

Accidence — Probability — Necessity — Negligence

F. IRK

*Chief Research Officer
Institute of Criminology and Criminalistics, Budapest*

The major characteristics of the majority of the criminal acts committed by negligence are similar to those of the accidents (e.g. traffic, household, industrial). The characteristics of the relation between behaviour and deleterious effect (the result) are in many respect different from the features of the intentional criminal acts. While judging causality and establishing human responsibility these respects should be more thoroughly considered. Otherwise one is not able to punish only those whose deviant behaviour may will be separated from the others. Our primary task regarding both the phenomena and result is to separate the contingent facts from the imperative ones. This method may create a ground for a legal practice in which an individual should not undertake responsibility for those events and consequences which may not be influenced by him namely which are contingent factors/consequences from his point of view. This problem will be discussed in Part I.

The evaluation of the works of natural and social scientists (first of all mathematicians and philosophers) makes it possible to define exactly and to evaluate in a complex manner two ends which are most important also from standpoint of the crime, namely the contingency and the necessity, as well, as the closeness of their relation which may be determined on different levels, of probability. This will be discussed in Part II.

Neither the theory nor the practice of the law have interpreted the importance of these principles determined by the science in preventing negligent acts. There are several elements of uncertainty which challenge the validity of present practice. The main problem is the following: are really those persons imposed punishment on who really endanger the society? This will be discussed in Part III.

I. Negligence and Law

The evaluation of the role of the contingency is one of the main problems to be solved by the researches dealing with negligent criminal acts. Neither the criminological, criminal law nor the psychological, sociological, pedagogical studies—which take the research results into consideration—can solve this problem satisfactorily. The question is particularly important in cases of traffic accidents, conflict situations or violences of traffic rules which happen within the sight of the "public".

The results of researches in other areas, of negligence verify, however, that this problem should be solved in other fields, too. This statement is particularly true to industrial and "household" accidents which cause more damage to the society than the different deviant behaviours within the traffic system. This is why in connection with these problems and taking into consideration the negligence in *technical meaning* (namely to concentrate the occurrence of accidents), I would like to sum up the different sources of information available and I'll try to define my own position:

Undoubtedly this problem should be solved first of all within the field of public traffic system. The different opinions and positions—which are in many cases totally contradictory—severally encounter each other in this field. According to my experiences the results if any are elaborated in the field of the traffic violences, too, and later used in the studies dealing with those negligent behaviours which are more “hidden” and don't happen within sight of the “public”.

In Hungary undoubtedly László Viski has dealt with this problem from the legal point of view most thoroughly. In the course of a detailed evaluation of the international literature he has summed up the most important in his work¹, as follows:

— The participation in the traffic today has set such requirements for beings, which are very difficult to comply with. This statement seems to be verified by the frequency of accidents according to the so-called Poisson-curve.

— Contingency has an important role from the point of view of the occurrence of the result (the severity of the output). This is inconsistent with criminal theories based on liability for the results.

— The role of contingency may be investigated in other respect, too. The research data verify that in the case of those who participate in the traffic in a manner regularly traffic rules only the contingency “decides” when an accident would follow the series of deviant behaviours.

— Since the number of those who infringe the traffic rules is high and the number of sanctions is low the application of the latter depends on a mere chance. As a result of this the sanctions are inefficient.

— The occurrence of the result (ranging from a deviant behaviour without any consequence to a homicide caused out of neglect) does frequently not depend on the mistake of the person violating the rules but on the behaviour of the other party participating in the traffic. The occurrence or the omission of the result therefore depends on a contingent factor from the point of view of the rule-breaker. The main problem is whether the other party can do or wants (the importance of intention has been always emphasized by Viski) to do something to prevent the dangerous situation caused by the mistaking person.

— Theories tracing the occurrence of the accidents back to the contingency (which may be backed either by the results of professional literature or impulsive public opinion) restrict in a large degree the preventive force of the punishments and sanctions imposed on traffic criminal acts.

— The most serious accidents have been caused mostly by offenders having a positive personality, according to data available. Other experts hold opposite views² according to which those offenders causing fatal accidents have in certain respect a

¹ Viski, L.: *Közlekedési büntetőjog* (Traffic criminal law), Budapest, Publishers for Economical and Legal Sciences, 1974, pp. 20., 130., 31., 39., 206. and 457.

