Se me perdieron las llaves[1], or Back to the Phenomenon of Guilt in Philosophy of Law Again

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ABSTRACT
The article is dedicated to the consideration of the phenomenon of guilt in the sphere of legal philosophy. The reasoning of the similar issue is fulfilled both synchronically and diachronically. In the synchronic field of research authors consider the specificity of guilt in the sphere of private law (civil law, commercial law) as such as in the region of public law (criminal law, administrative law). In the context of the diachronic research of the phenomenon of guilt authors turn themselves to the origin of the legal thought — legislation and legal philosophy of Ancient Greece (first of all, pre-Socratic philosophy of law — Parmenides, Heraclitus etc.) and Ancient Rome. The result of the diachronic analyses is the following conclusion. The guilt in its legal-philosophical aspect presents itself originally as the transformed category of the causality. During the contemporary development of the legal thought the latter is substituted by the interpretation of the guilt as the psychological relation of the person, who has committed the legal deed towards its socially dangerous consequences. The similar conclusion is grounded partly on the comparative examination of the obligations, which derivate from contract and from the infliction of the harm (contractual obligation and delict obligation). In the similar case the guilt as the causal relation is existed between the deliberate or negligent action from one side and the harm, which is derivated from the similar action — from the other.In this situation the category of delict (the break of the norms and rules) is interpreted as the secondary in historical relation and taking place later than phenomenon of causing the harm. In its turn, the synchronic analyze of the phenomenon of guilt leads authors to the hypotheses, that the form of guilt (criminal intent or criminal negligence) is a criterion, which gives us possibility to distinguish the fields of private law and public law. It's worth to underline that sphere of gross negligence is the border line (so-called mixed zone) between the public and the private law. As the special case authors underline such institute of the civil law as the responsibility without guilt, when the fact of the committing deed (or even the possession of the certain estate) as such creates the ground of the legal responsibility of the person. Finally authors come to conclusion that the real foundation of the legal responsibility is guilt as the fact of involving in the occurrence, i. e. that concrete situation, "case" which is an ontological ground to turn to the law.
Keywords: guilt, intent, negligence, causality, private law, public law

1. Introduction

The question of guilt is fundamental to both legal theory and legal practice. At the same time, if in the practical aspect it is the establishment of the guilty person that is the core of the criminal, civil or other judicial process, then in the context of the philosophy of law, the focus of questioning shifts to the phenomenon of guilt itself. What gives grounds to establish a connection between the act of a person, on one level, its actual consequences — on the other, and legal consequences — on the third? Anyone who takes on the difficult task of understanding the problem of guilt in its philosophical and legal aspect inevitably falls to such a "Bermuda triangle".

At the same time, it is necessary to pay attention to the seemingly obvious fact that not only a jurist, but also a theologian, an ethicist, and in general anyone who dares to ask a question about guilt in its religious, ethical or other dimensions finds oneself a similar triangle. Accordingly, the task of the philosophy of law in this case will be a particular "specification" of this "triangle" in legal terms, since guilt as a fundamental condition of human responsibility before God, people, or, for example, the state or society will be significantly differentiated depending on the perspective of the question.

2. Historical exposition of the problem

It is known that in ancient time law did not stand out as such from the general scope of social norms, being inscribed in a syncretic array of religious, ethical and other rules governing the public life of people. In accordance with this, guilt itself was conceived in a similar way — syncretically simplified, representing not the "mental attitude of a person to the committed act", but his "being-the cause" of what happened, i. e. the actual ability of a person to conceive the cause-and-effect sequence that later leads

[1] My keys are lost (Spanish)

to a certain result.[2] In other words, more initially than the mental attitude of a person to the accomplished act, guilt means: source, beginning, cause, reason, preposition[3]. Similarly, in Latin (causa), and, for example, in German (die Schuld), *guilt* denotes the ability of a person *to conceive the causal sequence that leads (may lead) to the occurrence of damage*. As the German philosopher M. Heidegger points out when analyzing the phenomenon of guilt, "guilt" can be understood in two ways: as "being-guilty" in the sense of duty to someone and "being-the cause" of something. They coincide in what we call *"to-be-guilty"* (italics M. H.), that is, through the guilt of duty to violate the right and make yourself subject to punishment. ...The delinquency is not due to the offense as such, but because one's fault is that the Other in their existence is put under attack, led astray or even broken. This delinquency to Others is possible without violating the "public law"[4].

