Member since 2023
JM17311

HYBRIS nr 64 (2025)

ISSN: 1689-4286

OPEN ACCESS

https://doi.org/10.18778/1689-4286.64.05

JULIUSZ MROZIŃSKI

0000-0002-9738-6207

Uniwersytet Wrocławski

juliusz.mrozinski@uwr.edu.pl

The Right to Happiness and its Constitutionalization

Introduction

Happiness is a state that is not only subjective, desirable, and elusive, but also defies rigid categorization. Of all the target conditions marking human aspirations, it remains the most deeply immersed in the sphere of intuitive cognition, and thus poses fundamental problems of definition. Remaining in its essence a subject of interdisciplinary research, mainly from the crossroads of philosophy, psychology, anthropology and medical sciences, it has shaped a category important from the perspective of legal sciences since the beginning of the community. Since at least the

Received: 2025-01-31 | Verified: 2025-04-18 | Accepted: 2025-06-08 Lodz, Poland
First published online: 2025-06-23

18th century, one can observe a tendency to juridize[1] – and at first at the highest level in the hierarchy of legal norms – this puzzling condition. Paradoxically, regardless of the undoubted social and individual significance of happiness, any attempt to make it an object of social relations on a par with things or other concrete social goods brings to mind various utopian associations. Nevertheless, the state of fundamental individual well-being seems to mark a value deeply encoded in the philosophy of the social order of Western civilization. There is no shortage of voices identifying the "ultimate good of man" with, for example, the fundamental principle of the order of natural law (Elders, 2019, p. 429) or situating the imperative to multiply the happiness of citizens at the very top of the goals of the existence and functioning of states (Magalhaes, 2021, p. 43323).

In this text I present a view of happiness and its social function from a legal-constitutional perspective. I address the problem of the eudaimonistic paradigm in force in the law of democratic states and attempt to present the most significant parallels between the normative – framed by legal acts – and the extra-normative, strictly philosophical conception of happiness, conducting in this aspect a critical analysis of non-legal literature. I will outline the function fulfilled by happiness – however defined – in various legal systems and present the practical scope of its normativization. Finally, I will try to answer the question of the possibility of effectively guaranteeing the right to happiness at the constitutional level. Keeping in mind the theoretical-legal profile of the research, analyzing the acts of law in force, I use the formal-dogmatic (textual) and theoretical (doctrinal analysis) methods. The need to refer to the sources of law in force in the past calls for the usage of the historical method, while the universal nature of the value of happiness prompted me to also present below a comparative (legal-comparative) perspective of the issues

[1]By the concept of juridization (or juridification) I mean, following Blichner, Molander (2005, pp. 2–3), the inclusion of a specific area of social relations under legal regulation (the establishment of "legal domination") through the transcription of a term into legal language – the inclusion of the term in the text of a legal act, and thus giving even a limited normative value. I assume that a legal term, if only of a programmatic nature, plays an important role in the procedure of imposing obligations or granting rights to the subjects of legal norms.

explored. The research techniques used in the study include a review of legal acts and policy statements, a review of case law, and a review of the literature.

Happiness from an interdisciplinary perspective

"Happiness" has undergone – and continues to undergo, probably more dynamically than ever before – a semantic evolution so characteristic of abstract concepts (Johnston, Colson, Falk, p. 10). A trend worthy of mention is the formation of highly specialized departments in the social sciences that study the correlation between happiness and their main focus (Diener, Kesebir, Tov, 2009, p. 2).[2] While the dispute over the ultimate identification of the content of "happiness" seems insoluble, it is obvious to every person that "happiness" exists and can be achieved in various ways. This formal aspect of "happiness", which remains relevant even today, was already distinguished by ancient philosophers. Transmissions on Socrates' views on happiness, preserved thanks to Plato, focus on the interrelationship between happiness, virtue and wisdom (Klosko, 1987, p. 251), and thus not merely on the psychophysical state of the happy man himself, but rather on

[2]Since the dawn of philosophy, happiness has been perhaps the most important category to reflect upon for those practicing this field of knowledge. In the philosophical context, it is difficult to even speak of a separate specialization focusing on the issue of happiness, since from the beginning it was not so much an object of philosophers' cognitive pursuits as their desired, ad hoc side effect (Mattila, 2011, p. 3). Figuratively speaking, it can be said that the way to achieve happiness can be a strictly theoretical reflection on happiness. The specialization of the fields of philosophy and the development of science have been accompanied by a contextual stratification of reflections on happiness. Thus, in the humanities, regardless of the "philosophy of happiness", which still occupies a prominent place, a current called the "history of happiness" is gaining popularity (McMahon, 2008, 80–93); the pioneering character cannot be denied to the research conducted by representatives of "ethnology and cultural anthropology of happiness" (Brudzinska, 2022). Happiness is made an important theme in literary and linguistic studies (Rundberg, 2010), not to mention the traditionally related sciences of culture and religion and art (Childs, 2010, p. 550). In the social sciences, on the other hand, the theme of happiness is gaining prominence in the context of the development of the "psychology of happiness" (Argyle, 2013), "economics of happiness" (Lin, Chiu, Xie, 2024, p. 159) and "sociology of happiness" (Veenhoven, 2016, p. 18). Threads related to happiness defined differently are explored both by representatives of general legal sciences (Bayertz, Gutmann, 2012) and specific sciences of legal studies (Graafland, 2023, p. 1799). Unexpectedly, as it might initially seem, discord arises over the significance of happiness as a specific state of human consciousness within engineering and technical sciences (Lomas, Bartels, Van De Weijer, 2022, p. 288).