² SZAKÁCS, F.: (ed). *Közúti baleset. 3 pszichológiai tanulmány* (Traffic, accident., Three psychological studies) Budapest, Hungarian Publicity, 1971, p. 140.

different personality than those causing other kinds of accidents. This statement may be particularly applied to offenders causing accidents in repeated manner. The role of the contingency has been raised, however, in almost every sociographical study and work dealing with work and the everyday problems and activities of workers. As an example it is sufficient to refer to the words of an uranium miner quoted by Lajos László in his study to show the chances deciding the fate of a human being in everyday work. "I was trimming a big stone. I almost finished it when a rock the size of a half table was getting loose over my head. I heard people cry, but I was not able to jump away and it fell to my back. It should have surely broken my backbone—and it would have mean the end of my life, I think—if I had had not a lamp-case on my back. It held off the staggering blow."³ Essentially the similar view is reflected in the personal experiences of Ferenc Halmos: "The stove was already half full with melted salt. This time it dissolves further by itself. I put on the rest of lump salt and I was going over to help Feri in order to finish our work as early as possible. This was my luck because we were far enough from the hearth. We were continuously working. Suddenly I tossed up my head to beam of light which was followed by a big explosion... One part of the liquid salt of 50 kg in weight and of 800 degrees heat is on the ceiling, the rest of it curdling and splashing about the stove is on the iron closet and on the concrete floor."⁴

On the basis of the above said it should be noted that the role of contingency within the causal process of accidents has not been satisfactorily explained yet. There are sometimes totally contradictory standpoints on these questions either in the public opinion or in the professional literature. To explain and clarify the role of contingency within the criminal law is a more and more imperative task for scientific research, however. In the field of preventing criminal acts has been of technical nature there a revolutionary new theory and practice beginning to take shape since the last decade. Its strategy, efficiency and even its survival depends in a large degree on the approach of the criminal law science to this important question namely how it adapts itself to changing methods. Considering this a starting point, the purpose of this study is to render a help and serve data to some questions not being satisfactorily solved by using basic categories efficiently applied within the marxist philosophy for a considerable long time. From this respect it would be quite reasonable to deal with some crucial aspects of negligent crime.

Before dealing with this problem in details I would like to point out some aspects on a more general level. Our starting point is the following: the system of legal regulation in civil societies is in a close connection with the real demand of society on the one hand and with the real possibility of this demand on the other. The attention has correctly been drawn up by György Lukács pointing out that "there could not be an important means of realization of social conflicts in the everyday life of the people if

³ LÁSZLÓ, L.: *Uránbányászok* (Uranium miners) Budapest, Gondolat Publishers, 1974. pp. 153—154.

⁴ HALMOS, F.: *Illő alázattal* (With proper humbleness) Budapest, Literary Publishers, 1978. p. 29.

it could not refer continuously to the conviction of the people having been developed spontaneously in connection with the contents of the same conflicts."⁵

One cannot equalize with the cases mentioned the situation when a lot of people should face a mass of conflicts. "The real possibility of the legal regulation on the level of society has been called into existence only by the fact that these conflicts may be avoided by a lot of people since the individual persons—under the influence of spontaneous laws—give up to behave in a manner which may mean an obstacle in the course of the social reproduction system"⁶. As a direct result of this it should be pointed out that within those field where it is not possible to avoid certain conflicts the legal regulation is foredoomed to failure.

As it could be concluded from the foregoing this problem has very practical consequences within the field of the negligent criminal acts. We should agree with András Szabó who emphasizes that the theory of the causality system has not yet been elaborated within the field of the negligent criminal acts.⁷ The reason of this—according to the author—is that the violence against the law has separated from the function of the legal system. The explanation for this could be traced in the survival of a theory having formally been rejected for a long time but still existing from the point of view of its contents. According to this theory there is a direct relation between the social order and the individual behaviour. The crime as a whole is considered to be the "relic of the mind of times past". The prohibitions included into the system of legal regulation have been replaced by the notion socially dangerous behaviour. But with the majority of offenders committing negligent criminal acts one can do nothing with the notion of antisocial mental attitude, at least in the traditional sense.⁸ At the same time in the course of a correct evaluation of negligence criminal acts we should not ignore the important fact that the conditions of the crime as a whole are created by the society.⁹

II. The Multidisciplinary Investigation of the Subject

As it could be seen, the objective reality does not always and necessarily coincide with its reflection in mind (for example a behaviour and its judging from the point of view of social dangerousness). This is of course a general problem, which manifests itself not only in the field of the crime.

