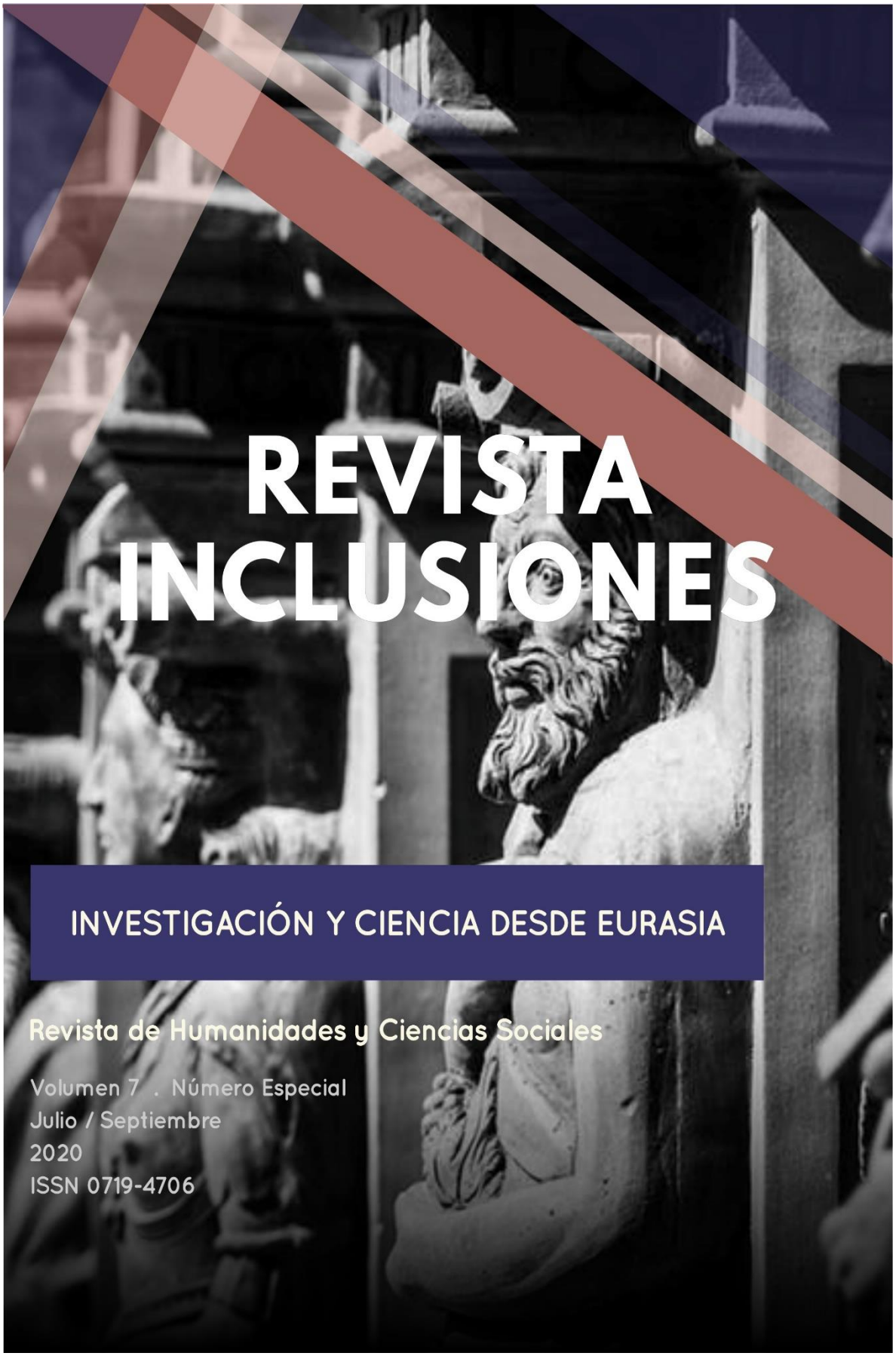

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INTEREST, WILL AND NEUROLAW

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Abstract

Interest and will are legal phenomena and elements of the motivational complex of human behavior. The discoveries of neurosciences and neurotechnologies expand knowledge about human behavior and the psychological and biological characteristics of interest and will. They form new directions, including neurolaw, which is not only widely used in practical terms but also changes traditional legal views, for example, on free will – a fundamental category of jurisprudence. Goal: To analyze existing and identify new approaches to the study of interest and will in the context of neurolaw, which will allow identifying new behaviors.