how one's conduct makes happiness achievable. The timeless relevance of the Socratic point of view is best evidenced by the fact that it remained (and still remains – Harland, 1993, p. 82) an important point of reference for the most important philosophers of all eras (Jakubovská, Waldnerová, 2020, p. 35), Here, we might mention thinkers as distant from each other in time as Aristotle (McMahon, 2008, p. 83) and Immanuel Kant. Kant's idea that happiness, being one of the most important categories of a philosophical system, is attainable only for a person who acts morally (Ciochină-Barbu, 2017, p. 3; Kant, 1785), is one of the fundamental tenets of philosophy. Accompanying the ancients in post-Aristotelian times, a deep conviction about the fundamental role of happiness in man's temporal life, the right and even the duty of its reasonable pursuit (Rabbås, Fossheim, Tuominen, 2015, p. 22) led to the formation of two polarized, though historically equivalent, attitudes toward happiness and the methods of achieving it. Thanks to the systematization of the age-old opposition between "low" (physiological) and "high" (spiritual) pleasure, carried out by representatives of the Epicurean and Stoic schools, it became possible to distinguish between the hedonistic and "enlightened" conceptions of happiness. While the dominant aspect of the former is the static sensation of pleasure, the latter focuses on the achievement of well-being grounded not so much in the strictly biological state of the body, but in the every-day involvement of one's consciousness, showing a certain dynamism, adaptability, and persistence over time. In this context, the category of needs and satisfying them is of fundamental importance for explaining the essence of happiness – also in terms of its influence on the shape of normative systems created by people. Although the dependence of an individual's well-being on the degree of satisfaction of his needs is an issue covered by general consensus – regardless of the research orientation adopted (Lu, Shih, 1997, pp. 181–182) – the two currents described above seem to view happiness through the prism of quite different levels within the hierarchy of human needs.[3] The pleasure that

[3]During the last seventy years or so, various theories have been proposed to systematize a theory of needs. The concept of a five-stage hierarchy of human needs proposed by Abraham Maslow received

makes it possible to achieve a state of happiness closest to the hedonistic conception can and even must (given its biological nature) be achieved through simple factual activities, as a rule not requiring intellectual involvement, while long-term life satisfaction requires mental engagement, sometimes cognitive effort, patience and the development of the ability to defer immediate gratification.

Ultimately, both currents formed the foundation of philosophical systems developed in the Middle Ages, the modern era, and today. The influence of Epicurean thought – corresponding, as mentioned, with the hedonistic current[4] – can be seen in the writings of utilitarians, including Jeremy Bentham and John Stuart Mill. A proponent of Epicureanism, which is fundamental to the constitutional tradition of the United States, was to be Thomas Jefferson himself (Richard, 1989, p. 433). In the views of John Locke, marked by the influence of Epicureanism, whose works were a direct inspiration for the drafters of the United States Declaration of Independence, the values identified with the well-being of the individual enjoyed the attribute of inalienability (Conklin, 2014, pp. 197–198). Stoic thought, in turn,

the widest publicity and general acceptance (Gambrel, Cianci, 2003, p. 143). As psychology developed, the proposed models took on an increasingly complex shape, thus reflecting the dynamic transformations of advanced Western civilizational societies. Eventually, not only the hierarchical nature of "Maslow's pyramid" was challenged, but also its scope, identifying 13 general needs and 52 specific needs (Desmet, Fokkinga, 2020, pp. 9–10). A common element of the theories that take up the challenge of systematizing human needs - both hierarchizing them and grouping them separately from the assumption of the superiority of certain needs - is the distinction between strictly physiological, so necessary for biological survival (fundamental) and non-physiological (non-fundamental) needs. Analogous concepts of demarcation of human pursuits are sometimes based on the criterion of the complexity of how to satisfy them. Thus, while the satisfaction of needs at the lower levels of the "pyramid of needs" (assuming their hierarchical nature) corresponds to the hedonistic view of happiness, higher-order needs reflect a conception of satisfaction closer to the views of Zeno of Kition and other representatives of the Stoic school.

[4]While the central element of a philosophical system based on Epicurus' views is pleasure, understood as a "kinetic" phenomenon "perceived through the senses" and thus aligning with the assumptions of hedonists (Konstan, 2012, p. 2), it would nevertheless be a serious misinterpretation to classify the Epicurean concept of happiness purely within the tradition of hedonism. Happiness as perceived by the Epicureans is a phenomenon far beyond the realm of sensual, physiological pleasure. Rather, the paradigm of Epicurean *eudaimonia* was the pursuit of a "normal or healthy human condition" based on the assumption that "Pleasure is a state: it is not a hedonic ideal that aims at maximizing pleasure quantitatively, or a utilitarian calculus like Jeremy Bentham's 'sum of pleasures and pains,' even though the Epicureans were entirely in favor of sacrificing short-term pleasures at times for the sake of the longer term" (Konstan, 2012, p. 21).

is regarded as a fundamental impetus for the development of modern liberal philosophy, and the foundation, after all, for the concept of the modern democratic rule of law (Mitsis, 2005, p. 230).

