses his gratitude to his academic supervisor, Professor Roman Maydanyk, Academician of the National Academy of Legal Sciences of Ukraine; to the reviewers for their objective assessment of the text; to Professor Tetyana Kaganovska, Rector of V.N. Karazin Kharkiv National University; Professor Vitaliy Seryogin, Dean of the Faculty of Law; and Olena Ustymenko, Head of the Department of Civil Law Disciplines, for their assistance in writing and publishing this monograph. The author is also grateful to Professor Thomas Douglas, Director of Research at the Uehiro Oxford Institute, for invaluable advice and discussions; and to his grandparents, parents, wife, children, and family for their inspiration, support, and understanding.

The author extends special gratitude to Balliol College, University of Oxford, its Master and Fellows, and the British Academy for their comprehensive support of this research.

Published for the first time in English, this book is a revised and updated translation of a monograph previously released in Ukrainian, which has received prestigious awards, including:

1. The Best Publication of 2024 from the National Academy of Sciences of Higher Education of Ukraine;

2. Winner of the III National Competition of Scientific and Educational Publications on Law, Security, and European Integration for the Best Monograph of 2024.

1. Methodological Principles of Recognition of Free Will as the Genesis of Legal Understanding

1.1. Historical and Philosophical Analysis of Free Will as the Genesis of Legal Understanding

Law is the foundation of a civilised society, because it allows us to distinguish between order and chaos, system and disorder. Historically, the primary purpose of law has been the regulation of social relations, a fundamental idea that remains unchanged.

The relevance of a historical and philosophical analysis of free will as the origin of legal understanding is underscored by the foundational works of G. W. F. Hegel. He was the first to conclude that the starting point of law is will, therefore, freedom constitutes its substance and concept, and the system of law is the kingdom of realised freedom (De Caro and Putnam 2020). Philosophical and legal scholarship indicates that the will represents the transformation of subjectivity into objectivity. It is the unity of theoretical consciousness and practical activity, the efficacy of objectified consciousness, and the purposeful regulation of behavior aimed at reshaping reality (Blikhar 2015, 150).

To fully explore this issue, it is necessary to examine the understanding of free will throughout various periods: in the philosophy of Antiquity, the Middle Ages, and the Renaissance; in the doctrines of the Modern Age and classical German philosophy; in 20th-century Western philosophy; and in contemporary Ukrainian philosophy. Such an analysis will allow us to trace the shifting paradigms in the understanding of free will across different historical epochs and to assess its profound impact on the development of law.

The philosophy of antiquity laid the foundations for the understanding of free will, as well as basic legal concepts. Confirmation of this can be seen in the works of Jaspers, who noted that the West is familiar with the idea of political freedom. In Greece, he

argued, a form of freedom existed – albeit briefly – that arose nowhere else. This community of free people withstood the pressures of universal despotism and totalising organization. In doing so, the polis established the foundations for the entire Western conception of liberty, encompassing both the reality of freedom and its ideals (Jaspers 2000).

Aristotle defined philosophy as the process of "thinking about thinking" – the development of thought aimed at self-knowledge and, simultaneously, knowledge of the external world. He argued that without this self-awareness, a person possesses a slavish consciousness, becoming a mere executor of another's will in their motivational impulses. Therefore, the central question of philosophy is not the relationship between matter and consciousness, but that between will and reason. Aristotle posited that the will is not inherently rational from birth; it must be cultivated to become so (Zhadko and Bidzilia 2019). The relevance of these ideas will become apparent later in our discussion of the connection between free will and civil capacity, the scope of a minor's free will, and other related issues.

Ancient times produced a great number of legal philosophers who explored the fundamental ideas of law.

The ancient world produced a great number of legal philosophers who explored the fundamental ideas of law. The flourishing of slave-owning democracy spurred the development of views on personal autonomy and choice. At the same time, the belief in an inexorable fate (*fatum*) that guides individuals and limits their free will persisted. The relationship between free will and predestination has been a recurring theme throughout human history, reflected in the works of leading scientists, philosophers, theologians, and lawyers.

For example, the Stoics are well-known, particularly the concept of fate, which is higher than the gods and is the embodiment of immutable cosmic laws. According to common understanding, fate is a predetermined, unavoidable destiny – a mysterious force that dictates the course of all existence (*Slovnnyk ukrains'koi movy* [Dictionary of the Ukrainian Language] 1979, 10:570). Antiquity

proclaimed the immensity of fate, yet it did not assert that individuals must obey the will of the gods in all circumstances (Potsiurko 2018, 2). These two approaches formed a single philosophy wherein individuals should act according to the dictates of fate but retain the autonomy to decide whether to accept them.

Thus, the initial understanding of free will presupposed the existence of fate alongside freedom of action. Socrates emphasised the existence of an inner voice (*daemon*) that a person hears throughout life and which helps him make choices.

The Cynics paid particular attention to the issue of free will. The founder of the Cynic school is considered to be Antisthenes, a student of Socrates, who linked free will with knowledge and volitional actions (Prince 2020). Free will came to be understood through *ataraxia* (tranquillity) and the rejection of external dependencies, especially fate.

Plato continued to develop Socrates' ideas about free will. In his works, the concept of the need to recognize the existence of three kinds of being is traced: eternal ideas, concrete things that change, and the space in which things exist. Plato divided the soul into three principles: the rational, the spirited (affective), and the irrational (appetitive). Free will is aimed at subjugating the irrational parts of the soul by the sensible part. According to the philosopher's ideas, the soul is not endowed with valid free will and is subject to the world of ideas. He also interpreted freedom itself as a person's responsibility to the state in which they live (Cooper 1997).

Aristotle considered free will to be relevant only for free people. This was explained by the lack of enslaved people's right to dispose of even their own lives, and therefore, enslaved people had no free will and the ability to make legal decisions. Aristotle also considered freedom as an opportunity to participate in power with others alternately and influence the formation of the state will (Aristotle 2003, 66–69). However, Aristotle did not analyse free will in its pure form, distinguishing only between voluntary (conscious) and involuntary (unconscious) actions. He believed that the self acts as the rational cause of voluntary actions, whereas involuntary actions occur spontaneously, without a conscious goal, or are

caused by external circumstances that one cannot resist (Gunderman 2006). Aristotle defined *entelecheia* as the inner striving for a goal and perfection,—that which actualises what is otherwise merely potential, such as the force that makes a flower grow from a seed (The Editors of Encyclopaedia Britannica 1998).

Aristotle's ideas on free will can be summarised as follows: human freedom is manifested in actions aimed at achieving virtue, which is possible only when reason aligns with the senses. He also used the term of *proairesis*, which can be defined as a rational choice or deliberated desire (Sorabji 2007).

