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## **Contemplating Liability**

*an overview of the ideological history of unlawfulness, as a gauge of behaviour  
in the area of liability for causation of non-contract-regulated damages*

Ph.D Dissertation

**THESIS NOTES**

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## ***I. Introduction***

There are certain common prerequisites to determining civil law liability for damages outside of contractual obligations that can be found in all national legal systems without exception and can be traced by investigating all forms of liability whether general or specific. Clarifying concepts and dogma relating to the components of these findings is essential, whether the liability qualifies as general or specific. If not done, not only might the regulation of the given form of liability, and based on that the legal practice evolving, be misleading but so might the entire superstructure of the system of liability. In the least it could jar the trust of the legal practitioner.<sup>1</sup>

This doctoral dissertation endeavours to present the conceptual, dogmatic, and codification metamorphoses of legal offenses that set the foundation for delictual liability in Hungarian law. This is particularly topical considering the substantive termination of Civil Code codification beginning with government decree 1050/1998. (IV.24.)Korm. as amended by government decree 1061/1999 (V.28.) Korm. and ending with Act V. of 2013 entering into force on 15 March 2014 which was adopted following the road set by government decree 1129/2010 (VI.10.) Korm. From a perspective of 15 years it seems to have been forgotten that at the point of departure the legal scholars participating “admitted” that a rift had emerged in what was originally a moral category of misdemeanour, and it has evolved into what Gustav Radbruch tellingly called “verschämte Zufallshaftung.” He then recommended placing liability for damages in civil law “on a more sincere foundation.”<sup>2</sup>

This is all the more true given that just about every civil law scholar establishing a new school from the second third of the 20th century onward weighed in on the subject of liability for damages. They displayed an unquenchable and restless scientific desire to create a uniform

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<sup>1</sup> Compare: “Despite the best efforts of the “Defenders” of the Civil Code, especially of the authors, the dogma of civil law has become poorer. The exceedingly simplified (we can even call it primitive without exaggerating) concept of private law has objectively led to the disappearance of the gradations of dogmatic resolutions and the fading away of contours. It has had legal concepts that had been recognized and applied for centuries chipped away from it and it often becomes the victim of substandard legal services.” in: LAJOS VÉKÁS: *Az új Polgári Törvénykönyv elméleti előkérdései*; [In Hungarian – The theoretical prerequisites to the new Civil Code] hg. Győr: Budapest, 2001; 199.

<sup>2</sup> The concept of the new Civil Code, Magyar Közlöny [In Hungarian – Hungarian Gazette] 15/2002 (Vol. 2) 151p; JÁNOS ZLINSZKY: : *Indokolt javaslat a Ptk. felelősségi fejezetéhez* [In Hungarian – Justified proposal regarding the title on liability in the Civil Code] in Magyar Jog, 8/2001

liability system. In the meantime and most curiously their research broke away from the whole of civil law and the civil law system. They restricted their focus to the problems of liability they were exploring to the exclusion of all else. They failed to consider the whole of civil law either as an entirety or with respect to the general principles of dogma and spirit. Gusztáv Schwarz anticipated this at the turn of the 19th/20th centuries, writing: “One inelegant feature of the current private law system is that it groups property law by content and legal obligation in accordance with the given factual basis although two different regulatory foundations must not be used in the same system.”<sup>3</sup> The question then becomes whether it is necessary or in fact permissible to sacrifice a hoped for and higher order of unity within the system of civil law in hopes of establishing a uniform system of liability. In fact, are we not looking at l’art pour l’art attempts to force this sacrifice to take shape if we really and honestly admit to the obvious bases, which is that liability for damages does not and cannot have a uniform place within the system because it can ensue from a contractual liability, a non-contractual one, or another set of factors. As such, it branches out into just about every part of civil law, which means that it too becomes diffused.<sup>4</sup> According to Gusztáv Schwarz, “Of the diverse basic factors of the liberally spread liability for damages are two we can consider matters of principle and generality: one is the contract, in other words acceptance of damages, and the other is the causation of damage.”<sup>5</sup> Géza Marton defined the specifics of the internal structure of liability in a general analysis of liability, deeming it a question and answer issue. The foundation for his theory is that there is a dual and reciprocal connection between liability and obligation. “On the one hand, the decisive factor that something is legally sanctionable (in other words, one can be considered “liable” for something) is derived from the existence of an obligation, and on the other liability can thank its existence and content to obligation.”<sup>6</sup> In other words, liability is not an “autonomous concept,”