Explaining what has been said, it should be noted that in the history of law, guilt was initially understood as the ability of a person to be the cause of what happened (infliction of damage). A clear illustration of this situation was the law in the Early middle Ages (the "Salic Law", "Russkaia Pravda", "Gray Goose Laws", etc.), which not so much contained the offences, as were a kind of a "price list" of material equivalent to the damage, effectively replacing both guilt, and the offense as a whole.

However, what does "being-the-cause" mean? After all, in some way "cause" of a murder committed by a child, "are" the parents as the reason for his birth, cause of a theft is hunger, cause of an accident is an animal or an object that actually caused harm. In other words, the question of guilt as a cause gave rise to the question of at least the criteria for determining the cause as the "zero number" from which one should "count" both the event itself and its outcome — infliction of damage. Similarly, in the field of civil law, even in ancient Rome, the complexity of forms of economic turnover led to the fact that non-performance of obligations by the counterparty or actual harm was often caused by a complex set of intermediate causes and consequences, in which a simple "objective imputation" of guilt could not serve as an effective way to resolve the dispute.

It is known that even in the most ancient Roman law, it was established that an obligation can arise from two grounds: from a contract and from a delict[5]. In other words, initially, both in German law and in Roman law of the archaic period, the "guilt", i. e. the cause of the obligation (as a rule, of compensation for harm), was considered to be the act that caused the damage: either as a violation of the obligations assumed, or directly as a delict. Guilt was specified in three ways: as intent (dolus), gross negligence (culpa lata) and petty negligence (culpa levis)[6]. Somewhat deviating, it can be assumed that it is the above-mentioned allocation of three degrees of guilt that served in modern legal theory as the basis for the crystallization of both the "material" and "procedural" distinction between private and public law. So, if the delict was committed intentionally, then this act fell into the sphere of public law and was subject to prosecution by the state. If the damage was caused carelessly or was the result of non-performance of the contract, the committed offense belonged to the sphere of private law, and the process of bringing the culprit to justice was of the nature of private prosecution. It is no accident that even in Roman law, malice (dolus malus) was understood not so much as the degree of guilt, but as a delict as such ("causing harm from malice»)[7]. In turn, the Roman jurists understood negligence, first of all, as imprudence. There is guilt when there was no provision for what a caring person could have provided for[8].

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[2] *Karnaukh, B. P.* Vyna yak umova tsyvshno-pravovsy vidpovidalnosti. [Karnaukh B. P. Guilt as a condition of civil liability.] Kharkiv, 2014. p. 10. (in rus)

[3] *Dal V.* Tolkovyy slovar zhivogo velikorusskogo yazyka: v 4 t. [Dal V. Explanatory Dictionary of the Living Great Russian Language: in 4 v.] Moscow, 1955 v. 1. A – Z p. 204. (in rus)

[4] *Heidegger M.* Sein und Zeit. Tuebingen, 2001. S. 282. See also Russian translation: *Heidegger M.* Bytiye i vremya. [Heidegger M. Being and time.] Moscow, 1997. p. 282. The reference to the German text is given because of our disagreement with the translation of this fragment by V. V. Bibikhin (for example, the latter translates "ein Recht verletzen" as "to break the law" instead of "to violate the right", etc.)

[5] We focus on the ancient origin of this division for a reason, since only in the classical period does Roman jurisprudence begin to take into account its incompleteness. Thus, although Gaius says in the Institutions (III.88) that "omnis obligatio vel ex contractu nascitur vel ex delicto", he himself in another work (2nd book of "the Golden", Aureorum) adds a third group "aut propria quodam jure ex variis causarum figuris" (from various other grounds). In the Justinian period, however, we see a generally formed four-term division of such grounds (contracts, delicts, quasi-contracts, quasi-delicts) (see: *Pokrovsky I. A.* Istoriya rimskogo prava. [Pokrovsky I. A. History of Roman law.] Saint Petersburg, 1999. p. 372, 390, 391; Rimskoye chastnoye pravo : uchebnik [Roman Private Law: Textbook] / ed. I. B. Novitsky and I. S. Peretersky Moscow, 1997. p. 239, 240).

