Concept of Freedom: History and Modern Times

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ABSTRACT
The historical discussion of formation of the concept of freedom briefly displays main definitions of freedom, shows interrelations and connections of the concept of freedom with other important notions of the human existence, such as subject, self-realization, law, good, labor, knowledge, otherness. Correct understanding of the phenomenon of freedom implies a principal distinction between law and morality. It is law as a social institution that introduces freedom as such into social life, whereas morality provides only liberation from evil. According to the initial definition, freedom is the labor of self-realization. As freedom obtains social reality only in a legal form, the more concrete definition of freedom is as follows: freedom is a balance of human rights and duties.
Keywords: freedom, self-realization, labor, subject, morality, law, libertarism, sobornost

This article does not claim to offer an exhaustive explanation of such a complex subject as the concept of human freedom. The task is much more modest: to outline the main facets of the philosophical interpretation of freedom and to show the practical significance of legal regulation for entrenchment of freedom in the social reality. Freedom is a value or a duty, that is, an ideally existing goal, while the ambiguity of the goal poses many dangers. One cannot but agree with C. Montesquieu regarding the initial vagueness and uncertainty: "Not a single word would receive so many different meanings and make such a different impression on the minds as the word "freedom""[1]. Individuals, sometimes even entire nations, repeatedly strive to move from lack of freedom to freedom. It is all the more important to learn the experience and knowledge accumulated on this path in order to find, in spite of the multitude of random opinions, a real and not an imaginary answer to the key question: what is freedom?

The subject is free will[2]. Therefore, striving for freedom turns out to be a search for oneself, and vice versa. In other words, to comprehend one's freedom means to become conscious of oneself as a subject. Eastern philosophy has not yet made a significant contribution to the comprehension of freedom, because it has traditionally avoided focusing on a person as a subject. Own discoveries and achievements of Eastern thinking on this subject are rather a matter of the future than of the past.

The history of the concept of freedom begins in ancient Greece. City-states (polises) and, in general, the forms of social relations, mainly based here on the developed monetary economy, for the first time create favorable conditions for the isolation of a person from the public whole, the assertion of the independence of members of the society. The individual person becomes the real source of social order. A similar vision is already found in the appeals of ancient poet Hesiod (VIII-VII centuries BC): "Keep within limits in everything and do your work in time"[3]. Several centuries later, Protagoras will express this worldview position with maximalist directness, albeit in a sophistic, relativistic manner: "The measure of all things is man, existing, that they exist, and non-existent, that they do not exist"[4]. There emerges a social perspective of mutual coordination of special measures, beliefs and aspirations of each person, thereby the practical implementation of freedom. However, ancient Greeks did not turn freedom into the principle of social order. The open phenomenon of human freedom remains rather a natural givenness for them and does not become a value.

Therefore, the ancient Greek consciousness often equates freedom with arbitrariness, self will[5]. It is not freedom as such that matters, but the dignity of the freeborn. It is to the free-born that Aristotle's ethical teaching is addressed, which glorifies human nature brought to perfection, ennobled by virtue. According to Aristotelian ethics, happiness is the highest goal. However, happiness is a natural state: "the sum of satisfaction" of all needs and inclinations[6]. The natural fullness of ethics is emphasized by

[1] *Montesquieu C. L.* On the spirit of laws [O dukhe zakonov]. M. : Thought [Mysl'], 1999. P. 136.
[2] *Hegel G.* Philosophy of Law [Filosofiya prava]. M. : Thought [Mysl'], 1990. P. 68.
[3] *Hesiod.* Writings and days [Gesiod. Trudy i dni] // Hesiod. Complete collection of texts [Gesiod. Polnoe sobranie tekstov]. M. : Labyrinth [Labirint], 2001. P. 72 (694).
[4] *Plato.* Teetet [Platon. Teehtet] // Plato. Collected works in four volumes. T. 2 [Platon. Sobranie sochinenii v chetyrekh tomakh. T. 2.]. M. : Thought [Mysl'], 1993. P. 203 (152a).
[5] *Plato.* State [Platon. Gosudarstvo] // Plato. Collected works in four volumes. T. 3 [Platon. Sobranie sochinenii v chetyrekh tomakh. T. 3.]. M. : Thought [Mysl'], 1994. Pp. 350– 351 (562b–563d).
[6] *Kant I.* Fundamentals of the metaphysics of morality [Osnovy metafiziki nravstvennosti] // Kant I. Writings in six volumes. T. 4. Part 1 [Kant I. Sochineniya v shesti tomakh. T. 4. Ch. 1]. M. : Thought [Mysl'], 1965. P. 235.

the fact that Aristotle links virtue and happiness together, defines true happiness as "the activities of the soul in the fullness of virtue"[7]. All people strive for happiness; therefore, happiness is the good, moreover, the human good, that is, expressing the fullness of human existence which is not reduced to scientific, philosophical cognition. The knowledge of the good as such does not make a person happy and virtuous. Happiness is actualized in virtuous actions that embody the decisions made by a person on the basis of a conscious choice or striving for the good as a goal. The expediency of the decision presupposes an indivisible unity of will and thinking, therefore a person is a "striving mind"[8]. Actions do not express any deliberate correctness, because in striving for the good, a person can act one way or another, thus the content of actions is not the subject of science. Virtue is the middle between excess and lack of manifestations of emotional feelings. In the circumstances of a particular situation, a person independently decides where exactly the middle is, and acts accordingly.

