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Nomos

JUAN PABLO MAÑALICH, SANTIAGO (CHILE)

DETERMINISM, FREE WILL AND CRIMINAL RESPONSIBILITY

The article presents an argument in favor of a compatibilistic account of free will as criterion for the attribution of personal responsibility, stressing that freedom of the will must be understood not in terms of indeterminism but rather in terms of self-determination. In applying the argument to the specific structures of criminal responsibility, the article discusses how law-abidance must be seen as personal preference of an agent who is member of a democratic political community.

I. DETERMINISM, INTENTIONALITY AND AGENCY

a) Determinism and avoidance

Determinism is the thesis that "there is at any instant exactly one physical possible future".¹ Yet determinism does not imply fatalism, that is, the inevitability of events. In a fully determined world, there are things some agents can in fact avoid, inasmuch their evolutionary design allows them to foresee the occurrence of a certain event and to decide to prevent it. Neither does determinism imply the predictability of events.² Determination is an ontological property of events, whereas the predictability of an event concerns an observer's epistemic capacity. For the prediction of an event it is essential that generalized correlations between certain types of events and other types of events be available, which can be more or less strict.

The thesis that the identity of mental and physical events entails the determination of the former stems from the so-called principle of the causal closure of the physical world. Against this claim it is often argued that quantum physics would refute it, since the behavior of electrons at subatomic level would appear to be undetermined.³ There seem to be good reasons, however, to restrain this interpretation of quantum physics to a microphysical level, so that no direct argument at the level of the philosophy of biology or of philosophy of mind be made out of it.⁴ But even if one accepted the transference of microphysical indeterminism to a macrophysical level, no foundation of an indeterministic conception of free will would be gained, since undetermined events do not necessarily represent freely willed actions.⁵

The evolutionary design of agents that are capable of intentional avoidance concerns some properties that are described, for the most, by reference to biological

- 1 Peter Van Inwagen, *An Essay on Free Will*, 1983, 3; Daniel Dennett, *Freedom Evolves*, 2003, 25
- 2 Gerhard Roth, *Fühlen, Denken, Handeln*, 2003, 504-11; Michael Pauen, *Illusion Freiheit?*, 2004, 32-33
- 3 John Searle, *Mind. A Brief Introduction*, 2004, 16-17
- 4 Michael Esfeld, *Holismus in der Philosophie des Geistes und in der Philosophie der Physik*, 2002, 351-60
- 5 Jürgen Schröder, *Einführung in die Philosophie des Geistes*, 2004, 310-11