[6] *Karnaukh, B. P.* Vyna yak umova tsyvshno-pravovsy vidpovidalnosti. [Karnaukh B. P. Guilt as a condition of civil liability.] Kharkiv, 2014. p. 11. (in Ukranian)

[7] Ibid. p. 12.

[8] Ibid. p. 13.

At the same time, the form of guilt served as a "watershed" for determining the subject areas of not only material, but also procedural law. It is known that in the era of the primitive society, not only the legal prosecution of the guilty, but also the execution of the court decision was entirely entrusted to the interested person — the plaintiff. However, as the French philosopher M. Foucault points out, since the classical Middle Ages, the right to resolve their disputes is alienated from individuals; a prosecutor appears as representing the state that suffers damage from a misdemeanor, and the very concept of an offense appears[9]. Thus, with the development of the state, the latter begins to actively monopolize the coercive power, primarily in relation to intentional crimes. This tendency reaches its apogee in the absolutist states of the Modern age, when any public offense was thought of as an "attempt on the body of the monarch", which could only be balanced by a retaliatory material repression of the state against the body of the criminal[10].

3. The phenomenon of guilt in modern legal science

As we can see, with minor changes, such a basis for differentiating public and private law has been preserved to this day, being actualized both in the "substantive" difference between public and private law, and in the "procedural-legal" difference between criminal or administrative proceedings, on the one hand, and economic or civil proceedings, on the other. Responding to the possible objection that any process is inherently public (at least by virtue of its administration by a State body — a court), it should be clarified that, for example, intentional damage to property and intentional failure to fulfill civil obligations assumed are inherently public offenses and are subject to prosecution by the State, while similar acts committed by negligence belong to the sphere of private law, when bringing the perpetrators to justice is the prerogative of the victim themself. At the same time, there is a so-called "gray zone" between public and private law, when a number of negligent delicts (for example, negligent homicide, fatal accidents) are criminalized, entering the sphere of criminal law. A similar "gray zone" in procedural terms is the case of private prosecution in criminal proceedings or public lawsuits in civil or economic proceedings.

It should be assumed that the historical basis for distinguishing the "gray zone" of the spheres of public and private law in material terms can also serve as the previously mentioned degrees of guilt, which were distinguished in Roman law: gross negligence (culpa lata) and petty negligence (culpa levis). Thus, gross negligence took place where there was no measure of foresight (diligentia), which could be demanded from anybody, from "anyone"[11]. At the same time, petty negligence was understood as the absence of the foresight that is inherent not in everyone, but only in a good, prudent owner (bonus paterfamilias, diligens paterfamilias)[12]. In other words, if gross negligence in the most ancient Roman law was actually equated with intent and, accordingly, in its essence belongs to the sphere of public law, then light negligence immanently belongs to the sphere of private law[13].

Thus, it can be assumed that guilt as a person's attitude to the act committed by him and its consequences is the most important criterion for distinguishing whether this act inherently belongs to the sphere of public or private law, thereby predetermining the corresponding material or procedural consequences. Thus, if the guilt is expressed in the form of intent, the offense will obviously be mainly of a public-legal nature, while in the case of petty negligence, it will belong to the sphere of private law.

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[9] *Foucault M.* Intellektualy i vlast // Istina i pravovyye ustanovleniya. [Foucault M. Intellectuals and power // Truth and legal regulations.] Moscow, 2005. p. 88 (in rus)

[10] *Foucault M.* Nadzirat i nakazyvat. Rozhdeniye tyurmy. [Foucault M. Discipline and Punish: The Birth of the Prison.] Moscow, 1999. p.73 (in rus)

[11] *Karnaukh, B. P.* Vyna yak umova tsyvshno-pravovsy vidpovidalnosti. [Karnaukh B. P. Guilt as a condition of civil liability.] Kharkiv, 2014. p. 12. (in Ukranian)

[12] Ibid. p. 13.