György Lukács has made efforts to explain this phenomenon. In connection with it he pointed out that the subjective consciousness of the direct process corresponds

⁵ LUKÁCS, Gy.: *A társadalmi lét ontológiájáról II. kötet* (On the ontology of social existence, Volume II.) Budapest, Magvető Publishers, 1976. p. 455.

⁶ LUKÁCS, Gy. op. cit.

⁷ SZABÓ, A.: *Bűnözés, ember, társadalom* (Crime, human being, society) Ph. D. dissertation, Budapest, 1977. p. 46.

⁸ SZABÓ, A. op. cit. pp. 50—53.

⁹ See SZABÓ, A. op. cit. p. 63.

frequently to a "false" consciousness of the objective facts of the case. He says: "... false consciousness develops concerning the significance of the process which happened in the practice." The main problem is that the mind has not reached in every case to the correct reflection.¹⁰

What may the reason be? According to György Lukács the main source of false consciousness in the "faith" —of course not in its religious-ethical meaning. An average man (including all the people who are not experts in this field) simply uses and employs the different things resting on this "faith" placed in the statements of the experts and on empirical experiences underlying the reliability of different things being used.¹¹

I think it is not our purpose to investigate this question in more details here, however, the following statements should be emphasized: "... when we draw, may or should draw direct practical conclusions from any theoretical statement... the scientific arguments are necessarily replaced by the faith. At the same time it is out of question that the faith has been out of accord with knowledge and cognition. It does not want to prove—this is the main feature of faith—or the real possibility lacks for it etc. This activity is practically the same as belief which is brought into contrast with knowledge from the point of view of logical terminology."¹²

It is hard to deny the truthfulness of such a standpoint according to which when we form an opinion of an act of somebody these aspects should not be ignored. The presence and importance of such a "faith" can be hardly denied in cases concerning decisions taken on either the act, or the behaviour of a person, or its reasons or conditions.¹³

This type of reflection which includes several elements of faith and often represents false reflection of the objective reality has played an important role within those fields where there is uncertainty in connection with one or more aspects.

It would hardly be a mere chance. Alfréd Rényi has pointed out, however, that only superficial reasoners might think that there is no need to make efforts to clear up every problem as thoroughly as possible.¹⁴

The abovementioned mathematician has emphasized, too, that within the mind the freedom of thinking must not include ignorance of facts. His arguments are as follows: "If a standpoint contradicts with itself and is false from, logical point of view, to follow such view is a mere stupidity. Besides, if we gave up convincing others in

¹⁰ LUKÁCS, GY.: *Az esztétikum sajátossága, I. kötet* (The Particularity of aesthetics, Volume I.) Budapest, Academy Publishers 1965. p. 83.

¹¹ LUKÁCS, GY.: *Az esztétikum sajátossága, I. kötet* (The Particularity of aesthetics, Volume I.) p. 104.

¹² LUKÁCS, GY.: *Az esztétikum sajátossága, I. kötet* (The Particularity of aesthetics, Volume I.) p. 105.

¹³ Some aspects of this will be reverted later.

¹⁴ RÉNYI, A.: *Levelek a valószínűségről* (Letters on probability) Akadémiai Kiadó, Budapest, 1967. p. 51.

scientific questions about the truth of our opinion based on facts and logics, then the development of science should come to a standstill. Naturally I think only conviction with the help of arguments and not of aggressive or violent suppression contrary opinions, imprisonment or killing the thought."

