

# FREEDOM OF CONSCIENCE AND THE LEGAL PROTECTION OF THE INDIVIDUAL IN PRIVATE LAW: BETWEEN MORAL AUTONOMY AND PATRIMONIAL SECURITY

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**ABSTRACT: Freedom of Conscience and the Legal Protection of the Individual in Private Law: Between Moral Autonomy and Patrimonial Security.**

This study analyzes freedom of conscience as the moral and legal foundation of the autonomy of will in private law, with the primary objective of identifying how this humanist value supports the balance between individual freedom and the legal protection of patrimonial interests. Adopting an interdisciplinary and humanist approach, I have integrated historical-legal, doctrinal, and jurisprudential perspectives to demonstrate the role of freedom of conscience in establishing a peaceful and equitable legal order.

Our research starts from the hypothesis that freedom of conscience is regarded as an expression of dignity and moral autonomy. In this context, it constitutes the foundation of the principle of autonomy of will, and respect for this freedom ensures the stability of legal relationships. At the same time, the study examines the limits of this freedom imposed by public order, good morals, and the demands of social equity, demonstrating the necessity of balancing an individual's inner freedom with the external legal order.

The methodology employed combines hermeneutic and comparative analysis with historical and socio-legal approaches, exploring doctrinal sources, case law, and perspectives from European legal systems. The variables chosen (freedom of conscience, autonomy of will, legal protection, and normative intervention) allowed for the construction of a coherent understanding of the relationship between morality and law.

The research results confirm the main hypothesis, in that freedom of conscience represents the axiological foundation of the autonomy of will and an

essential condition for legal equity. In conclusion, recognizing freedom of conscience as an active principle of private law is indispensable for the development of a balanced and sustainable legal order.

**Keywords:** *consent, morality, freedom of conscience, human rights, autonomy of will, patrimonial security.*

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## Introduction

The topic of our research aims to explore an essential dimension of the human condition and contemporary legal order: the relationship between freedom of conscience and the legal protection of the individual within private law. In an era in which the fundamental values of law face challenges generated by accelerating social, economic, and technological changes, the idea of freedom of conscience emerges as a moral and legal benchmark for balancing an individual's moral autonomy with the patrimonial security guaranteed by the rule of law.

The rationale for choosing this topic is grounded in the fact that the subject analyzed in this study is part of a long-standing scientific concern of ours, relating to the direct and indirect protection of the creditor's rights with respect to their own patrimony, as well as the patrimony of their debtor. The research starts from the conviction that freedom of conscience is not merely an inner reality of the individual, but also a fundamental legal category of private law, reflected in the principle of autonomy of will. This freedom lies at the intersection of morality, law, and legal education—three domains that together define the architecture of a democratic society and durable peace.

Our scientific endeavor is based on a principal hypothesis, according to which freedom of conscience, understood as an expression of the dignity and moral autonomy of the individual, constitutes the value-based foundation of the principle of autonomy of will in the realm of private law. Respect for this freedom thus becomes an indispensable condition for maintaining the balance between individual freedom and the legal protection of patrimonial interests. On this basis, we formulated three secondary hypotheses as follows:

- a. Here is a direct connection between freedom of conscience and the development of legal awareness, manifested through the influence of

- education on respect for the rights of others;
- b. Limiting the autonomy of will through public order and good morals does not restrict moral freedom but ensures legal equity and stability;
  - c. Legal systems that explicitly recognize freedom of conscience as a fundamental principle provide balanced protection to the individual, both in patrimonial and non-patrimonial terms.

To conduct this research, complementary analytical methods were employed. Among these, the hermeneutic and logical method allowed for the interpretation of philosophical and legal concepts within their historical dynamics; the comparative method served to examine the reflection of freedom of conscience across different private law systems; the analytical and systemic method was used to analyze the principle and functions of autonomy of will, as well as its limits; the historical method enabled the identification of the evolution of the idea of freedom in European and Romanian legal traditions; and the socio-legal method highlighted the role of legal education in strengthening civic awareness and social peace.