[13] In this regard, the concept of L. I. Petrazhitsky, who, when considering the division of the right to public and private, shifted the emphasis to the area of individual mental experience of the authorized person, deserves special attention. This approach makes much more sense than it may seem at first glance, especially if we take into account, along with the personal opinion of the authorized person regarding the direction of his interest, also the much more objectifiable factor of the form and degree of guilt of the subject (what we, in fact, are discussing). Thus, the criterion of the basic division of law proposed by L. I. Petrazhitsky becomes much clearer, at the same time the injustice of the reproaches of the supporters of the theory of material interest, who attribute this approach to dependence on the changeable state of the mood of the authorized person, becomes more obvious (for more information see: *Cherepakhin B. B.* K voprosu o chastnom i publichnom prave [Cherepakhin B. B. On the issue of private and public law] // Cherepakhin B. B. Trudy po grazhdanskomu pravu. [Cherepakhin B. B. Works on civil law.] Moscow., 2001. p. 98-100). (in rus)

Guilt in the form of gross negligence introduces the committed act into the so-called "gray zone" between public and private law, when the identification of the relevant legal relations will fluctuate depending on specific historical, social, political and other standards. In that way, for example, according to the legislation of Ukraine, if the driver of the car, being drunk, lost control and carelessly crashed into someone else's car, this will constitute a civil tort. If it is proved that the mentioned actions were committed intentionally, then this act as the deliberate destruction of someone else's property automatically moves to the sphere of public law. At the same time, it is obvious that the legislation of other countries may regulate these situations differently.

Similarly, the nature and specificity of the legal consequences of the act depend on the form of guilt. Thus, in the case of guilt in the form of intent, the focus will be, first of all, on retaliation, on punishment for the committed act, and only then on compensation for the harm caused. At the same time, any carelessness brings to the first place precisely the issues of compensation for damage, while just retribution for the committed act plays a secondary role. This distinction covers even the previously mentioned "grey areas" between private and public law. As a matter of fact, we know from practice that in cases of reckless crimes, compensation for the damage caused and reconciliation with the victim most often lead to the release of the guilty person from punishment or even from criminal liability, while in cases of intentional crimes, the commission of these actions in most cases only mitigates the punishment.

Summing up the above, we can conclude that a single and seemingly self-sufficient phenomenon of guilt, when examined more closely, breaks down into a complex system of interaction of such fundamental legal categories as *guilt*, *liability* and *damage*. Thus, in the sphere of public law, mainly in the sphere of intent, *guilt* seems to "prevail" over *damage*, determining *responsibility* first of all by the act itself, and only then by its consequences and the possibility of compensation.[14] In other words, an act committed intentionally "forms" its own consequences, as if by itself, when responsibility as *legal* consequences of the committed act is primarily due to the premeditation of the act. In the sphere of private law, in relation to a careless tort, the emphasis is shifted from *guilt* to *actual* consequences — *damage*, the absence of which excludes the *responsibility* of the offender, and compensation for the result of a careless act "erases" the committed act, making legal liability inherently derivative, derived from actual compensation for harm. In other words, the *guilt* in the sphere of private law from the mental attitude of the offender to the committed act and its consequences actually tends to the *objective imputation of the subject of violation of those rules, the observance of which would allow them to avoid causing harm.* The peak of such a *transition* from the phenomenon of *guilt* as the basis of legal *responsibility* to the *act* is a *responsibility without guilt*, as is the case with compensation for damage caused by a source of increased danger. At the same time, it can be assumed that such widespread civil constructions as the presumption of guilt of the defendant or strict liability are rather fictions designed to cover up the actual objective imputation. In other words, in the mentioned examples, the "zero number of guilt" as the cause of the incident is shifted from the guilty (intentional or careless) in commissioning of a tort to the fact of possession of the relevant property (with strict liability) or to the commission of the act that purely deterministically led to damage. At the same time, the defendant's mental attitude to the committed act and its consequences is important only in so far as it is necessary to distinguish *intent* (which transfers the act into the sphere of public law) from *negligence* (which allows to remain within the private law). Thus, the actual objective imputation is covered by the constructions of strict liability or the presumption of guilt solely for the purpose of "ideological disguise" of the "medieval" legal policy of the state in the relevant sphere.