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<sup>3</sup> GUSZTÁV SCHWARZ: Ujabb magánjogi fejtegetések [In Hungarian – More thoughts about private law] Politzer Zsigmond és Fia Publishers, Budapest, 1901. 217

<sup>4</sup> Consider: “To speak of a uniform law governing damages (liability for damages) is hypocrisy since in universities the job is to review the historical foundations, the regulatory systems and valid law (legislation and judicial practices). We may not arbitrarily force a set of legislative material which currently is not a uniform system when considered on the basis of objective law or even theoretically – at least as far as the basis for liability for damages is concerned – to fit into a uniform system.” Zoltán Csehi: Gondolatok a kártérítési jog polgári jogi szabályainak oktatásáról [In Hungarian – Thoughts on teaching damages law within the rules of civil law]; in: CSEHI ZOLTÁN: Diké kísértése – Magánjogi és kultúrtörténeti tanulmányok [In Hungarian – Tempting Diké – Studies in private law and cultural history], Gondolat, Budapest, 2005, 293

<sup>5</sup> SCHWARZ: op. cit. 218

<sup>6</sup> KONRAD ZWEIGERT – HEIN KÖTZ: Einführung in die Rechtsvergleichung auf dem Gebiete des Privatrechts; Tübingen, 1971

but is a supplementary definition to the previous concept, that of obligation. If we think this through, we end up recognizing that there are as many obligations as there are basic facts and as many liabilities as there are obligations.

This is the point of “principle and generality” at which we draw the line where 20th century self-restrictions on liability theories come into play. Gusztáv Schwarz was perhaps the first to voice it regarding damages. His question was: “Does the party causing the damage have to be guilty or is it sufficient to be guiltless and if so, when?” Authors speculating on this vicious circle include Géza Marton, Gyula Eörsi, and even Ferenc Mádl, Attila Harmathy and László Sólyom. This is the same topic that appears in András Földi’s summary: “The legislator can assume the relationship between the obligation and the injury resulting in liability lies within a basically objective and subjective foundation. Today’s civil law operates with the concepts of *dolus*, a *culpa lata*, a *culpa in concreto*, a *culpa levis* and *custodia*. We think that systematizing these forms of liability is the most suitable way of distinguishing among objective and subjective (guilty) liability even if the terms qualify as old fashioned.”<sup>7</sup>

This research does not go that deep into liability but gets stuck in the anteroom of damage causation. We believe that some specific behavioural gauge would need to be established to study (understood as “to measure” and “to restrict”) unlawfulness – as reflected on the whole of civil law, its dogma and its spirit. To put it another way, civil law scholars are expected to come up with a sincere and open admission that they need to “grind a new edge onto a blunted blade” consisting of an existing and richly detailed gauge of behaviour.

## ***II. Methodology***

### **II.1. The triumvirate of comparative law, history of law and sociology of law**

This dissertation offers an analysis of Hungarian works on theory of law and legal science as well as of related legislative trials, specific laws and codes offering proposals on resolving civil law liability. The analysis uses comparative law and methodology and progresses linearly, based on chronology, encompassing the five hundred years of Hungarian legislative development from the *Tripartitum* to the new Civil Code.

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<sup>7</sup> ANDRÁS FÖLDI: *A másért való felelősség a római jogban* [In Hungarian – Responsibility for others in Roman law] Rejtjel, Budapest, 2004, 94

It becomes difficult to separate comparative law from history of law since history of law also operates essentially – though not consciously – with methods of comparative law when investigating the legal systems of bygone times. It should not come as a surprise to anyone that most of the founders of modern comparative law were legal historians.<sup>8</sup> It is rather clear that the way to make a distinction between the two sciences is not through their investigation methodology but through their subject matter. History of law spotlights a “vertical comparison of laws” of the past while comparative law is concerned with the present, seeking a “horizontal comparison of laws.” This dissertation makes implicit sojourns into comparative law when exploring significant German, Swiss, Austrian, or even Soviet private law implications, even though it is basically aimed at offering an overview of the historical principles behind the development of law in Hungary.