This view of the well-known scientist of a science in which a statement may proved or disproved by exact measures has similar validity within either the natural the social sciences, according to my point of view at least. The principles included these statements should be taken into consideration by the social scientists in a more detailed manner since here to decide and to prove the problem of truthfulness falseness—due to the well-known complexity of transformation of quality into quantity—is more difficult than within the field of natural sciences.

With the constant view of these respects in the followings I would like to define my own position within the context of the two ends—contingency and necessity—a their intermediate level, probability. In the references, of course, I could not aim completeness. My primary task was to confirm my own position elaborated in the last Part of the study by views of experts working in different research fields.

1. On contingency

There are plenty of definitions on contingency. We are first of all interested those which

- are in connection with necessity or—as an intermediate level—probability on the one hand:
- emphasize the relativistic relational nature of contingency on the other.

According to the view of Judit Fodor the concurrence of two or more *events* should be considered as a contingency when neither of them (due to the definability in an inevitable relation with any other event included in the other series of events. Their concurrence should not be the result of own possibilities hidden in any event itself since it is alien considering both processes involving these events. In spite of this concurrence in limited time and space comes into being between the results, a relation has developed.¹⁵ An event is contingent if its occurrence is not the result of the essence of any of its relations. The contingency is thus the dominant part of the relation-complex of the event.¹⁶

This dual aspect has been asserted by the definition according to which "the relation of two or more objects or events is contingent when their relation does not originate in their definability or the occurrence of two events does not necessarily entail the development of a relation between them."¹⁷ According to the above opinion there

¹⁵ FODOR, J.: *A véletlenről* (On accidenty) *Magyar Filozófiai Szemle* (Filozófiai Szemle), 3/1967, 430—439.

¹⁶ FODOR, J. *op. cit.*

¹⁷ FODOR, J. *op. cit.*

is one condition to be met as well: the two events should be in an inevitable relation (due to their definability) with the series of events involving the other event. Thus a mutual possibility exists for the occurrence of the relation between the events involved. It is characteristic for these cases that "... neither of the events getting in concrete objective relation implies the necessary development of the given relation."¹⁸

László Hársing has given a more simple definition of contingency. According to him a phenomenon can be considered to be contingent if it may but also may not take place under special conditions.¹⁹

First of all the view of Kunkel is worth to be mentioned among the foreign researchers, especially therefore as he discusses the contingent event in close relation with the result. According to him the contingent result is a result towards which many factors contribute at the same time. These factors may have a role in the occurrence of phenomena or they may remain "hidden" behind them subject to a certain degree of probability. He refers to the concept of Poisson, too, according to whom the contingency is the totality of causes uniting to bring about a given result without the influence of their abstract probability on the dimension or the extent.²⁰

Hentig has discussed the connections of contingency to *causality*. According to him contingency means the unintentional and not predictable concurrence of the series of causes "which stresses the dominance of life (existence) even for the cleverest individuals."²¹ The contingency has been called by Hentig as the "stratosphere" of causality. It is out of question—he argues—that contingency is determined by causality, only its perceptibility and "intervention" into its process is impossible for the time being. We are not able to realize the series of causes (causality) and make it applicable for our own purposes because the different factors are in the "state of savagery" from the point of view of causality.²²

Hentig cites Plutarchos who said that no Temple for Wisdom, Austerity, Persistence and Generosity had been built up in "Rome" whereas very old and highly respected Temples had been constructed in the honour of Fortune. According to a notion having been held for a long time indicating that one part of the people is born under a lucky star whilst the other part is ham-handed "Pechvogel". He draws the attention to the fact that the word "contingency" originates from the falling of the dice as the word "casus" in Latin language means either a dice or contingency. The Greek notion of contingency means originally self-evident and refers to the contrary of the events created by human beings.²³

¹⁸ FOLK, J. op. cit.

¹⁹ HÁRSING, L.: *Valószínűségi következtetések* (Probability conclusions) *Filozófiai Szemle*, 6/1965. pp. 948—960.

²⁰ KUNKEL, E.: *Die Unfallneigung in Strassenverkehr*, Verlag TÜV Rheinland GmbH, 1973. p. 31.

²¹ HENTIG, H.: *Das Verbrechen I*, "Dynamik und Bereich des Zufalls" Berlin, Springer Verlag, 1961. p. 125.