Somewhat different views are found in the philosophical treatises of Cicero. One must agree with G. Striker, who highlights the eclecticism of Cicero's philosophy and his attempt to create a distinctly Roman philosophy befitting the greatness of his state and satisfying the spiritual needs of its people (Striker 2022). Cicero's idea of free will stems from his analysis of the soul and mind. He noted that the mind—with its memory, thought, and imagination—allows a person to preserve the past, foresee the future, and comprehend the present. This capacity, he argued, is divine and can only come from God; therefore, the nature of the soul is something special, distinct from the physical world we know (Cicero 2010).

In his understanding of free will, Cicero included the idea that there is something in the soul that is independent of fate and foresight, thanks to which a person is endowed with the ability to think independently, make decisions and be responsible for them. He explained this with the thesis that a soul that feels itself moving also feels that it moves by its own power, not by an external one (Cherevko 2022).

Cicero's views on free will, seen through the prism of passions and desires, were progressive for his time. M. V. Vidryhan summarises Cicero's concept by noting that desire and joy arise from our understanding of the good; what seems good becomes a goal to be achieved. Desire, taking hold of a person, becomes the driving force for action. When the goal is achieved, the person rejoices. Thus, will is a stable and rational desire or aspiration for the good. If this desire becomes overly agitated and irrational, it turns into lust and evil (Vydryhan 2019, 16). This is confirmed by Cicero's statement

that, according to the laws of nature itself, all people are drawn to what is considered suitable for them, and the opposite is avoided; therefore, if the object seems reasonable, then nature itself commands us to achieve it. If this desire is stable and rational, the Stoics call it *boulesis*, and we call it will (Cicero 1991).

Summarising Cicero's ideas on free will: a creator or god, who is a free mind in continuous self-motion, stands behind the universe and animates human bodies with particles of its divine soul; the soul is an ideal phenomenon located in the head, possessing mental, volitional, and sensory properties; will is a stable and rational desire for the good; those who claim that fate and a primordial series of causes govern humanity deny free will; human freedom consists not in wanting for nothing or obeying no one, but in having the will to submit when necessary, to govern when it is a moral or state duty, and to resist succumbing to fate or other external circumstances while pursuing what is right and honorable, even in the face of great difficulties and dangers; humans experience various forms of freedom, including moral, religious, and political (Vydryhan 2019, 17).

The period of Antiquity was a great impetus for the development of philosophical and legal thought, in particular, by laying the foundation for the original concepts of free will. The ideas of its leading thinkers became the basis for later developments. For example, they inform the views of Erich Fromm, who argued that the only criterion for the realisation of freedom is the individual's active participation in determining their own destiny and the life of society – not just through the formal act of voting, but through their daily activities, work, and relationships with others (Fromm 2011).

The historical experience of Ancient Greece is valuable primarily because it accumulated a highly developed body of political-legal thought and state practice that remains relevant today. It is characteristic that prominent thinkers like Protagoras, Socrates, Plato, and Aristotle, who represented different approaches to the limits of individual freedom and state power, emerged during the classical period of Greek democracy. This revealed the direct link between political freedom and personal freedom, which could be

realised through citizenship, individuality, and intellectual, artistic, or entrepreneurial pursuits (Vdovychyn 2013, 419–420).

The ideas of Antiquity regarding free will are also reflected in the works of Quintus Horatius Flaccus, who expressed an ambivalent attitude toward social criticism in his satires and poetic invectives (Tarrant 2020). While acknowledging the omnipotence of Fortune, he maintained that individuals have the right to free choice and must bear responsibility for their actions. This constitutes the uniqueness of Horace's vision of fate's role in human life.

The ideas about free will, laid down in Antiquity, underwent their development in the Middle Ages and during the Renaissance. The Stoics had taken the first steps in distinguishing between foresight, fate, and their connection to free will, but it was in the Middle Ages that the concept of predictability and freedom was elaborated upon at the level of religion. The era was permeated with Christian influences, which interpreted free will as the ability to choose between good and evil and to act in accordance with Church teachings or to disregard them (Yaruniv 2018, 29). As a result, free will became understood through the norms of morality.

Medieval Christianity faced a dilemma: from the standpoint of reason, free will exists, meaning a person is responsible for their actions; from the perspective of faith, there is complete submission to the Divine will, which limits the ability to make independent decisions.

A special place in the transition from the views of Antiquity to Medieval Christianity is occupied by the ideas of Origen – a Greek Christian theologian, philosopher, and scholar (Holcomb 2018) – the founder of biblical philology and the author of the term "God-man" (The Oxford Handbook of the Epistemology of Theology 2017).

Origen paid considerable attention to the issue of free will, which he believed transforms depending on a person's actions. He argued that a person is born with complete free will, but it becomes limited with each act committed. As a result of their life, a person either retains full free will and is reborn or loses it and merges with God, leading to a complete transformation of their free will (Kantzer 2012). These views bear a resemblance to the concepts of

karma and reincarnation in Hinduism and Buddhism, although Origen had no direct connection to them.

The works of Aurelius Augustine were of great importance for understanding free will. His treatise *De libero arbitrio* (On Free Choice of the Will) deserves special attention, as he focuses on the relationship between human and divine will. He emphasised that everything created by God is to some extent involved in absolute goodness – the All-Good God: after all, the Almighty, carrying out creation, depicted in the created a certain measure, weight and order, laying down an extraterrestrial image and meaning. To this extent, good is inherent in nature, in people, in society. He noted that any nature that can become better is good (Bagnall 2012). Thus, Augustine deepened the idea of theodicy, acknowledging the influence of God on human will and the impossibility of evil existing without good.

At the same time, Augustine explicitly recognized the active power of the will, locating it at the very center of human psychology. In his analysis of the mind, he argued that the will is not merely a moral capacity but a fundamental element of all cognition, inseparable from memory and intellect. Illustrating this interdependence, he wrote:

I remember that I have memory, understanding, and will; and I understand that I understand, will, and remember; and I will that I will, understand, and remember. (Augustine 2002, 58)

By introducing this theory, Augustine posited that the will is the unifying force that directs attention and actualises thought. This inherent capacity for volition is what made the theological narrative of human freedom possible. For instance, Augustine maintained that Adam was created with a truly free will; had God not endowed him with this capacity, Adam's breaking of the covenants would have been meaningless – an act of divine orchestration rather than a genuine, tragic choice of his own volition.

As M. Potsyurko summarises, in his early works, Augustine held that reason and wisdom are a worthy path to a blessed life, which entails the liberation of the soul from bodily defilement and living in accordance with the soul's rational part. He emphasised

that free decision is not subject to natural causality and that divine providence does not eliminate the autonomy of the will (Potsiurko 2018, 174). Later, he adopted a fideistic position, affirming the imperfection of human reason in matters of faith and advocating for complete reliance on Divine grace (a conviction Augustine held during the anti-Pelagian polemic) (Ibid.).

Similar ideas can be found in the writings of Boethius, who emphasised that man is endowed with reason and the ability to distinguish what to desire from what to avoid. He argued that if there were no free will, there would be no point in rewarding the good and punishing the wicked, as these outcomes would not be the result of free choice (Boethius 1999).

