



25th IVR World Congress  
LAW SCIENCE AND TECHNOLOGY  
Frankfurt am Main  
15–20 August 2011

## Paper Series

No. 067 / 2012

Series A

Methodology, Logics, Hermeneutics, Linguistics, Law and Finance

*Paweł Banaś*

**Akrasia – Status of Weak-Willed  
Actions in Philosophy of Law**

URN: urn:nbn:de:hebis:30:3-249258

This paper series has been produced using texts submitted by authors until April 2012.  
No responsibility is assumed for the content of abstracts.

Conference Organizers:

Professor Dr. Dr. h.c. Ulfrid Neumann,  
Goethe University, Frankfurt/Main  
Professor Dr. Klaus Günther, Goethe  
University, Frankfurt/Main; Speaker of  
the Cluster of Excellence “The Formation  
of Normative Orders”  
Professor Dr. Lorenz Schulz M.A., Goethe  
University, Frankfurt/Main

Edited by:

Goethe University Frankfurt am Main  
Department of Law  
Grüneburgplatz 1  
60629 Frankfurt am Main  
Tel.: [+49] (0)69 - 798 34341  
Fax: [+49] (0)69 - 798 34523

## **Akrasia – Status of Weak-Willed Actions in Philosophy of Law**

*Abstract: Akrasia, or weak-will, is a term denoting a phenomenon when one acts freely and intentionally contrary to his or her better judgment. Discussion of akrasia originates in the Plato's Protagoras where he states that “No one who either knows or believes that there is another possible course of action, better than the one he is following, will ever continue on his present course”. However, in his influential article from 1970, Donald Davidson argued that akrasia is theoretically possible yet irrational. Some other critics of Plato's stance point out that phenomenon of akrasia is common in our everyday experience, therefore it must be possible.*

*These two arguments in favor of akrasia existence – theoretical and empirical – will be discussed from both – philosophical and psychological points of view. Especially, George Ainslie's argument that akrasia results from hyperbolic discounting will be taken into consideration to show how it affects traditional thinking about weak-willed actions.*

*Finally, the paper will discuss how the contemporary notion of akrasia may affect the idea of responsibility and free will. Implications for the philosophy of law will be shown, i.a. whether it is possible to claim that a given example of a weak-willed action was indeed free and intentional and one should be held responsible for its results.*

*Keywords: akrasia, weak-willed actions, discounting,*

### **I. Definition and History of the Concept**

#### *1. Short Introduction – Procrastination*

How many times have we experienced a situation when, despite having to write an article or a paper for a conference, instead of doing so we firstly cleaned up the room perfectly, did the washing-up, checked all the latest news on the Internet, found suddenly time to answer all the forgotten emails etc. Of course, while carving the pencils for God-knows which time we are perfectly aware that we should be doing our work instead. This is the case of procrastination, the nightmare of all the students when the exams are coming, the „venerable sin of sloth” as G. Ainslie puts it (2008). He defines it also more precisely: „by procrastinating you choose a course that you would avoid if you chose from a different vantage point, either from some time in advance or in retrospect” (ibidem).

Procrastination is a form of *akrasia* or a weak-willed action – done freely and intentionally against one's better judgment. In this paper I want to discuss the notion, possible

---

<sup>1</sup> PhD Candidate, Department of Theory of Law, Jagiellonian University

explanation (from theoretical and empirical point of view) and eventually consequences of this phenomenon – in the philosophy of law. I will discuss three consequences:

- a) for the assumption of homo oeconomicus as used in the economic analysis of law;
- b) for the assumption that free market maximizes expected income most efficiently;
- c) eventually – agent responsibility for a breach of legal rules.

These are not all the possible consequences of *akrasia* for the philosophy of law, but I will focus only on them. Now, I will begin with a brief historical introduction.

## 2. Plato

The problem of *akrasia* originates from Plato's *Protagoras* [358c] where Socrates argues:

*“Then if the pleasant is the good, no one who knows or believes there is something else better than what he is doing, something possible, will go on doing what he had been doing when he could be doing what is better. To give in to oneself is nothing other than ignorance, and to control oneself is nothing other than wisdom.”*

Therefore, for Plato, *akrasia* is impossible [let me call this approach a Socratic stance]. Had one believed that something is better for him – he would have done it. For Socrates (and Plato) *akrasia* is simply ignorance.