²² HENTIG, H. op. cit. p. 140.

²³ HENTIG, H. op. cit. p. 124.

With some exaggeration also Hentig has pointed out the fact that in our mechanical world the dominance of contingency has become instinctive. There are professions which are particularly dangerous such as hunters, sailors, airmen, alpine guides or habitual criminals. Their self-maintenance has been determined by anticipation and carefulness only in a small extent. Since they are living mostly on luck they are superstitious.²⁴ We should quote Darrow who wrote the following on his own long and stormy career: contingency is a large element of life. Two people play a game for a given amount. One wins everything the other loses everything. In an accident the one dies the other remains alive. Two people are attacked by the same pathogen. The same quantity kills one of them while the other gets well again.²⁵

On the basis of the last quotations there is little doubt that the statements and opinions dealing with the probability of the occurrence of traffic accidents referred in the Introductory Part of this study can hardly be considered to be up-to-date ones on the one hand and they may appear in all the fields of life on the other. At the same time theories tracing the occurrence of the detrimental result back only to contingency are always in connection with the fact that the supporters of these theories do not understand certain relations of causality "hidden" in the background.

The validity of this simplifying approach is to be challenged with the help of dialectical materialism which agrees—as it is known—with the determinist theories one should sometimes speak not only about chance or simple contingency but about the simultaneous relation between necessity and contingency. Although the dialectical relationship of the two phenomena shall be discussed later it is worth to mention here that the place of a given phenomenon has a key-role in the chain of determination.

György Lukács has explained this as follows: "... if we speak only about the first member of a given chain of determination it also could not be in this respect an undetermined one, only a mere chance. It could be a contingent factor in which different series may encounter." "Exact dialectics should be applied here in every case which can deduce from the difference of genetical and other influential factors the existing contingency, its degree, extent and nature for given typical cases."²⁶

The points are explained by the following easy-to-understand example: if a brick falls down from the roof to the head of a person by chance, the movement of the brick is causally determined on the one hand certainly and perhaps, the movement and the position of the person is determined, too, on the other hand because he walks in this direction every day. As it can be seen from the above the contingency takes place within the boundaries of a given complexity, within the interrelation of the different elements of a complex process. On the other hand we can also say that the contingency originates from internal determinants since every species (in comparison to genus) and

²⁴ HENTIG H. *op. cit.* p. 126.

²⁵ HENTIG, H. *op. cit.* p. 128.

²⁶ LUKÁCS GY.: *A társadalmi lét ontológiájáról, II. kötet* (On the ontology of social existence Volume II.) p. 177.

every single organism (in comparison to species) has inherent contingent elements and factors.²⁷

We should not ignore that determination as well as indetermination is partly an objective and partly a subjective category. Their superficial contradiction (namely the contradiction of the objective determination and determinational field subjectively revealable) may be solved only on the basis of the dialectical method of thinking. The first step of it has been pointed out by the above Lukács-quotation (the accident is a result of inner determinant series) the second has been emphasized by Alfréd Rényi as follows: "An event does not become an accident due to the fact that we are not able to foresee exactly its course, but just the opposite: they can not be exactly anticipated just because they are not unambiguously determined from the point of view of the objective reality."²⁸ The conditions taken into consideration do not exactly determine what would happen. They allow the occurrence of an event but its failing to come about as well. They always determine however, the probability of the two possibilities. Sometimes we do exactly know these values of probability in other occasions we do not have the faintest idea about it. This statement, however, does not influence the substance of these processes.²⁹

As it has already been pointed out, there are many who draw the conclusion that since accidental events may not be exactly anticipated some laxity and the method of "talking only halfly meant words and using unmaturred notions"³⁰ may be allowed.

It should be emphasized that the same phenomenon may be considered as a determined one on a specific level, however, it may become a mere chance on a more general level. Lukács has referred to the illness and death of Lenin as the example of a fact which was perfectly determined biologically, but it should be considered to be an unpredictable accident from the point of view of the series of determination of the Russian revolution. As a result of this contingency does not simply mean the combination of determined and not determined factors generally: it is a consequence of processes of different nature and influencing each other in the reality. According to Lukács the illusion of the ontological homogeneity of reality has arisen from the fact that the heterogeneity of the reality is "hidden" by the experience that the interrelation of heterogeneous beings does not always and inevitably create an accident and that the cognition may discover regularities to a higher degree through the interdependence of heterogeneous forces and conditions.