Against the backdrop of contemporary controversies surrounding the identification of "happiness," it seems that one of the most serious definitional problems in research that is still not fully overcome is the communication trap. The meaning of many general concepts, especially concepts as abstract as "happiness," is a function of the judgments formulated by society at a particular stage of its development. Attempts to describe a concept as general as "happiness" using equivalent phrases necessarily lead many definitions to a state akin to a vicious circle[5] regardless of the stage of development in which the society in question happens to be.

The development of science, which ran parallel to the interdisciplinary stratification of the ancient theory of happiness, led to the development of autonomous definitions and methodologies used in its study. A description of happiness using the nomenclature of only one research discipline would be as inaccurate as it would be academically dishonest. Even within research focused very rigidly around the paradigm of a particular discipline, tools from borderline disciplines, sometimes even from the intersection of entire scientific fields, are used to describe happiness (Pilkington, 2016, p. 265). It cannot be said that the legal sciences somehow particularly stand out against this background. The research methodology of the legal sciences depends, of course, on the purpose of a particular study, nevertheless, one can confidently defend the thesis that legal science has adapted the methodology of empirical sciences in the field of happiness research (Bagaric, McConvill, 2005, p. 4).

[5]In this context, Diener, Kesebir and Tov (2009, p. 3) confront the following foundational terms: "subjective well-being", "life satisfaction", "psychological well-being", "fulfillment", "good life", and "meaningfulness." It is hard to resist the impression that each of these in itself would merit a separate definitional study of at least dissertation size.

Happiness in legal perspective

The multiplicity of perspectives from which happiness is subjected to scientific description is also the reason why it is only exceptionally taken into account directly in the texts of legal acts. Law, remaining – at least from a sociological perspective – a special, intrusive example of a social system (Trubek, 1972, p. 28), is characterized by semantic autonomy. From a legal point of view, the subjects and objects of various social relations are subject to a special qualification conditioned by the need to guarantee the stability of the legal situation of its subjects – certainty about their rights and obligations. The condition for the proper functioning of the legal system in a democratic state is the objective minimization of the openness of meaning (Zeifert, 2022, p. 410) of the natural language, which the law by necessity uses, and thus requires the strictest possible qualification of the elements of reality. It is no different with "happiness." This term, however intuitively read and understood by every person, being a complex mix of many feelings, perceptions, values and goals, carries an incomparably strong emotional charge. As researchers point out (Bandes, Blumenthal, 2012 p. 162), although emotionality plays an important role in the process of conceptualizing the law, it is difficult to accept the assignment of a fundamental role to emotions in the dimension related to the content of the legal norm shaping the behavior of a particular person. The law, if it is to be equal for everyone, cannot be directly marked by an emotional charge (Maroney, 2009, p. 915). An absolute condition for preserving the impartiality of a judge applying the law (in the context of this text, also a constitutional judge), who is, after all, an emotional being himself, is to ensure an institutional position that protects from the pressure of emotionally charged legal rules (Laster, O'Malley, 2013, p. 23). Thus, even if "happiness" finds its place in the body of legal regulations, most often its normative (binding) aspect is mitigated, minimized in favor of programmatic, instructional value as a result of the legislator's efforts, which, in turn, results in the normative plane of the legal system becoming is "insulated" from its theoretical, philosophical, psychological foundation. Within the concept of the

rule of law, fundamental from the point of view of the rule of the democratic legal state, considered universal by modern constitutionalism – is inscribed the autonomy of the legal system in relation to other social systems – a condition that can be figuratively described as the principle of legislative emotional restraint.[6]

From a legal point of view, in the term "happiness" one can find a way of concretizing the value that is even more general, expressed *expressis verbis*, in the legislative domain. We are talking about the "common good," the presence of which, in the form of an element of the legal text, was already marked in the Magna Carta of 1215.[7] "Common good" does not, of course, guarantee subjective happiness, but nevertheless, from the point of view of Enlightenment philosophy, it was a convenient starting point for seeing the importance of individual well-being in a social context. The state of the "common good" in a system that grants subjectivity

[6]Further deepening the issue of the importance of law's autonomy for its preservation of the status of a system guaranteeing impartiality in the weighing of social goods, it is worth mentioning the concept of the autopoieticity of the legal system, which still arouses justified emotions among legal theorists and philosophers, proposed and developed by Günter Teubner on the basis of the findings of Niklas Luhmann (Jacobson, 1989, p. 1647). In a nutshell, in such a view, the law, insofar as it itself creates the elements belonging to the system it establishes, requires the isolation of an identifiable, formal layer within the general concepts subject to jurisprudence, suitable for use in constructing legal norms. Thus, what the law requires of "happiness" is that it be capable of being grasped as a criterion or goal of conscious human action (behavior), which proves problematic.