## 3. Aristotle

On the other hand, Aristotle argues in his *Nicomachean Ethics* that *akrasia* is actually possible and quite common in our everyday experience. This comes from an intuitive observation that everyone from time to time is subject to passion (*pathos*) which does contradict the reason. People who tend to act according to their passions are called *akratic*, while these who would rather follow their reason – are called *enratic*.

Actually, Aristotle enumerates two types of *akrasia* – *propeteia* [impetuosity] and *astheneia* [weakness]. He also talks about two appetites that are the passions that may cause *akrasia* – pleasure and anger. If we now put the two types of *akrasia* in rows and two appetites in columns – we will receive 4 forms of *akrasia*. Two of them, caused by pleasure, would be “standard” *akrasia* while the two remaining “qualified” – anger caused *akrasia*.

For Aristotle, *akrasia* would be a result of conflict between emotion and reason, or to be more precise – a conflict between reason limited by emotion and reason free of emotion impact. This is important because, although there are some different opinions (Austin, 1956/7

[in:] Stroud, 2008), I think that for Aristotle the case of *akrasia* was not absolutely exclusive of person self-control.

These two positions – Socratic, which doubts the possibility of *akrasia* and Aristotelian, which tries to explain the common intuition of possibility of acting against one's reason – are fundamental for the ongoing discussion. However, the problem was given much attention in the history of philosophy. Historical introduction can be found in Bobonich, Destree (2007) or Thero (2006).

#### 4. Contemporary Definition of the Concept

The aim of this paper is to discuss *akrasia* theoretically and empirically. I will focus on R. Hare and D. Davidson explanations of weak-willed actions from the philosophical point of view. As per psychological explanation – I will address G. Ainslie idea, that *akrasia* is a result of hyperbolic discounting.

W. Załuski (2010) suggests three forms of *Akrasia*:

- *akrasia sensu stricto* – refers to acting non-compulsively against one's better judgment. This refers to a situation when an agent<sup>2</sup> did *x* rather than *y* at time *t* even though she was convinced at *t* that, all things considered, *x* was a better thing to do and she was able to do *x* (which implies that she did not act compulsively).
- *akrasia sensu largo* – refers to *akrasia sensu stricto* as well as acting compulsively against one's better judgement.
- *akrasia sensu largissimo* - *akrasia sensu largissimo* “embraces the two preceding forms of *akrasia* as well as the failure by an agent to realize her resolutions due to her natural inclinations which the resolutions were supposed to counteract (Załuski, 2010).

*Akrasia sensu largo* can be therefore further divided into compulsive *akrasia sensu largo* (or simply compulsive *akrasia*) and non-compulsive *akrasia sensu largo* (or simply non-compulsive *akrasia*).

---

<sup>2</sup> Usually, when I will be using the form “agent” I will mean a person acting at the given moment.

## II. Theoretical Approach

### 1. Richard M. Hare

A contemporary Socratic stance is present in the works of Richard M. Hare who argues that *akrasia* is indeed impossible. He states that it is impossible for a human being to do something and at the same time truly and correctly claim that he ought instead to do something else. Hare's thinking about weak-willed actions mirrors his theory of evaluative judgments, which for him must be differentiated from descriptive judgments. Evaluative judgments, he says, are strongly connected with the actions in a way that they (judgments) “guide” them (actions). According to Hare, evaluative judgments entail an answer to the question “what shall I do?” and, therefore, constitute an order or imperative such as “let me do  $x$ ”.

For Hare, if we have a judgment, such as: (J) “I ought to do  $x$ ”; and an imperative (I) “let me do  $x$ ” - (J) entails (I) in a way that assenting to (J) requires assenting to (I) otherwise one cannot claim that he correctly assented to J. Therefore, true assenting to the statement J requires doing the thing the imperative in question addresses.

This means that for Hare the true evaluative judgment the given person holds can be drawn most reliably from the actions and choices of that person. From what the person does we can elicit what she thinks, what are the moral rules she follows and what are the preferences of that person. Actually, to be precise, Hare claims that if  $A$  did  $x$  at time  $t$ , it means that  $A$  valued  $x$  at time  $t$  the highest.