In line with the above, our analysis seeks to follow four major directions: the theoretical grounding of freedom of conscience, its reflection in private law, the humanist and educational dimension of this freedom, and applied research on the evolution and expression of this freedom in the Romanian legal system and European case law. Regarding the research proper and its statistical results, these will not be included in the present study but will form an integral part of another, more extensive work.

## 1. Theoretical and Conceptual Framework

### 1.1. Freedom of Conscience as a Source of Human Rights

*Freedom of conscience* represents one of the principles of human dignity and constitutes the axiological foundation of human rights. This idea of social and legal value is found in the works of various authors from different fields of expertise<sup>1</sup>, including the legal domain in which we specialize. According to some of these authors, the importance of balancing *individual*

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1 Daniela Vacarciuc, *Axiology and the Value Essences of Education*, 2023, CZU 37.017 | doi.org/10.5281/zenodo.7974612, p. 10, [https://ibn.idsi.md/sites/default/files/imag\\_file/9-14\\_41.pdf](https://ibn.idsi.md/sites/default/files/imag_file/9-14_41.pdf)

*freedom with social responsibility* is grounded in the necessity of an ethical conscience in relation to others.<sup>2</sup>

In modern philosophy, we encounter the moral autonomy of the individual as an inner freedom to act according to one's own moral law<sup>3</sup>. Some authors argue that freedom of thought and conscience is part of the natural rights of human beings<sup>4</sup>. Complementing these ideas is the concept of the *social contract*, which emphasizes the interaction between a human being's freedom to enter agreements and the individual's pact with society (one enjoys their rights only until the point at which they infringe upon the rights of another). This latter notion provides the conceptual premises for the incorporation of freedom of conscience into the legal order.

Within the legal domain of analysis and interest, there are also recent views suggesting that law and morality lie at the boundary between fundamental principles and contemporary challenges<sup>5</sup>. All of these considerations guide us toward the field of law, allowing us to address the concept of *freedom of conscience* in a juridical context.

From a legal perspective, freedom of conscience is enshrined in key international instruments, such as the Universal Declaration of Human Rights (Art. 18) and the European Convention on Human Rights (Art. 9)<sup>6</sup>. These norms recognize the individual's right to form their own

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2 John Stuart Mill, *On Liberty*, The Walter Scott Publishing Co., Ltd., Londra, and Felling-on-Tyne, New York și Melbourne, <https://www.gutenberg.org/files/34901/34901-h/34901-h.htm>

3 Immanuel Kant, *Groundwork of the Metaphysics of Morals. Critique of Practical Reason*, Scientific Publishing House, Bucharest, 1972, pp. 43-44.

4 John Locke, *Al doilea tratat despre carmuire - scrisoare despre toleranta - John Locke*, Ed. Nemira, 1999; See also: Ioan-Gheorghe Rotaru, "Reflections of John Locke's Thinking and the Impact of his Ideas", in *Proceedings of the 39th International RAIS Conference on Social Sciences and Humanities*, Dr. Yuying Shen Dr. Fotios Vouzas Dr. Simona Franguloiu (Eds.), April 17-18, 2025, Princeton, NJ, USA, pp. 168-176. DOI:10.5281/zenodo.15474902.

5 Diana Dănișor, Gheorghe Dănișor, *Law and Morality: Between Fundamental Principles and Contemporary Challenges*, article extracted from *The Philosophy of Human Rights. A Critique of Modernity*, Universul Juridic Publishing, Bucharest, 2024, <https://www.universuljuridic.ro/dreptul-si-morala-intre-principii-fundamentale-si-provocari-contemporane/> ,

6 Bîrsan Corneliu, *The European Convention on Human Rights. Commentary on Articles*, 2nd ed., C.H. Beck Publishing House, Bucharest, 2010, ISBN: 978-973-115-676-7, pp. 727-763.

beliefs, to express them, and to respect them, under the protection of the state and international jurisdictions. Thus, the individual's inner freedom is transformed into a universal principle of legal legitimacy, crossing both private and public law and shaping the interpretation and application of legal norms.