Ethnology of law is also closely related to comparative law. As science and technology advanced in the 19th century, the idea of objective law, first postulated by Charles Darwin, grew to dominate the way of thinking.<sup>9</sup> Herbert Spencer was the first to attempt to transpose the objective law Darwin discovered (“the struggle for life”) to the social sciences. In law, Bachofen and Maine established the direction by initiating the field of ethnology of law. The essence was that there were objective laws that man cannot influence, merely recognize, and that these were universal laws valid for all peoples.<sup>10</sup> If therefore, we want to define the individual stations in this unavoidable process – “advancing from status to contract”<sup>11</sup> – we receive the “stations” that every single people must cross. Thus, the law of primitive peoples shows similarities to the pasts of the more advanced societies. According to Koschaker, the roles of the scholars of comparative law are to be aware of typical and atypical factors and to assist the development of the law of primitive people by emphasising the typical factors.

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<sup>8</sup> KONRAD ZWEIGERT – HEIN KÖTZ: Einführung in die Rechtsvergleichung auf dem Gebiete des Privatrechts; Tübingen, 1971

<sup>9</sup> CHARLES DARWIN: Journal of researches into the geology and natural history of the various countries visited by H.M.S. Beagle, under the command of Capt. Fitzroy R.N. from 1832 to 1836., London, 1839, and the book: The origin of Species, London, 1859, written as a consequence of the journey.

<sup>10</sup> Consider: “... these rules live within the souls of thousands in a society, shape their personal individual convictions, with moral, religious or legal considerations, equally affecting them with tremendous weight, thus they impact both the beliefs of the individual who is a member of this society as well as those of succeeding generations. These members simply cannot reject the rules and often follow them unconsciously and with servility as their own moral religious or legal beliefs even though these rules evolved from the system of positive norms in the society in which they live and are inseparable members.” In: MARTON, op.cit. Point 7.

<sup>11</sup> HENRY MAINE: The Ancient Law; J.M.Dent & Sons and E.P.Dutton & Co.; Oxford, 1861

Chapter 6 is an effort to connect the high abstraction level of the history of principles – offered as an ancillary loss that formally interrupts the format but makes the connection regarding content – with the assertion medium of law (and ethics). In other words, it uses comparative law, history of law, and sociology of law to investigate the extent to which law enforcers follow or violate the law by adherence or non-adherence to a prescribed conduct. Here we need to point out that sociology of law and comparative law are most similar when comparing application of methodology and pragmatic orientation. However, while sociology of law seeks the social, economic or psychological reasons behind the establishment and termination of various legal institutions, comparative law sets the various legal institutions alongside one another using one or another legal criterion. Put another way, the difference is that comparative law seeks the responses to the questions arising when making legal comparisons within the world of law itself (“Wie sollte es sein?”) while sociology of law emerges from the enforcement (or non-enforcement) of the law (“Was für dieses konkrete Problem ... unter den besonderen sozialen und wirtschaftlichen Bedingungen dieses Raumes und dieser Zeit die angemessene Lösung ist?”)<sup>12</sup> An investigation using a questionnaire and resting on a foundation of history of law and the outcome of that investigation powerfully demonstrate the close connections between the wealth of legal concepts and even their “disfigured” condition and the effectiveness of actions that deliberately and consciously influence the shaping of legal policy and legislation.