In support of his standpoint Lukács has pointed out that it is the ontological preliminary condition of a statistical regularity that individual events — as events —

²⁷ LUKÁCS, GY.: *A társadalmi lét ontológiájáról, I. kötet* (On the ontology of social existence, Volume I.) pp. 264—265.

²⁸ RÉNYI A.: *A valószínűségszámítás elvi kérdései a dialektikus materializmus megvilágításában* (Some questions of probability theory with a view of dialectical materialism) *Filozófiai Évkönyv*, Budapest, Akadémiai Kiadó, 1952. pp. 63—97.

²⁹ RÉNYI, A.: *Levelek a valószínűségről* (Letters on probability) op. cit. pp. 61—62.

³⁰ RÉNYI, A.: *Levelek a valószínűségről* (Letters on probability) op. cit. p. 52.

should not be deduced fully from the necessity of existing totalities. It is important note here, however, that totality may not be synthesized only from the individ processes.³¹

For the sake of a better understanding of our forthcoming points it is advisable to sum up shortly the problem of the single accidental event. As it is shown also by designation the occurrence of these events may be observed only in one occasion because the observation may not be repeated under the same conditions circumstances.³²

Studying the *ethical* aspects of contingency the attention should be drawn particular to the work of Ágnes Heller. She deals with contingency in the course of elaboration of the difference between the right and the ethical conduct. He who "rightly" without the willing of morality could not be considered to be a moral man the more, since it is a mere contingency to act "rightly" only on the basis of impulses conventions and nothing follows from it concerning the future acts — emphasizes author.³³

Heller discussed the problem of contingency also while studying the relation between the act and its consequences. She argued that from the point of view objectivity the estimation of the consequences has a primary role in the evaluation the moral act. Afterwards, however, she puts up the following question herself: "One wonders whether it is not a cruelty or an injustice? Is the judgment not cruel and unjust which evaluates an act only from the point of view of its consequences and near ignores the possibly best and most human intentions of the actor? Since frequently only the accidental conjunction of circumstances takes a turn for the worse or better. May one hold the man responsible for the unfavourable circumstances or the unlucky conjunction of conditions?"

The argumentation of Heller answering this question starts from the following: somebody acts he should consider in advance the possibilities under which his acts realized. If somebody acts without the intention to estimate the possible consequences of this act according to his abilities then he acts irresponsibly and should responsibility for all the unforeseen tragical consequences.

As a result of this argumentation a man acting maliciously can not be exempted from the moral denunciation even in case of the most favourable accidental consequences. From a historical point of view there are countless people who acting under good will, but failed, however, because of the lack of anticipation of consequences. It is obvious that in these cases while evaluating the acts of an individual one considers directly recognition, utilization of possibilities and successfulness only indirectly the problem of the moral factor. This statement has been challenged

³¹ LUKÁCS Gy.: *A társadalmi lét ontológiájáról II. kötet* (On the ontology of social existence. Volume II.) p. 178.

³² RÉNYI, A.: *Levelek a valószínűségről* (Letters on probability) op. cit. p. 56.

³³ HELLER, Á.: *Portrétvázlatok az etika történetéből* (Some portraits from the history of ethics) Budapest, Gondolat, 1976. p. 24.

Heller: according to her the real moral man is not only moral but clever, too.³⁴ Considering that my point of view on this topic will be developed in details and accounted for later, here I only draw the attention to the fact that this opinion has been quoted by László Viski in agreement.³⁵

The attention has been drawn by Mária Rupp to the fact that people whose lives are governed by chances consider themselves unlucky in a much greater proportion than those who regard their lives as being governed by predictable events on their own will. According to Merton the psychological function of faith in contingency is the lightening of the endurance of failures. These people make decisions slower and subject to anxious meditations. They make special efforts in order to pave the way of accidence in manners — not firstly with financial means.³⁶

