RESPONSIBILITY, LIABILITY, ACCOUNTABILITY

Does the causality principle prevent us from considering liability? Does it make pointless the distinction between responsible agents and those who benefit from excuses? Since anti-determinist arguments generate more problems than they actually solve, we will argue that the effort to consider both determinism and free will is our best option to take into account legal as well as moral responsibility. We will show that mechanistic explanations do not necessarily threaten the practices leading us to consider others as responsible of their own acts. Finally, the impossibility to reduce moral terms to descriptions, or practical judgments to theoretical judgments, will prove that no deterministic knowledge could replace our deliberations, and that it is therefore rational to consider oneself as a morally responsible agent.

The Economy of Liability

The Law is today placed before a strategic imperative: to turn its force towards the future, to face challenges (digital and climatic) on which the law and the contract do not have enough influence, since too local or too little systemic, while ex post responsibility is not adequate in front of the irreparable. Responsibility therefore takes hold of the future, the judge becoming the central character of the world without his having wanted it. This displacement in time may remain anchored in the past, due to commitments by States or companies. But this responsibility for the future causing an obligation not to repair but to do can come even more directly from the sole fact that the entity concerned is "in a position" to act so that others are preserved. Pre-constituted evidence, ex ante office of the judge, duty for others but also capabilities of companies and State to bear this ex ante responsibility, pillar of compliance law, a law of the future, are the new rules which are being implemented.

This study provides a summary of the literature devoted to the economic analysis of civil liability. After considering the purposes of civil liability's law, we will present the general economic model, allowing us to compare the main regimes based on fault or not. Some extensions of the model are suggested as well as a discussion of the normative scope of the presented approach. The objective is to demonstrate that the economic analysis of civil liability hold a promise, that of shedding light on the rationale of many principles of this branch of civil law. The interpretation of legal concepts and reasoning most often leads to consolidating the jurist's knowledge on an economic basis. From an historical point of view, the analysis also provides the tools necessary to understand how law has adapted to the changing circumstances of societies since the creation of the French Civil Code in 1804. The economic analysis of law is thus a good way to reconnect with the great civil law tradition.

Responsibility and Public Powers

In recent decades, the time horizon of State responsibility never ceased to expand. Towards the past on the one hand, with the appearance of disputes linked to history and, in particular, to some health scandals, and towards the future on the other hand, with the emergence of climate disputes which outline the contours of intergenerational justice. This article analyzes this movement and some of the obstacles the administrative judge has to tackle.

The author first shows that the responsibility of magistrates cannot be dissociated from their independence and protection. She then outlines the various measures implemented to strengthen ethics by the French Conseil supérieur de la magistrature and the Cour de Cassation. She concludes by stressing that the judge's responsibility is internal and finds its source in the work of the judge on himself.

Distinct from managerial accountability and criminal liability, the financial liability of public managers, which aims at protecting the regularity of public management, is part of a long tradition in France: control and accountability are even inseparably linked to the very existence of the financial jurisdictions, of which the French Cour des comptes constitutes the heart. If the philosophical foundations of this liability remain more topical than ever, in a context where citizens are losing confidence in public action, the practical modalities of the requirement imposed on public managers to "account", and hence to their individual liability, must, in order to be fair and effective, constantly adapt to changes in management methods: the in-depth reform of public financial law liability regimes, announced for 2022, offers a particularly relevant and current example. However, the long-term credibility of the new regime will depend both on the plasticity of the offenses and on the development, upstream, of relevant regularity checks making it possible to “feed” financial litigation.

Liability and Fundamental Rights

Parental liability seeks to differentiate itself from the legal notion of parental authority in order to underline its aims, protecting the child, rather than the means of implementation. It reflects the way in which these purposes are today ensured by parents but also by third parties in an increasingly assertive sharing of responsibilities. At the same time, it indicates a shift from a logic reasserting parental authority to logic of guiltiness for the failure of their child's education.

Climate change constitutes a global risk difficult to capture within traditional liability regimes. The vast climate litigation currently developing in many States, but also at regional and international levels, is leading to the development of common solutions for the different jurisdictions that outline the elements of a global liability regime for climate risk. These remedies concern companies as well as States, but we are specifically interested here in the responsibility of the State for negligence when controlling polluting activities in its area of accountability. Climate responsibility is thus characterized by taking into account the link between State and risk, probable damage and by its anticipatory function. It could ultimately constitute a model for the State's responsibility where other types of global risks are concerned.

In the wake of the interdepartmental IGJ/CGEDD assessment report "Justice for the Environment" and the law of December 24, 2020, creating specialized courts for environmental offenses with criminal and civil jurisdiction, the authors ask for the efficiency of our liability law

in the face of the systemic ecological crisis affecting the climate and biodiversity. Shaking up the existing categories, it calls not only for a renewal of thought in this field, but above all for the solutions that must be considered and implemented.
Challenged with the accumulation of risks, they put forward pragmatic approaches, based on the idea of universal expertise, a renewal of collective solidarity and the implementation of universal guarantee schemes, the only way to sustainably protect the Earth and living beings in the face of the increasing perils that threaten them.

Nuclear Accident caused series of new problems. Liability being a strict liability, victims did not have to prove negligence, but they pursued negligence in tort to claim more mental damages. This leads us to the problem of blameworthiness in negligence and in strict liability. I suggest blame-worthiness to be understood not morally but as deviation from the standard. The greater the deviation, the greater the blameworthiness. It does not depend on whether the cause of liability is negligence or strict liability. As for damages, what damages are compensable and what damages are not was the biggest issue. It was important to know how to find the criteria for this decision and how to justify them. It was necessary to understand the structure of tort liability (both negligence and strict liability) and to see how the basic principles of corrective justice and distributive justice work in this structure.