Aristotelian ethics overcomes the identification of freedom with arbitrariness, outlines the fundamental definitions of freedom, within which further philosophical comprehension of the phenomenon of freedom starts. From now on, freedom appears as its own way of achieving the good as the fullness of human existence, independence in an active striving for happiness, self-actualization of a person among people. However, the understanding of freedom as an inborn, natural property of a freeborn prevents the substantive consideration of freedom as a social institution, the development of a special social regulator for the protection and maintenance of freedom. Aristotle notes that "man is inherently a political being"[9] living in a state, and in a very ancient Greek manner he declares the state to be self-sufficient, possessing independent significance. Freedom, equality and justice among people are actualized only in state communication, but if the state turns out to be a natural formation, it inevitably subordinates a person. The subject is objectified in the ancient Greek state, thereby accepting freedom as a givenness, loses the living source of freedom which is inside the person, and not the state.

The fall of the ancient Greek civilization led by no means to oblivion of the concept of freedom, but to the movement of freedom into the depths of subjectivity. Stoics emphasize the unconditionality and inalienability of freedom, the absolute independence of a person from external circumstances. According to Epictetus, one can be free even in chains[10]. A new search for social forms of freedom begins.

Owing to the accumulated historical experience, freedom as such appears to the Romans as the essence of human subjectivity, therefore, for the first time, it becomes a value, a guiding principle of social life. The task arises to find the subjective dimension of social relations, to overcome social objectification or alienation of members of the society, to establish freedom as a social institution, and ensure the true actualization of freedom in social reality. The solution was the Roman private law. The Romans discover law as a special way of regulating the relations between people which is not reduced to morality or another social regulator; they create jurisprudence (legal science) as a science of law, with its own subject area and methodology, isolated from ethics and other sciences.

The Roman private law restructures property relations according to the principle of freedom. The archaic, pre-legal property exchange, including the exchange of a thing for cash (real sale), is two counter donations carried out as a moral duty, is rooted in the ancient practice of exchanging gifts for the sake of prestige and social peace[11]. Such an exchange puts the donee in a position of personal subordination or dependence on the donor; if the donee does not make a counter donation or does not return what he has received, strict retribution reaches his personality. Slavery for debt, widespread in ancient times, is as a well-known illustration. The transformation of property relations according to the principle of freedom presupposes a conceptual transition from exchange as the state of being bound by an impersonal debt, a social role, to exchange as cooperation for the good of everyone. The legal approach preserves the volitional content of the exchange from the beginning to the end, the alienation of a thing is no longer accompanied by the alienation of subjective will. The new exchange mechanism is based on the concept of (subjective) law which establishes the sphere of freedom for a party. From

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[7] *Aristotle.* Nikomakhova ethics [Aristotel'. Nikomakhova ehtika] // Aristotle [Aristotel'.]. Works in four volumes [Sochineniya v chetyrekh tomakh]. T. 4. M. : Thought [Mysl'], 1983. P. 74 (1102a5).

[8] Ibid, p. 174 (1139b5).

[9] *Aristotle.* Politics [Aristotel'. Politika] // Aristotle. Works in four volumes [Aristotel'. Sochineniya v chetyrekh tomakh]. T. 4. M. : Thought [Mysl'], 1983. P. 378 (1253a).

[10] Conversations of Epictetus [Besedy Ehpikteta]. M. : Ladomir [Ladomir], 1997. P. 41 (I, 1, 23).

[11] For more detail see: *Moss M.* Experience about the gift. Form and basis of exchange in archaic societies [Opyt o dare. Forma i osnovanie obmena v arkhaicheskikh obshchestvakh] // Moss M. Society. Exchange. Personality. Proceedings of social anthropology [Moss M. Obshchestva. Obmen. Lichnost'. Trudy po sotsial'noi antropologii]. M. : KDU, 2011. Pp. 134–285.

now on, exchange is not so much an objective process that has to be accepted as it is, but rather the exercise of contractual rights, directed towards the future by free cooperation.

The right of one party is reflected in the obligation of the other. Roman jurisprudence creates the fundamental concept of an obligation: a legal link between people, by virtue of which one person (the creditor) has the right to demand performance of specified actions from the other (the debtor), and the other is obliged to perform such actions[12]. With regard to the sale, exchange of goods for money, two obligations are initially formed: the obligation to buy, that is, the seller's right to demand payment of the price and the relevant obligation of the buyer, and the obligation to sell, that is, the seller's obligation to transfer the goods into ownership and the buyer's right to demand the transfer. These obligations are interrelated, each obligation, in the sense of emergence and performance, is based on a counter obligation. In general, such a legal relationship is called a bilateral, or synallagmatic, obligation. The entitled party in one obligation becomes obligated in the counter obligation, while the obligated party becomes the entitled party. No party is here only obligated or authorized, but has the right and obligation, for example, the seller has the right to demand payment of the price and is obliged to transfer the goods. The bilateral obligation, clearly illustrated by the obligation to buy and sell, is a model of the rule of law: the right of a party in one relation is balanced by the obligation of the same party in another relation.

In a bilateral obligation, the right of one party relies on the right of the other. Therefore, the relation does not degenerate into subordination or dependence, but develops as free cooperation. The inextricable connection of freedom, equality and justice is revealed. Since each party is empowered in relation to the other, the parties not only have the sphere of freedom enshrined in subjective law, but are also equal as having the same right, and they are equal in freedom precisely. Recognition of the commensurate right of the other party presupposes constant and invariable willingness to listen in good faith and respond to the appeal of the other; therefore, law embodies justice. Law actualizes freedom in social reality simultaneously as equality in freedom and justice in the sense of recognizing another subjectivity. Punishment for an offense is not retribution inspired by blind vengeance, but is a responsibility that has the sole purpose of making up for the damage caused to freedom, restoring freedom in relations between people. Jurisprudence proceeds from the practical understanding of freedom as a balance of human rights and obligations.