## 1.2. Distinction between Freedom of Conscience, Freedom of Thought, and Freedom of Religion

Tracing back to antiquity, historical sources indicate that the norms of conduct (such as the following Roman concepts: *ius* or *lex*) were originally based on religious norms (*fas*), sometimes being conflated. Over time, the two categories of norms became distinct and autonomous, although evidence exists that these concepts occasionally influenced each other.

*Freedom of conscience* refers to the internal autonomy to form and uphold one's own moral or philosophical convictions. *Freedom of thought* focuses on the internal cognitive process and the right to choose one's ideas without external constraints. In contrast, *freedom of religion* pertains to the right to adhere to a faith, to participate in rituals, and to publicly manifest this affiliation, under the legal protection of the state.

In private law, these distinctions acquire concrete relevance: *freedom of conscience* is reflected in decision-making and autonomy of will, legal capacity, and the exercise of patrimonial and non-patrimonial rights. Therefore, the individual is not merely the holder of internal freedoms but also the active element of legal relationships, whose decisions must be both protected and balanced by the demands of the legal and social order.

Considering the above, it can be stated that the individual's inner freedom constitutes the moral source of legal norms, bridging ethics and legality and providing the axiological foundation of autonomy of will in private law. This freedom thus occupies a central position in the entire research endeavor, serving as the starting point for analyzing the connection between moral autonomy and the legal protection of patrimonial interests.<sup>7</sup>

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7 Ioan-Gheorghe Rotaru, "A look at how the concept of human rights has evolved over time", *Journal for Freedom of Conscience (Jurnalul Libertății de Conștiință)*, Vol. 11 No. 2 (2023), pp.825-874. DOI: <https://doi.org/10.5281/zenodo.10557901>;

### 1.3. Freedom of Conscience as the Foundation of Autonomy of Will in Private Law

Freedom of conscience is not merely a philosophical ideal or an abstract right enshrined in international instruments. It is concretely reflected in private law through the principle of autonomy of will. As is well known, autonomy of will presupposes an individual's capacity to freely express choices within legal relationships, to enter into acts and contracts in accordance with personal values and convictions, and to manage their patrimony responsibly, without arbitrary interference.

However, obligations assumed under legal acts are sometimes not fully or only partially honored, which can lead to adverse consequences for the contractual partner's patrimony. This is why contractual relationships must be reinforced with guarantees, to which the contracting parties consent and which ensure the proper and full observance of the rights and obligations assumed. Such considerations contribute to normative stability and the legal order in society.

From this perspective, freedom of conscience constitutes the axiological source of legal decisions: each legal act expresses a moral choice and the conscious decision of the subject, and legal norms serve both to protect these manifestations and to limit excesses in the name of public order, equity, and good faith. Thus, private law not only recognizes the individual's inner freedom but also translates it into rules that guarantee patrimonial security and the stability of legal relationships within a specifically legal logic.<sup>8</sup>

This relationship between freedom of conscience and autonomy of will generates a permanent tension: on the one hand, the individual has the right to freely exercise will in accordance with their moral convictions; on the other hand, legal norms intervene to prevent patrimonial harm or social imbalances. Consequently, inner freedom becomes both *the moral foundation and the practical instrument* of a balanced legal order, where ethical values and legal norms intertwine to protect the individual and the community.

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8 John Dewey, „Logical Method and law (Metoda logică și dreptul)”, *Cornell Law Review*, vol. 10 (1), 1924, pp. 17-27, translated by Cristinel Munteanu, *Diacronia Journal*, no. 15/2022, ISSN: 2393-1140, <https://doi.org/10.17684/i15A211ro> , pp. 1-7, <https://www.diacronia.ro/ro/journal/issue/15/A211/ro/pdf>

This understanding allows for the integration of the concepts of freedom, morality, and legal responsibility, providing the conceptual framework necessary for a detailed analysis of autonomy of will and its limits in private law. These aspects will be further analyzed and developed throughout this study. In this light, freedom of conscience is no longer merely a theoretical ideal but a functional principle of the legal order, shaping patrimonial and interpersonal relationships while supporting social stability.