[7]As Article 42 of the Charter states, "Henceforth any person, saving fealty to us, may go out of our realm and return to it, safely and securely, by land and by water, except perhaps for a brief period in time of war, for the common good of the realm. But prisoners and outlaws are excepted according to the law of the realm; also people of a land at war against us, and the merchants, with regard to whom shall be done as we have said." (Henderson, 1892, p. 296). "The common good," having its roots in Platonic thought, then reflected in the writings of Aristotle, Thomas Aquinas, John Locke, David Hume or John James Rousseau, in general constitutes a normative category permanently rooted in European constitutionalism (Mlynarska-Sobaczewska, 2009, p. 62). Interchangeable with "the common good" are used by constitutional legislators of European states "common good" or the concept of "community" as a constitutive element of the principles of the system of states. "The common good" is honored in the Federal Constitutional Law of the Republic of Austria of October 1, 1920. (Art. 18(3)), the Constitution of the Republic of Poland of April 2, 1997 (Preamble, Art. 1, Art. 25(3), Art. 82), the Federal Constitution of the Swiss Confederation (Art. 2(2)), while preference for the "common good" is reserved by the Basic Law of the Federal Republic of Germany of May 23, 1949 in the context of the exercise of the right to property (Art. 14(2) and (3)). Against this background, the guarantee of basing the public activities of state bodies on the goal of ensuring "every citizen's personal, economic and cultural well-being," established by §2 of the Form of Government Act of February 28, 1974 (which is an integral part of the Constitution of the Kingdom of Sweden), seems to go quite close to the substantive concept of happiness.

to the individual cannot be based on the arbitrary preference of the interests of the current power or the realization of the abstract and absolute common goal of the sovereign, but is realized through the aggregation of reasonably understood individual well-being. The "common good" clause, so characteristic of European legal culture (Wieacker, 1990, p. 17), is an expression of an awareness of the profound need to optimize the law not explicitly in the direction of individualistic or collectivistic values, but "in between" them. Bringing to mind libertarian associations, "happiness" that is understood as the socially abstracted individual well-being of the individual is alien to European constitutionalism, characterized – for historical reasons – by its inherent conviction that the full emancipation of the individual is possible only through their social involvement and support in the spirit of solidarity. "The common good," in this case, is not a simple counterweight to individual happiness, but suggests that individual happiness exists within a much broader framework of general well-being.

The constitutionalization of the right to happiness

The fact that the aura of semantic doubt and legal mistrust surrounding "happiness" was not an obstacle for the authors of the United States Declaration of Independence of July 4, 1776 – arguably the most important act coupled with constitutional law in modern history – can be linked, on the one hand, to the extra-normative nature of the document[8] (Tsesis, 2015, p. 371), and, on the other hand, to the specific context of the reference to happiness.[9] It is not "happiness" itself that has been the focus of

[8]The question of the nature of the Declaration's provisions still stirs emotions nearly 250 years after its promulgation. Most researchers, although recognizing the fundamental importance of the Declaration from the point of view of the direction of the development of the legal and political culture of the United States, emphasize the primacy in the normative sphere of the Federal Constitution adopted more than a decade later (Strang, 2006, pp. 439–450). Views granting the Declaration of Independence normative value remain in the minority and tend to focus on the legal-natural obligations incumbent on the federal government in general (Tsesis, 2015, p. 373).

[9]As the Declaration states, "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness--That to secure these Rights, Governments are instituted among

the Declaration's authors, but the "*pursuit of Happiness*." Thus, the document reflects not the essence itself, some abstract material ideal of happiness, but rather its strictly formal aspect – universal availability, attainability, reality. This in its own way realistic, precursor approach to an issue so complex, perfectly in keeping with the liberal overtones of the Enlightenment Revolution, made the formal right to happiness a model for the implementation of analogous American Declaration of Independence programmatic norms in the legislatures of all continents. An equally pioneering role in the aspect of normativization of happiness can be attributed to the Polish Constitution of May 3, 1791, which is almost 15 years older than the Declaration of Independence, and whose provisions to the variously identified universal happiness are referred to three times each.[10]

While the statement that the emanation of law is the state deserves approval, the designation of the overriding purpose of the existence of law in the form of a guarantee of "happiness" is not particularly novel. The subsoil for the 18th century concept of state eudaimonism[11] can be traced to the views of the aforementioned Aristotle. Ironically, the post-absolutist police state, nominally a tribute to the idea of "well-being, convenience, peace and happiness of its inhabitants" (Nizhnik, 2021, p. 1831) was rarely capable of satisfying the strictly biological needs of its citizens. Legislative concretization of happiness creates the temptation to refer to specific

Men, deriving their just Powers from the Consent of the Governed, That whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or abolish it, and to institute a new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness."

[10]We are referring to the text of the preamble ("[...] holding dearer than life, than personal happiness the political existence, external independence and internal liberty of the people whose destiny is entrusted to our hands, and desiring to merit the blessing and gratitude of contemporary and future generations [...]") and Article VII ([...] "The happiness of peoples depends upon just laws, the effect of the laws--upon their execution. [...] Experience of disastrous interregnums periodically overturning the government, the obligation to safeguard every inhabitant of the Polish land, the sealing forever of avenue to the influences of foreign powers, the memory of the former grandeur and happiness of our country under continuously reigning families, the need to turn foreigners away from ambition for the throne, and to turn powerful Poles toward the single-minded cultivation of national liberty, have indicated to our prudence that the throne of Poland be passed on by right of succession. [...]") (Kasperek, 1983, pp. 47–48).

[11]Like the modern reception of the Stoic and Epicurean trend, state eudaimonism is a mutation of the ancient idea.

states and activities to achieve, maintain or intensify it. As an anecdote, one should note the sometimes emerging legislative initiatives aimed at guaranteeing, also at the constitutional level,[12] the possibility of achieving the entire spectrum of strictly bodily, physiological pleasures, corresponding closest to the hedonistic way of perceiving happiness – from those morally irrelevant to those that arouse resonance in ethically sensitive circles.