## **II.2. Behaviour gauge as in tertium comparationis – hypothesis v. thesis**

In the process of comparing both horizontal and vertical law – often motivated by dissatisfaction with domestic or currently dominant legal solutions – or the actual absence of a domestic solution – the domestic (currently investigated or critiqued) law is to be compared (comparandum) with the foreign (precursor in legal history) as the law it is judged against (comparatum). There is a need for a third factor in addition to the domestic and foreign law, and that is the tertium comparationis, which is described by Jescheck as “the methodological function of the point of contact.” The explanation is obvious. The only thing worth comparing in law is that which plays the same role and meets the same function. This is what we call functionality. Functionality, as the methodological principle of comparative law, has two sides. The first is recognition that the various media – despite differences in society, customs, religion,

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<sup>12</sup> ZWEIGERT-KÖTZ: op.cit. 42

history and so on – are facing the same problems in law, but respond to the challenges in different ways. The other, the “negative” side, of functionality operates to apply the previous statement in practice. It demands that students of law free themselves from the binds in the concept, dogma and other aspects of their own legal system while investigating the purely functional aspects of the problem. At the same time, when conducting comparisons of law, consideration must be given to circumstances such as custom, historical tradition, order of moral values and other extra-legal factors, all of which influence legal life. Of course, when the goal is to compare different legal, economic, form-of-government, and socio-cultural systems over the five hundred years or thereabouts investigated by the dissertation, we have to rely exclusively on the functionality as interpreted above. Therefore, at the outset we need to specify that the basis on which we gauged behaviour was not legal evaluation as defined by the legal attitudes and responsibilities of the present. When discussing unlawfulness as a behavioural gauge we explore all circumstances that generate legal evaluations basically and substantively connected to the legal, economic, form-of-government, and socio-cultural systems of the distant past when measuring and judging human behaviour as the legal factor establishing and modifying legal conditions. Therefore, the legal and non-legal evaluation of *bona fides*, *noneste vivere*, *aequitas* and *active and action law* become mixed, particularly in the initial centuries of the period under investigation. Our investigation shows that “... the social basis for civil law liability is the opportunity for alternative choice. The error of the subject (person) is having chosen the poor alternative. It makes no difference if this choice was deliberate, negligent, unlawful, or anything else if there had been a chance to make a choice. If it had been possible to act differently, then the subject is liable. The point of departure in civil law in determining liability is the fact that damage was caused. But the basis for liability is violation of the legal norm that prohibits causation of damage. Therefore it is illegality. So, the problem of liability shifts from guilt to an entirely different plane. It no longer examines whether the damage was the outcome of a fault or illegal action but whether the legal entity violated rules that prohibit causing damage and had it been possible to avoid taking that route; in other words, could the legal entity have chosen a lawful behaviour, have chosen not to have caused the damage. If there had been a choice between a lawful and unlawful alternative, the legal entity is responsible for the unlawfully caused damage.”<sup>13</sup> In our research the legal (moral) equivalent, the indicator

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<sup>13</sup> PESCHKA, VILMOS: A kártérítési felelősség morális és etikai kiüresedése (In Hungarian: The moral and ethical

i.e. the “degree,” serves as the “hows and whys” of this choice of behavioural gauge from the functional point of view.

A direct consequence is that the legal history and history-of-principle systems of comparison will have holes in it, in that the different resolutions – functionally within comparative law – can be summarized under the major concepts. One hypothesis of this research was that law and in particular private law – as a topic of research – is not bound to national restrictions despite differences resulting from national specifics. However, putting the makings of the legal systems of different nations and ages alongside one another is less than a legal comparison, as comparison only begins at this point. If the research were to be considered complete by simply listing the various legal solutions, then – in Binder’s words – it would be no better than merely collecting a bunch of building blocks and leaving them in a pile instead of putting them to use. In other words, the processing of the outcomes from a critical vantage point and with the intent to improve upon it is an essential part of legal comparison because comparative law is principally a tool for learning about legal science and is not the way to uncover concrete laws.

This functionalist outlook advanced the research from the hypothesis of unlawfulness as a gauge of human behaviour into the topic of gauging human behaviour in a manner that bridges the real differences in the cultural and descriptive systems of quite different legal systems. That makes it possible to delve into the concept of the gauge of human behaviour. This enables us to demonstrate that when looking back on centuries of Hungarian law and legal practices we will find a wealth of efforts in interpretation that is rich even in its errors.