For Hare “It is a tautology to say that we cannot sincerely assent to a ... command addressed to ourselves, and *at the same time* not perform it, if now is the occasion for performing it and it is in our (physical and psychological) power to do so.”

For Hare situations described as akratic are in fact those when a person cannot do what he or she wants or when he or she does not truly think that he or she ought to do the thing in question.

### 2. Donald Davidson

Despite the fact, that *akrasia* seems logically implausible, it is difficult to deny its existence. It simply happens too often – whether in form of procrastination or some impulsive actions we later regret but on the spur of the moment they seemed much more attractive. The question is what weak-willed actions really are.

In 1970, in his influential paper, Donald Davidson defended the possibility of *akrasia*. However, he perceived the “paradox” of weak-willed actions as the problem of philosophy of action – not moral philosophy.

Accordingly, he rather uses the term “incontinence” (instead of *akrasia*) defining it as follows:

In doing  $x$  an agent acts incontinently if and only if:

- 1) the agent does  $x$  intentionally;
- 2) the agent believes there is an alternative action  $y$  open to him; and
- 3) the agent judges that, all things considered, it would be better to do  $y$  than to do  $x$ .

There seems to be a contradiction between 1) and 3). However, to the contrary, Davidson discusses how it is possible for a person to act freely and intentionally against her better judgment<sup>3</sup>. His argumentation is as follows:

For Davidson there is a very important difference between two sentences:

S1)  $A$  does  $x$ , although he finds  $y$  a better option

S2)  $A$  does  $x$ , although he finds  $y$  a better option all things considered

Let us consider two judgments:

J1)  $x$  is better than  $y$

J2) Because of  $r$ ,  $x$  is *prima facie* a better option than  $y$

J2 does not suggest that  $x$  is absolutely better than  $y$  – as J1 does. In case of e.g.  $s$  (instead of  $r$ ) –  $y$  might be a better option.

We can therefore extend the judgment J2:

J3) because of  $r_1, r_2, r_3... r_x$  –  $x$  is *prima facie* a better option than  $y$ ;

or: because of  $(r_1...r_x)$  –  $x$  is *prima facie* a better option than  $y$ .

---

<sup>3</sup> This is what W. Załuski defined as *akrasia sensu stricto*.

Even if we consider now  $r$  as  $(r_1...r_x)$ , so that  $J_2=J_3$ , still  $J_2$  is not identical with  $J_1$ . This is because  $J_2$  is a relational clause – and as such it cannot conflict logically with any unconditional judgments. So if we move back to compare sentences  $S_1$  and  $S_2$ ...

S1)  $A$  does  $x$ , although he finds  $y$  a better option

S2)  $A$  does  $x$ , although he finds  $y$  a better option all things considered

...we can see that  $S_2$  is a relational sentence – not an all-out sentence like  $S_1$ . Logically, hence, you may claim that you judge that, all things considered, it would be better to do  $y$  than to do  $x$  and yet do  $x$  intentionally, even if you could freely choose between  $x$  and  $y$ .

This means that for Davidson *akrasia* is possible, yet irrational. It is logically possible that you act against your better judgment. However, acting rationally requires that you accept the rule of continence – saying that one should act according to the option seen as the best considering all the available information you find relevant or as Davidson puts it “*perform the action judged best on the basis of all available relevant reasons*” (Davidson, 1970).

If Davidson is right (and he seems to be), it is theoretically possible to act against one's better judgment. There is, however, a controversy about his argument. What Davidson tries to do is prove that *akrasia sensu stricto* is logically possible. The question is, is this what his argument is really about? In fact, what Davidson does, is make us think that in *akratic* situations we prefer one thing conditionally and the other one unconditionally. For Davidson's argumentation to be plausible, it should be the case that what we prefer more is a conditional preference and what we prefer less is an unconditional one.

It seems reasonable to agree that our preference scale is hierarchical and we prefer one thing over another, but yet a third thing to the first. This way our preferences are indeed conditional. But it is rather preposterous to claim that what we find less attractive in the first place is an unconditional preference overall. In fact, when Davidson suggests that  $A$  prefers  $x$  all things considered, then  $y$  must be in fact an option already considered (*sic!*).