The concept of constitutionalization is currently used in science to describe not so much a phenomenon occurring at the micro scale (within a single system of state law),[13] but at the macro scale – to describe phenomena concerning the legal framework that entrenches the integrative interdependence between the legal systems of different states pursuing a common political goal.[14] The focus of this thesis is micro-scale constitutionalization (occurring within the framework of a national law system), concerning one specific legal institution, which would be a constitutionally guaranteed formal or substantive right to happiness. Simplifying, the purpose of this part of the text is to illuminate – in a comparative perspective – how the constitutions of selected countries guarantee "happiness" to individuals in practice.

A search of legal acts conducted makes it necessary to distinguish between several approaches of the constitutional legislator to "happiness." Firstly, we can speak of a general constitutionalization of happiness, by which is meant an extra-normative reference to happiness in the text of the basic law. In such a variant,

[12]The legal framework for achieving happiness through physiological activities in the opinion of most of the legal community (Sharman, 2005, p. 971), as well as the European Court of Human Rights (Roessler, 2017, p. 197), are constitutional guarantees of the right to privacy.

[13]Constitutionalization of national law means rooting all applicable legal norms in a single fundamental act with supreme force in the system of sources of domestic law. The processes that marked the 20th century led to the (almost) definitive ascension of the constitutionalist concept to the role of a paradigm of modern law. The obvious foundation for the construction of the rule of law is to base its system on a constitution, however flexible and not necessarily uniform.

[14]In this context, the concept of constitutionalization is used by authors of works on the constitutionalization of the United Nations (Herdegen, 1994, p. 135) or the European Union (Rittberger, Schimmelfennig, 2013, p. 1148).

"happiness" is part of the introduction to the constitution[15] or is included in the text of individual legal provisions in the nature of a policy standard, in the "soft" edition, in turn, in the "hardest" edition program rule.[16] Specific constitutionalization means giving a value a strictly normative value (imposing a concretized obligation on the subject obliged to the beneficiary). For discussion, the framework of which would necessarily have to exceed the size of this paper, there remains the question of the content of the obligation associated with "ensuring happiness" (the material right to happiness) or "ensuring the possibility of pursuing happiness" (the formal right to happiness).

Although the United States has not chosen to constitutionally guarantee the right to happiness or even the pursuit of happiness,[17] the idea anchored in the American Declaration of Independence has traveled to the opposite shore of the Pacific in the wake of the US armed forces, where it has been implemented directly into existing legislation of other countries. Thus, according to Article 13 of the Japanese Constitution of November 3, 1946, "the right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs" (Jones, 2023, Article 13). While the Japanese Constitution's provision on the aspect of the right to pursue happiness sounds firm, the Korean legislature takes an even bolder

[15]The introduction to a constitution, called a preamble, can take on a diverse character – from generally declaratory to strictly normative, to mention here the distinction between a "hard" and "soft" variant introduction proposed by Frosini (2017, p. 628). In addition, it fulfills a number of specific functions fundamental to the application of the Constitution, including that it should explain the circumstances of its enactment and identify the core values of a society taking up the challenge of constitutionalizing the legal and political order (Orgad, 2010, p. 715–716). All these features make the preamble potentially an ideal place for introducing "happiness" as one of the values that stabilize the state order.

[16]For the purposes of this text, it adopts the distinction between the concepts of policy standard, program rule and legal rule (norm). By policy standard I mean, following Schlag (1985, p. 382), "a directive [...] [owning] a soft evaluative trigger and a soft modulated response"; by legal rule – "a directive [...] [owning] a hard empirical trigger and a hard determinate response." By program rule – *per analogiam* – a directive which has a hard empirical trigger and a soft modulated response or a directive owning an evaluative trigger and a hard determinate response.

[17]The 1787 U.S. Constitution with its 27 amendments adopted between 1791 and 1992 – unlike the 1776 Declaration of Independence – contains no reference to either happiness *per se* or the pursuit of happiness, not counting the "general Welfare" cited in the preamble of the Constitution itself.

stance. According to Article 10 of the Constitution of the Republic of Korea of July 17, 1948, "All citizens shall be assured of human worth and dignity and have the right to the pursuit of happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals." The preamble to the Constitution of the Republic of Korea, stating as one of its goals "to ensure security, liberty and happiness for ourselves and our posterity forever"[18] reflects not so much the formal side of the right to happiness as its substantive, ideal variety. Also outside the sphere of direct influence of American legal thought, "happiness" as well as "the pursuit of happiness" were made (and not so long ago) the subject of legislative work. While the preamble of the Constitution of the Kingdom of Bhutan dated June 18, 2008 refers to "happiness and well-being," Article 9 makes one of the principles of state policy the "pursuit of Gross National Happiness".[19] According to Article 20 of the Bhutanese Constitution, "The Government shall protect and strengthen the sovereignty of the Kingdom, provide good governance, and ensure peace, security, well-being and happiness of the people. [...]." Analogous in nature (and extent of actual implementation) provisions are contained in the text of the Constitution of Thailand[20] dated April 6, 2017 and the Constitution of the Republic of Turkey[21] dated November 7, 1982.

