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Major Trends in Liability Perception

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Question : is it possible to forecast,
to anticipate the liability risk ?

- The common sense by insurers is to say :
no
- Liability is the main domain of juridical
insecurity
- But...

My purpose : an attempt to build a predictive model of liability risk

- Why is it so difficult ?
- 3 main raisons :
 - there is no liability essence
 - liability goes through evaluation and compensation
 - liability depends of actions and judgement

No essence

- We have to make distinction between responsibility (very new concept) and liability. Liability can exist without responsibility
- We have to make distinction between civil, penal and administrative (public) liability
- The main notion is imputation, that is to make a transfer of a charge. There are many rules of imputation.

Compensation

- Liability for insurers means only civil liability
- That is the duty to pay a sum of money to someone
- There is no natural relation between this sum of money and the pain, the damage or the prejudice
- Compensation, wich need evaluation
- What can be the true value (in money) of the prejudice ?
- The rule of « complete compensation », wich is a social one

Actions and judgement war and peace

- Claim like social disorder, threat against social peace
- Justice search peace by compensation of an injury wich makes peace

To predict the future of risk liability
we have to study three trends :

- Trend in imputability (the reasons of) –
juridical dimension
- Trend in evaluation – economic dimension
- Trend in the social status of the solidarity
in society (intensity of civil war).
Responsibility is an inverse function of
solidarity – sociological dimension

But we have also to remind :

- That insurance liability is not made to
protect the insured, but the victim.
- In the first sense : the contract would be
immoral
- But in the second sense, the aim of the
judge will be to protect the victim (liability
triangle)

Economic perspective : trend in evaluation

- Value of life is increasing
- Value of prejudice depends of social security scheme, of the wealth of nation
- How to assess what is lost ?
- We need common rules to evaluate prejudices (laws and economics). « Barême » ? Table ?

Economic perspective : trend in evaluation

- In a context where we search equity and fairness between victims
- The french case of the law about handicap
- Two mains trends in the same time : increasing value of life and search of an equality norm (mass torts)
- *Reinsurers should support compensation economics*

Juridical perspective : trend in imputation

- The notion of the rule of judgment
- Which is different of the text of the law
- But to be used to interpret the law
- Law and jurisprudence can be very variable and the rule of judgment stable

Juridical perspective : trend in imputation

- First step : liability = responsibility (moral context)
- Second step : liability like a power function. The main rule : to exercise power makes liable. Dependency. Law and jurisprudence set up a lot of actions to implement the rule. Asymmetric society. Transportation. Workers compensation law. Customers protection.
- Third step : enforcement of the powerrelationship. Ethical perspective (dignity). The duties of power : sincerity, transparency, information, advice. Power on...stakeholders : past, present and future. Questions of care.

Juridical perspective : trend in imputation

- Where is the limit ?
- Societal responsibility. Corporate governance. The question of trust.
- Environmental responsibility.
Are we gods ?

Toward a reversal ?

- The limits of power : knowledge
- The question of uncertainty : who has to support the weigh of uncertainty ?
- Equality before uncertainty
- French medical malpractice case

Trend in the social relationships

- The good time of the reign of solidarity. The role of insurance scheme in the risk sharing and socialisation. Imputation without responsibility
- The renewal of responsibility in a time of lost of solidarity
- Your risk is not mine. Risk like a solidarity principle

Trend in the social relationships

- The end of workers compensation law. Asbestose case.
- Historic prejudice
- Industry under precautionary scope
- Class action
- Juridisation. A judiciary society

Trend in the social relationships

- The precautionary principle : a tool of socialisation of the risks or a responsibility principle
- Prevention before compensation
- Compulsory insurance (GMO)

The future

?

Depends (in part) of the insurers play

- Trend in compensation : relativ value. It depends of insurer to make visible the reality of the play
- Trend in imputability : duty of care and first party insurance
- Trend in social relationships : search for a « civilisation ». Sustainable development. Solidarity.

Or a world without responsibility (and insurance)

- Compensation by social security scheme
- Publicisation of risks in a precautionary state
- Insurance like tool in a public policy

Dream
or
nightmare ?