Further development of ideas about free will can be seen in the works of Thomas Aquinas, who defined man's striving for freedom as his characteristic feature. He emphasised that man is endowed with a rational soul and free will, and because of this, he chooses his actions and is responsible for them. Reason is recognized as the basis for free will and dominates it. Using a logical method, Aquinas concluded that freedom of choice is necessary; without it, concepts like sin and virtue, punishment and reward, could not exist. However, a person can only be free if the source of their free will is reality and if their intellect accurately reflects objective necessity (Aquinas, *Opera omnia*).

Aquinas's views were refined in the religious mysticism of Bernard of Clairvaux, who defined freedom as the soul's ability to follow its own will, independent of external coercion. Clairvaux attributed the presence of evil in human life to free will, born of original sin (Claraevallensis 1620). An analysis of his selected works reveals three types of freedom in his concept. The first distinguishes man as a unique creature with a mind and soul, a freedom endowed by nature. The second is freedom from sin, called the 'freedom of grace'. The third, the freedom from suffering or the freedom of life, gives a person the ability to overcome their desires and sins (Clairvaux 1987). Thus, Clairvaux speaks of free will as the capacity to make decisions through a struggle between reason and sin. If the religious component is removed, it becomes clear that modern conceptions of free will are based on similar principles.

The religious constants of the Middle Ages began to take on a progressive form with the advent of the Renaissance and the start of the Reformation. This was based on Giordano Bruno's idea of freedom of thought and the right to doubt religious dogmas. Bruno's ideas continued the concepts of his predecessor, Pico della Mirandola, who posited that free will gives man the ability to either ascend to God or become a slave to his passions, distinguishing humanity from other creatures (Copenhaver 2022).

At the same time, the Reformation gave rise to new theological approaches to free will. Martin Luther emphasised the impossibility of a rational theodicy, arguing that a person's salvation is not linked to their purposeful actions. He reasoned that only a person completely disappointed in themselves ceases to choose and instead waits for God to act, thereby having the chance for future happiness. The highest form of faith, he argued, is to believe that God is merciful even when He saves few and condemns many, and to consider Him just when, by His own will, He makes us worthy of condemnation (Potsiurko 2018, 176). The views of Francisco Suárez are also of great importance; he speaks of God's influence on human actions only in cases where *gratia efficiens* (effective grace) can occur without restricting human freedom (Suárez 2011). These ideas became the basis for the theory of Congruism.

In summary, for Antiquity, the understanding of free will was tied to the existence of fate. In the Middle Ages, the Augustinian dilemma arose between acknowledging free will and complete submission to the will of God. The Reformation emphasised a fatalism that precluded free will, while the Renaissance prioritised the autonomy of the human will alongside the divine. Although the approaches of medieval philosophers often reflected a deterministic, theocentric position, they contradicted the classical evangelical tradition and were later completely reinterpreted.

Ideas about the autonomy of human free will evolved in the philosophy of the Modern Age. The rational determinist approach to the will is linked to the theories of Thomas Hobbes, Baruch Spinoza, Immanuel Kant, Johann Gottlieb Fichte, and G. W. F. Hegel.

Hobbes developed a fundamental concept of free will that became the basis for numerous doctrines, including theories of relative derivation and rational choice (Boudon 2003). He justified free will based on the conviction that any object is free if its essential nature contains no obstacles to its movement when acting according to its internal laws (Johnson 2020). A flame, for instance, spreads in various directions but is not endowed with a will to determine its path. Thus, free will exists within the real possibility of choosing one's behavior. A person has the freedom to walk, but if they have no legs, they are physically unable to do so, and their free will is limited. Human actions arising from the will are free, yet they are also necessary, as they are caused by factors independent of the subject. Like all other natural phenomena, human actions are subject to the universal law of mechanical necessity, which is nonetheless compatible with freedom (Holden 2023).

René Descartes attributed the will to the thinking world of man, emphasising the existence of free will as the ability to decide for oneself what to agree with and what to reject (Descartes 1985).

Classical German philosophy fostered a deep understanding of free will not only through the lens of philosophy but also from the perspective of law. Kant asserted a direct link between legal freedom and the rationality of the will, which, based on a formal, universally rational principle, is alone capable of ensuring the moral quality of actions. Reason, according to Kant, is subject to its own legislation and is thus autonomous and self-legislating (Brovko 2007, 44).

Kant argued that the problem of free will is of a transcendental nature and therefore cannot be understood by physiology or psychology. The concept of freedom, he claimed, is one of the inevitable problems of pure reason and the cornerstone of the entire edifice of transcendental philosophy (Schneewind 2002). Kant paid considerable attention to this issue, starting with his first work, *Principiorum primorum cognitionis metaphysicae nova dilucidatio*. His understanding of free will can be summarised as its perception as practical reason, once again proclaiming the inseparability of free will from the capacity for free thought and decision-making.

Kant finds the manifestation of free will in the meaning that a person ascribes to their actions. If a person were indifferent in their choices, their actions would be random, marking the end of all freedom (Brown, Nardin and Rengger 2002). These ideas later evolved into the metaphysical concept of transcendental freedom. In his *Critique of Pure Reason*, Kant defined free will as something that can manifest independently of sensory impulses (Kant 2007).

The relationship between free will and law is a distinct aspect of his philosophy. Kant thoroughly substantiated the independence of the will from any law except the moral law (Kant 2007). From this, one can conclude that external factors, such as positive law, cannot limit the internal component of free will, as only one's own reason serves as its measure. This can be illustrated in civil law: legislation mandates a written form for real estate sales contracts, yet parties, aware of this, knowingly conclude the contract orally. For instance, instead of a car sales contract, they execute a power of attorney. The external influence of the law failed to compel compliance. Free will allowed the parties to consciously violate the law's norms. Formally, the parties achieved their goal (one receives money, the other gains possession and use of the property), but legally, their actions are not recognized as a transfer of ownership.

When parties comply with the law, they also do so at their own discretion, guided by moral norms. This study will further argue that the law does, in fact, limit free will through its norms, compelling parties to make decisions within its framework. On this issue, Kant's theory is more philosophical than practical-legal, as from a normative standpoint, transactions that violate legal requirements (e.g., defects of form or will) are deemed invalid.

One of Kant's key theses is the compatibility of free will with the necessity that exists in nature, where free will is understood as the independence of the will from causes external to the subject (or reason). This view can be defined as a form of compatibilism, albeit a special kind, as compatibilists typically define free will in a way that does not presuppose independence from external factors. Kant inextricably linked free will with moral responsibility, which suggests his support for compatibilism as an opposition to causal determinism.