[18]The wording of the Constitution of the Republic of Korea of July 17 1948, based on the official translation available on the website of the Korean Law Information Center (Ministry of Governmental Legislation) <https://www.law.go.kr/LSW/eng/engLsSc.do?menuId=2&query=CONSTITUTION%20OF%20THE%20REPUBLIC%20OF%20KOREA#liBgcolor0> accessed 31.10.2024.

[19]Text of the Constitution of the Kingdom of Bhutan dated June 18, 2008 in the official English-language version <https://www.rcsc.gov.bt/wp-content/uploads/2021/02/Constitution-of-Bhutan-Eng-2008.pdf> accessed 31.10.2024.

[20]Preamble, Section 3, Section 114, Section 164 para 4, and section 247 *in fine*. Unofficial translation by the Legal Opinion and Translation Section, Foreign Law Division under the legal duty of the Office of the Council of State, Constitute Project <https://www.constituteproject.org/constitution/Thailand_2017.pdf?lang=en> accessed 31.10.2024.

[21]Article 5. Official translation of the text of the Constitution of the Turkish Republic provided by the Department of Laws and Resolutions <https://cdn.tbmm.gov.tr/TbmmWeb/Icerik/Dosya/2e5836e4-4d42-4255-92ff-7e749130096c.pdf> accessed 31.10.2024.

Summary

The reference to happiness in current legal texts, especially in such momentous acts as constitutions, may appear an eccentric exercise against the background of the degenerate states that, despite adopting "happiness" as the foundation of their system, often fail to uphold the fundamental rights of their citizens. The effect of the unexpected grotesqueness of such legislative actions is only heightened by the restraint of states that take seriously the standards of protection of individual rights against the invocation in the normative context of values so high and at the same time so undefined. Undoubtedly, the sincere idea of the Founding Fathers articulated in the text of the Declaration of Independence, marked by the influence of the Enlightenment reinterpretation of Epicurean and Stoic philosophy, was subject – as the concept of the constitutional state proliferated – to gradual devaluation. From a realist position, not without some disappointment, it must be admitted that the establishment at the constitutional level of the right to happiness is a manifestation of a not necessarily conscious, but undoubtedly cynical, desire on the part of the legislator to make the Constitution a nominal document, if not at all merely semantic (Loewenstein, 1957, pp. 150–153).

Considering the way legislators of various states approach the challenging task of juridizing "happiness," it can be noted that the closest thing to a legal qualification of happiness is the popular contemporary, albeit very formal, synthetic, anthropological conception of happiness as an attainable intersubjective desirable state of human consciousness (Thin, 2012, p. 59; McKenzie, 2015, p. 77; Jackson, 2019). Such a conception, giving happiness the attributes of a classical legal good, similar to and as momentous as other abstract legal goods (life, health, safety, public order and morality: George, 2000; Ciochină-Barbu, 2017, p. 3), opens the way for it to be covered by effective legal protection. However, the legal state of affairs in this regard is not matched by practice, as it is impossible to imagine a procedural realization of this type of right on the part of the individual – whether judicial or administrative – in both horizontal and vertical relations. Finally, the way in which

the "hard" provisions of the Constitution guaranteeing "happiness" or the "pursuit of happiness" are technically formulated, given the conditions whose fulfillment would enable the direct application of the provisions of the Basic Law (Gołębiewski, 2017, p. 36), precludes the individual from invoking these provisions.

The proliferation of the constitutional right to happiness was not a spontaneous process. The unifying feature of the countries in whose legal systems the implementation of the "right to pursue Happiness" took place is the strong influence of US constitutionalism. Although the American concept of both the substantive right to happiness and its juridized formal mutation (the right to pursue happiness) remain foreign to European constitutionalism, the ideal of the common good remains an element deeply rooted in the constitutional tradition of democratic European states. In conjunction with the institutional guarantees of economic, social and cultural human rights present in European constitutions, the concept of happiness inscribed in the "common good" appears quite different from the individualistically oriented liberal dimension of the pursuit of happiness instilled by the Founding Fathers of the United States.

References

Argyle, M. (2013). *The psychology of happiness*. London: Routledge, https://doi.org/10.4324/9781315812212

Bagaric, M., & McConvill, J. (2005). Goodbye justice, hello happiness: Welcoming positive psychology to the law. *Deakin Law Review*, 10, 1–26, https://doi.org/10.21153/dlr2005vol10no1art265

Bandes, S. A., & Blumenthal, J. A. (2012). Emotion and the law. *Annual Review of Law and Social Science, 8*(1), 161–181, https://doi.org/10.1146/annurev-lawsocsci-102811-173825

Bayertz, K., & Gutmann, T. (2012). Happiness and law. *Ratio Juris*, 25, 236–246, https://doi.org/10.1111/j.1467-9337.2012.00511.x

Blichner, L. C., & Molander, A. (2005). What is juridification? Working Paper No. 14. Oslo: Center for European Studies – University of Oslo.

Brudzinska, J. (2022). Transcendental anthropology and existential phenomenology of happiness. In: *The Existential Husserl: A Collection of Critical Essays* (pp. 31-44). Cham: Springer International Publishing, https://doi.org/10.1007/978-3-031-05095-4_2

Casey, C., & Vermeule, A. (2022). Myths of common good constitutionalism. *Harvard Journal of Law and Public Policy*, 45–103.