Keywords

Interest – Free will – Brain – Neurolaw – Norms – Simple and complex models

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Introduction

Interest and will are interdisciplinary categories, and their widespread use has led to their understanding as social and legal phenomena that accumulate the most significant problems of public life and are tools for social development. However, there is no unambiguous understanding of these categories in legal science and practice; the problem is the determination of their relationship. For example, views that are of interest from the positions of various structural elements (object, needs, values, motives, drives, aspirations, decision-making, implementation, action plan, analysis of the achieved result, goal, etc.) dominate, classical theories of "legal interest", based on the methodology of pragmatism of the late 19th – early 20th[1] centuries. There are no answers to the questions of what is will, whether will is a mental or legal concept, whether they need to be separated, whether the will has a legal meaning, etc. There are different positions on the relationship of interest, will, and law: interest and will are included in the concept of law (V.N. Protasov); will and interest are satellites of law, sometimes its condition, but not necessarily elements of the very essence of law, which without them is conceivable and exists (Ya.M. Magaziner).

On the one hand, despite the existing differences, interest and will are legal phenomena (reflected in legal norms, causing legal consequences, protected and provided for with a system of legal guarantees). Thus, in accordance with paragraph 2 of Article 1 of the Civil Code of the Russian Federation, "Citizens (natural persons) and legal entities shall acquire and exercise their civil rights on their own free will and in their interest". On the other hand, interest and will are the main elements of the motivational complex of human behavior, which is studied by representatives of various sciences.

New approaches and discoveries of neuroscience (brain science, combining the results of research in the natural and humanitarian sciences), as well as the introduction of neurotechnologies, change and expand knowledge about human behavior and mental and biological features of interest, will, and related elements. Their achievements since the beginning of the 1990s have been used in law, forming an interdisciplinary field called neurolaw[2].

The attitude to neurolaw is ambivalent. However, first, the achievements of neuroscience and neurotechnology are used in practical terms. Studying the biological and psychological foundations of taking actions and making decisions. For example, it is possible to find out if judges, police officers, and employers are guided by selfish interests in their decisions. They are applied in court cases as evidence and considered when sentencing as well[3]. Second, the growing influence of neuroscience research on jurisprudence leads to a rethinking of the basic categories of law (legal responsibility, legal capacity, sanity, subject of law, the nature of volitional behavior and decisions made, etc.)[4].

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[1] I. L. Chestnov, Interesy v prave s pozitsii postklassicheskoi metodologii. Interesy v prave. Zhidkovskie chteniya. The All-Russian Scientific Conference (Moscow: RUDN. 2017).

[2] J. S. Taylor; J. A. Harp y T. Elliott, “Neuropsychologists, and neurolawyers”, Neuropsychology Vol: 5 num 4 (1991): 293-305 y J. S. Taylor, Neurolaw: Brain and spinal cord injuries (New York: ATLA Press, 1997).

[3] M. A. Belyaev; A. B. Didikin & V. S. Gorban, “"Neiropravo": est li osnovaniya?” V sbornike: Pravo i neironauki: Sbornik statei (Ekaterinburg: Izdatelskie resheniya, 2019).

[4] D. Patterson y M. S. Pardo, Philosophical Foundations of Law and Neuroscience (Oxford: Oxford University Press, 2016).

In the future, the importance of neuroscience and neurotechnology will increase, since the basis of modern development is knowledge and intellectual and creative capabilities of a person. This leads to the perception of the brain as a valuable resource, the study of which allows creating new technologies and implement new operating principles that take advantage of people and machines. However, there are also questions: whether human actions are conscious, whether they can be controlled, whether one is responsible for their actions, whether it is necessary to distinguish between the use of artificial intelligence and human activities. Therefore, the importance and role of law as a regulator of public relations will increase.

Methods

Modern jurisprudence is highly integrated. Inter-scientific connections are an element of its development, which is manifested in attracting achievements and research tools of other sciences aimed at maintaining an equilibrium, stable state of society, and its ability to adapt to the challenges of time. Its main task is to determine the role of the human and volitional principle in social progress. The successful solution of this task depends on the availability and degree of development of certain methodological prerequisites for the use of the categories "interest" and "will".