To define free will as the genesis of legal understanding, it is necessary to note Kant's concept of the autonomy of the will, where he endowed the will with the property of establishing laws for itself. This approach correlates with the modern principle of freedom of contract, which allows parties to create their own contractual norms. However, the laws a person's will establishes for itself cannot alter positive legal norms. As the real estate example illustrates, the parties' decision to disregard a regulatory requirement is free and conscious, but it does not create the intended legal relationship. Thus, the parties' free will cannot change the norms of law and must be subordinate to them. In this case, free will manifests in the decision to comply with the regulatory imperative or not.

An opposing understanding of free will can be found in the works of Hegel. While Kant viewed free will through individual human actions, Hegel emphasised a socio-political understanding.

Hegel's thesis that the starting point of law is the free will, that freedom is its substance, and that the system of law is the "realm of realised freedom" is classic (Hegel 2000, 24). It was Hegel who placed free will at the foundation of the understanding of law, emphasising the impossibility of law's existence without it. Today, this idea is central to the system of natural law.

As Nataliia Brovko notes, the dialectic of free will generates a system of forms and degrees of law, which leads to the ambiguity of the concept of law in Hegelian philosophy. It is used in several primary meanings: law as freedom (idea of law), law as a specific degree and form of freedom (particular law), and law as statute (positive law). All stages of the development of the objective spirit are determined by the idea of freedom, and this sphere itself is the realisation of freedom in the forms, methods, and institutions of human coexistence (Brovko 2007, 36).

Hegel emphasised that a person who is not conscious of their freedom cannot possess free will, and that only a thinking intellect is truly endowed with it. Based on this, one might assume that an incapacitated person cannot have free will, and question its existence in someone under the influence of alcohol or drugs.

Another representative of classical German philosophy, Friedrich Schelling, shifted the understanding of free will by transforming the concepts of reason's scope and free causality. He based free will on human decision-making, emphasising that every person acts only according to their own will, never against it (Dews 2023).

In turn, Hermann Cohen entered into a polemic with Kant's ideas, proposing to abolish the concept of free will and use autonomy instead. Autonomy in Cohen's philosophy carries a different meaning than in Kant's. It is not legislation given by a metaphysical self, but legislation through which the moral self first emerges – 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 of responsibility as one of the developmental stages of the concept of autonomy (Cohen 1919).

Ludwig Feuerbach advanced this problem as far as a materialist who had not yet overcome a contemplative approach to cognition could go (Feuerbach 1986). His ideas about free will were detailed through his understanding of criminal law and were predicated on the existence of free will, as a person independently decides to commit a crime. He emphasised that only a person who has freely committed a crime can be held accountable. Of significant importance was the idea of not holding a person criminally liable if they, guided by their free will, voluntarily refrain from committing a crime. Today, however, the timing of such a refusal is crucial for the legal qualification of the act, distinguishing between a completed crime, an attempted crime, and a situation where a person intended but did not even begin to commit the crime. It is in the latter case, where a free refusal occurs at a stage that cannot even be classified as an attempt, that Feuerbach's idea is most relevant.

The most complete and theoretically finished concept of the will as the first principle of being was formulated in the 19th century by Arthur Schopenhauer. According to his philosophy, in the phenomenon of objectification, the will is not so much the cause as the very essence of being (Hannan 2009). Within the ontological general will, a series of objectifications of varying levels arise, initially without a rational observer (Schopenhauer 1995). Prudka notes that Schopenhauer was primarily interested in the inner

world of the individual, without aligning their behavior with social factors. Consequently, everything related to society was of secondary importance to him, leading to shortcomings in his concept of freedom, which he considered in isolation from society and disconnected from its moral and historical foundations (Prudka 2019, 65).

It is impossible to discuss free will as the genesis of legal understanding without mentioning the ideas of John Locke. He argued that only a person who has reason and acts according to its dictates can be free; there can be no freedom where there is no thought (Locke 1824). In his views, we again see support for the direct link between free will and reason as its primary enabling mechanism. Gottfried Wilhelm Leibniz, in turn, developed Locke's ideas, introducing the notion that mental activity is determined, but not necessarily through compulsion or a mechanical push.

Leibniz applied the principle of pre-established harmony to the problem of free will (Leibniz 2017). He refused to accept that every human action is predictable but fell into his own dilemma: if everything is based on harmony, endowing humans with free will would lead to chaos and destroy that harmony. He, therefore, concluded that freedom is the self-activity of a rational subject, guided by increasingly well-founded motives. The more motivated, rational actions we perform, the more freedom we attain.

Leibniz distinguished between actual and legal freedom. Legal freedom reflects the existing laws of a state, and its measure for each person is normatively defined (Parkin and Stanton 2013). The purpose of legal norms is to establish the formal boundaries of free will. Leibniz held that actual freedom manifests as freedom of action (the ability to decide what to do and how) and is therefore linked to an individual's material, social, and physical state (Look 2021). For example, a wealthy person has a greater degree of free will than a poor one because they have more opportunities for its realisation. This concept reveals similarities between the views of Leibniz, Spinoza, and Locke.

The views of Modern Age philosophers on free will can be summarised by the position of Karl Marx, who viewed freedom in relation to law. For him, freedom is defined by law, which should

protect it but also establishes its limits and methods of implementation. He defined laws as general norms of behavior in which freedom acquires an impersonal, theoretical existence, independent of the arbitrariness of any single individual (Vidal et al. 2018).

The philosophical concepts of the Modern Age attempted to explain the nature of free will by linking it to empirical knowledge, which later raised doubts among rationalist metaphysicians and empiricists, who developed their own concepts in the 20th century.

Friedrich Nietzsche developed Schopenhauer's ideas on free will and presented his own vision in works such as *Thus Spoke Zarathustra*, *Beyond Good and Evil*, and *On the Genealogy of Morality*. His understanding was linked to the concept of the will to power and reflected the influence of antagonism and the voluntarist views of his predecessors, resulting in an incomplete concept of the relationship between free will and necessity (Acampora 2013).

Emmanuel Mounier spoke of the danger of understanding free will merely as freedom of choice, as this would render it incapable of making a choice due to insufficient impulse and would foster a culture of indecision or unprincipledness, which he saw as a spiritual disease of modern thought. Mounier highly valued psychoanalysis but disagreed with its claims that morality, art, and religion arise from subconscious animal drives. Instead, he argued that the unconscious allows a person to communicate with a higher reality (De Tavernier 2009, 362).

Martin Heidegger, in his seminal work *Being and Time*, argued that anxiety (*Angst*) is a foundation for free will (Velkley 2011). Karl Jaspers refined this position, considering free will in relation to cognition, internal law, and arbitrariness. Jaspers derived his understanding of free will through its necessary connection with guilt. In *The Question of German Guilt*, the philosopher discusses freedom as the overcoming of arbitrariness and the impossibility of exercising a purely divine or evil will, writing about freedom of decision, law, and the realisation of existence (Jaspers 2000).

Jean-Paul Sartre proposed an original theory of free will, identifying it with absolute freedom in his work *Being and Nothingness* (Sartre 2021). He argued that because every human possesses reason, free will—the ability to choose one's actions—is inherent in

everyone. Thus, free will is again reduced to the ability to make decisions based on one's own subjective convictions.