Our goal was not to investigate the whole of delictual liability in civil law but only a factual component, unlawfulness, an area in which research has perhaps been sparsest. In particular, we spotlighted differences in concepts, dogma and codification. Nonetheless, a special outcome of the investigation – often appearing only between the lines – was that in both the important examples of Hungarian legal literature and the components of the fact of delictual liability in civil law the close interdependency also made up the whole of liability law. More precisely: the legal nature of thinking in terms of liability appeared in its own richness of intellect and legal technique. Of itself this is a respectable and valuable component of our legal makeup that we

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hollowness of liability for damages), in: *Ius Privatum Ius Commune Europae, Liber Amicorum Studia ferenc Mádl Dedicata*; ELTE ÁJK; Budapest, 2001; 217

need to interpret and put to use, not only deliberately but self-consciously. This dissertation is an effort to contribute to this goal.

### ***III. Research conclusions and ways of putting them to use***

#### **III.1. Thinking in terms of liability – liability codification**

It probably was not an accident that there are interesting overlaps between the features discussed within the framework of the itemized legal liability considerations and the study called Experiments in accessing lay feelings about law on issues of objective liability.<sup>14</sup> Géza Marton, discussing primitive law and the Kausalhaftung in it – even in connection with Erfolgshaftung and citing Jhering and Hippel,<sup>15</sup> says that for primitive man “an unintentionally caused wound hurts just as much as a deliberately caused one... If in time a difference is seen between the two, the reason is merely that after a measure of experience even primitive man realizes that the intention of the actor is of concern, because when deliberate the good or bad impact will be repeated. When not deliberate no repetition will occur, so the first occurrence produces a higher level of good or bad for the recipient than when deliberate.” In the same study, Marton also focuses on the layman in much the same way as on primitive man. The question is the same: is the lawman a subjectivist or objectivist in his concept of liability? The exceedingly clever investigation – which includes a German basis for comparison – produces a thought-provoking outcome. While with regard to criminal law, the layman remains attached to his instinctively, religiously, and morally based concepts which means a decisively subjective concept of liability, on issues of private law the instinctive undamaged sense of right and wrong of the respondents weighed in with a very respectable preference for objective liability. So, we think it necessary to ask and are justified in asking why the sciences of private law and statutory law do not exploit this train of thought?

All this occurred eighty years ago.

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<sup>14</sup> MARTON, GÉZA: Kísérletek a laikus jogérzet kipuhatólására a tárgyi felelősség kérdéseiben (In Hungarian - Experiments in accessing lay feelings about law on issues of objective liability); Miskolc, 1932

<sup>15</sup> MARTON, op.cit. Point 34

Thirty years went by, packed solid by one cataclysm of war, the advance of Soviet law and ideology, the death of Géza Marton and the advance of Gyula Eörsi's theory of civil liability, followed by the birth of the Civil Code in Act IV of 1959.

All this happened fifty years ago.

Twenty years went by, the first twenty years of the country's first valid and effective Civil Code. Court practices evolved followed by the first monographs concerned with issues of civil law liability, most of which were already writing of the "end game," "decline," or "death" of civil law liability.<sup>16</sup> A question was asked: "In essence the system he (Marton) believed in is part of Hungarian legal theory and practice. What is questionable is whether it will and should be fully implemented."<sup>17</sup>

All this took place thirty years ago.

Another twenty years went by and as changes occurred through the world starting in the 1980s, the issues of liability, damages and sharing of damages that the courts had found so trying surfaced in Hungary and elsewhere. The regime change of 1989-1990 exposed additional latent problems and multiplied the difficulties.<sup>18</sup> The outcome was that in the past ten years there were nearly no (!) court decisions concluded by a ruling in favour of the person causing the damage.<sup>19</sup>

Eighty years or three full generations had gone by since then.

So, after eighty years, can we pull out Géza Marton's theory of objective liability without exploring the changes in "the medium of validity"? How might<sup>20</sup> the past eighty years have affected the regulation of liability based on a consciousness of legal liability dominated by the cardinal rule of subjective liability (guilt) resting on the individualist concept of guilt. Can we continue to build on Géza Marton "uncontaminated" sense of law resulting from the impressive priority given to objective reliability he showed in a study written eighty years ago based on his

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<sup>16</sup> In Hungarian: The concept of the new Civil Code, Hungarian Gazette 15/2002 (Vol. 2) 148

<sup>17</sup> ZLINSZKY, JÁNOS: Marton, Géza, a civilista; (In Hungarian: The civilist) in: Students of and on Géza Marton, Ed.: Hamza, Gábor; Budapest, 1981; 51.

