

## ***THE EVOLUTION OF THE CONCEPT OF LEGAL LIABILITY IN THE HISTORY OF POLITICAL AND LEGAL THINKING***

**Mihaela Diana Frătoaica**

**PhD, University of Pitești**

*Abstract: The purpose of this scientific study, it forms an integrated research fundamental categories of law, namely, liability, a problem whose treatment causes difficulties both in the general theory of law and legal disciplines at branch level. Liability occurs when a particular mode of conduct is not within the accepted social rules. We can say that liability is one form of social responsibility. Addressing moments in the history of legal liability institution development has enabled us to discover the evolution of this process in time. The fundamental problem which bothers researchers lies in determining legal liability insurance legalității role in the prevention and control ilegalităților. The methodological approach, the liability is treated as application of sanctions is a matter of applying the law. This raises the first plan obligația bodies empowered to exercise greater mobility for the application of the expected sanction mandatory legal provision violated when ilgalități commit. We will try to put light on liability in its evolution and many of its elements inherent in their historical evolution. We will try to do this, since for a better understanding and scientifically legal liability is mandatory the use of historical method.*

Keywords: liability, conduct, social history of the development institution of legal liability, legal liability developments.

### **One of the fundamental principles of law is the principle of responsibility.**

As a social phenomenon that expresses an act of employment of the individual who assumes the social consequences of its action and is assessed according to the extent and content of the transposition in practice of conscious social norms and *the principle of responsibility is the right size*<sup>1</sup>.

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<sup>1</sup> Ion Craiovan, *Treaty of General Theory of Law*, 2nd edition revised and added, Bucharest, Ed. Universul Juridic, 2009, p.349.

Responsibility expresses that man as an individual and human communities are fully aware of the rules of law. Compared to this, both individual and community assumes responsibility for the legal system to operate according to the rules of conduct<sup>2</sup>.

Social life is conducted in an organized manner based on societal norms or rules due course of human activities in various sectors. These rules establish certain conduct which subjects must comply with in between them. Violation of rules predetermined by misconduct involves social responsibility - in a variety of forms - from the guilty, forcing him to bear the consequences of his act different<sup>3</sup>.

Responsibility designate human conscious subordination to the law. Social responsibility can be defined as the human capacity - based on knowledge and foresight - responsibility for the consequences of his acts<sup>4</sup>.

The basis of responsibility can we find the freedom that a man acquires the knowledge and possession laws the way society and nature, to act and participate in social life as a creative subject.

Every action of man's conscious menus into deliberation, a choice, a decision. Responsibility is both action earlier, when the individual assumes tasks and duties, and its rear by taking responsibility for the consequences of that action. Responsibility is a phenomenon with deep social roots, conditioned expressed commitment and responsibility act that man he assumes to himself, to nature and society, and the consequences of his acts<sup>5</sup>.

### **The society itself will not remain indifferent to behaviors that violate social rules.**

The responsibility is always lawful, nobody can do yourself justice, no one can be judge in his own case.

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<sup>2</sup> Costică Voicu, *General Theory of Law*, undergraduate course, revised and updated edition, Bucharest, Ed.Universul Juridic, 2006, p.89.

<sup>3</sup> C.Șerban, R.Duminică, *Elements of law*, Craiova, Ed. Sitech, 2008, p.313-344.

<sup>4</sup> Costică Voicu, *General Theory of Law*, undergraduate course, revised and updated edition, Bucharest, Ed.Universul Juridic, 2006, p.89.

<sup>5</sup> *Ibidem*, p.90.

*The principle of personal responsibility* that liability is covered by the returns actually only guilty of committing illegal acts with absolute rule for sanctioning or repressive forms of social behavior because of the danger that determines the repressive attitude of the society. If repairers liability exists under the law and vicarious liability (parental responsibility for minor children of the principal for the acts servants) or joint liability<sup>6</sup>.

The purpose of liability is to preserve the system of relations liability. The responsibility arising from sanctions that the legislature provides a content rule.

The responsibility as an essential component of any forms of social organization, there was still primitive society in this society, the individual, the social absorbed, still undifferentiated, supports external moral responsibility, and this is essentially collective. The company innovates new forms politico-state responsibility. The social, differentiated in groups and social groups makes to individualize responsibility. Becoming subjective responsibility nature has not changed. She just changed character, appropriating social and November characters that are full of modern civilization. The community, through a "liability dictated" its legal status requires individuals. The society in which he lives at that who sins a crime, a misdemeanor, a tort etc., counts - her legal by its rules such as reprehensible action. The effect committing such an action, another person was injured in her being or entity or in its property, the rule of law was affected, general interests were ignored; This is the issue of liability<sup>7</sup>.