Davidson's presuppositions are artificial; what he tries to do is prove that *akrasia sensu stricto* is logically possible, but in order to do so he added some additional presuppositions that change the initial definition of *akrasia sensu stricto*. This alteration seems unjustified.

The main conclusion drawn from the theoretical part of the argument is that there is, I believe, a general agreement that *akrasia sensu stricto* is impossible. No one has so far



managed to prove it and it seems rather impossible. Nonetheless, no one has denied the possibility of compulsive *akrasia*, which strikes one as a rather common phenomenon.

### III. Psychological Approach

#### 1. Psychology of *Akrasia*

If this is possible not to act according to our better judgment and indeed, already described cases of e.g. procrastination (well-known from our everyday experience) suggest that this often happens - why do we actually happen not to do what we consider rational? Utility theory, for instance, would suggest that we ought to maximize expected income. It encounters certain problems explaining why people in cases of *akrasia* seem to fail to do so. Therefore, actual existence of the phenomenon, which is interpreted as a sign of irrationality of human behavior not only by Davidson, but by utility theorists as well, proves again that we are not rational *homines oeconomici*.

But let's take a closer look at the psychological aspect of the weak-willed actions, considering some ideas usually connected with casual agency (Wegner, 2002) like plans and intentions. Let's imagine that I am on a diet. I have a long-term goal to loose some weight. In that case I have a *plan* to loose some weight which probably involves some exercise, no cakes etc. I also *intend* not to eat any cakes. Our actions to be perceived as truly ours, that is consciously willed, require conscious intention as well – if I honestly intend to do something I will do it if only it is possible.

It so happens that on my way home I go past a bakery and smell the strawberry cake. I cannot resist (although I still find my actions free) and enter the bakery to buy a cake – which I then eat on-the-spot. I felt my action as intentional as well. If someone asked me 10 minutes earlier, I would undoubtedly claim that my intention was no to eat a cake on my way home. In fact, that was really my intention, I consciously decided not to eat. I might have even left work earlier, because one of the employees had birthday and would certainly treat me with a piece.

Eventually, I finished up eating a cake. Actually, it would be a great excuse to say: this was an impulse, I couldn't control it. Yet we feel this action as consciously willed, maybe irrational and hasty, but still – willed or rather “weak-willed”. It might be the case that will is just an illusion (as in fact the experience of casual agency of will might be an illusion at all; Wegner, 2002). The true motivation can be, and surely to some extent is, unconscious. Therefore, for a while I will leave the notion of will and try to explain *akrasia* using the idea

of motivation, suggesting that there is a process which propels the somehow self-defeating behavior.

## 2. *George Ainslie*

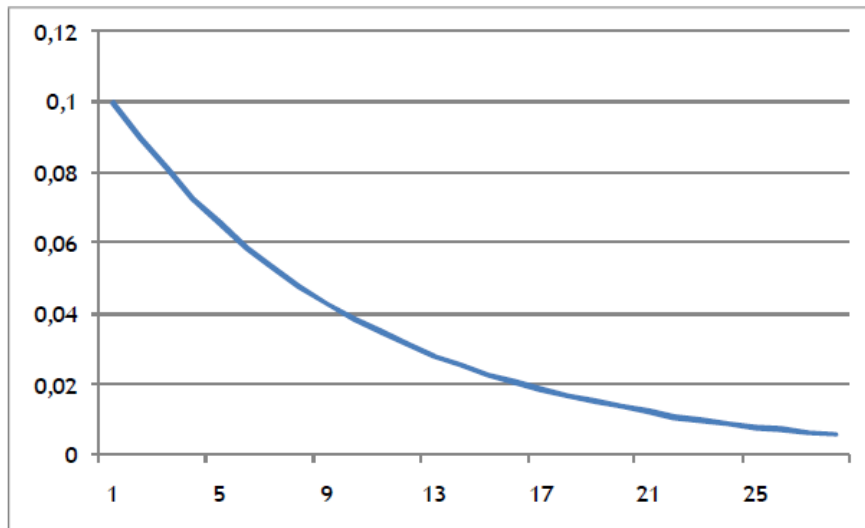
How is it possible that if we judge a certain option better – we still choose to do something else? Utility theorists would suggest that we weigh benefits and losses and choose the option we consider the best. Maybe the answer would be that on the spur of the moment we judged certain option higher than the one we judged better all things considered. Again, however, how is this possible?