Thus, in the course of our consideration of the question of guilt, we come to the need to revise the coordinates of its understanding. However, in the search for a way out of the previously mentioned so-called "Bermuda triangle" (act-damage-sanction), we find ourselves in another "triangle" formed by the act, damage and responsibility, where, it seems, there is no place for guilt. What is the basis of legal liability in this case? It should be assumed that here is the limit of questioning within the branch legal science, which is only able to construct dogmatic constructions, without speculating about their nature and essence. For example, the expression of Article 179 of the Civil Code of Ukraine describes a thing as "an object of the material world, in relation to which civil rights and obligations may arise." However,

[14] It should be noted that the difference between the so-called "material" and "formal" elements of a crime does not refute our statement, since in crimes with formal or even truncated elements, the onset of socially dangerous consequences is presumed by definition (as, for example, in the case of the creation of a criminal organization [Article 255 of the Criminal Code of Ukraine], when the very fact of the creation of such is considered harmful to public relations, regardless of whether such an organization has committed any specific crimes or not).

civil law, within its subject area, is unable to define what "world", "matter", "object", etc. is, being forced to borrow these categories from philosophy as dogmatic ones. Thus, we are forced to move into the sphere of the philosophy of law, which by its very nature is designed to question the meaning and grounds of the corresponding phenomena.

4. The phenomenon of guilt in the philosophy of law

It is known that in the theory and philosophy of law, guilt has traditionally been interpreted in two ways: "subjectively" – as a person's mental attitude to the committed act (the so-called "psychological theory of guilt"), or "objectively" — as a way of behavior that objectively does not meet the standards adopted in a particular society, regardless of the direction of the perpetrator's intent (the so-called "behavioral theory of guilt»)[15]. At the same time, both theories are based on the philosophical postulate that there is a special kind of connection between a human act (action or inaction) and its consequences, which cannot be reduced to either a causal or logical connection, but has a very special nature. In other words, the seemingly contradictory "subjective" and "objective" interpretations of the phenomenon of guilt have common philosophical roots, going back to those concepts of truth that existed in the minds of people in the corresponding period of time, causing and inducing the corresponding understanding of guilt in the field of jurisprudence[16].

In modern non-classical philosophy of law, guilt is initially understood as the existential ability of a person to become a reason for causing damage to the being of another person (existence)[17]. This ability resides in the fact that the offender in his being with other people seems to "hides" himself, by means of such concealment, not allowing other people who meet him in being to realize their opportunities. The modes of such concealment are "refusal" (complete concealment), "appearance" (distorted visibility) and "order" (hyper-manifestation of oneself in being with other people, excluding and absorbing their self-perception)[18]. In turn, in Roman law, guilt as malicious intent was initially associated with non-appearance, distortion, concealment. Thus, malicious intent was interpreted as a kind of "trick to deceive another person, when the pretended appearance is one thing, and the actions are different" (Servius). "It is possible to act without pretense in such a way that someone will be bypassed (deceived), it is possible to do one thing without malice and create a false appearance of another: thus act those who, by such pretence, hold and guard either their own or others'; therefore (Labeon) himself defines evil intent in this way: it is cunning, deception, trickery, committed in order to circumvent, deceive, confuse another" (Ulpian)[19].

However, the distinction between guilt and innocence as between concealment and appearance has even deeper Greek roots than Latin: as the difference between the truth ('αλέθεια), understood as the maximum manifestation of being in the fullness of its being, and the lie, concealment, oblivion of the truth of being (λέθέ). In works of Parmenides the access to 'αλέθεια was kept by none other than the goddess Dike, who owns the changing (now locking, now unlocking) keys to the gates of Day and Night[20]. As has been repeatedly noted in the relevant literature, there is an inherent relationship between the truth ('αλέθεια) and the law ('Dike'). Thus, the German philosopher of law E. Wolf points out that the essence of Dike as a goddess who shines and translucents, illuminates, exposes and reveals the hidden

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[15] *Karnaukh, B. P.* Vyna yak umova tsyvshno-pravovsy vidpovidalnosti. [Karnaukh B. P. Guilt as a condition of civil liability.] Kharkiv, 2014. p. 44. (in Ukranian)

