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ОТВЕТСТВЕННОСТИ БЕЗ ВИНЫ**

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**PHILOSOPHIC LEGAL PROBLEMS OF JURIDICAL RESPONSIBILITY
WITHOUT BEING GUILTY**

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АННОТАЦИЯ

Понимание вины напрямую связано с понятием справедливости, которое, по сути, является чувством меры ответственности за содеянное. Правосудие в обществе обычно настолько воспринимается справедливым, насколько ответственность, по действующим оценкам общества, соразмерна вине содеянного. Поскольку общественные оценки деяния и оценки лица, совершившего деяние, могут не совпадать, то у лица, будучи признанным виновным по действующему законодательству чувство справедливости может быть ущемлено. В данной статье соотношение вины и ответственности осмысливается через представление ответственности при отсутствии вины, затрагиваются проблемы, связанные с этим и возможные перспективы их разрешения в будущем.

ABSTRACT

The comprehension of guilt is directly connected with the notion of justice, which, in its essence, is a feeling of a measure of responsibility for committed act. The justice in a society is usually interpreted to be just inasmuch the responsibility, according to the actual social evaluations, is proportionate to the guilt of the committed act. Since the social evaluations of a commitment and the evaluations of the person, who had committed the act, may not coincide, the feeling of justice of the person after being recognized as guilty according to the legislation in force, might be hurt. The following article considers the correlation of guilt and responsibility through the notion of responsibility without being guilty, takes into consideration some problems connected with it and possible perspectives of their solution in future.

Ключевые слова: вина; формы вины; юридическая ответственность; уголовное право; правовая политика.

Key words: guilt; forms of guilt; juridical / legal responsibility; criminal law; legal policy.

Introduction

The democratic principles of justice say that there is no crime without guilt and no one can be convicted without being guilty... From the formal point of view, juridical / legal responsibility is a result of application of a law norm, first of all – realization of its sanction. Explanation of social nature of legal responsibility depends on what the given society considers to be the violation of law and whom it considers to be infringer of the law. As far as violation of law is an infringement of the ruling order of social relations, by a person, i.e. in the end - infringement of society - to that extension the restoration of the infringed condition, prosecution of the violator and prevention of similar infringements in future – has been always the social affair. That is why this social function is being fulfilled by an official representative of the society – the State, and the function itself has not a private but public character. Moreover, due to historical process it became juridical liability of the state power. [2, 280-281]

Morals cannot be disassociated from human minds and actions and is usually considered to cover the range of laws. Due to their different scopes and coverage, it is also important to clarify and distinguish the terms when handling the guilty deeds. This article deals with the concepts of responsibility and guilt first, and separates out the different meanings of moral and legal meanings of responsibility and guilt. The relationship between legal responsibility and legal guilt along with the problems of juridical responsibility without a sense of guilt will be followed, and the conclusion will be drawn out in the end with a brief summary.

1. Concepts of Responsibility and Guilt

A. Responsibility

While *responsibility* is frequently used as a synonym for *liability*, both concepts are distinguished from each other in criminal law. Liability is imposed by law. There is no liability unless a law is enacted imposing it [14, 204]. However, law does not impose liability out of the blue. Whether civil or criminal, there is a factual basis for imposing it; and the factual bases of civil and criminal liability have common elements. These

are harm, conduct, and causal relation between the conduct and the harm. At its minimum, conduct is voluntary outward bodily motion. Liability is not imposed for harm caused by involuntary motion. We can say, that juridical responsibility – is the liability of the person, who had committed the violation of law, to suffer unfavorable consequences (hardships). [3, 316]

Where liability is imposed, voluntary motion, causal relation, and harm are always present. Absolute or strict liability is imposed on the basis of these three elements alone. Hence, in the primary sense that responsibility is the basis of liability, voluntary motion causing harm is responsibility [14, 204].

The essentials of criminal responsibility could be described in three different ways, as follows: (i) *The act must be wrong, and the actor must know what he is doing and must will to do it*; (ii) *In addition to the elements of (i), the actor must know that his act is wrong*; (iii) *In addition to the elements of (i) and (ii), the actor must have a sense of personal guilt*. Neither a sense of personal guilt nor knowledge that the act is wrong is essential for a mentally abnormal actor to be criminally responsible [14, 209-210].