Morality and law diverge here[13]. Morality strives towards good as the opposite of evil, while law overcomes the dualism of good and evil through the understanding of the notion of good, shows good and evil as transient moments of human freedom. Morality frees from evil, therefore it provides only negative freedom which easily degenerates into lack of freedom, while the law realizes freedom as a person's self-actualization in the social reality, therefore, it embodies genuine, living or positive freedom. Morality subordinates a person to duty which expresses a lifeless abstraction of good, while the law demands fulfillment of the duties that reflect the rights of another person, thereby teaching pay heed to another subjectivity. Only the generally binding nature of laws, a truly legal law really comes from people, thereby achieving the situation that "everyone should act uniquely individually, that is, always having a living person in front of oneself, a concrete personality rather than abstract good"[14].

A legal law has internal expediency when the goal of lawmaking is the law itself being a common will and good — a legal law. The discovery of the internal expediency of legal legislation begins with a clear understanding that the successful or effective operation of the law depends on the genuine approval of the law by all citizens affected by it, so that everyone should consider the law truly his own. The legal law reflects the common will, that is, it brings a lot of individual wills to agreement without imposing a deliberately correct decision. Only jurisprudence has the means to express the consent of citizens without destroying the individual will as a living source of the common will and to save the individual will from being suppressed by the supreme (national, public) will. This means is a balance of the rights and duties of each person. On the contrary, the moral law is subject to external expediency, because it serves the supra-legal goal of good chosen quite arbitrarily. Moral instructions can be enshrined in a compulsory law and be protected by public authority. An illustration is the contemporary labor and social legislation, in general any laws or orders of the authorities, inspired by striving for some good, but at the same time avoiding the total imposition of good. Because nonobservance of the measure of good brings evil. Such a moderately moral legislation in practice reconciles good and evil, therefore it

[12] For more detail see: *Dozhdev D. V.* Roman private law [Rimskoe chastnoe pravo]. M. : Norma, 1996. Pp. 427–431.

[13] For more detail see: *Slyshchenkov V. A.* Law and Morality: differences in concepts [Pravo i nravstvennost': razlichiya ponyatii]. M. : [Yurlitinform], 2020.

[14] *Berdyaev N. A.* About the appointment of a person. Experience of paradoxical ethics [O naznachenii cheloveka. Opyt paradoksal'noi ehtiki]. Paris : Modern Notes [Parizh : Sovremennye zapiski], 1931. P. 114.

partly fulfills the purely legal task of maintaining public freedom, however, not so much for the sake of freedom as such, but for uninterrupted functioning of social systems. Therefore, moral legislation rather strengthens and prolongs, but never overcomes the alienation of a person in the society. Nevertheless, the achieved legal result allows considering moral legislation as a law, however, as a kind of social law which differs from law as such by the absence of legal expediency proper. Social law is not at all a model of law as such, but only a practical premonition of law as a special way of regulating social relations. The external expediency of the law means that lawmaking is not supposed to be independent activities, but an appendage of other areas of social life, from religion to economics. This approach is inconsistent with the practice of law-making and law enforcement, does not explain the emergence and development of a special legal science and education. Law acts as an independent sphere of human activities having internal expediency, while historically the first law in its own sense was Roman private law.

After the collapse of ancient Roman civilization, the western man is again left alone with his freedom. However, historical experience reminds of freedom as the guiding principle of social life. The search for new social forms of freedom is supported by the Christian religion, according to which free will is a divine gift. The actualization of the freedom of a man as a member of society, not an individual or private one, but a social person, becomes the main content of the subsequent centuries of complex Western European history up to the end of the modern age. Freedom unfolds as an objective necessity. Therefore, the man of the Western world traditionally comprehends freedom as knowledge. Hence the worship of the natural law as the truth of social relations. The human law established by the will must be consistent with the natural law, the freedom of a social person must reflect natural freedom, but such consistency is observed very rarely: "A person is born free, but he is in chains everywhere"[15]. Freedom of a person as a member of the society living by the law, a citizen is truly achieved only when the person obeys his own law. Such a person is not a slave or an object, but a person or a subject of law: "… a person is subject only to the laws set himself (independently or, at least, together with others) for himself"[16].

The formal or procedural principle of lawmaking contained in this opinion was elaborated only in the second half of the 20th century owing to the communicative legal theory of J. Habermas. On the contrary, the knowledge-oriented modern European thinking seeks to define self-established laws in terms of content rather than the legislative process. Various natural law theories demand that the existing laws should be consistent with an allegedly indisputable moral truth. Such true laws only are called the law or legal laws which differ in terms of the content from power arbitrariness just outwardly formalized by the laws. However, within the framework of natural-legal theorizing, freedom turns out to be absorbed by moral knowledge, and a person — by the state as the highest moral organization of the community: "…the state is the journey of God in the world …"[17]. Thereat it turns out to be impossible to logically deduce the content of the whole legislation from natural law. The real criterion of lawmaking is the practical effectiveness of the law, not at all the observance of the natural law. Ideas about the natural law are rather adjusted to a successful law than vice versa.

In contrast with the natural law school the legal positivism trend which took shape in the 19th century refuses to search for the true law. The law is considered to be any valid law; from this point of view, the most inhuman orders of the authorities are referred to law. Legal positivism sometimes focuses on purely logical processing of the positive law, sometimes it expands to a sociological perspective to clarify the economic, cultural and other social factors of lawmaking. These factors are interpreted as extra-legal due: if natural law prevails over the law allegedly directly, social factors prevail only through the legislator. Both versions of legal positivism, that is, logical and sociological, leave the content of legal regulation to the discretion of the legislator. The doctrine of natural law and legal positivism remain in the paradigm of the external expediency of social law. The difference lies only in how the goal of the current law is determined: by cognition of the supposedly preexistent natural law or by the arbitrariness of the legislator. Substantial legal consciousness proceeding from the internal expediency of legal regulation opposes both natural legal ideas and legal positivism. Proper understanding and preservation of law as a social institution protecting freedom requires a substantial legal approach.