Special attention should be paid to the libertarian interpretation of free will, particularly the fundamental works of Robert Kane, who contrasted ancient determinism with a genuine understanding of free will. Kane argued that the kind of free will we truly care about—the one that makes us the "true creators" of our actions—emerges during conscious deliberation. This deliberation is caused by indeterministic processes that are neither counter-causal nor purely random; it is the indeterminate result of the effort of will we experience when choosing between alternative courses of action (De Caro and Putnam 2020).

Correlating free will with the right to make decisions, Kane introduced the concept of a splintered will, which manifests in the inability to choose between two equally rational options based on previously formed motives, character traits, and experiences (Waller 2003). The philosopher insisted that personality-shaping actions occur at difficult moments in life when we are torn between conflicting views on what we should do and who we should become. At such times, the tension and uncertainty in our minds are reflected in a certain indeterminacy within the neural processes themselves, excited by the conflict in our wills (Mele 2017). In effect, Kane's theory suggests that, possessing free will, a person can make opposing decisions in similar situations.

The ideas of European thinkers on free will also found a place in the views of Soviet and Ukrainian philosophers. The interpretation of free will was established in the works of the Westernisers of the mid-19th century, who believed that self-awareness and an understanding of free will came to the Slavs later than to Europeans. Comparing the development of Western European and Slavic tribes, they noted that the Germanic peoples were the first to be inspired by a deep sense of individuality, whereas the Slavic peoples represented a qualitatively new phenomenon. The latter's family-oriented way of life did not cultivate the sense of separateness and focus that compels a person to draw a line between themselves and others (Sheiko, Kolodii and Ilchenko 2018, 49).

Agreeing with Sheiko, Kolodiy and Ilchenko, it should be noted that the methodology for comprehending the essence of free will requires holistic knowledge – an organic connection of empirical, rational-theoretical, and intuitive-religious cognition. In this respect, both the Westernisers and the Slavophiles demonstrate a dependence on creating a synthetic theory of knowledge to resolve the question of freedom and necessity (Sheiko, Kolodii and Ilchenko 2018, 57).

Pyotr Chaadaev addressed the concept of free will through the prism of the relationship between freedom and necessity. He noted that man is endowed with consciousness and free will, making him a bearer of the social world. Free will exists independently to a certain extent, and strict providentialism is absent; however, true freedom must ultimately strive to comprehend and reunite with the eternal freedom of (Sheiko and Kolodii 2019, 30).

Concluding this historical and philosophical analysis, the definition of free will has evolved from Antiquity to the present day and has ultimately been reflected in legal norms. In Antiquity, free will was inextricably linked with fate. The Middle Ages produced several different concepts, but all were closely tied to divinity, giving rise to the Augustinian dilemma of recognising free will or complete submission to God's will. The Reformation emphasised a fatalism that precluded free will, while the Renaissance prioritised the autonomy of the human will alongside the divine. Although the approaches of medieval philosophers often reflected a deterministic, theocentric position, they contradicted the classical evangelical tradition and were later completely reinterpreted.

In the philosophy of the Modern Age, free will was recognized as an indisputable property of the human mind, necessary for self-awareness. At the same time, it was not considered absolute, due to its limitations by legal and moral norms. In subsequent theories, human autonomy increasingly moved away from determinism, taking the form of the possibility of free decision-making. The modern understanding of free will is grounded in the ideas of natural law.

The study of past philosophical concepts is of great importance for shaping and clarifying the content of modern philosophical paradigms (Sheiko and Ilchenko 2023, 9). Of course, the number of scholars who have studied free will is far greater than those mentioned in this study. However, the analysis conducted is sufficient to affirm the evolution of views on free will and its undeniable influence on law. This makes further research into the legal nature of free will a relevant and urgent task.

1.2 The Legal Nature of Free Will

The concept of free will has a significant impact on civil law, which is founded on the principles of dispositivity and autonomy of the will. Violations of these principles can serve as grounds for declaring transactions invalid or exempting individuals from liability, making the concept of fundamental importance for all areas of civil law. However, legislation does not contain a definition of free will, nor does it delineate its boundaries and principles.

The issue of free will has been studied by scholars globally, all of whom recognize its importance in legal science. To begin with, it is appropriate to turn again to the concept of G.W.F. Hegel, who laid the foundation for the modern legal understanding of free will. Hegel begins his definition by criticising slavery, emphasising that an enslaved person does not know their essence, infinity, or freedom; they do not know themselves as an essence, which means they do not think of themselves (Hegel 2000, 39).

The very existence of a person in slavery is also connected with will. This can be explained by the fact that even a person who is entirely subject to the will of another and has no rights still makes an independent decision to remain in such a state. For example, an enslaved person independently chooses the path of servitude or finds an opportunity to change their condition—even through suicide, as a manifestation of free will. Hegel emphasised that when we speak only of the will as such, without defining it as a will that is free in and for itself, we are speaking only of a disposition toward freedom, or of a natural and finite will, and therefore not of a truly

free will. In a genuinely free will, the truly infinite is endowed with reality and presence (Hegel 2000, 40).

By substantiating the personal freedom of the individual as the embodiment of the universal freedom of their will, Hegel proclaims the inalienability of the individual and considers slavery and serfdom to be states of alienated liberty, which are unjust and must be overcome. According to his views, the enslaved person's absolute right to freedom is inherent in the very nature of things (Brovko 2007, 50).

The main idea of Hegel, which became the foundation for further understanding of will, is to recognize human activity, its choices, and decision-making as a manifestation of free will.

The issue of free will is also relevant to the Ukrainian intellectual tradition, which can be traced in the works of Dontsov (*Nationalism*), Dragomanov (*The Path to Freedom*), Kistyakivskyi (*In Defense of the Law*), Pavlyk (*The Slavery of Women*), and others. Zhvania emphasizes that even in the works of Taras Shevchenko and Lesia Ukrainka, the combination of the idea of free will with reason and the ability to make a conscious choice can be traced. Illustrating this opinion, he notes:

Life for an internally free individual always involves situations that require an active choice between good and evil... in the lyric-epic works of Taras Shevchenko and Lesia Ukrainka, there are heroes whose actions are the result of a conscious choice... and heroes whose actions depend on emotions and passions... in the works of both artists, one can read the statement that every person is capable of pacifying passions and of self-mastery... that is, every person, guided by will, can improve himself... which is the possibility of free will, elevating a person to the level of a creator, since he himself creates the world of his inner self. (Zhvaniia 2009, 127)

We should agree with the conclusions of Lebid-Hrebeniuk, who identifies the following stages in the evolution of free will:

1. Hagiographic tradition: Any specific person (such as Prince Volodymyr, Saints Boris and Gleb, or Theodosius of the Caves) realizes their own freedom of choice within the limits of the absolute freedom of God's will.
2. Moral law: The moral law is given to man by God as an a priori given, forming the basis of ethical behavior.