The point of view concerning the role of contingency in the unfavourable results of human acts is also strengthened by the fact that such results happen rarely due to the rare coincidence of different space and time factors. Since the coincidence of these factors depends seemingly by contingency there are many who come to the conclusion according to which in such cases the consequences are rather the results of chances than those of the existing factors determining the result in advance.³⁷

The sociological approach to contingency is deserving attention too. From the point of view of the individual the different degree of socialization may be considered to be a contingency. But what does it mean? Let me show it through an example of Hentig. This example refers to a pair of twins. One of them is a well-known and successful expert, the other is a vagabond who was punished many times. When the former was 16 years old a horse trampled on him and he was seriously injured. He was confined to bed for nine weeks, became fat and sexually inactive, had no children, however, he succeeded to adapt himself into society. His brother has not become fat, got married twice and had children. First time he committed a rape and it was a source of serious conflicts in his whole life. For him it was a misfortune not to become a victim of an accident.³⁸

2. On the relation between contingency and necessity

Lenin draws the attention to the fact that there are no "pure" events either in nature or in society. This statement is based on the dialectical method of Marx who emphasized that the notion of "purity" would refer in practice to certain one-sidedness

³⁴ HELLER, Á.: *A szándéktól a következményig* (From intention to consequence) Budapest, Magvető, 1970. pp. 177—178.

³⁵ See VISKI, L. op. cit. p. 229.

³⁶ RUPP, M.: *Kísérlet a véletlen átélésének pszichológiai vizsgálatára* (An effort to the psychological study of the empathy of accidency) Akadémiai Kiadó, Budapest, 1974. p. 67.

³⁷ LEJUENE, W.: *Grundlagen, Ergebnisse und Probleme der Geschwindigkeitsbegrenzung in Strassenverkehr*, Vortragsreihe des "Heidelberger Studios", Stuttgart, Kröner Verlag, 1961. pp. 171—172.

³⁸ HENTIG, H. op. cit. p. 35.

to the "partiability" of man due to the absence of the overall and complex recognition of the subject.³⁹

Quoting Engels Alfréd Rényi has emphasized that the dialectical materialism not accept the strict counterposing of accident and necessity. The necessity is result of and enforces itself through the consequence of the series of accidents.

The relation between accident and necessity has been grasped by Győr Lukács in its complexity and in the same time in an expressive form. According to standpoint the necessity is a circle and therefore it is complete and comprehensive. accident is a phenomenon within the necessity. Every necessity has accidental side not one but more. Within the progress of reality and the realization of necessary processes the necessity is never present in a "ready" state but firstly it emerges in form of different possibilities. Among such possibilities there are some which do contain the necessity or contain it only in a small degree. These possibilities turn out to be abstract possibilities in the course of the development within which the necessity not be realized. The other group of possibilities contains more or less necessity. In case the determining factor is not the inner development, but an outer condition (which can be considered outer and accidental from the point of view of the inner development). This condition "decides" over the possibility which may come being among other *real possibilities*. This means that in the moment of the realization of the necessity the event could not have happened in a different way as it happened in practice. Among the many concrete possibilities to this moment just this and the others realized due to the influence of certain accidents.

It is important to mention that there are some authors not having accepted standpoint — very similar to that pointed out here — according to which the necessity comes into being through the series of accidents (and vice versa). The reason of rejection is the oversimplification of the reality. In these cases "the necessity comes being in its own kinds and its different kinds contain the suitable sorts of accident and vice versa."⁴¹

A series of complex and immense reasons is the most important *determinant* of the accidental events. These complex reasons may not be realized and recognized in their depth in practice. These main reasons do not determine unambiguously the course of a given phenomenon since they allow more possibilities. Considering above it should be pointed out that there is no possibility to anticipate exactly a course of an event on the basis of the main causes only.⁴² This means at the same time — as was told earlier — that accidents and necessary accidents are not "pure" incidents. An event may be accidental in one level and may be necessary on the other and vice versa.

³⁹ Lenin Művei; 21. kötet (Lenin, Works, Volume. 21.) Budapesti, Szikra, 1951. p. 232.