Childs, E. (2010). Religious attendance and happiness: Examining gaps in the current literature - A research note. *Journal for the Scientific Study of Religion*, 49, 550–560, https://doi.org/10.1111/j.1468-5906.2010.01528.x

Christopher, K. (1982). *The Constitution of May 3, 1791*. Translation based on the Polish text published in Piotrkow, Poland, in 1915, originally published in *PNCC Studies*, 3.

Ciochină-Barbu, I. (2017). About the legal nature of the "right to happiness." *Acta Universitatis George Bacovia. Juridica*, 6, 315–52.

Conklin, C. N. (2014). The origins of the pursuit of happiness. *Washington University Jurisprudence Review*, 7, 195–260.

Desmet, P., & Fokkinga, S. (2020). Beyond Maslow's pyramid: Introducing a typology of thirteen fundamental needs for human-centered design. *Multimodal Technologies and Interaction,* 4, 1–22, https://doi.org/10.3390/mti4030038

Diener, E., Kesebir, P., & Tov, W. (2009). Happiness. In: *Handbook of Individual Differences in Social Behavior* (147–160). New York: The Guilford Press.

Elders, L. J. (2019). *The ethics of St. Thomas Aquinas: Happiness, natural law, and the virtues*. Washington: Catholic University of America Press, https://doi.org/10.2307/j.ctvcb5cmh

Frosini, J. O. (2017). Constitutional preambles: More than just a narrative of history. *University of Illinois Law Review*, 603–628, https://doi.org/10.2139/ssrn.3516805

George, R. P. (2000). The concept of public morality. *American Journal of Jurisprudence*, 45, 17–31, https://doi.org/10.1093/ajj/45.1.17

Gołębiewski, A. (2017). Review of the constitutionality of law in the direct application of the constitution. *Roczniki Administracji i Prawa*, 17, 33–54.

Graafland, J. (2023). On rule of law, civic virtues, trust, and happiness. *Applied Research in Quality of Lif*e, 18, 1799–1824, https://doi.org/10.1007/s11482-023-10163-2

Harland, L. A. (1993). The relationship of virtue and happiness in Socrates' moral theory. Vancouver: University of British Columbia.

Herdegen, M. J. (1994). The constitutionalization of the UN security system. *Vanderbilt Law Review*, 27, 135–157.

Jackson, E. J. (2019). The double-edged sword of happiness. *AERA (American Educational Research Association) Annual Meeting, 2019.* American Educational Research Association.

Jacobson, A. J. (1989). Autopoietic law: The new science of Niklas Luhmann. *Michigan law Review*, 87, 1647–1689, https://doi.org/10.2307/1289278

Jakubovská, V., & Waldnerová, J. (2020). Reflections on happiness and a happy life. *Ars Aeterna,* 12, 34–44, https://doi.org/10.2478/aa-2020-0009

Johnston, B. R., Colson, E., Falk, D., St John, G., Bodley, J. H., McCay, B. J., & Slyomovics, S. (2012). On happiness. *American Anthropologist*, 114, 6–18, https://doi.org/10.1111/j.1548-1433.2011.01393.x

Kant, I. (1785). *Fundamental principles of the metaphysic of morals.* Translated by Thomas Kingsmill Abbott. Project Gutenberg, https://www.gutenberg.org/files/5682/5682-h/5682-h.htm (accessed 31.10.2024)

Klosko, G. (1987). Socrates on goods and happiness. *History of Philosophy Quarterly*, 4, 251–264.

Konstan, D. Epicurean happiness: A pig's life? *Journal of Ancient Philosophy*, 6, 2–24, https://doi.org/10.11606/issn.1981-9471.v6i1p1-22

Laster, K., & O'Malley, P. (1996). Sensitive new-age laws: The reassertion of emotionality in law. *International Journal of the Sociology of Law*, 24, 21–40, https://doi.org/10.1006/ijsl.1996.0002

Lin, T. Y., Chiu, Y. H., Xie, X. H., & Chang, T. H. (2024). Economic performance, happiness, and sustainable development in OECD countries. *Social Indicators Research*, 171, 159–188, https://doi.org/10.1007/s11205-023-03253-z

Lomas, T., Bartels, M., Van De Weijer, M., Pluess, M., Hanson, J., & VanderWeele, T. J. (2022). The architecture of happiness. *Emotion Review*, 14, 288–309, https://doi.org/10.1177/17540739221114109

Magalhaes, A. L. (2021). 21st century political thinking and eudaimonia. *International Journal of Development Research*, 11, 43322–43325.

Maroney, T. A. (2009). Emotional common sense as constitutional law. *Vanderbilt Law Review*, 62, 849–915.

McKenzie, J. (2015). Recognizing decentered intersubjectivity in social experience. *Emotion Review*, 7, 73–78, https://doi.org/10.1177/1754073914545361

McMahon, D. M. (2008). The pursuit of happiness in history. In: M. Eid & R. J. Larsen (Eds.), *The science of subjective well-being* (pp. 80–93). New York: The Guilford Press.