<sup>18</sup> In Hungarian: The concept of the new Civil Code, Hungarian Gazette 15/2002 (Vol. 2) 148

<sup>19</sup> Op.cit. 153

<sup>20</sup> Compare: László Sólyom's "Devaluation of values," or Péter Erdő's "Seeing the counter-effect of overemphasis of excessive legal positivism and legal security at the expense of legal justice is one way of sobering up"

own experiments? In the final analysis: “Is the concept of liability among the layman subjectivist or objectivist?” That was the question behind the repetition of Géza Marton’s experiment. Two things were noticed in this context:

A) The introduction to Part Four of the new Civil Code Concept reads: “The formula set down by Béni Grosschmid one hundred years ago, that ‘the question of damages law continues to be a judicial problem’ is all the more true today. At least, this problem has not grown smaller in the past one hundred years – in fact the problem has become the problem of legislation in general.”<sup>21</sup> There is more to this issue in our view, since of itself liability and damages law is an “outlook” that diversely characterizes the society living in the area where it is effective. We see that in some countries (states) the latest “developments” in damages law are threatening the viability of the entire society. Therefore, the problem of damages law is the problem of the whole of society.

B) The above experiment shows that it would be justified or would at least teach us something to conduct a similar survey – research on the layman’s sense of law and the status and development of consciousness of law – on a larger scale. “To put it concisely: law is humankind itself. Humans have had an ancient need for law, adjudicated to them by nature. If humankind manages to prove its worthiness it receives law as a legacy. Real law, which is in the heart and the Bible: Thou shalt not steal! That is .....law. Thou shalt not kill .... thou shalt not covet ....thy neighbour’s....There is no difference today...and if this is transferred from the codices to the heart .... that will be true law...” (Jenő Rejtő (Sic!). But in the meantime, they need to be transferred to legislative codes to facilitate “the transfer to the heart,” and the one certain and obvious way of doing so is to explore the layman’s sense of law just as Géza Marton did.

### **III.2. To terminate the safeguarding of the gauge of behaviour**

This paper was not intended and could not have been intended to explore the whole of liability theory and systems, and merely offers an overview of the anteroom of damage causation by exploring the differences in the concept of unlawfulness, its dogma, and its codification in the development of Hungarian (civil) law as reflected upon the dogma and spirit of the whole of civil law. We began our investigation with the Tripartitum of 1514 and concluded it with an

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<sup>21</sup> In Hungarian: The concept of the new Civil Code, Hungarian Gazette 15/2002 (Vol. 2) 148

analysis of the Civil Code that entered into force on 15 March 2014. The study showed the organic and deliberate construction and unique accidental factors that exerted harmonic and divisive influences in developments, some of which were theoretical and others of which were empirical.

The development of unlawfulness as a behavioural gauge, as demonstrated, was not only non-linear but was often impossible to even trace. Sometimes it pops out from a bona fides concept and sometimes it breaks through from the huge boulders of society-wide demand for the sharing of damages.

So, has there been no development at all? Yes, there has been.

The behavioural gauge has always gained with the passage of time, just like the cities have, but it has always held some sort of “unknown” in reserve. If we do nothing more, let us think of the independence of unlawfulness within the legal branch merely touched on in this paper in an effort to keep the investigation focused on topic. In other words, on the one hand it remains unknown while on the other, we nevertheless manage to learn it and navigate our way through it. We were not the founders and we did not predict a need for a system of liability in civil law. But we have no knowledge of any “designers” on Earth plane and perhaps there were none. The legal scientists cited merely designed the draft legislation discussed. They were not the enforcers.

We have respectfully run through the rules of the different eras while also attempting to offer our critical opinions. The obstacle to this was that, given the order and disorder mixing up the regulation of unlawfulness (we might even call it a potpourri of legal legacy and absence of legal legacy on the part of the legislator), there are very few components that are beyond dispute. We may even say that the lengthy and fragmented era of “the absence of legal culture” has ended, though we still cannot avoid the task and run away. Therefore, we must try to undertake the regulation of the unlawful and within that of delictual liability in keeping with our convictions, even knowing that we might make mistakes.