Results

A comparative analysis of the definitions of interest and will in philosophy, psychology, sociology, law, economics, and politics shows that there are certain common features. They do not exist outside of human behavior, which is determined by external (everything that surrounds a person – the situation, relationships, the behavior of people around them, etc. or regulates their behavior – norms, laws, rules, etc.) and internal (needs, motives, goals, will, interests, values, etc.) factors. Interest and will, along with the need, motive, goal, etc., are the main elements of the motivational complex of behavior.

The inclusion of certain elements in the motivational complex, their concepts and relationships remain debatable. For example, for some lawyers, the will is a collective concept that includes needs, interests, motives, goals, and actions (D.A. Kerimov, V.A. Oygenzikht). For others, the connection between interest and will is manifested in the fact that the direct source of willful actions is conscious interests, which in the form of motives induce expression of the will outside (S.N. Sabikenov, V.V. Subochev). The issue of the priority of will or expression of will remains controversial. The "theory of will" prevails in science and "the theory of expression of will" – in law enforcement practice.

Today, the positions presented need to be re-evaluated, since the discoveries of neuroscience have generated discussions about free will – a fundamental category of jurisprudence that addresses issues of responsibility, capacity, sanity, regulatory methods, etc. Thus, the principle and content of the dispositive method, in particular, civil law (subjects acquire and exercise their rights by their will and in their interest, they are given the right to determine the possibility of choosing behavior that does not contradict the law) is a conscious, purposeful, active, and lawful behavior of the subject, which is based on the connection of interest and free will.

The reason for the controversy was an experiment conducted by the American psychophysiologist B. Libet. At the beginning of the 21st century, a series of experiments were set up in Germany, which confirmed its results, based on which the opinion was formed

that free will is just an illusion and one's actions are initiated by unconscious mental processes long before one is aware of their intention to act. The decisions and actions one takes are the results of neural processes[5]. Numerous experiments have shown that there are conscious and unconscious interests. Unconscious interests (motives, emotions) are manifested in cases, for example, when emotional unconscious stimuli affect a person's conscious assessment, but remain invisible to them. Thus scientists from Israel showed that unconscious interests can affect the objectivity and neutrality of court decisions. They found that judges were significantly more likely to deny prisoners parole if the hearing was held just before lunch, while the rate of parole remained at the same level immediately after lunch. The judges interpreted their interests not as a desire to satisfy hunger, but as an attitude towards prisoners[6]. Therefore, the categories "interest" and "will" should be considered from the perspective of the interaction of the rational and emotional systems of the brain within the framework of the idea put forward by the Nobel laureate D. Kahneman: 1) fast, automatic, unconscious (emotional) and 2) slow, purposeful, arbitrary (rational)[7].

The conclusions that can be drawn are that, first, conscious will and interests are far from the only reasons for one's decisions and actions. Making decisions and committing actions are conscious and unconscious processes, in some cases predictable. Second, it is a mistake to abandon the idea of free will and autonomy of the subject, since it still lies at the basis of social institutions, including law. Rejection of will leads to undermining social practice, which initially ascribes freedom to a person. It is no coincidence that the U.S. Supreme Court called the belief in freedom of human will, the consequence of which is the ability of a normal individual to choose between evil and good, a universal and unchanging foundation of the system of law that serves society in the realization of its interests, goals, and needs[8].

Discussion

Based on the conducted analysis, it is possible to distinguish simple and complex models of the manifestations of interest and will in public relations. Their main difference is that automatic, social safe-useful behavior prevails in the first one while purposeful, innovative behavior in the second. Either way, there is behavior that is contrary to social, including legal, norms. In particular, most murders (except for contract ones) are committed situationally, without understanding one's actions and their consequences[9]. Therefore, it is necessary to consider not the fact of deviation from the norm, but the nature and results of the deviation (positive or negative) to distinguish between anti-social and innovative behavior. Thus, as a result of innovative behavior, new rules of behavior are created, contained in contracts, corporate, and local acts, which do not violate legal norms in accordance with the legal freedom granted to the subject. This leads to the development of public relations, social approval, and encouragement.