## **2. Moral Autonomy and Autonomy of Will through the Lens of Private Law**

### **2.1. Autonomy of Will as the Legal Reflex of Freedom of Conscience**

In private law, freedom of conscience is concretized through autonomy of will, a principle that provides the individual with the capacity to organize their legal relationships according to their own moral values and inner convictions. At the same time, this freedom is not absolute. Normative intervention serves to protect social balance and patrimonial security, generating a tension between moral freedom and legal necessity.<sup>9</sup> At this stage of our legal analysis, we aim to examine these mechanisms from two complementary perspectives: the legal expression of moral autonomy and the way private law balances individual freedom based on the protection of patrimonial interests.

It is indisputable that autonomy of will represents the legal manifestation of freedom of conscience in private law. It is reflected in the right to freely enter into legal acts, to dispose of assets, and to organize patrimonial and non-patrimonial relationships according to one's own values. In Romanian, European, and international doctrine, autonomy of will is regarded as the fundamental principle of contracts and voluntary legal relationships, since, in principle, it recognizes the individual's capacity to decide freely, responsibly, and consciously regarding the legal acts they undertake.

However, autonomy of will is not absolute. It is limited by public order, good morals, and the principle of good faith, which protect the general interest and the equity of legal relationships. For example, a contract that violates imperative norms or causes evident harm to one of the parties may be subject to absolute or relative nullity. This limitation does not contradict

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9 „Man is born free, but everywhere he is in chains”, Jean-Jacques Rousseau, *The Social Contract*, Antet Publishing, Bucharest, 2013.

the individual's moral freedom but places it in dialogue with legal reality, ensuring social and patrimonial protection.

Moreover, established doctrine has analyzed the principles of law in general and civil law in particular. In this context, it has been argued that *it is natural and logical for the past to be exempt from the application of new civil law, since the latter, being essentially an order, cannot impose that an act be conducted in accordance with its provisions except after its entry into force.*<sup>10</sup> Nevertheless, the legislator has recognized two exceptions to this rule (retroactivity and ultra-activity of civil law), in cases strictly and exhaustively provided for by law. We consider this idea useful for a comprehensive analysis of the hypotheses we have established for this scientific endeavor.

Furthermore, legal language itself is shaped according to certain factors to ensure that the legal norm is clear, concise, and capable of being correctly understood and applied.<sup>11</sup> All of this highlights the manner in which autonomy of will manifests under the protection of the normative framework, balancing inner freedom in relation to legal security.

## **2.2. The Tension between Moral Freedom and Patrimonial Protection**

As previously noted, the individual's moral freedom, expressed through autonomy of will, sometimes comes into conflict with the necessity of protecting patrimonial interests or social equity. This tension arises in several practical situations, such as abusive clauses included in contracts. Even if the contractual party has acted in accordance with their own conscience, the law intervenes to safeguard balance and good faith. Another practical situation concerns consumer protection, where the consumer's rights limit the contractual freedom of the professional to prevent imbalances and abuses. Additionally, another example may involve the protection of the debtor. In this latter case, the law provides guarantees against the excesses of creditors, even if the debtor initially consented to certain conditions.

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10 Gheorghe Lucian, „News and Controversies Regarding the Contravention Liability of University Staff According to the Provisions of the Romanian Law on Higher Education”, in the volume of the International Conference *Challenges of Business Law in the Third Millennium*, vol. 13, no. 4, p. 567.

11 Gheorghe Lates, Gabriela Lupsan, Mihaela Postolache, „Factors of modelling the legal language from the current Romanian legislation”, *Contemporary Readings in Law and Social Justice Journal*, vol. 4, nr. 1, Addleton Academic Publishers, New York, 2011, pp. 632-634.

This interaction demonstrates that private law does not restrict moral autonomy but integrates it within a normative framework that ensures equity and the stability of patrimonial relationships. At the same time, respecting the individual's moral freedom guarantees that state or judicial intervention does not become arbitrary but is carried out in accordance with fundamental moral and legal values.