B. Guilt

The drama of guilt is enacted upon a wider stage than that set by law. There are many types of conduct in daily lives that may give rise to some guilt, but not necessarily to ‘legal guilt’. Since this concept of legal guilt is arguably weighted with moral significance, the relationship between it and moral guilt also needs to be presented.

The concept of legal guilt has a circumscribed role, not only within life but within the law itself. Judgments of guilt are neither to be identified with, nor implied by, judgments of invalidity or judgments of civil liability. The legal concept of guilt is restricted to the criminal law, and it is within this area of law that verdicts of guilt are rendered. Consideration of this practice of rendering verdicts is essential if one is to grasp the nature of legal guilt.

There are two main theories of guilt in criminal law science: 1) evaluation theory

(normative, ethical), when the guilt of a person for the committed act is reduced to the evaluation (social, moral, political) characteristic of it by a court, when formulating its reproach; 2) psychological theory, which reflects a subjective (inner, psychic) person's relation to his socially dangerous and violating the law activity or inactivity/ negligence and to their socially dangerous consequences.[1, 225] According to the last, psychological theory, each socially dangerous and directed against the law activity (inactivity) of a responsible person is considered to be volitional and conscious. Each volitional and conscious act is reasonable (done with a reason) and purposeful, i.e. is committed according to a certain reason/ motive and to achieve specific purposes. Does it mean, if there is neither motive nor purpose, there is no guilt in the actions of a person?

i. The Verdict of Guilt

A 'verdict' is not a statement of fact that one is or is not guilty as charged. Verdicts themselves are neither true nor false, but valid or invalid. It is an essential characteristic of verdicts that they make things happen rather than state what is so. If a verdict is valid a person becomes, by virtue of that fact, either guilty or not guilty before the law. This concept of legal guilt is referred to here as "legally operative guilt."

Validity conditions for verdicts – there is a common understanding as to what communicative behavior in what settings constitutes a verdict.

The meaning of legally operative guilt – One's status is thereby transformed into that of the legally condemned.

Presuppositions of the practice – a number of background conditions are presupposed by a legal practice embodying the concept of guilt, which include the presuppositions of a verdict and the practice respectively, a general commitment throughout the society, and the social practice embodying guilt presupposing beliefs.

Functions served by the practice of rendering verdicts of guilt – Practices come into existence and persist for a variety of reasons. They may also, once in existence, serve interests that were not factors leading to their genesis.

Legally operative guilt and factual legal guilt – Some might argue that legally

operative guilt is the entire substance of the concept of legal guilt, while jurors are asked to consider whether a person is in fact guilty before they reach a verdict of guilt. A concept of legal guilt that is logically independent of a verdict of guilt is a concept that guides those charged with reaching a verdict. Thus, it would seem wise to acknowledge the presence of two legal concepts of guilt and to address oneself to their relationship.

ii. Factual Legal Guilt

As previously stated, the norms governing the practice of rendering verdicts require that those charged with the responsibility consider the evidence relevant to factual legal guilt. In the own system of criminal law, a verdict of guilt is to be returned only if it is believed beyond a reasonable doubt that the defendant is indeed guilty. Although the verdict is not a statement of fact, it presupposes beliefs about the facts. This brings us to a consideration of the nature of factual legal guilt. ‘When is a person considered guilty’ is what to be discussed.

First, conduct is normally a prerequisite for legal guilt. This means that a person must actually commit a certain act. It is not enough for him to merely think of doing it, nor is it enough for him simply to have a status of a certain kind, such as being a member of a certain race [12]. Second, the conduct must normally be conscious. Individuals are not guilty for what they do while asleep. Third, there must be legal wrongdoing. Even the most egregious moral wrong does not occasion legal guilt unless the wrong is also a legal one. Fourth, one must have the capacity to appreciate the significance of the norms applicable to one. Animals and infants, for example, do not have the ability to experience guilt.