Legal liability through the complexity of which demonstrates, is a phenomenon that has preoccupied the minds of all times, which led to the birth of numerous scientific studies. This phenomenon not only interested legal experts in the field, since, by virtue of its general regulations that establish the scope of legal liability rules and principles all the facts fall. Thus, based on this review, we understand that a theory concerning liability would be incomplete if we ignore the different approaches and interpretations that have brought most prominent representatives in the field throughout history<sup>8</sup>.

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<sup>6</sup> C.Șerban, R.Duminică, *Elements of law*, Craiova, Ed. Sitech, 2008, p.313-344.

<sup>7</sup> M.Eliescu, *Tort Liability*, Ed.Academiei, Bucharest, 1972, p.5.

<sup>8</sup> Dumitru Baltag, *Accountability and legal liability theory*, Free International University of Moldova, Central Printing House, Chisinau, 2007 p.66.

Numerous papers and research over the years that have marked the history of juridical refers to phenomena such as the rule of law.

For example, Cicero compares with moral justice, stating:” As justice of the force does not follow someone, it has build on a natural principle, and being natural, is as immutable as the moral and necessary”<sup>9</sup>.

Since ancient times there have been serious concerns vis-a-vis the attempt to penalize qualified as one that violate the laws, principles and conditions to be met to apply the law and legal liability arise. Analysing the legal sanction, we realize that it from a historical stage to another and we acquired new dimensions, which talks about an evolution of thinking in this regard<sup>10</sup>. But legal sanction development could not take place only by developments in the institution of legal liability in general, evolving both theoretical and practical.

Philosophers, politicians, moralists, such as Plato, Aristotle, Socrates, Cicero, Machiavelli, Thomas Hobbes, John Locke, Charles Louis de Montesquieu, Jean Jacques Rousseau have studied the issue of state and law, maybe touched, directly or indirectly legal liability issues. These thinkers were concerned about the issue of legal liability, which is apparent from their works relevant, namely Plato's Laws, the right of H. Grotius war and peace, about national and Hobbes Leviathan T., Spirit of the Laws of Charles Louis de Montesquieu, crimes and punishments of Cesare Beccaria, etc.

Plato-stoic philosophy and Socrates's trial had a role in the emergence and development of the concept of liability. The reaction of society to the adverse effects of human behavior, about accountability it would be the essence of substantiation<sup>11</sup>.

Aristotle, addressing the question of the free will of the person referred to as a citizen in good faith and with a sense of respect for the law well developed must have two qualities: the ability to distinguish right from wrong and the ability to choose between them, ie the ability to

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<sup>9</sup> Ibidem, p.66-67.

<sup>10</sup> Dumitru Baltag, *Accountability and legal liability theory*, Free International University of Moldova, Central Printing House, Chisinau, 2007 p.66-67.

<sup>11</sup> Ibidem, p.67.

choose correctly in accordance with legal and moral categories<sup>12</sup>. The issue of legal-moral criteria of cataloging human behavior or problem of some importance in ancient Greek teachings about responsibility. Formula,, human behavior - especially the bad - to be judged,, served as leitmotifs plato-stoic philosophy.

Platon, a disciple of Socrates, is one of the outstanding personalities in the history of legal thinking. The last work of Platon entitled *Laws* is relevant legal thinking in the sense of evolution, and the name of his views on the phenomenon of legal liability. He determined its legal liability, noting that no one has impunity to disregard laws, regardless of the damage it causes by this act. It was also mentioned that there are no impediments to punish offenders, even leaving the state, as this would impede law enforcement, and enhance its failure<sup>13</sup>.

In opera *Laws*, Plato equates fair and lawful: proper behavior would be lawful and legitimate one will be absolutely right. Fairness law, after Plato, fully justifies the requirement to follow strictly the behavior prescribed by law, even if people will be forced to oppose all worldly temptations to follow the law. For these reasons who will not be able to face reality and to respect the law, you will be required to bear the proper punishment which the law requires<sup>14</sup>.

For Aristotle, "the penalties are sometimes cure" treatment of legal liability is different from that of Plato. Punishment is seen by them rather as a factor of psychological impact on the offender in particular and society in general. Thus, by regulating offender sentencing and punishment influence the attitude you have members of society by adopting a correct position for the purposes of compliance with legal rules. Aristotle notes in his opera *Rhetoric*, that compensation is not always possible, but it is possible, will be given priority<sup>15</sup>.