The constitutional consolidation of human rights and freedoms inspired by the teachings of natural law, in practice overcomes the moral limitations of natural law, it places the legal principle of the balance of the rights and duties of a citizen, instead of ethical requirements, in the basis of a state community.

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[15] *Rousseau* J. J. On the social contract, or the principles of political law [Ob obshchestvennom dogovore, ili printsipy politicheskogo prava] // Rousseau J. J. On the social contract. Treatises [Ob obshchestvennom dogovore. Traktaty]. M. : Canon Press [Kanon-press], 1998. P. 198.

[16] *Kant I.* The metaphysics of morals in two parts [Metafizika nravov v dvukh chastyakh] // Kant I. Writings in six volumes. T. 4. Part 2 [Kant I. Sochineniya v shesti tomakh. T. 4. Ch. 2]. M. : Thought [Mysl'], 1965. P. 132.

[17] *Hegel G.* op.cit. P. 284.

Although the name of public law is already familiar to the Romans, public law as such arises only owing to the new European legal doctrine of human rights and freedoms. Private law based on the Roman concept of obligation, as well as modern European public law together form the law known at the current historical moment in the proper sense. The freedom of speech, assembly, other public rights and freedoms belonging to everyone (excluding socio-economic and other similar rights that relate to morally oriented social law) presuppose proportionate duties as conditions of rights and freedoms, primarily, the duty to respect the rights and freedoms of others people. Thus, the freedom of a person as a member of the society, a public person is consolidated in the social reality. Western European civilization finds its own practical formula of freedom: the rights and freedoms of man and citizen. The theoretical expression of this outstanding achievement is the political and legal doctrine of liberalism. Some dogmatism of the liberal views is related to the inappropriate absolutization of the historical experience of Western states in ensuring public freedom. The shortcomings of liberalism do not diminish the undoubted importance of public rights and freedoms as a social form of freedom.

Public rights and freedoms are laid into the foundation of social life not by knowledge but by mutual recognition of people. Understanding or explanation, acquisition of knowledge in general, is movement from an object to a thought about an object. Man as such, in his subjectivity, avoids being cognised precisely because the subject is not an object. In other words: "The subjective reality of the human I cannot be fully objectified in objective activities"[18]. Recognition proceeds from the limitation of understanding: understanding is always open to the new or the incomprehensible; however, it is this openness that implies that on the other side of the understood there is always another one as unconditional otherness. The principal "openness to another" presupposed by proper understanding[19] demands that the other's voice be heard. Thus, understanding, cognition passes into recognition. Understanding the other means that the other is seen through, but thereby not recognized as another. Understanding between people takes place only as an understanding of the matter itself, that is, some objectivity, but not as an understanding by one person of another in his subjectivity: "A conversation is a process of mutual understanding. Therefore, in any genuine conversation, we gain insight in the words of the other, really reckon with his point of view and put ourselves in his place: however, not in order to understand him as the personality, but in order to understand what he is saying. The point is that … we could come to an agreement with him on the matter under discussion"[20]. In other words, mutual understanding between people does not mean their identity: each still remains different for the other. A person acts as a subject in the true sense, that is, another without reservations, only where understanding ends.

The well-known definition of freedom as a cognized necessity misrepresents genuine or positive freedom as negative liberation from the burden of necessity. The freedom of the subject does not at all mean merging with objectivity in absolute knowledge. The first objection is that objectivity appears to the subject as initially given, thus the subject is determined by objectivity, even when he comprehends its necessity. In other words, the cognized necessity is not true freedom for the same reasons that freedom of choice cannot be called true freedom: "If, in considering arbitrariness, we dwell on the fact that a person may want this or that, then this is really his freedom; however, if you firmly remember that the content is given, then a person is determined by it and it is in this aspect that he is no longer free"[21].

The second objection is directed against objective idealism, according to which objectivity does not have the initial givenness, as it is generated by thinking or knowledge. However, freedom which supposedly comes from thinking only unfolds the necessity of thinking: as long as thinking remains a support, the subject does not exist as such. To think about oneself is to be divided into a subject and an object. Following J. P. Sartre, it is necessary to reject the primacy of cognition as a way of human existence[22]. A person does not become free at all because he thinks; on the contrary, he is able to think because he is free. Thinking is born as a person's comprehension of his freedom, in other words, as an abstraction of the I from self-consciousness. Owing to the consciousness of one's otherness, one's being-not-object, self-awareness awakens which thinking clarifies in the abstraction of the I and which then returns to the concreteness of existence as realized otherness, living (genuine or positive) freedom in the form of recognition of the inherent otherness of another.

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[18] *Kon I. S.* Friendship. 4th ed. [Druzhba. 4-e izd.]. St.-Petersburg, 2005. P. 174.

[19] *Gadamer H.-G.* Truth and Method: basics of philosophical hermeneutics [Gadamer H.-G. Istina i metod: osnovy filosofskoy germenevtiki] / Transl. from German of I. N. Burova, M. A. Zhurinskaya, S. N. Zemlyanaya, A. A. Rybakov. M., 1988. P. 425.

[20] Ibid. P. 448.

[21] *Hegel G.* op.cit. P. 81.

[22] See: *Sartre J. P.* Being and Nothing: The Experience of Phenomenological Ontology [Bytie i nichto: opyt fenomenologicheskoi ontologii] / Transl. from fr. of V. I. Kalyadko. M. : Republic [Respublika], 2000. P. 24–30.