Mitsis, P. (2005). The Stoics on property and politics. *The Southern Journal of Philosophy*, 43, 230–249, https://doi.org/10.1111/j.2041-6962.2005.tb01987.x

Nizhnik, N. (2021). Police-law theory on the regulation of public relations in the police state. *European Proceedings of Social and Behavioural Sciences*. International Scientific and Practical Conference "MAN. SOCIETY, COMMUNICATION". https://doi.org/10.15405/epsbs.2021.05.02.228

Orgad, L. (2010). The preamble in constitutional interpretation. *International Journal of Constitutional Law,* 8, 714–738, https://doi.org/10.1093/icon/mor010

Pilkington, M. (2016). Well-being, happiness and the structural crisis of neoliberalism: An interdisciplinary analysis through the lenses of emotions. *Mind & Society*, 15, 265–280, https://doi.org/10.1007/s11299-015-0181-0

Rabbås, Ø., Emilsson, E. K., Fossheim, H., & Tuominen, M. (Eds.). (2015). *The quest for the good life: Ancient philosophers on happiness*. Oxford: Oxford University Press, https://doi.org/10.1093/acprof:oso/9780198746980.001.0001

Richard, C. J. (1989). A dialogue with the ancients: Thomas Jefferson and classical philosophy and history. *Journal of the Early Republic,* 9, 431–455. https://doi.org/10.2307/3123751

Rittberger, B., & Schimmelfennig, F. (2013). *Journal of European Public Policy*, 13, 1148–1167. https://doi.org/10.1080/13501760600999474.

Roessler, B. (2017). X-privacy as a human right. *Proceedings of the Aristotelian Society* 117, 187–206, https://doi.org/10.1093/arisoc/aox008

Rundberg, S. (2010). *Cognitive linguistics: The conceptualisation of happiness.* Lund: Centre for Language and Literature – Lund University.

Schlag, P. (1985). Rules and standards. *University of Colorado Law School* 33, 379–430.

Sharman, J. M. (2005). The right of privacy in state constitutional law. *Rutgers Law Journal*, 37, 971–1086.

Thin, N. (2012). *Social happiness: Theory into policy and practice*. Bristol: Policy Press, https://doi.org/10.46692/9781847429216

Trubek, D. M. (1972). Toward a social theory of law: An essay on the study of law and development. *The Yale Law Journal*, 82, 1–50, https://doi.org/10.2307/795251

Tsesis, A. (2015). The Declaration of Independence and constitutional interpretation. *Southern California Law Review*, 89, 369–398.

Veenhoven, R. (2016). The sociology of happiness. In: *The futures we want: Global sociology and the struggles for a better world.* 3rd ISA forum of sociology.

Wieacker, F. (1990). Foundations of European Legal Culture. *The American Journal of Comparative Law*, 38, 1–29, https://doi.org/10.2307/840253

Zeifert, M. (2022). Rethinking Hart: From open texture to prototype theory-analytic philosophy meets cognitive linguistics. *International Journal for the Semiotics of Law-Revue internationale de Sémiotique juridique*, 35, 409–430, https://doi.org/10.1007/s11196-020-09722-9

Prawo do szczęścia i jego konstytucjonalizacja

Abstrakt

Tekst podejmuje problem roli szczęścia – postrzeganego z jednej strony jako pojęcie subiektywne, z drugiej jako autonomiczna kategoria filozoficzna – w kształtowaniu konstytucji. Przy zastosowaniu analizy historycznej, teoretycznej, prawno-dogmatycznej oraz porównawczej autor prezentuje rozwój koncepcji szczęścia od jej starożytnych korzeni w myśli sokratejskiej, poglądach Arystotelesa i Kanta, aż po ich współczesne implikacje w tekstach aktów obowiązujących oraz politycznych deklaracjach programowych. W tym względzie w tekście omówione zostały próby ujęcia "szczęścia" w ramy normatywne poprzez włączenie go do preambuł konstytucyjnych i treść zasad prawnych. W artykule zawarto odniesienia do konkretnych dokumentów historycznych, w tym Deklaracji Niepodległości Stanów Zjednoczonych, powojennej konstytucji Japonii oraz konstytucji Republiki Korei. Prawne ujęcie szczęścia, tak jak sama pozaprawna definicja terminu wciąż pozostawia wiele do życzenia, zwłaszcza na płaszczyźnie konfrontacji jego wymiaru uniwersalnego oraz indywidualistycznego. Wnioski z pracy sugerują istnienie istotnych antagonizmów między idealistycznymi aspiracjami konstytucji sankcjonujących „prawo do poszukiwania szczęścia" wprost a pragmatycznymi ograniczeniami w realizacji prawnych modeli.

Słowa kluczowe: prawo do poszukiwania szczęścia, konstytucjonalizm, dobrostan, porównawcze prawo konstytucyjne

Abstract

The paper addresses how happiness, traditionally a subjective and philosophical concept, has increasingly become an objective of constitutional frameworks. Through historical, philosophical, and legal analyses, it explores the concept of happiness from its ancient roots in Socratic, Aristotelian, and Kantian philosophy to modern-day implications in constitutional law. The author reviews attempts to

juridicize happiness by incorporating it into constitutional preambles and legal principles. Notable case studies include the United States Declaration of Independence, Japan's post-war Constitution, and Korea's Constitution, each of which emphasizes the “pursuit of happiness” as an aspirational rather than a guaranteed right. This distinction underscores ongoing challenges: defining happiness in legal terms and addressing its universal versus individualistic dimensions, particularly in the context of Western democratic frameworks. The analysis suggests a tension between the idealistic aspirations of happiness as a right and the pragmatic limitations of law in fulfilling such abstract ideals.

Keywords: right to the pursuit of happiness, constitutionalism, welfare, comparative constitutional law