[16] The reference to the "relevant time period" is not accidental. Depending on the chosen historical epoch, the"binding" of guilt to a person will be based on a variety of prerequisites, starting from the "objective imputation" (guilt as a cause) and ending with the imputation of guilt as the "subjective direction of intent" of the actant. At the same time, at the "prehistoric" stage of human development, it is not necessary to talk about "specifically legal guilt" at all, since law itself was not isolated from the system of other social norms, which were a syncretic fusion of religion, morality, magic, etc. Similarly, in place of the deterministic connection of an act and its consequences in primitive society, "acausal rows" (K.-G. Jung) took place, when, for example, in contrast to "physical" harm, "hex", "evil eye" , etc. were not the result of a "direct action" of a person, but of one's appeal to supernatural forces ("allies", "spirits", "totems", etc.).

[17] *Stovba O. V.* Temporalnaya ontologiya prava. [Stovba O. V. Temporal ontology of law.] Saint Petersburg, 2017. p. 288 et seq. (in rus)

[18] Ibid. p. 290.

[19] D.4.3.1.2 (cit. from: Digesty Yustiniana [Digest of Justinian] / translated from Latin. v. I. ed. by L. L. Kofanov. Moscow: Statut, 2002. p. 433). (in rus)

[20] Dosokratiki: eleatovskiy i doeleatovskiy periody [Pre-Socratics: the Eleatic and Pre-Eleatic periods] / translated from the Ancient Greek by A. Makovelsky. Minsk, 1997. p. 452. (in rus)

(wrong), solves and exposes, is identical with the essence of 'αλέθεια[21]. Hence, guilt, taken from such a perspective, is a specific way of being of a person, ontologically-existentially associated with untruth, concealment, which at the ontic-psychological level are manifested as a lie, deception or pretense. Thus, it is unexpectedly revealed that before any "objective imputation" or "form of intent", guilt is inextricably linked with truth.

However, the truth for the ancient Greeks is by no means a frozen "correspondence of our ideas to the objective state of things." As has been repeatedly noted in the relevant literature, the ancient truth is inherently dynamic, it is constantly coming true, it is happening[22]. When the limit is set to this implementation, to this occurrence of truth, then guilt takes place. In other words, if the truth is the happening itself, then the distortion, the concealment of it, will be the guilt. In other words, earlier than the violation of any natural law or positive law, the offense of the offender was that he would not let come to pass what essentially is such, and through his action, or inaction as it were, concealed, obscured what was going on, so it was impossible to tell who acted in accordance with the truth and who did not. As a result of an act that is illegal in its nature, i. e. "guilty" in the very original sense of the act, the distinction between Dike (truth, norm) and Adiksia (enormity) is erased.

At the same time, it was obvious to the ancient Greeks that it was possible to act with the best intentions, hiding the truth of what was happening, without realizing the mentioned concealment at all. So, in the famous tragedy of Sophocles "Oedipus Rex", the ancient Greek hero Oedipus, hurrying along the night road, accidentally kills his father Laius, and after saving his native city of Thebes from the monster Sphinx, turns out to be the husband of his mother. At the same time, the fact that Oedipus acted out of ignorance, not only having no intention to commit such terrible things, but also acting with completely noble intentions, in no way saves him from guilt or responsibility for what he did. Oedipus is guilty to the extent that, having committed a certain act that distorts what is happening, he is involved in it, and this fact of "involvement" turns out to be the source of both guilt and responsibility[23]. In other words, we can assume that before any "objective" and "subjective" theories of guilt, *its ontological basis is an incident as such, in which a person is involved*, when everything happens as if by itself, but the person still turns out to be responsible for what *happens to them*.

Turning to the philosophical and methodological prerequisites of this hypothesis, it should be pointed out that, like the construction of a relative legal relationship in civil law, in modern philosophy of law, one can meet the so-called "discrete theory of law", according to which law does not exist constantly as a certain legal field, constantly permeating the existing reality, but discretely, arising as a result of the committed act and disappearing after the onset of proportionate and timely legal consequences[24]. Similarly, it can be assumed that guilt initially exists not in the form of an ideal timeless construction describing "the mental attitude of a person to an act and its consequences" or "an objectively illegal way of behavior", but as a concrete situational acquisition of a person's "place" in what is happening, when they, being involved in it *as* someone, "automatically" receive that corresponding set of "rights and obligations", which makes any factual discourse about the person's guilt possible. In other words, initially guilt is a kind of "indicator" of the person's involvement in the incident, while responsibility is a "feedback" of the person and of what is happening. In other words, a person, being "connected with what is happening in a certain way" (in a way of being present in it)[25], gives a "countdown" of this connection in the course of explicating their place as a share in the whole of the incident, thereby "taking responsibility" for what is happening to them.