It is the person, the person himself, who is the source of the cognized necessity. However, as such a source, the person does not fall inside the necessity created by him, that is, he is not objectified or alienated in the comprehended necessity, while remaining independent of the natural necessity, to which he is able to oppose his own necessity. Man is the border of two worlds, the end of the natural necessity of nature and the beginning of the artificial or ideal necessity of culture. Such a borderline existence means absolute otherness "out this world", that is, a person does not embody any necessity. The otherness of human existence is retained only in relation to other otherness, thereby the absoluteness of otherness turns into relativity which presupposes an indefinite set of othernesses.

The man's otherness is actualized only among people as casual others. The law of free will says: act according to your otherness. Following one's own otherness presupposes the preservation of the otherness of the other, because the denial of other otherness abolishes the otherness of the doer himself who remains different only in relation to the other. Likewise, showing off the singularity for the sake of difference as such is harmful to otherness, because the singularity is certainty: a reckless immersion in certainty kills otherness. At the same time, certainty cannot be avoided, because a person actualizes his otherness through self-determination. Thus, freedom is seen not in an escape from any definitions or restrictions, but in the retention of otherness in the determination of one's own will.

Recognition of the other is reconciliation with otherness. Such a vision remains mostly alien to the European public consciousness of the Modern Age focused on understanding, cognition. Even public rights and freedoms at first seem to protect the fundamental sameness of people rather than the otherness of an individual person. The new European rationality sought only identity in the subject, therefore it did not attach importance to otherness which was just overcome as something insignificant. Karl Marx's statement is telling: "A person at first looks into another person like in a mirror. Only by treating the man Paul as of his own kind does the man Peter begin treating himself as a man. At the same time, Paul as such, in all his Pavlovian corporeality, becomes a form of manifestation of the "man" genus for him"[23]. Another person of the epoch of modernity is an alter ego, a different I. Only the time of European postmodernity fully discerned a different, non-I-subject as a fundamental otherness from the very beginning. "Neither the category of quantity, nor even the category of quality, — emphasizes E. Levinas, — describe the otherness of another, whose quality is not just different from mine: the other may be said to have otherness as a quality"[24]. The other's otherness is its imperfection, that is, the other is not what it supposedly should be like. Awareness of otherness is a prerequisite for the decision in the true sense of the self-determination of the will, for only owing to a person's awareness of his otherness will the will be alone with itself.

The antithesis of the right and the duty underlying legal regulation proceeds from the otherness of the participants: one side of the legal relationship is entitled, the other is obligated. Therefore, the rule of law orients a person to making a decision in full awareness of otherness opposite to another and to defending his decision in interaction with another. The difference between the right and the duty expresses otherness, apart from which the subject does not exist at all: "In certainty, a person should not feel determined; considering the other as another, he only then acquires a sense of himself"[25]. Freedom is real only as a balance of human rights and duties achieved through struggle which therefore must be thought of separately in order to balance. The identity of the right and duty as a legal position, a kind of theoretical and legal model of legal duty[26] appears as a bizarre distortion of the nature of legal regulation evidencing a confusion of law and morality. From a legal point of view, it is moral duty that looks like a syncretic unity of the right and duty.

Recognition is achieved through the exercise of a right mediated by the performance the opposing duty by the other party. The authorized party does not exercise power or domination over the obligated party, for otherwise the otherness disappears. In other words, to be obliged does not at all mean to belong to the authorized person, that is, to be a slave, rather the opposite: "A slave cannot have duties, only a free person has them"[27]. Therefore, the dispute over rights and duties appears as a search for an agreed solution, that is, mutual recognition. In the absence of agreement between the parties, the

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[23] *Marx K.* Capital. Criticism of political economy. Volume One. Book I: The Process of Capital Production [Kapital. Kritika politicheskoi ehkonomii. Tom pervyi. Kniga I: Protsess proizvodstva kapitala] // Marx K., Engels F. Writings. T. 23. 2nd ed. [Marks K., Ehngel's F. Sochineniya. T. 23. 2-e izd.] M. : Gospolitizdat, 1960. P. 62, ref. 18.

[24] *Levinas E.* From Existence to Existing [Ot sushchestvovaniya k sushchestvuyushchemu] / Transl. from French of N. B. Mankovskoy //Levinas E. Favorites. Totality and Infinity [Levinas Eh. Izbrannoe. Total'nost' i beskonechnoe]. M. — St. Petersburg : University Book [Universitetskaya kniga], 2000. Pp. 59–60.

[25] *Hegel G.* op.cit. Pp. 74–75.

[26] See: *Alekseev N. N.* Religion, Law and Morality [Religiya, pravo i nravstvennost']. Paris : YMCA Press, 1930. Pp. 76–77.

[27] Ibid. P. 207.

dispute is resolved by an independent court precisely in order for each party to agree with the final decision as its own. Instead of the mass of bodies measured by ordinary scales, the scales of justice weigh the weight of the recognition of the other contained in the counter decisions of the subjects.

Preservation of otherness presupposes openness to the other, constant and unchanging willingness to respond to the call of the other. The voice of another should be heard not for the sake of usefulness, truth or other objective qualities. The other strives for justice, for the other does not obey the existing rules but demands different rules that overcome the usual boundaries of correctness. Justice is rightness that is open to the incorrectness of another. Therefore, justice "is impossible without uniqueness, without the singular character of subjectivity"[28], which means the genuine involvement of the other. The implementation of justice is the content of legal communication where each is different for the other. The presence of the other explains the uncertainty of justice that escapes the evidence of knowledge. Therefore, one reasonably speaks about a sense of justice.