Some other operationalizations of the problem can be found in Freud who differentiated between two types of motivational processes: one that serves serve long-range goals (the “reality principle”) and one that serve short-range ones (the “pleasure principle”) (Ainslie, 2001). Some psychologists define impulsiveness as the preference for smaller but earlier rewards over larger but later rewards. A qualified form of impulsiveness would be also an inability to wait for delayed rewards (*ibidem*).

It is important to notice the intuition that we value certain reward higher now than we would value when delayed temporarily. We value the reward of 100 USD higher now than we would value the same reward today, knowing that we will receive it a year later. Simply, in the former option, we could invest our 100 USD and have 120 USD in a year. This is why we may temporarily discount the value of a future reward.

To put it more precisely – imagine that drinking a bottle of vodka is worth for you 10 utiles. You also have a discount rate of 10% a day. This means that drinking a bottle of vodka tomorrow is worth for you:  $10 \cdot 90\% = 9$  utiles today; drinking a bottle of vodka in two days:  $10 \cdot 90\% \cdot 90\% = 8,1$  utiles etc. On the other hand, drinking vodka usually means hangover the next day, costing you, let's say, 11 utiles, with a similar discount rate of 10%. This means that having hangover tomorrow entails the cost of  $11 \cdot 90\% = 9,9$  today and had the cost of 8,91 yesterday. This means that if today we have Saturday, you will drink (reward=10; cost=9,9) if you had to make this decision on Friday (about Saturday), you would decide the same (reward=9; cost=8,91). This is exponential discounting. It is described by the formula:

$$\text{value} = \text{objective value} * (1 - \text{Discount rate})^{\text{Delay}} \text{ (Ainslie, 2001)}$$

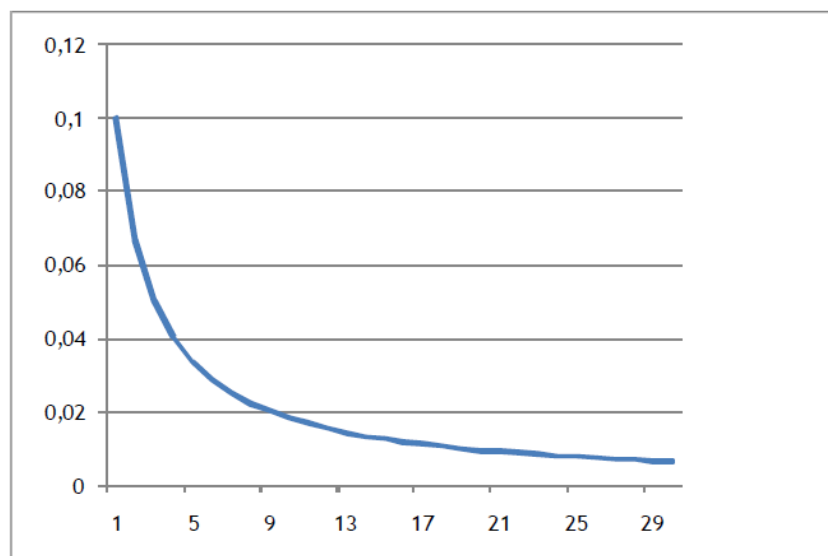


picture 1. Exponential discounting;  $y$  – value;  $x$  – reward delay

It should be differentiated from hyperbolic discounting, caught by the following formula (Mazur, 1987 [in: Ainslie, 2001] )

$$\text{value} = \text{amount} / (\text{constant}_1 + (\text{constant}_2 * \text{delay}))$$

where constants are usually close to 1



picture 2. Hyperbolic discounting;  $y$  – value;  $x$  – reward delay

As one can see hyperbolic curve is similar to the exponential curve in a way that rewards at both very short and very long delays would be valued the same in both. However, rewards in

between would be valued less in a case of hyperbolic comparing to exponential one<sup>4</sup>. This is because the former is more “bowed” than the latter.