Finally, it is normally a prerequisite for legal guilt that there be conscious fault or culpability with respect to wrongdoing, that is, there must be a “guilty mind”. Whatever defeats one’s fair opportunity to behave otherwise than he did - typically some reasonable ignorance of fact or limitation on his freedom of action - may excuse him.

These conditions are common to most legal systems. The connection that factual legal guilt has with our moral conceptions of guilt is less clear: moral fault is not essential for legal guilt. Nevertheless, there may be a connection between legal guilt and moral fault that is more than merely accidental.

iii. Moral and Legal Guilt

Moral and legal guilt may differ significantly. There is no concept in morality comparable to legally operative guilt; one is never morally guilty merely by virtue of being judged as such [17, 134].

Moral guilt is always factual guilt. Further, the law may specify in a relatively arbitrary way the norms that regulate conduct and the circumstances under which violation of these norms incurs guilt.

Moreover, *legal guilt* is restricted to those situations in which a wrong is done to society [ibid]. It is not enough that someone's personal rights have been violated. For the most part, however, moral wrongs that establish guilt arise in situations where another's rights have been violated; the guilt is not necessarily done to the society that conceives itself as threatened by the conduct.

Further, in being morally guilty there is no implication of being justifiably liable to punishment. There may be entitlement to criticize and to be resentful or indignant, but in a variety of situations where moral guilt arises, either the wrong done is not appropriately viewed as punishable, or the relationship is in no way seen as righted by punishment.

In addition, the objects of moral guilt differ from those generally of concern to the law. Maxims such as "the law aims at a minimum; morality at a maximum" and "the law is concerned with external conduct; morality with internal conduct" draw attention to the different emphases of law and morality [12].

Finally, moral guilt may remain forever in doubt once all the facts are in. Moral reflection allows for the judgment that a person is and yet is not guilty; this depends on one's perspective, which is not precisely defined by any authoritative pronouncement.

iv. The Sense of Guilt

Guilt is a human sentiment that manifests itself in our inhibition from doing what we believe to be wrong and in our feeling guilty when we do what we believe to be wrong []. Thus, it operates both in a forward- and a backward-looking manner. Guilt is the feeling most closely connected with wrongdoing, taking as its object belief in wrongdoing. A person who feels guilt holds certain beliefs and is disposed to feel and act in certain specific ways; however, it is not the human disposition to feel guilt related to the legal practices.

2. Relationship between Legal Responsibility and Legal Guilt

Legal responsibility is exactly equivalent to liability to punishment. The sole question in every case is: *Is this person liable, by the law of the land, to be punished for the act which he has done?*

Moral guilt does not determine criminality. Moral responsibility may exist without legal responsibility. Thus a child of six may steal, knowing that it does wrong, but English law refuses to regard such a child as capable of any crime. Equally legal responsibility may exist where moral responsibility is denied, as in certain cases of persons of unsound mind [15, 276-277]. But while legal responsibility does not correspond to the popular conception of moral responsibility, the law is not arbitrary in imputing liability to persons. It proceeds upon principles, and it is in determining those principles that the study of the law may afford profitable illustrations to the moralist.

For the purposes of the criminal law, 'accountable' may be said to be synonymous with rational, and 'person' may be defined as rational creature. Since it is the character of the intention which determines the character of the act, some degree of knowledge is necessary in order that any act may be a crime, but that degree may vary according to the nature of different offences. There are many circumstances under which acts, which would otherwise be crimes, are deemed innocent.

The consciousness of wrongdoing is the essential element in responsibility under the law. The power of the criminal to do, or to refrain from doing, the act complained

of, is a matter of no importance [15, 285]. Personality is, for the law, conscious being in relation to a certain environment. Consciousness and position are both necessary to it, indeed the relation between them is personality. Granted a certain position, the law neither permits the human being in that position to fall below, nor requires him to rise above, a certain standard. Such is legal responsibility.

3. Problems of Juridical Responsibility Without Being Guilty

It has been said that: “The greatest problem that ‘confronts’ the criminal law as a social institution is the test of the responsibility of a person for his crime”, and “Certainly no one who has studied the problem of mental disease in relation to criminal responsibility can be content with either the present rules or their administration”. Thus it seems that the tests being used are not doing what they are supposed to do well enough; consequently there is need of a better test or tests.