3. The Baroque era: A transition occurs from a God outside man to a God inside him, which leads to a partial subjectivization of free will.
4. Modern literature: Free will is understood as a special internal state of man, when he realizes his own will at the behest of an internal (and self-established) moral imperative (Lebid-Hrebeniuk 2009, 38).

Later, Ivan Sechenov introduced the concept of will into the scientific paradigm as the active component of reason and moral feeling (Lebid-Hrebeniuk 2009, 102). His understanding of free will was based on a person's ability to act freely in accordance with their thoughts and desires, as well as contrary to them; therefore, the will must mediate between the reflexes of the brain and actions. For there to be no conflict between free will and law, they must be based on the same moral principles. This is a profound understanding of the role of free will and its significance for law. If a person consciously violates contractual norms defined by civil legislation, then their understanding of what is right contradicts legal norms. In this case, a conflict arises between an individual's will and the public will of the state, as expressed in regulatory acts. This is why we should discuss the dynamism of civil law and its ongoing development.

Civil law norms emerge in response to existing social relations. We are observing the rapid growth of civil legal relations and the emergence of new legal structures, including novel types of contracts. Today, we must create relevant civil law norms that are consistent with the free will already exercised by participants in these legal relations. Otherwise, the parties will attempt to circumvent current legislation through its existing gaps. This can be seen today in the example of virtual assets (digital property), the circulation of which is carried out through grey markets, the number of which is growing as new types of objects that can be qualified as virtual property constantly appear (Nekit 2019, 41).

The understanding of law as the value of ordered human freedom was criticised by K. Yu. Herman, who emphasised that such a position contradicts the tenets of legal positivism. Representatives

of this school speak of the inadmissibility of determining the value of law through its connection with the triad of natural-law values, being satisfied only with such characteristics as general obligation, normativity, and formal certainty (Herman 2015, 118).

Modern scientists pay special attention to the relationship between law and free will. For instance, Bogdan Kistyakivskyi speaks of the essence of law as human freedom—not just any freedom, but a freedom that is defined and secured in a certain way. Because freedom is a property and form of life inherent in a person, reflecting their desire for self-expression and self-realisation, it does not mean that freedom is the possibility of doing anything (Sikach 1999, 225). Here, we see the concept of free will in a person, which allows them to make decisions and perform actions freely, but only within the framework of established law.

Volodymyr Shkoda considered law as a combination of will and reason, recognising its auxiliary function in making correct decisions (Shkoda, 1997).

As can be seen, the understanding of free will is closely related to the idea of freedom. Therefore, it is necessary to define this concept to understand free will in civil law studies.

The academic understanding of freedom is often reduced to its definition as the absence of political and economic oppression or restrictions in the socio-political life of a class or society as a whole; will (*Slovník ukraïns'koi movy* [Dictionary of the Ukrainian Language] 1978, 9:98).

Freedom is defined as life or existence without dependence on anyone; the ability to behave at one's own discretion; the ability to act without obstacles and prohibitions in any field; the ability to express one's will as a subject, conscious of the laws of nature and society; ease, the absence of difficulties in anything ("*Svoboda*" [Freedom] n.d.-c).

In the *Philosophical Encyclopedic Dictionary*, freedom is defined as a special way of determining spiritual reality, since spirituality is a specific property of human existence. Freedom directly manifests itself in human life, which is the interaction of spiritual (conscious and unconscious) and natural (physical and biological) factors ("*Svoboda*" [Freedom] n.d.-a). Freedom is the awareness of the

permissible limits of human behavior, which depend on the specific situation of human existence (individual and social) and, in this regard, is the awareness of necessity. The defining characteristics of freedom as a spiritual phenomenon are choice (since the spiritual space is a pluralistic field of possibilities) and responsibility (the correlate of necessity in the sphere of the spirit). Freedom as a cognised necessity (fatalistic freedom) is only formal (degenerate, deprived of its essential features) ("*Svoboda*" [Freedom] n.d.-a).

In the *Dictionary of Synonyms of the Ukrainian Language*, freedom is generally recognized as a synonym for will, meaning the absence of restrictions on someone in something ("*Svoboda*" [Freedom] n.d.-b).

In the Legal Encyclopedia, freedom in law is associated not only with the subject's responsibility for their actions, which implies their free will, but also with the measure of responsibility. The requirement of justice necessitates establishing this measure of responsibility for an act, and a fair verdict establishes the measure of punishment (Shemshuchenko 2003, 516).

To summarise, we can conclude that the academic understanding of freedom boils down to recognising it as the ability to make decisions freely, without dependence on external factors.

Freedom is generally understood by most scientists as the ability to make choices. O. O. Punda defines freedom as the possibility of a person's manifestation of will in combination with the awareness of the laws of nature and society and his ability to act in accordance with his own goals and interests, based on the knowledge of objective necessity (reality) (Punda 2006, 12).

L. Yarmol and S. Vandeo consider freedom through its internal and external aspects. Internal freedom is regarded as a person's independence from the interference of law in their aspirations for freedom in thoughts, beliefs, and conscience; therefore, it is inappropriate to regulate the internal freedom of a person by law. The external aspect of freedom is manifested in a person's actions and inaction (Yarmol and Vando 2015, 253).

In their study, they conclude that freedom is a natural feature and, at the same time, a necessity for a person, embodying self-suf-

iciency and individuality. The peculiarity of freedom lies in its contradictory nature. If it is unlimited, it eliminates itself, which is why the law becomes the main expression and form of its embodiment (Yarmol and Vando 2015, 256). O. P. Donchenko, in the study of freedom as a category of law, substantiates that freedom as a form of creative self-realisation of the individual is a formal and substantive category of modern Ukrainian law, which is based on the dynamic unity of natural law and positivist principles (Donchenko 2010, 5). It is argued that freedom as a legal category is one of the ways of manifesting freedom as an existential characteristic of human existence and consists in the individual's desire not only to find a connection with and realisation of the world in themselves but also to ensure congruence with the world and other people. It is also substantiated that the epistemological function of freedom is the knowledge of law through freedom and its definition as a measure of freedom, which creates conditions for the optimal harmonisation of social relations (Donchenko 2010, 6).

V. Zhadko and P. Bidzilya suggest starting from the fact that freedom is not just a perceived necessity, but a means for developing freedom of thought (Zhadko and Bidzilia 2019, 4). This refers us to current research on the right to freedom of thought and opinion, conducted by scholars such as Marc Blitz and Jan Bublitz (2021). In this relationship, the issue of determining the priority between law and freedom is recognized as central. On the one hand, law exists to implement freedoms, and human freedom should have a higher character than the law. Law exists to protect people's freedoms and freedom in general.

N.I. Brovko notes that human freedom, in dialectical unity with the responsibility for one's own actions, is a fundamental legal value, the source of which is the nature of man as a being capable of choosing his goals and means to achieve them. The embodiment of this is the freedom of the individual in its personal dimension and the corresponding natural law (Brovko 2010, 7).