The legal fixing of the right and duty on opposite sides of the relationship becomes a principle or form of the otherness of subjects: (subjective) right in unity with the duty of the opposing side formalizes the call of the other and a positive response to the call. The call of the other is the beginning, hence jurisprudence or legal science is a teaching about the right and not about the duty. Through vesting of rights and duties, a legal formalization of the relationship is achieved and a legal relationship arises which is abstracted from the peculiar circumstances, expresses only the mutual recognition formalized by the right and duty. As a legal abstraction, the form of the right and duty includes any member of the society who meets the conditions for participation in this legal relationship. Owing to the abstraction of rights and duties, and anyone can have this right or duty, the legal capacity makes everyone a person, the legal order ensures the equality of subjects which is called formal equality.

Equality of abstract legal entities as a conceivable, ideal equality, that is, equality on an abstract basis, in practice turns into inequality, because abstraction is not reality. Equal legal capacity as the ability of everyone to have the right presupposes the inequality of actual possession: the right is on one side of the legal relationship, while the other side gets only the duty. However, whoever has a duty in one respect knows that he may have a right in another respect. The recognition of the obligated by the authorized person only in words turns into recognition in practice, when the obliged wins the right in another respect which balances his duty in the first respect. Therefore, the rule of law includes a struggle for recognition, a struggle for the right, through which the obligated party acquires the right in another legal relationship becoming the entitled party there, thereby balancing the burden of its duty. A good example is the citizen's right to elect and be elected which accompanies the duty to obey the orders of the authorities. The combination of this right with this duty on the citizen's side, or the combination of the duty to respect elections with the right to govern on the opposite side, essentially evens the ruling and the dependents. By allowing the struggle for the right, the law order protects the freedom of people: "The subject is free only in the struggle"[29]. The reality of formal equality means freedom which is practically revealed as a balance of rights and duties, that is, the balance of the right in one legal relationship with the duty of a given person in another respect. In other words, the true equality of subjects as such is equality in freedom. Legal freedom turns out to be positive freedom, because, as distinguished from negative moral freedom, it serves not to free oneself from some evil, but to strive for the good, for self-actualization of a person among other people.

The rule of law forms a spiral: from justice to formal equality, then to freedom. The transition to freedom does not close the circle, but is the beginning of a new round of the spiral of legal history, because the justice contained in freedom reveals a new other each time. This means that the law has a basis in itself: there is no other goal than the embodiment of the essence of law in the social world, in other words, the simultaneous implementation of the three essential properties of law: justice, formal equality and freedom[30]. The rule of law is not a closed system: legal establishment opens up to external influences, that is, it takes into account the expectations of extra-legal reality through the fair involvement of another into legal communication.

With regard to legal dogma, the simultaneous disclosure of the objective requirements of justice, formal equality and freedom in the current legal order appears as a transition from positive legal principles to legislative provisions, then to legal norms.

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[28] *Levinas E.* Totality and the Infinite [Total'nost' i beskonechnoe] / Transl. from french of I. S. Vdovinoy // Levinas E. Favorites. Totality and Infinity [Levinas Eh. Izbrannoe. Total'nost' i beskonechnoe]. M. — St. Petersburg : University Book [Universitetskaya kniga], 2000. P. 244.

[29] *Hegel G.* op.cit. P. 422.

[30] For more detail see: *Nersesyants V. S.* The philosophy of law. 2nd ed. [Filosofiya prava. 2-e izd.] M. : Norma; INFRA-M, 2011. Pp. 30–48.

In a certain area of social relations positive legal principles express justice as proper recognition of otherness, for example, public rights and human freedoms are such principles. Legal principles are not always explicitly expressed in the texts of laws: the main content of the latter is in legislative provisions that enshrine rights and duties at the achieved level of formal equality. For example, the private law principles of good faith or freedom of a contract, or public law freedom of speech, or religion, or another human public right are furnished with conditions for the implementation and reinforced by the duty of the other party, are transformed from a positive legal principle into a model stipulated by legislative provisions of legal relationship.

An individual legal norm as a systemic unity of hypothesis, disposition and sanction is formulated in specific circumstances at the stage of law enforcement by means of comprehending and interpreting the existing legislative provisions in the light of legal principles. Therefore, the norm of law does not arise as an obligation, but rather a prediction of future behavior. Legal norms latently change principles and rules: legislation can be specified, supplemented or canceled according to the practical application in life situations. By creating a generally recognized legal norm here and now, everyone becomes a legislator, and thus free. Of the variety of doctrinal definitions of law that can be based on the above, the most explicit is the definition of law as normative justice, that is, justice as a norm.

In this regard, it is appropriate to draw a distinction between the legal and logical understanding of the norm. Jurisprudence creates a norm as a rule of behavior according to the formula "if ..., then ..., otherwise ..." reflecting the systemic unity of the hypothesis, disposition and sanction, by considering the regulated social relations in the light of their legal essence. In other words, jurisprudence is not abstracted from the volitional nature of the norm, that is, the legal norm is perceived not just as a givenness, but as a result of purposeful activities. Therefore, the legal understanding of the norm proceeds from the fact that the legal norm is an obligation only as a goal. The norm establishes the boundaries of behavior, thereby formalizes, determines the form of the will: the specificity of the legal approach lies in the fact that the legal norm expresses the will, its purpose being its own form, that is, the will itself. Therefore, only a legal norm makes the will free and at the same time reasonable: reasonableness in general is the expediency of self-actualization. On the contrary, the interpretation of a norm as a form or measure of free will is alien to deontic logic or the logic of norms; here the norm is considered in the empirical givenness of a normative statement. A purely logical approach to legal regulation does not correspond to the subject, because it does not take account of the essence of a legal norm, ignores the substantial basis of law.

