

Summary

“Muss die Willensfreiheit bewiesen werden, damit sich das Schuldprinzip rechtfertigen lässt?”

by Héctor Wittwer

In recent years, several authors have claimed that determinism, i. e. the thesis that all events in the world occur necessarily can be proven scientifically. Some of those authors even call for the modification or the abolition of the culpability principle. As no person could ever decide or act in another way than she actually does nobody could ever be responsible or culpable. The article tries to face this challenge to the foundations of German criminal law.

Contrary to what some commentators say, it is first shown that German criminal law does indeed rest on the following two assumptions: (i) not all events in the world are causally de-termined by antecedent events and natural laws (indeterminism), (ii) adults are generally able do decide freely what to do (freedom of the will as the normal case). In the second step, I argue that neither determinism nor indeterminism can be empirically verified. Both positions are metaphysical doctrines. Although we cannot empirically decide whether we are free or not, we have to make a decision on whether or not to abolish the culpability principle. It is shown that this choice is a decision under a double uncertainty. Firstly, we cannot know whether our decision will be carried out in a determined or in an indetermined world. Second-ly, we cannot know whether in deciding on the culpability principle we choose freely or not. It is argued that under these circumstances we must not give up the principle of culpability because abolishing that principle would involve serious risks whereas keeping it up does not involve any risk. This argument in favour of the culpability principle is a variant of Pascal’s famous wager.