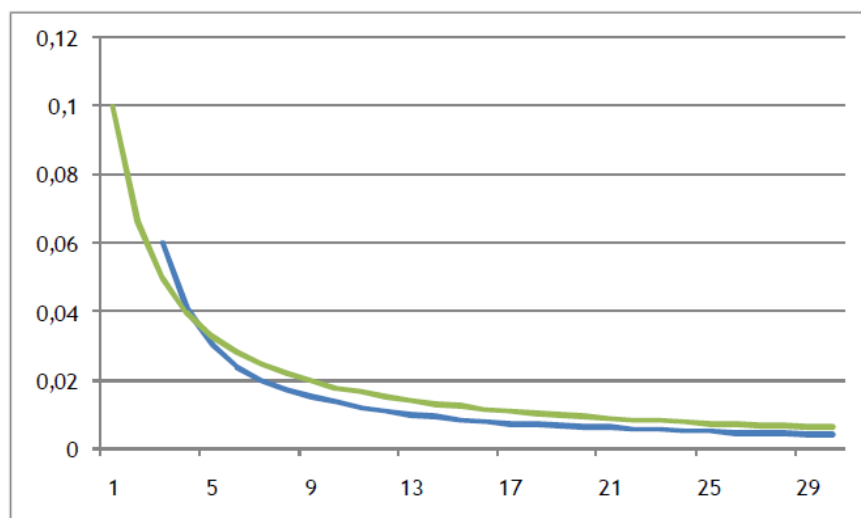
It is quite easy to notice that exponential discounting “wins” against hyperbolic one. As G. Ainslie puts it

“Ms. Exponential could buy Ms. Hyperbolic’s winter coat cheaply every spring, for instance, because the distance to the next winter would depress Ms. H’s valuation of it more than Ms. E’s. Ms. E could then sell the coat back to Ms. H every fall when the approach of winter sent Ms. H’s valuation of it into a high spike.”

To avoid exploitation by someone who discounts exponentially, one should discount exponentially as well. This suggests that e.g. natural selection would “prefer” exponential discounting over hyperbolic one. Within economy it is also widely perceived that the most rational way of discounting goods would be an exponential curve (Zaluski, 2006).

A very interesting observation is, however, that people (as well as animals like e.g. pigeons) do not follow exponential curve in their everyday decision-making. They rather discount according to hyperbolic curve – an observation proved to be true in a series of empirical studies (see e.g. Mazur, 2001 or Ainslie, 1992<sup>5</sup>). This is rather a surprising finding, especially if we consider natural selection<sup>6</sup>.

However, hyperbolic discounting explains perfectly the phenomenon of *akrasia* – self-defeating behavior. Take a look at this graph:



picture 3. Hyperbolic discounting – long-term and short-term rewards; y – value; x – reward delay.

<sup>4</sup> Precisely speaking, “an agent discounts future rewards hyperbolically if she discounts them in inverse proportion to their expected delays: the more delayed the reward is, the less discounted it is” (Zaluski, 2006).

<sup>5</sup> Discovery of hyperbolic discounting was one of the main successes of Richard Herrnstein's laboratory at Harvard who studied behaviors of pigeons.

<sup>6</sup> To see some possible explanations, see Ainslie, 2001.

As one can see – in case of hyperbolic discounting, you may value certain long-term reward higher for most of the time (if delay is long enough), but eventually go for a short-term reward if the delay is shorter. To give an example, you generally would assign higher value for staying sober – but only if there is no close opportunity to drink. When e.g. you are at the party – and the delay of the “being drunk” reward is close enough – you will drink. In fact, you may truly intend (and will) not to drink in a long term – and, when the opportunity beckons – you will “change you mind” and truly intend (and will) to drink. This is what utility theory would not predict – but still this comes from weighing rewards and losses, only the discount curve is hyperbolic instead of exponential.

#### IV. Consequences

Davidson, as I have point it out already, proved that *akrasia* it logically possible. Yet, it does not mean that it must exist. Of course, we seem to experience *akrasia* quite often (procrastination, impulsive behavior etc.) - but this might be an illusion (e.g. we might have intended to drink in the first place). “Discovery” of hyperbolic discount curve is, however, an empirical prove that *akrasia* not only exists but is quite a frequent phenomenon<sup>7</sup>.