The philosopher Hugo Grotius in his trilogy *About war and peace* law focuses on the fairness of legal liability, focusing on the issue of legal liability essence and its goals. In Grotius's view, the aim is either to legal liability benefit against which acted on the first either all

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<sup>12</sup> Ibidem, p.67.

<sup>13</sup> Ibidem, p.68.

<sup>14</sup> Ibidem.p.68.

<sup>15</sup> Ibidem, p.70.

members of society<sup>16</sup>. Grotius further emphasizes the importance of proportionality between the offense and penalty, removing the right choice to highlight its sanction for each delict. Also Grotius analyzed and society's right to punish those who disregard the laws that affect community life conditions and threaten its existence. For the philosopher, the purpose which it pursues economic sanctions is threefold: directing the offender, victim satisfaction, its defense, and the right to punish the sanction is a natural law.

Thomas Hobbes in his work entitled *About citizen and Leviathan* addresses the issue of legal liability, trying to highlight in particular the grounds for holding a person in legal liability.. Thomas Hobbes distinguish between liability and other forms of social responsibility. Thus, any action that is not derived from state power at all, can not be considered legal liability, even under these actions aim punishment of committing an antisocial act. Liability will be legal only under conditions in which the offender will be directed acts as the author state power. Also, progressive is Hobbes's idea about the retroactivity of the law that penalizes an act or set of acts for the one who committed this occurs earlier<sup>17</sup>.

Charles Louis de Montesquieu continued its predecessors' ideas on liability. In his work *The Spirit of the Laws*, the author makes the connection between the form of government and the nature of sanctions imposed on those who violate the law. The despotic states is characteristic hardness and roughness penalty, while forms such as the monarchy and republic is closer humanism them of legal liability. In this respect, the author notes that in a democratic state prevailing sense of responsibility, which makes every citizen of that State to have a heightened sense of responsibility, which would inevitably lead to a decrease in crime<sup>18</sup>.

Jean-Jacques Rousseau is the one who upheld the death penalty as a sanction for serious anti-social behavior and most representative of contractualist. It divides the laws into several categories: political, civil, criminal, liability is governed by the criminal law. The last category of laws established by Jean-Jacques Rouse, are habits, especially public opinion. According to Jean-Jacques Rouse, the criminal law expresses legal force, moreover, authority to other

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<sup>16</sup> Ibidem, p.71

<sup>17</sup> Ibidem, p.72.

<sup>18</sup> Ibidem, p.73.

categories of law. Thus, in his view, applying criminal penalties laid down by the legal norm, can cultivate respect for the rule of law in general, which gives character and special role of legal liability<sup>19</sup>.

On the other hand, Cesare Beccaria comes to contradict Jean-Jacques Rousse, showing more moderate nature of legal sanction and even exclusion of capital punishment. In his work, about crime and punishment, the author emphasizes that any Santa apply unless of extreme necessity, is only an expression of abuse of power. Therefore, Beccaria enunciated a rule related to liability: "No penalty toughness, but its inevitability will effectively prevent the commission of unlawful ". Here we see a successful combination of views of Plato and Aristotle. We want to emphasize that Beccaria is considered the founder of the classical doctrine of criminal law. He sees legal basis to punish social utility. For him the aim is to prevent legal liability offender to bring his countrymen further injury and to divert others from committing similar acts<sup>20</sup>.

The concept of responsibility is quite difficult to analyze. The institution of legal liability and legal science is studied widely known as the general theory of law, which is a very large institution. Perhaps, in our view, it is the most fascinating part of science right.

In those circumstances, liability acquires a very special significance, because its meaning is to ensure stability and order in society. The juridical responsibility is organically linked to the activity of the state and its organs vested with powers particular legal matter of finding a violation of the law, to determine liability and its limits and constraints specific application case. These legal powers are simultaneously and as many safeguards designed to exclude arbitration in law enforcement since the onset of juridical responsibility has consequences, some very serious nature and extent of their constituting deprivation of material or moral damage which may result in temporary loss some rights or freedom of the individual<sup>21</sup>.

Addressing moments from the history of the development institution of juridical responsibility allowed us to reveal the evolution process in time, to elucidate the fundamentals

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<sup>19</sup> Ibidem, p.73-74.

<sup>20</sup> Ibidem, p.74-75.

<sup>21</sup> C.Șerban, R.Duminiță, *Elements of law*, Craiova, Ed. Sitech, 2008, p.313-344.

analyzed: social, moral and religious legal liability, embodiments of legal sanctions in the era of ancient, medieval, modern and contemporary.

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