Therefore, the analysis of autonomy of will in private law reveals a delicate balance in which the individual's inner freedom is protected and valued, while the legal order intervenes where freedom might generate social imbalances or patrimonial harm. This interdependence between morality and legal norms forms the foundation of a fair social order, highlighting the humanist dimension of private law.

From the foregoing analysis, we observe that autonomy of will, as the legal reflex of freedom of conscience, manifests as an essential principle of private law. It allows the individual to exercise moral freedom and organize patrimonial relationships, while simultaneously being calibrated by norms that ensure social balance and patrimonial protection.<sup>12</sup> In this way, private law becomes an instrument for harmonizing the individual's inner freedom with the requirements of the legal order, preparing the context for the analysis of the educational and humanist dimensions, which will be addressed in the continuation of this study.

### **3. The Humanist and Educational Dimension of Freedom of Conscience**

#### **3.1. The Formation of Legal Consciousness**

Freedom of conscience is not merely a theoretical or legal value; it also represents an educational tool and a key factor in social cohesion. In a democratic society, respect for the individual's conscience, combined with the

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12 Marilena Marin, *Comparative analysis regarding the immovable goods publicity and the land book of the states of the European Union (Analiză comparativă privind publicitatea imobiliară și cartea funciară în statele UE)*, Current Issues of the EU Political-Legal Spac, Law Review - International Journal of Law and Jurisprudence Open Source Online Publication, Edited by the Union of Jurists of Romania and Universul Juridic Publishing House, e-ISSN 2246-9435, volumul: *Supplement of Law Review - Year 2019*, pp. 229-236.

development of legal competence, constitutes the foundations for the formation of a fair and peaceful social order.<sup>13</sup>

It can also be noted that freedom of conscience, in relation to its social value, is protected through criminal law mechanisms. The state's authority to punish arises from the need to enforce order in society, even at the cost of the legislator's imperative intervention.<sup>14</sup> The Latin dictum "*fiat justitia, pereat mundus*" aptly expresses this mechanism available to state authority. As an illustrative example, one may consider the impact of regulatory and control systems on individual behavior and compliance,<sup>15</sup> human dignity, and the right to enforce sanctions.<sup>16</sup>

This is the rationale for considering it both appropriate and interesting, within the scope of this study, to analyze these dimensions, focusing on the formation of legal consciousness and the relationship between freedom and durable peace.

In the formation of legal consciousness, legal education plays a central role and has direct implications for cultivating respect for freedom of conscience and the principle of autonomy of will. Through legal instruction, young graduates and professionals in the legal field learn to understand not only legal norms but also the moral and social values they reflect. This awareness transforms theoretical knowledge into practical responsibility, contributing to the development of individuals capable of making informed and balanced decisions in exercising their patrimonial and personal freedoms. In this way, legal professionals are not only able to create legal norms but also to apply them responsibly.

Legal professions play an essential role in this process: they act as mediators between the individual's moral autonomy and the normative framework, ensuring that freedom of conscience does not remain a mere abstract ideal but materializes in correct and equitable codes of conduct, as

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13 Florica Brașoveanu, „Reaffirming democratic values in a time of global crisis”, *Journal of Freedom of Conscience*, vol. 11, nr. 3, Editions IARSIC, 2023, p. 64.

14 Mariana Mitra-Niță, „The Basis of Punishment. The State's Right to Punish”, *Proceedings of the 21st International RAIS Conference on Social Sciences and Humanities*, Scientia Moralitas Research Institute, 2021, pp. 161-163.

15 M. Foucault, *Surveiller et punir: Naissance de la prison*, Ed. Gallimard, Paris, 1975.

16 Diana Dănișor, Elena Oancea, *The Kantian Foundations of the Right to Punish (Fundamentele kantiene ale dreptului de a pedepsi)*, C.H. Beck Publishing, Bucharest, 2024, pp. 2-4, 162.

recognized since antiquity (“*Juris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere*”)<sup>17</sup>. This demonstrates that legal education is not limited to technical training; it cultivates respect for human dignity, the rights of others, and social cohesion.