Important consequences of this approach to weak-willed actions were discussed in the fields like e.g. substance abuse (e.g. Ainslie & Monterosso, 2003b), decision making and game theory (Ainslie & Monterosso, 2003a). Also in philosophy of law some attention was given to the notion of weak-willed actions. Now, I want to discuss some of them:

1. *Economic Analysis of Law*. This approach, built on the utility theory assumptions suggests that human is a rational *homo oeconomicus*. However, discounting future hyperbolically shows an “imperfection” of human nature. An agent who discounts hyperbolically (rather than exponentially) is an irrational agent (Zaluski, 2006). Namely, possibility of *akrasia* as an irrational self-defeating behavior (Davidson, 1970) and its occurrence is a strong argument against economic analysis of law.
2. *Business (Commercial) Law*. If a man is an irrational (or rather not fully rational) being – than limiting economical liberalism would in fact maximize expected income. Models in economy built on exponential discounting win against those built on

---

<sup>7</sup> Maybe hyperbolic discounting predicts even more frequent occurrence of than it really is. But, what is again frequently observed, we tend to “predict” our future fails due to some more or less expected appetites. This is why it may seem as if we treated our “future self” as a separate agent and try to trick ourselves not to give any opportunity to change the intention of the “present self”. E.g. we may avoid situations (like parties) where we expect alcohol will be present if we at this particular moment intend not to drink (Ainslie, 2001). Consequences for the philosophy and psychology of self are, however, not be discussed further in this article.

hyperbolic discounting (are more effective). In fact, when a human being becomes aware of the values and delays between rewards – she may start to use exponential discount curve (Ainslie, 2001). This suggest that a human being is capable, if only “conscious” enough, of maximizing her expected income. However, in most of everyday situations we would automatically use hyperbolic curve, therefore, some limitations to free market should be justified.

3. *Responsibility*. So far, all given examples of *akrasia* were those rather funny, harmless acts of procrastination, not following one's diet or drinking alcohol despite earlier promises like “it won't happen again”. However, everything I have already written about *akrasia* applies to all kinds of impulsive behavior. Including breaking legal rules. There are two distinct areas of special interest for law theorists or philosophers:
  - a) How, practically speaking, are legal rules used by those expected to adhere to them? Awareness of the fact that people tend to discount future hyperbolically and act on the basis of so discounted reward value helps to understand human nature and to design legal rules more efficiently. In fact, a guideline ought to be followed - to ask every time a rule is created: what sanction would motivate in the long term strong enough so that it would minimize the possibility of impulsive acts against the norm if the values of obeying and disobeying the norm are discounted hyperbolically.
  - b) To what extent can one be held responsible for disobeying a given rule. Do we disobey rules willingly?

The problem here arises because we define acratia actions (*sensu stricto*) as free and intentional, yet we claim that one acts acratia (impulsively) because one discounts future hyperbolically (which indeed is a part of human nature). The question is – could I avoid acting impulsively (which might have resulted in breaking a legal rule)? If following hyperbolic discount curve and acting on the basis of the intention to do what one values the highest in this particular moment is how we are “constructed”, is a part of being a human – how can we treat these impulsive acts as free? We have usually a little control of what we are prone to and which appetites we find seductive as well.

Nevertheless, we perceive acratia actions as free and intentional ourselves. A murderer might have never intended to kill his victim. Except for the moment he did so. And he may truly regret it afterwards. Yet, he feels that on the spur of the moment his action was free and intentional and he knew he was breaking a certain rule. How can we reconcile an intuition

(obvious even for the murderer himself) that he is responsible for what has happened with the realization that he in fact could not resist what he did?

I suggest two possible answers to this riddle:

1. The murderer (or anyone) could predict he is impulsive and avoid situations that could instigate him to fail to obey rules – moral and legal<sup>8</sup> (killing is forbidden). Just like in a situation when I know that I am prone to smell of a cake and I try to avoid candy-stores when I am on a diet.

This suggests that a given person should treat herself as two temporally separate agents – present one – intending not to break a norm and the future one – that will intend to break the norm if only given such opportunity. A person can always avoid appetites if she knows they are difficult to resist. Two problems, however, arise with this solution:

- a) We cannot know that we are prone to something before an opportunity is given to experience this proneness;
  - b) Even if such a proneness is predictable for an agent, occurrence of these appetites – sometimes is not. But even if appetites occur suddenly – we still may perceive our actions as free and intentional and feel responsible.
2. Experience of casual agency of free will is just an illusion (Wegner, 2002). Experience of will might be just an illusion or a subjective feeling of self-control which connects thought with action (*ibidem*). In this case “decision” to murder was in fact somehow “mechanic”. This would mean that our intuition of responsibility does not need casual free will – just the illusional experience of it. The only problem with this solution is that describing experience of casual free will as illusional might be counterintuitive itself.