However, freedom cannot go beyond the limits established by law – the freedom of an individual ends where the liberty of another person begins. In some instances, the law limits a person's freedom and rights. Law and free will are inextricably linked and

form a vector for each other's development. Thus, free will outlines the paradigm in which law should develop, and law outlines the limits of free will and the conditions for its implementation.

In turn, various works reveal the understanding of freedom as the law of autonomy, encompassing the ability to make self-commitments and govern oneself, which forms the basis for the existence of law. Law appeared to regulate relations, formalising the norms of morality and rules of conduct adopted in society, and became an extension of freedom. The primary tasks assigned to it could not exist without the concept of freedom. In the context of civil law, we can provide the following example: a person collected shells on the shore and made a necklace from them, which they then exchanged for apples. All of this is a manifestation of civil law constructions, including property rights and barter agreements. These constructions would be impossible without freedom. The above statement is complemented by the idea of dividing freedom into internal and external aspects. Thus, internal freedom is connected to a person's moral values, and external freedom is established by law. Internal freedom remains a personal matter for a person as long as it complies with the legally defined limits of external freedom. At the moment when a person violates the norms of law, there is a need to determine their guilt, and this cannot be done without encroaching upon the limits of their internal freedom (Emerson, Pattison, and Poole 2020).

The above reflects the doctrinal understanding of freedom as the ability to choose and make decisions that may or may not comply with the norms of law. However, in the legislation of Ukraine and international acts, the construction "rights and freedoms of man and citizen" is established. The word 'freedom' is found in five thousand regulatory legal acts, but typically in the context of the fundamental constitutional freedoms of man and citizen. Normatively enshrined freedoms reflect natural human rights, which have the highest legal protection and form the foundation of the entire legal system, guiding the development of legislation. This leads to one of the key principles of law — the principle of freedom. In general, the principle of freedom allows for the possibility of choosing a variant of behavior within the limits of the law's norms.

The basis of human freedoms is the idea developed by the Sophists concerning the division of law into natural and positive law. Natural law is considered to be derived from the natural order of things—from the order of the universe and the nature of man. Positive law is artificial, created by people and devoted to the interests of an artificial formation such as the state (Danylyan 2009). Through natural law, its norms and principles, individual legal consciousness connects its existence with universal, general fundamentals of being; through positive law, it connects its existence with a specific state and its institutions (Danylyan 2009).

O. O. Volodina rightly notes that freedom is a right inherent in every person from birth and constitutes the most important good and condition for the normal development of the individual and society. The right of the individual to physical freedom and inviolability is the core of any system of government that defines itself by the rule of law (Volodina 2005). This approach aligns with the natural-law understanding of freedom and builds upon the classical ideas of Plato, Aristotle, Kant, and Hegel.

The conclusions of S. F. Denysov and G. O. Zubov, which generalize the legal understanding of freedom, are logical:

1. In national law and legislation, freedom is a measure of the possible behavior of a subject of social relations and is the opposite of duty, which is a measure of the proper behavior of a subject.
2. Legal freedom does not have a precise mechanism for implementation; it corresponds to the responsibility to refrain from committing any actions that violate this freedom (Denysov and Zubov 2016, 11).

Speaking about the connection between law and freedom, the following theses can be distinguished: law outlines the normative boundaries of freedom; law is based on freedom and recognizes its social value; the idea of freedom is reflected in legal institutions and principles; and law protects freedom.

Returning to the normative understanding of freedom, it is necessary to refer to the Constitution of Ukraine, which stipulates that the legal order in Ukraine is based on the principles according

to which no one can be forced to do something that is not provided for by law (*Konstytutsiia Ukrainy* [Constitution of Ukraine] 1996, art. 19). This norm gives rise to a dualism in the boundaries of freedom. On the one hand, it is the freedom to dispose of one's subjective rights and fulfill obligations, reflecting the fundamental principle that everything not prohibited by law is permitted. On the other hand, it concerns the clear observance of legal norms by the state and its bodies, according to the principle that only what is stipulated in the law is permitted.

We can agree with N.V. Fedina that society is interested in preserving the freedom of all participants in social interaction and thus carries out the norming and formalisation of liberty based on a general scale and equal measure (where everyone is free to the same extent, and the freedom of one person is limited by the freedom of another). This forms legal regulation. To ensure the freedom of participants in social communication, the law organises it based on the principle of formal equality, abstracting from the initial differences characteristic of people and formally recognising them as equal and free subjects (Fedina 2015, 74).

Analysis of Article 19 of the Constitution of Ukraine provides grounds to assert responsibility for violating the legal concept of freedom. The constitutional prohibition of coercion should be interpreted as the inadmissibility of illegal actions of one party toward another in relations between citizens, as well as between citizens and state and local government bodies, and among state bodies themselves (the state and its bodies cannot force other entities to act in a manner different than that provided for by the Constitution and laws of Ukraine) (Tatsiy and Petryshyn 2011, 140).

It should also be agreed that coercion for the purpose of committing unlawful actions can relate both to the use of subjective rights (e.g., inducing a citizen against their will to join a political party) and to the performance of legal obligations (e.g., forcing a state body to adopt an illegal act) (Tatsiy and Petryshyn 2011, 141). Violation of the legal idea of free will is of fundamental importance for civil legal relations and can, for example, become a basis for declaring a transaction invalid due to vitiating factors.

Thus, the constitutional understanding of freedom is achieved by providing a person with the ability to behave in a certain way and by prohibiting coercion, except in cases provided for by law. Herman notes that freedom, which is not given the form of a legal norm, should be defined and enshrined in legislation at the level of a principle (not a right) as a higher goal on which the law is based. This reveals and specifies the individual's ability to freely express their will within the framework of the existing legal system (Herman 2015, 121).

However, as will be proven later, free will is the foundation for the principles of civil law, its sub-branches, and institutions. Agreeing with the position of Herman would lead to proclaiming free will as the principle on which other principles of law are based, making it a super-principle. With this in mind, we believe that free will extends beyond the understanding of a principle and takes the form of a legal concept, which is manifested in the principles of autonomy, pluralism, tolerance, and the inviolability of human rights, among others.

The legal idea is the most general, abstract expression of the essence of law, its project or task (regulatory idea); it constitutes the ideal aspect of the existence of law, its form (in the Aristotelian sense) (Danylyan 2017, 140).

The global nature of the legal idea of free will is confirmed by its manifestation throughout all of law. Without the concept of free will, the rule of law is compromised, human rights are suppressed, political (electoral) rights are absent, a fair judicial system loses its meaning, democratic societies cannot exist, and, ultimately, modern liberal states and supranational values lose their mechanisms of implementation. This brings the legal concept of free will closer to the idea of human rights (Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954), justice, and other fundamental values, which, according to N. Simmonds, are normative standards governing what we should do, regardless of what current practices and institutions may require (Simmonds 2008).