Clearly, the formation of legal consciousness enables individuals to make the best decisions when entering into a legal act, without necessarily being legal professionals themselves. In social interactions, the principles of law are applied equally and largely reflect each person’s education, intentions, and interest in protecting their rights or assuming obligations. Consequently, this conduct creates legal order and guides us toward the balance that must also exist at the societal level. These processes may also support and sustain the concept of *durable peace*.

### 3.2. Durable Peace through Respect for the Conscience of Others

Respect for each individual’s conscience is the foundation of durable peace and social stability. Freedom of conscience, understood as the recognition of each individual’s dignity, becomes the instrument through which the legal community and society as a whole can prevent conflicts and ensure equity in patrimonial and non-patrimonial relationships.

Within the context of private law, durable peace requires a balance between individual freedom and the common good. Individuals’ moral and legal decisions are mediated by norms that protect the interests of all parties, and legal professionals act as guardians of this harmony, preventing abuses and imbalances. In this way, freedom of conscience transforms into an active principle of the social order, transcending mere legal protection and becoming a vector of solidarity, responsibility, and social peace.

An important measure in maintaining legal order at the societal level is to grant maximum respect to the normative system and, implicitly, to the rights of other individuals with whom we interact at any given time. When a norm of conduct is violated, it is advisable to restore balance and, if possible, attempt to resolve conflicts amicably, through mutual understanding.<sup>18</sup>

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17 Alexandra Crețu, *Roman Law in the Roman Province of Judea – A Legal Perspective on a Biblical Trial*, (*Dreptul roman în provincia romană Iudeea – o perspectivă juridică asupra unui proces biblic*),

<https://www.juridice.ro/699745/dreptul-roman-in-provincia-romana-iudeea-o-perspectiva-juridica-asupra-unui-proces-biblic.html>

18 Roxana Elena Topor, „Considerations for conflict. Diplomatic mediation”, *Revista Ars Aequi*, vol. 6, nr. 1, Universul Juridic Publishing, Bucharest, 2016, p. 136.

In doing so, we protect ourselves in the same way that we safeguard the legal relationships in which we participate.

It can be argued that the humanist and educational dimension of freedom of conscience complements the theoretical-legal analysis of the ideas previously discussed and provides a bridge to applied research. Applied research may test practical situations, working hypotheses, and examine how these legal principles are reflected in Romanian, European, and international jurisprudence. Furthermore, this type of research can pursue both the confirmation of the relationship between moral freedom and the legal protection of the individual, as well as the identification of mechanisms through which legal systems achieve a balance between personal autonomy and *patrimonial security*.<sup>19</sup>

## Conclusions

Upon reaching the conclusion of our scientific endeavor, and without claiming to have exhausted the topic, we can draw a series of conclusions that we present to interested readers, hoping that our study opens the way to further in-depth analysis and stimulates constructive discussion.

Regarding our topic, we note that freedom of conscience constitutes the axiological foundation of autonomy of will in private law, while the legal order, through norms and jurisprudence, protects the individual and balances freedom with patrimonial security. Legal education and professional training in legal professions are key factors in fostering social peace within the community, by cultivating moral and legal consciousness. Legal systems that explicitly integrate freedom of conscience provide more equitable and coherent protection for individuals, demonstrating the practical value of this principle.

Looking forward, in relation to the concept of “law” in a broad sense, we consider it appropriate to strengthen the principle of freedom of conscience in private legislation and jurisprudence. This applies both to law understood as the relationship between public authority and the citizen, and to the concept of “law of the parties” established within legal relation-

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19 Mădălina Botină, Marilena Marin, „Application of Legal Instruments of Protection in the Field of Personal Data–Human Rights between Challenges and Limits”, *ConScienS Conference Proceedings*, Scientia Moralitas Research Institute, 2021, DOI: 10.5281/zenodo.4542200, pp. 57-66.

ships between individuals. A deeper integration of moral and educational dimensions into the training of legal professionals is therefore essential.

Furthermore, future research should continue comparative studies to identify the most effective mechanisms for balancing moral autonomy with legal protection. These mechanisms can constitute an important component of legal order and respect for the individual as a legal subject.

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