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[5] S. M. Levin, "Svoboda voli, nauka i prichiny povedeniya", Epistemologiya i filosofiya nauki Vol: 55 num 2 (2018): 153-154.

[6] Yu. Stanek, "Pravo i neironauka – tochki peresecheniya", Izvestiya vysshikh uchebnykh zavedenii. Pravovedenie Vol: 4 num 333 (2017): 30.

[7] D. Kahneman, "A perspective on judgment and choice: mapping bounded rationality", American Psychologist num 58 (2003): 697–720.

[8] United States v. Grayson. 1978. URL: ht-tps://supreme.justia.com/cases/federal/us/438/41/case.html.

[9] I. L. Chestnov Interesy v prave s pozitsii postklassicheskoi metodologii. Interesy v prave. Zhidkovskie chteniya: materialy Vserossiiskoi nauchnoi konferentsii (Moscow: RUDN, 2017).

The simple model is characteristic of typical, standard relationships, a significant part of which is carried out unconsciously, automatically, out of habit, due to established skills, stereotypes, and is based on the balance of the emotional and rational systems of the brain. The social and legal are not differentiated, since a person interprets the surrounding reality without destroying the integrity, normality of everyday life[10]. For example, a rare lawyer reflects in a store about a sales contract or in public transport about a transportation contract, if the contract is concluded and implemented without problems[9].

In most cases, the simple model is socially safe and useful, it includes three basic elements – interest, will, and morality, which function as a single mechanism, are in unity and relationship (no morality – will and interest lead to unsafe actions; no will – moral interests can not be realized; no interest – the will to moral actions can not be applied in life). Social safe-useful behavior is learned by the majority; it is followed automatically, unconsciously, is characterized by certainty, stability, repeatability, and predictability, and ensures the normal functioning of the social structure.

The complex model is aimed at understanding the interests of volitional actions, their balancing, analysis, and calculation of behavior, making decisions and predicting their consequences, etc. In this model, interest, will, and morality, the emotional and rational systems of the brain not only interact but also conflict with each other. For example, opinions are periodically expressed at the political level that excessive ethical restrictions can become a hindrance in the competition for leadership in brain research[11].

A complex model largely mediates innovative behavior (the ability and readiness of a person to generate and implement new ideas, the ability to reveal and realize their creative potential), which is carried out by going beyond the established attitudes and stereotypes. In other words, deviation from the norm is a natural, necessary element that leads to the positive development of the individual, society, and social institutions.

Selecting simple and complex models is justified since it is time to organize the interaction of people and machines. Thus, robots and artificial intelligence function following the simple model. It is forbidden to go beyond the limits of the algorithm laid down by a person; changing the conditions entails changing the established algorithm. The complex model is unique to human behavior. For example, in Estonia, a robot judge is being tested that will make decisions on simple categories of disputes (the plaintiff and the defendant upload documents to the system and the program analyzes them and makes a decision). At the same time, any of the parties can later appeal this decision to a human judge[12]. In other words, based on the established judicial practice, a person creates a program for algorithmic analysis of court documents, which makes it possible to make decisions without the participation of a human judge. Changes in legislation and judicial practice mean changing the algorithm embedded in the robot judge.

[10] T. Berger Lukman, Sotsialnoe konstruirovanie realnosti (Moscú: 1995).

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[12] Robot sudia uzhe ne stol dalekoe budushchee. Rossiiskaya Gazeta. 2019. Retrieved from: https://rg.ru/2019/09/12/robot-sudia-uzhe-ne-stol-dalekoe-budushchee.html

Conclusion

New data provide a new level in expanding the capabilities of the brain, creating artificial intelligence, controlling human behavior, and so on. Today, new principles of work are introduced that take advantage of people and machines. This area is called "neural network" (human-machine communications based on advanced neurotechnologies, the next generation of the Internet). Its development is stimulated by the state and it covers significant areas of use[13].

In these conditions, the task of law is not only to use the discoveries of neuroscience and neurotechnology in court proceedings, but also to protect human consciousness from manipulation and unjustified technological interference, regulate the most important social relations related to the establishment of restrictions and prohibitions, and consolidate the principles of conducting neurobiological research, the use of neurotechnology, and human rights.

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