Freedom of will is a side of human rationality or wisdom which must be distinguished from reason, rationality as a simple ability to think abstractly. The abstraction of the ethical duty contains any content, because anything can be declared duty. The man of duty is reasonable, but does not belong to himself or is alienated, because he is enslaved by abstract precepts. The abstraction of duty is manifested in the formal rationality of capitalist management noted by M. Weber, that is, the subordination of economic activities to a purely quantitative monetary measurement[31]. Western European capitalism made money a fundamental moral value by expressing and enshrining the leading social significance of monetary management in the ethical field. Money promises liberation. Therefore, the ethical value of money is tantamount to the moral approval of a person's independence. Alienation in monetary relations appears as a person's oblivion of his independent will which is objectified in money, but thus it is still assumed to exist.

Freedom understood in a purely economic sense is freedom of choice, the human ability to make a rational choice. D. Hume clearly showed the limitations of this rational freedom. Questions about the reasons for the choice ultimately run up against the impossibility of a rational explanation, because the beginning of any choice is the immediacy of the human desire[32]. Nevertheless, the contemporary capitalist society considers rational freedom of choice to be the major form of freedom, because it fits well with the ideal of consumption. Freedom of choice masks and hides the specific social alienation on which the consumer society is based, namely, alienation through labor. The specific feature of capitalism is seen in the fact that it is labor that alienates a person, taking alienated forms of socially useful labor. A social man turns into a working animal (animal laborans) captured by an almost physiological cycle

[31] See: *Weber M.* Economy and Society: Essays in Understanding Sociology: In 4 vol. T. 1 [Khozyaistvo i obshchestvo: ocherki ponimayushchei sotsiologii: V 4 t. T. 1] / Trans. From German V. A. Brun-Tsekhovoy, L. G. Ionina, I. A. Sudarikova, A. N. Belyaeva D. B. Tsygankova. M. : Publishing House of the Higher School of Economics [Izdatel'skii dom Vysshei shkoly ehkonomiki], 2016. Pp. 133–135.

[32] See: *Hume D.* Research on the principles of morality [Issledovanie o printsipakh morali] / Transl. from English of V. S. Shvyreva // Hume D. Works in two volumes. T. 2. 2nd ed. [Yum D. Sochineniya v dvukh tomakh. T. 2. 2-e izd] M. : Thought [Mysl], 1996. Pp. 288–289.

of production and consumption[33]. Under capitalism, such alienation is mediated by money, that is, it is human self-alienation. On the contrary, under socialism it acts as directly compulsory labor. The historical mission of socialism was precisely in demonstrating and objectifying capitalist alienation.

The Marxist critique of alienation under capitalism is justified, but contains the fatal error of ignoring the key aspect of the mediating meaning of money. In Marxist economic theory, monetary mediation of commodity circulation means only that money is the universal equivalent of the value of commodities[34]. However, philosophically comprehended mediation is negativity, negativity of subjectivity as a source of dialectical development of social processes. It is owing to the person, the subject only, that denial comes into the world[35]. In other words, contrary to Marxist political economy, the commodity contains an internal contradiction between the consumer and exchange values not at all as such, that is, in the immediacy of objectified, materialized labor[36], but being mediated by the subject as a party to exchange. Therefore, a proper understanding of the mediating role of money places the man in the center of a self-developing economic system. Arbitrariness in setting prices for goods appears to be more important for the course of economic processes than the alleged source of objective commodity values. On the contrary, Marxism declares abstract human labor (that is, labor in general) to be the substance of the (exchange) value of goods[37], thereby revealing an allegedly objective basis for equating the exchanged goods, and hence the parties to the transaction, which in no way reflects the subjectivity of economic preferences. As distinguished from the objective commodity value, the subjective price of a commodity is regarded as something insignificant[38].

The key point, however, is that it is not labor embodied in a commodity that equates commodities (and the parties to a transaction), but rather that people compare and equate the values of their commodities. Only labor in general, abstract labor equates people, hence only the banal judgment that everyone works; on the contrary, concrete labor is compared and equated by people. No one can state which value ratio is correct in a particular transaction: the ratio is established by agreement, not scientific substantiation.

Marxist economic theory does not attach due importance to this circumstance, therefore it creates the false impression that under socialism labor is capable of determining the values of commodity costs directly, that is, without human participation. K. Marx writes: “Each individual manufacturer receives back from society, after all deductions, exactly as much as he gives it. What he gave to society is his individual labor share. For example, a public working day is the sum of individual working hours; the individual working time of each individual manufacturer is the part of the social working day supplied to him, his share in it. He receives a receipt from the society that such and such quantity of labor has been delivered by him ... and according to this receipt, he receives such a quantity of commodities for which the same amount of labor has been expended from the public stocks. The same amount of labor that he gave to the society in one form is received back by him in another form. This is probably dominated by the same principle that regulates the goods exchange as the latter is an exchange of equal costs ... a known amount of labor in one form is exchanged for an equal amount of labor in another form”[39]. Contrary to the above reasoning, the “individual labor share” is not able to compare itself with the labor share of another manufacturer: “Labor itself is a kind of factuality, an actual process, an actual relation, and it cannot measure and regulate itself, cannot be its own form, principle and norm”[40]. In addition, the equalization of the values of goods that embody labor is far from obvious, because the ratio of different concrete labor expended by two manufacturers is by no means proportional to the ratio of the time they worked, since for such a proportion it is first necessary to reduce the manufacturers’ complex labor to simple or abstract[41]. Therefore, it is extremely important who compares real labor contributions

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[33] For more detail see: *Arendt H.* Vita activa, or About an active life [Vita activa, ili O deyatel’noi zhizni] / Transl. from German and English of V. V. Bibikhina. St. Petersburg : Aletheia [Aleteiya], 2000. Pp. 103–174.