The analysis in terms of criminal policy of contemporary penal responsibility allows us to observe the movements which affect it from the inside, in particular its fragmentation which exposes it to inconsistencies, but also from the outside, especially its expansion which confronts its own limits.

Civil Liability

The reaffirmation of the constants of responsibility in the various reform projects in this area marks the restorative function of this institution, although the authors of the proposals were, for the most part, satisfied with a codification with an unchanging law, far from large conceptual ruptures, marking the stability of the conditions relating to damage and to causal link.

If the draft of the reform of the law of civil liability in its latest state hardly innovates by maintaining the opposition in principle between contractual and extra-contractual civil liability, it nevertheless breaks away from positive law by adopting not only an option of liability for the victim of personal injury but also a subsidiary action for third parties to the contract who are victims of its poor performance, which leads, in fact, to considerably limit the interest of the distinction between the two orders of liability. The enactment of rules common to the two

models of liability seems to further corroborate the weakening of the principle of distinction, which is far from having had its final say, as evidenced by a careful analysis of the texts drafted by the reformers.

The rewriting of the texts governing civil fault touches the heart of the French system of civil liability. The abandonment of the famous formula of article 1240 (ex-1382) of the Code Civil has given way, in the 2017 reform project, to three provisions intended to modernize the regime of liability for personal acts: reformulation of the general principle of tort liability, definition of the civil fault, and the constituent elements of tort for a legal entity. On analysis, however, these texts appear disappointing. The drafters of the Bill did not take the opportunity to clarify the many grey areas surrounding the application of a concept central to the law of civil liability. The purpose of this study is to identify these unanswered questions and to offer avenues of reflection for a more ambitious reform of this liability regime.

The French reform bill on tort liability published in 2017 aims at confirming the existence of the general principle of liability for damage caused by things, which was initially developed by case law, as well as its essential features. However, the intended reform could result in the regime being narrowed in its application and coming closer to liability for fault, something the drafters were not necessarily fully aware of.

Vicarious liability has undergone successive changes throughout the 20th century, either because the legal regimes have been adapted and fashioned in order to guarantee automatic reparation to the victims, or because the judge made use of its creative power to invent new liability regimes to answer social developments and new compensation issues. While the overall trend is towards the objectification of vicarious liability, inconsistencies have emerged which can be explained by the way in which case law is created, in small touches, according to the needs expressed in the courtrooms. At the time of rewriting the French civil code, the promoters of the reform promise new metamorphoses. They did not confine themselves to importing case law but assigned themselves the more ambitious mission of restoring to vicarious liability its lost coherence while guaranteeing a balance between the liability incurred by the civilly liable party and the importance of the authority exercised over others. To serve this objective, the reform bill and proposal specify the nature of vicarious liability and come out in favor of a dual regime of vicarious liability. This study considers the theoretical and practical consequences of the forthcoming reform and offers lines of thought to remedy the disadvantages it could induce.

The reform proposals about liability of abnormal neighborhood disturbances are clear and appropriate; they give judges a wide liberty for searching balanced solutions between the right to peace, and the challenges of living together, whether they are economic, social and environmental.

Remediation

Article 1266-1 of the civil liability law reform bill presented by the French ministère de la Justice on March 13, 2017 seeks to enhance the "effects" of extra-contractual liability with an enforcement function. This results in the introduction of a civil fine punishing so-called lucrative faults, allocated to a public fund and not insurable. This proposal certainly deserves examination, since the legal nature of this fine makes it part of criminal law without the regime provided for by article 1266-1 drawing all the consequences of this fact. The efficiency of this new sanction is also open to debate, both from the point of view of the debtor and from the point of view of the creditor of the civil fine.

Compensation for personal injury is omnipresent in the draft reform of civil liability law presented by French ministère de la Justice on March 13, 2017, thus clearly demonstrating the desire of its authors to confer a specific legal status to this category of damage. Such concern is shown in two ways. On the one hand, it is a question of inflecting, in a direction generally more favorable to the victims, the rules of tort liability, to ensure less random and broader compensation for damages resulting from an attack on the person. This is particularly the case when overriding the common law of evidence, when it comes to establishing causality in the event of damage caused by an undetermined member of a group. This also applies when withdrawing personal injury from the obligation imposed on the victim in the project to minimize his damage. On the other hand the draft intends to specify the methods of compensation for personal injury. The project accepts certain innovations that have taken place in recent years (implementation of a nomenclature, of a unique medical scale), and also endorses new solutions, such as resorting by principle to annuity (rather than capital compensation) for certain claims such as the need for a third party or loss of professional earnings) or asserting the principle of the free disposal of damages.

The draft of French Ministère de la Justice's reform of 13 March 2017 essentially anoints the solutions that have been cleared for several decades by case law in terms of compensation for damage on tangible property, the purpose of which is to find a fair balance between the right of the victim to obtain full reparation of the tort suffered and the need to preserve the interests of the person responsible.

As far as the compensation for damages resulting from a traffic accident is concerned, the prospective law of civil liability wavers between a disappointing tinkering and a pusillanimous procrastination, whereas a real disruption would have been welcome.

Conclusion

Miscellaneous Studies