A test of responsibility is a means by which to tell whether the prerequisites of responsibility were in the actor’s mind. A test of responsibility indicates that if this or that was not in an actor’s mind, he was not responsible [14, 217]. By indicating that, it says that this or that is an essential of responsibility. Yet this does not show what all the essentials are, and there are still disputes over it.

Some people suggest that the concept of responsibility be discarded; however, if we do not know just what all the essentials of responsibility are, we would not know just what it is suggested that we discard. Also, since there is no way that the concept could be discarded, the problem of volition will remain.

Another problem might be when considering a corporation or legal person as subject of crime. Currently, there is a tendency of development of criminal legislation in many countries in the direction of establishing criminal responsibility not only for physical but also for legal persons. Culpability will mostly be determined by the steps taken by the organization prior to the crime to prevent it and find the culprit. There are

very serious doubts about the measures that corporations are subjected to, even in the rare cases where criminal cases against them end in a trial and conviction.

Let's touch on the arguments in favor of such legal regulation. Some scientists say, that legal entities have long been recognized as subjects of law in civil and administrative law. Even if it is so, is there a sense to establish for legal entities one more liability? Though, when committing a crime in business sphere, it is often impossible to specify the specific person who committed the tort in all its constituent elements. Further, criminal liability of legal entities is considered (e.g. within the framework of the Dutch legal order) as a necessary condition for effective fight against organized crime (dubious means). The Supreme court of the Netherlands noted that in order to establish intent, a legal entity must give explicit consent to the actions of an individual (employee), that is, know about his actions and approve them. In this case, the actions of an individual (employee) can be considered as the actions of the legal entity itself. Why? If an employee, a person has been employed in the name of a corporation and acted as employee, we understand that he was employed by a certain chief and for commitment of his actions he also got an order from his boss. Why then the collective of a corporation should be punished, when imposing a fine on the corporation? In such a case the real infringer of a law avoids his punishment

The analysis of a significant number of theories that reveal the essence of a legal entity allows us to determine one of them that, in our opinion, correctly reflects the nature of such a complex social phenomenon – the “theory of fictions”. The fictitiousness of a legal entity as a subject of law indicates that the corporation cannot commit any act (including criminal law) as a kind of independent personality, abstracted from the collective that makes it up. In other words, the act of a legal entity is a fiction.

It should be recognized that the very idea of imposing criminal liability on a corporation arose for reasons of pragmatism and expediency, and from a social point of view, all this is justified, but transferring this socially useful idea to the sphere of criminal justice, one could not ignore the canons established in it. Among them, one of

the first places (perhaps the first) is the principle of guilt-imputation for guilt, the guilt of subjective imputation. Therefore, it was necessary to think through the mechanism or mechanisms of the guilty (and not only causal) connection of a legal entity (corporation) with the harmful, dangerous consequences of the crime committed by it.

Summarizing theoretical developments on the issue of recognition for a corporation the status of a subject of criminal liability and punishment, with retrospective criminal liability should be accepted as the responsibility of the perpetrator, endure the public censure, expressed a negative evaluation of the person and his acts, and be punished accordingly, we can state the following: under the current criminal policy, this obligation under any circumstances should not be shifted from the perpetrator to a third party. Thus, the position on the separation of the concepts of “subject of crime” and “subject of criminal responsibility” cannot be considered correct. Criminal liability and punishment in criminal legislation are focused on the person who committed the crime, and the corporation cannot be recognized as the subject of the crime. However, it seems that, without logical contradictions, the functions of criminal responsibility for various offenses against legal entities can be performed by civil or administrative law.

Conclusion

In conclusion, the basis on liability and responsibility need to be preceded in order to understand the concept of judicial responsibility, and there are differences of applications – whether to be factual or strictly legal – between moral guilt and legal guilt. Considering that the sense of personal guilt and knowledge that the act is wrong are required for normal actors to be criminally responsible and the necessity of supplements for the test of responsibility is suggested, the essentials of criminal responsibility accord with the concept of governmental just powers would be supportive.

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