[34] See: *Marx K.* Capital. Criticism of political economy. Volume One. Book I: The Process of Capital Production [Kapital. Kritika politicheskoi ehkonomii. Tom pervyi. Kniga I: Protsess proizvodstva kapitala] // Marx K., Engels F. Writings. T. 23. 2nd ed. [Marks K., Ehngel’s F. Sochineniya. T. 23. 2-e izd.] M. : Gospolitizdat, 1960. Pp. 77–80.

[35] See: *Sartre J. P.* op.cit. Pp. 59–81.

[36] See: *Marx K.* Capital. Criticism of political economy. Volume One. Book I: The Process of Capital Production [Kapital. Kritika politicheskoi ehkonomii. Tom pervyi. Kniga I: Protsess proizvodstva kapitala] // Marx K., Engels F. Writings. T. 23. 2nd ed. [Marks K., Ehngel’s F. Sochineniya. T. 23. 2-e izd.] M. : Gospolitizdat, 1960.Pp. 71, 84, 124.

[37] See: Ibid. Pp. 52–55, 67–68.

[38] See: Ibid, p 112.

[39] *Marx K.* Criticism of the Gotha program [Kritika Gotskoi programmy] // Marx K., Engels F. Writings. T. 19. 2nd ed. [Marks K., Ehngel’s F. Sochineniya. T. 19. 2-e izd.] M. : Gospolitizdat, 1961. P. 18–19.

[40] *Nersesyants V. S.* op.cit. P. 194.

[41] See: *Marx K.* Capital. Criticism of political economy. Volume One. Book I: The Process of Capital Production [Kapital. Kritika politicheskoi ehkonomii. Tom pervyi. Kniga I: Protsess proizvodstva kapitala] // Marx K., Engels F. Writings. T. 23. 2nd ed. [Marks K., Ehngel’s F. Sochineniya. T. 23. 2-e izd.] M. : Gospolitizdat, 1960. P. 53.

and how. In the practice of real (Soviet) socialism, the labor of workers and employees was equated by those in power in a compulsory manner and not without benefit (privileges) for themselves. The Marxist socialist utopia completely deprives human subjectivity of social significance, turning numerous private occupations and concerns into a directly public matter. Instead of genuine freedom, Marxism paved the way for unprecedented labor slavery.

In the 20th century the Russian state, then many Eastern European countries became the true center of the practical construction of a socialist social system inspired by Marxist ideas. The socialist glorification of labor turned out to be consonant with the essential features, revealed the hidden foundations of the Eastern European civilization. Here subjectivity, quite in the spirit of the Christian religion, finds the predominant form of self-expression in work: the worker imitates Christ, whoever does not want to work, let him not eat[42]. The assertion of labor activities as a form of social freedom, the transition from alienated labor as a moral duty to labor as self-actualization becomes the super-task of Eastern European history. In the context of the contemporary global capitalism which continuously aggravates labor alienation and widens the gap between the rich and the poor, the worldwide significance of this task is beyond doubt. The sad experience of real socialism helps to look for a genuine solution. The search has not yet been completed, the discovery of such a solution, convincing theoretical substantiation and successful implementation in social practice remain a matter of the future. In any case, it is necessary to find a way to legally transform the labor relations of social production still primarily regulated by morally oriented social law. The sought-after transfer of hired labor under the legal principle of the balance of rights and duties can violate the usual dualism of private and public law, lead to the emergence of a third system-forming part of law in the proper sense.

Labor is essential for ensuring human freedom, because freedom is not a givenness. The immortal is doomed to self-actualization, which is why he is not free. It is the awareness of finitude, mortality only that allows a person to comprehend his own self-actualization as a value, in other words, to consider self-actualization as a result of efforts or labor. Freedom is the labor of self-actualization. Free labor, not alienated labor, is labor as self-actualization.

In social life, a working person is guided not so much by the law as by the immediacy of the bonding social feeling, such as the feeling of friendship or love. The doctrine of togetherness developed by Russian religious philosophy is significant. The principle of togetherness is the person's self-actualization in the society as a living communication of free people[43]. The intuition of the joint social structure captures the sensual content of the rule of law which spreads friendly communication to all members of society. Thus, the concepts of community, public freedom and the rule of law coincide in all essential aspects. Therefore, consistent substantial legal thinking leads to a libertarian-joint theory of law.

One of the main lessons of history is that freedom is not identical to liberation. The principle of morality is liberation from all kinds of evil, its reverse side being objectification, the alienation of a person allegedly being unconditional good, an indisputable ethical truth. The negative freedom of moral duty turns into a new lack of freedom. On the contrary, genuine freedom is positive freedom which is not at all in flight from evil, but in the self-determination or self-actualization of a person, entering into reality through an independent decision, with which a person turns uncertainty into certainty. The source of positive freedom is a person's awareness of his own otherness, and the social mechanism is the legal balance of the rights and duties of everyone. As a special social regulator, law demands the recognition of the other as a subject, thereby realizing genuine freedom in public life.

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[42] See: Ano The Apostle Paul. The second letter to the Christians in Thessalonica. Book of the New Testament [Apostol Pavel. Vtoroe pis'mo khristianam v Fessalonike. Kniga Novogo Zaveta] // Books of the Holy Scriptures of the Old and New Testament. Canonical. Modern Russian translation [Knigi Svyashchennogo Pisaniya Vetkhogo i Novogo Zaveta. Kanonicheskie. Sovremennyi russkii perevod]. M. : Russian Bible Society [Rossiiskoe Bibleiskoe Ob shchestvo], 2011. P. 1325 (Гл. 3, 6–12).

[43] For more detail see: *Frank S. L.* The spiritual foundations of society [Dukhovnye osnovy obshchestva]. M. : Republic [Respublika], 1992. Pp. 54–63.

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