Unlawfulness as a gauge of behaviour – demonstrated by related legal theory and practice alike – is a legal institution that is both “planned” and “naturally growing and developing.”

Its viability and significance in the science of private law and in private law practice are beyond dispute. As far as the future is concerned, all other allegations belong in the sphere of futurism since looking into the past does not help it get to know the legislators (designers) of the next

generation or the persons adhering or not adhering to the law (“responsible for natural development”). The past has already shown us that unlawfulness as a behavioural gauge is not an eternal part of non-eternal and stagnating legal systems.

Let us quote István Subosits<sup>22</sup>, exploring a detail in an unpublished manuscript written about what has come to dominate his own area of science – something I have chosen as the motto of this dissertation: “The specialized vocabulary of a science cannot become a matter of hermeneutics, the science of interpretation. If for no other reason, that is because in the final analysis articles are not perfected by words; instead the words follow the articles. Therefore, before using a word, we must immerse ourselves in the meaning.”

Have we immersed ourselves in the concept of the gauge of human behaviour? Yes. Hungarian law and legal practice offers us centuries’ long sets of examples of attempts at interpretation that even offer learning material when they are mistaken. Can we put these results to use in perfecting our concepts? Yes, but only in part. Finally, can we leave open the possibility of further perfecting these concepts following codification? Can we entrust legislative practice to continue with hermeneutic experimentation after we have labelled them with current content and precise (restricted) linguistic definitions? Can we allow them to be interpreted and further developed within one and the same systems of definition coordinates and definition content? We hope so, because – as history of law has also demonstrated – no one codex can be “a body of law limited to conserving only valid law, nor may it desire to introduce revolutionary innovation at any cost when living legal practice has already shaped accepted solutions. Aurea mediocritas!”<sup>23</sup> That may serve as an incentive to the legal institutions and through them, to the earliest possible perfection of our inventory of concepts.

And to conclude: How would it be possible to “maintain” unlawfulness “by eliminating it” as a gauge of human behaviour and as a result to indirectly and similarly alter the goals of liability and damages under the changed circumstances? Lord Atkin believed that the only thing that could become an alternative to “over-technologized” law was a foundation of general moral commands. “His judgement of liability, or mandatory care and its limits uses biblical

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<sup>22</sup> István Subosits (1929-2009), founder and faculty chief of the Phonetics and Logopedia Faculty at the Bárczi Gusztáv Special Education Teacher Training College.

<sup>23</sup> VÉKÁS: op.cit. 28

terminology. A multiple transpositioning of “Love thy Neighbour” leads us to declaring what a liability for rationally foreseeable damages really is.”<sup>24</sup>

#### ***IV. List of studies pertaining to the subject of this doctoral dissertation***

1. Landi Balázs: Kártérítés és sérelemdíj (a szólás- és a médiaszabadság tükrében); In A személyiség és a média a polgári és a büntetőjogban – az új Polgári Törvénykönyv és az új Büntető Törvénykönyvre tekintettel – könyvfejezet; MTA BTK; Budapest, 2014; terjedelem: 183.000 nn  
(kézirat - várható megjelenés: 2014.III.negyedév)
2. Landi Balázs: A jogellenesség, mint a deliktuális felelősség tényálláselemének jelentősége és jelentés-változásai Grosschmid Béni, Zachár Gyula és Kolosváry Bálint elméleti írásaiban; In: Koltay András, Landi Balázs, Pogácsás Anett (Szerk.): Ünnepi kötet Lábady Tamás 70. születésnapja alkalmából; Szent István Társulat; Budapest, 2014; terjedelem: 71.713 nn  
(kézirat - várható megjelenése: 2014.III.negyedév)
3. Landi Balázs: A személyiségsértés szankciórendszerének sajátosságai a polgári jog rendszerében - történeti visszatekintéssel; In: Jogtudományi Közöny LXIX:(2); 93-104.o.
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