Just as human rights, in their most fundamental sense, are considered as transcendent moral principles on which positive law is

based (Howard 1993), so the idea of free will becomes a superstructure—a paradigm that determines the vector of law development and is formed as an imperative.

By analogy with the justifications of the good faith imperative by D. Pavlenko (Pavlenko 2008, 16), it can be determined that the imperative of free will formulates the behavior of participants in legal relations and indicates the connection between civil law and natural law, since the application of free will is a necessary element and a prerequisite for the normal development of society, regardless of its enshrinement in legislation.

However, despite the fundamental importance of free will, the legislator does not single it out as a norm or principle, and there is no such concept in regulatory acts. But, as we will see later, the idea of free will permeates the entire regulatory framework and supranational legislation and is reflected in court decisions. A.J. Colbert defines such an attitude to free will as clues that should not be ignored if we are serious about the value of the rule of law (Kolber 2016).

The concept of free will is fragmented across legal systems and norms, yet it is not embodied as a separate institution, principle, or norm. This may be due to the interdisciplinary nature and global scope of this idea, which complicates its normative consolidation, as well as the absence of a well-formed and established concept. And although free will has a transcendent basis, it is immanent to law, as confirmed by its significant manifestation in legal science and practice.

Free will in civil law is a legal idea that, in the absence of direct normative consolidation, is embodied through ideologemes. And although such idea-norms do not contain a direct reference to free will, they reflect its essence, using concepts such as voluntariness, by consent, free expression of will, prohibition of coercion, and at will.

Given that a definition of free will in civil law has not yet been fully established in legal scholarship or practice, the author proposes the following concept for discussion:

Free will is a fundamental element of civil legal ideology. It reflects an individual's capacity to consciously, freely, and independently make decisions regarding their participation in civil legal relations. This includes the power to perform acts or omissions, exercise subjective rights, fulfill obligations, and bear legal liability. Ultimately, this concept serves as the foundation for the formation of civil law principles and institutions.

R. R. Eman proves that an idea must fulfill its function if it is to be valid. Since reality is the standard of knowledge, a theoretical notion must correspond to reality to fulfill its function. If it did not conform to reality, it would not lead to knowledge. The reality of an idea is the basis of its validity, as it makes it possible to fulfill its function (Ehman 1961, 225). For a comprehensive understanding of free will as a legal concept, it is necessary to establish its tasks, which will confirm its validity.

The following functions of free will as a legal idea can be distinguished: law-making and regulatory.

The law-making function involves influencing the vector of norm-setting and shaping legal consciousness. Although free will is not directly enshrined in regulatory acts, it is, in fact, reflected through other legal principles, institutions, and norms. As will be demonstrated in the following sections of the monograph, the concept of free will is incorporated into all sub-branches of civil law, thereby influencing the development of legislation and the formation of value orientations within the law, serving as a latent criterion for norm-setting. An analysis of current civil legislation confirms the absence of direct normative opposition to the legal concept of free will.

The regulatory function consists of creating regulatory requirements that presuppose the use of free will to participate in civil legal relations. The conditions of voluntariness, consent of the parties, free expression of will, and prohibition of coercion confirm this.

The legal functions of free will can be supplemented by psychological ones, including incentive and inhibitory mechanisms. The incentive function ensures the fulfillment of duties and the performance of actions. If a person does not have a pressing need to act but is aware of the need to perform an action, the will creates an

auxiliary incentive, altering the meaning of the action and causing experiences associated with its intended consequences (Varii 2009, 152). In civil law, an example can be given when a party does not want to fulfill contractual obligations. Still, the will induces them to do so, motivating them with the threat of legal responsibility. The inhibitory function, on the contrary, is aimed at deterring unlawful behavior. A person can inhibit the emergence of undesirable motives and actions (Varii 2009, 152). In civil law, this function is invoked when a considers refusing to comply with regulatory rules.

The practical application of the above functions is actualised in the context of each sub-branch of civil law, which will be shown below. However, we can already conclude that the performance of these tasks by free will as a legal concept indicates its validity and soundness.

The aforementioned determines the logic of this study, as each section involves determining the meaning of free will for a separate sub-branch of civil law. In addition, we demonstrate how understanding the legal nature of free will impacts the resolution of current civil law issues. Today, there is no established list of such problems, as each scholar places their own emphasis. With this in mind, in each section, we analyse the meaning of free will in relation to solving current issues, drawing on the views of leading scientists who have attempted to generalize them.

In international law, free will is reflected as a legal idea. In particular, the right of every person to liberty and personal integrity, the prohibition of slavery, and the prohibition of arbitrary arrest and detention are proclaimed in the International Covenant on Civil and Political Rights (art. 9) and in the Universal Declaration of Human Rights (art. 3). It is separately proclaimed that all human beings are born free and equal in dignity and rights, and that they are endowed with reason and conscience and must act toward one another in a spirit of fraternity.

The most formulated embodiment of the legal idea of free will in international law is the principle of autonomy of will (*lex voluntatis*).

Lex voluntatis refers to the ability of private international law subjects, who are subject to different jurisdictions, to determine at

their own will which law of a country will govern their legal relations. This idea is in stark contrast to domestic disputes, in which the parties are subject to the local legal system. Party autonomy – the power of the parties to a contract to choose the law of a particular country to govern their relations – enhances certainty and predictability and recognizes that the parties may be in the best position to determine which set of legal principles is most appropriate for their legal relationship (Hague Conference on Private International Law 2015).

There are different approaches to understanding the principle of autonomy of will, including viewing it as a conflict of law principle or a special legal institution (Pohoretska 2014, 253). However, in the context of studying free will, the main idea of this principle is the possibility for the parties to go beyond the limits of actual jurisdiction by opposing their interests to national norms. Thus, the parties may be citizens of countries A and B, sign an agreement in country B (actual jurisdiction), but determine that the law of country D governs their relations. This is confirmed by numerous court cases, such as *Penn v. Lord Baltimore*, *Peninsular and Oriental Steam Navigation Co v. Shand*, *Lloyd v. Guibert*, *Bell v. Kennedy*, *Godard v. Grey*, *Schibsy v. Westenholz*, and *Phillips v. Eyre*, among others (Micklitz 2015). The law of most states provides for unlimited and unconditional autonomy of the parties' will regarding the choice of applicable law (Vasylchenko 2007).

However, the principle of autonomy of will is not absolute, as parties cannot conclude an international contract without first determining a jurisdiction. Having defined it, they must comply with the chosen national legislation. Also, as L. Khasneziri notes, when concluding and performing a contract, the parties cannot violate either the rights of third parties or the interests of society as a whole. This limitation is known as the public order clause (Hasneziri 2023, 146). This makes it possible to understand the principle of autonomy of will as an extension of the principle of freedom of contract, according to which the parties independently determine the content and conditions of contractual relations, but within the limits set by law.