---

<sup>8</sup> Rule of law may be treated here as sanction “amplifier”. Disobeying moral rule will mean in the given example disobeying legal rule as well – avoiding this “double” sanction is very rewarding even in a long term. Of course, some rules can have moral sanctions only, some legal sanctions only.

## V. Conclusions

The aim of this paper is to discuss *akrasia* or weak-willed actions from philosophical and psychological points of view and show consequences of *akrasia* for philosophy of law. The following conclusion can be drawn.

1. *Akrasia sensu stricto* is defined as a phenomenon when one acts free and intentionally against one's better judgment.
2. Our everyday experience suggests that *akrasia* is not only possible but it is quite a common phenomenon, usually observed in the form of e.g. procrastination.
3. Psychologically, *akrasia* can be explained by the observation that we tend to discount future hyperbolically – what is well proved empirically.
4. This might be rather surprising as exponential discounting is much more effective and can be considered rational, whereas hyperbolic discounting – irrational (or at least not fully rational).
5. This has some interesting consequences for philosophy of law. Three of them were discussed, namely:
  - Economic analysis of law is wrong in that it presupposes that we are rational and discount exponentially
  - Business law should limit free market if it is aiming at maximizing expected income
  - Existence of *akrasia* may suggest that to keep the intuition of responsibility for disobeying legal rules the notion of free will as a casual agent is dispensable and difficult to maintain. It can be argued that it is an illusional subjective experience for connecting thought with action.



## Bibliography

1. Ainslie, G. (2001). *Breakdown of will*. New York: Cambridge.
2. Ainslie, G. (2010). Procrastination, the basic impulse [in:] Andreou, Ch., White, M., (eds.). *The Thief of Time: Philosophical Essays on Procrastination*. New York, Oxford.
3. Ainslie, G., Monterosso, J. (2003a). Game theory need not abandon individual maximization. *Behavioral and Brain Science*, 26, 171.
4. Ainslie, G., Monterosso, J. (2003b). Hyperbolic discounting as a factor in addiction: A critical analysis [in:] Vuchinich, R. R. & Heather. N. (Eds.), *Choice, Behavioural Economics, and Addiction*. Oxford.
5. Aristotle, *Nicomachean Ethics*, book VII, 1-10.
6. Davidson, D., (1970). How Is Weakness of the Will Possible? [in:] Davidson, D. (2006). *The essential Davidson*. Oxford, New York.
7. Bobonich, C., Destrée, P. (eds.), (2007). *Akrasia in Greek Philosophy: From Socrates to Plotinus*, Leiden, Boston: Brill.
8. Plato, Protagoras, [in:] *Plato. Complete works*, Cooper, J.M., Hutchinson, D.S. (eds.), Hackett Publishing Company.
9. Stroud, S. (2008). "Weakness of Will", *The Stanford Encyclopedia of Philosophy (Fall 2008 Edition)*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2008/entries/weakness-will/>
10. Thero, P. D. (2006). *Understanding moral weakness*. Rodopi, New York.
11. Wegner, M. D. (2002). *The Illusion of Conscious Will*. MIT.
12. Załuski, W. (2006). Imperfections of Human Nature and the Law. *Legisprudence. International Journal for the Study of Legislation*, Vol I, No I, p. 118-135.
13. Załuski, W. (2008) Freedom from Akrasia as a Component of the Conception of Homo Oeconomicus, [in:] J. Stelmach, R. Schmidt (ed), *Krakauer-Augsburger Rechtsstudien*, Kraków: Wolters Kluwer.
14. Załuski, W. (2010). Positive freedom [in:] J. Stelmach, B. Brożek M. Soniewicka, (ed.), *Studies in the Philosophy of Law, Vol. V. Law and Biology*, Jagiellonian University Press, Krakow.

Address: Paweł Banaś, Department of Theory of Law, Jagiellonian University, ul. Bracka 12, Cracow / Poland.