A small insight into the field of linguistics will help to clarify what has been said[26]. For example, in Spanish, the passive voice is expressed by the particle "se", which is placed at the beginning of the sentence. As in Ukrainian and Russian (by means of the particle "ся" [sya], which, however, expresses

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[21] *Wolf E.* Greichisches Rechtsdenken. Frankfurt am Main, 1947. S. 36.

[22] *Heidegger M.* Parmenid. [Heidegger M. Parmenides.] Saint Petersburg, 2009. p. 202.

[23] The task of this article does not include a complete and comprehensive interpretation of this extremely deep and multifaceted myth (which would require an independent study that goes beyond the scope of legal science). Here, the authors use mythological material to provide a figurative illustration of some of the provisions of this article. A similar path is followed, for example, by the famous French philosopher M. Foucault, who believes that the play "Oedipus Rex" can be considered as a literary exposition of the problems of power (see *Foucault M.* Intellektualy i vlast // Istina i pravovyye ustanovleniya. [Foucault M. Intellectuals and power // Truth and legal regulations.] Moscow, 2005. p. 68).

[24] See, for example, *Stovba A. V.* Temporalnaya ontologiya prava. [Stovba O. V. Temporal ontology of law.] Saint Petersburg, 2017. p. 6, 209 et seq.

[25] Ibid. p. 317.

[26] It should be emphasized that this insight does not have an independent methodological significance, but is intended to illustrate some of the provisions of this article with the help of expressive means of the Spanish language.

the reflexiveness),such a construction indicates that everything happens as if “by itself”, while the being involved in such an event is passive. For example, the expression “se perdieron las llaves” means “the keys are lost”, i. e. they were lost “by themselves”, not “lost by someone”. If I want to say that “I lost the keys”, i. e. I am responsible for the loss, it will sound like “yo perdi las llaves”. But if the keys are “lost by themselves”, but I am the owner, this Hispanic construction expresses it as effectively as possible as opposed to the phrase “The keys were lost by me”. The expression “Se me perdieron las llaves” through the particle “se”, although it will indicate my passive role in what is happening, however, by means of the reflexive pronoun “me”, i. e.” I have”, irrevocably enters me into the fact of loss that has occurred, thereby imputing guilt and responsibility to me. Metaphorically speaking, although the “keys” to the gates of Parmenides’ truth are lost as if “by themselves”, a person still turns out to be guilty of what is happening and responsible for the consequences that have occurred due to the fact that he is irreversibly “tied” to what is actually happening. In this case, he falls into the so-called “Bermuda triangle” of damage and liability indicated in the article, not through the act, but due to the very involvement in the relevant incident. At the same time, it should be emphasized that in this case we are not trying to justify objective imputation as a general approach, but we are trying to radically revise the traditional grounds of legal liability, bringing them into line with both the actual legal process and the deep, philosophical and ontological foundations of this phenomenon.

5. Conclusion

Summing up, it should be noted that the philosophical and legal understanding of the phenomenon of guilt leads us to the conclusion that the basis of guilt is not “a subjective attitude to the act and its consequences, expressed in the form of intent or negligence”, but also not “an objective violation of the norms and rules established in society”. A person can be guilty only in so far as he, being involved in a certain kind of incident, occupies a certain place in it, by virtue of which he acquires certain “rights” and can bear “responsibilities”, through which all “legal” prerequisites of guilt and liability become meaningful. At the same time, as a hypothesis, it should be assumed that in the practical plane of guilt and its forms are a possible criterion for separating the public and private spheres of law, which allows us to move from dogmatic postulation to the development of adequate methodological tools for the specification of the subject of individual branches of law.

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