⁴⁰ RÉNYI A. A valószínűségszámítás elvi kérdései a dialektikus materializmus megvilágításában (Some questions of probability theory with a view of dialectical materialism) op. cit.

⁴¹ FODOR J. op. cit.

⁴² RÉNYI, op. cit.

⁴³ See FODOR, J. op. cit.

These thoughts are in close relations with the causality which has a central role either in natural or in social sciences, including criminal law and criminology, as well.

In the course of the development of philosophy causality has frequently changed in its contents. It is sufficient to sum up here shortly the most recent developments. The attention has been drawn by György Lukács to the fact that following the period of Hegel the bourgeois philosophy law of, in particular Schopenhauer, has created a theoretical dominance of causality. As a result of this certain fetishism has developed. In one end of the spectrum the notion of causality has been interpreted as a mechanical and fatalist process and in the other some philosophers have rejected the notion of causality and emphasized the irrational aspects of necessity. In both cases the picture of objective reality has become disfigured — as pointed out by Lukács. As for the first concept it has destroyed every bounds that are between contingency (accident) and necessity. From a theoretical point of view if we accept this notion every accidental event could be considered to be determined by causality. In the second case through the rejection or the questioning of determination each rational connection between the facts has been challenged.⁴⁴

There is a general axiom concerning causality: the factors influencing a phenomenon would determine together its course of development and the same results are always created by the same cause. It is important to know, however, that for those accepting the theory of causality it is necessary to accept another axiom, too, according to which the accidental events have a determined, a so-called "objective" probability. This axiom is a more exact and comprehensive formulation of our former guideline.⁴⁵

György Lukács — quoting Nicolai Hartmann — has drawn our attention to the faulty idea which always attributes also reason to causality. There are many too of the opinion according to which everything happening with us has undoubtedly a reason. Remaining still within the everyday reality and spontaneity this means an intellectual effort to eliminate contingency from the objective reality — adds Lukács. The everyday man considers the accident as an unpredictable and thus a disturbing factor of his life. This view may have two consequences. One concerns the recognition of the causal necessities of contingency, namely the dialectics of contingency and necessity. This problem may practically be solved only with a more flexible and a better elaboration of individual and collective plans. The ground of the — as emphasized by Hartmann — of the "aversion" of everyday thinking to accident. The followers of this conception can not say no to accident because it is a fact. However, this fact has been interpreted and considered as a predicted thing behind which a will operates superior to the human being. We may be within this process a witness of "transformation" of everyday world view into religious persuasion.⁴⁶

⁴⁴ LUKÁCS Gy.: *Az esztétikum sajátossága, I. kötet* (The Particularity of aesthetics Volume I. op. cit.) p. 704.

⁴⁵ RÉNYI, A.: *Levelek a valószínűségről* (Letters on probability) op. cit. pp. 60—61.

⁴⁶ LUKÁCS, Gy.: *Az esztétikum sajátossága, II. kötet* (The Particularity of aesthetics. Volume II.) op. cit. p. 724.

The attention has been drawn by Judit Fodor to the fact that the usual definitions of contingency would necessarily bring into connection this phenomenon with irrelevance, inconsequence and eventuality. As a result of this necessity has been correlated with essentiality, substantiality and unconditionality.⁴⁷

What is then the essential *difference* between accident and necessity? This difference has been explained in the most plactical manner by Rényi⁴⁸, according to whom the effect of the necessary cause may be anticipated after a well-grounded analysis and recognition of the subjects, incidents and relations of the objective reality while the effect of the accidental cause may not be anticipated or can only be made plausible. The most important characteristics of probability as well as stochastical laws is that they are valid only to the relation of general phenomena and not to that of the individual events.

A similar standpoint has been expressed by Cereteli, according to whom the degree of probability may sometimes be expressed in a mathematical way. It is also possible in the case of a repeatedly occurring general phenomenon. However, it can hardly be imagined to evaluate the percentage of the possibility of individual events expressing different stages of development which are more complex. Therefore it is not expedient to give a numerical or percental criterion for the definition of danger.⁴⁹

It seems to be important to emphasize here that the necessity and the contingency is always only one — however, sometimes the most important component of a given process or its tendency. Should we consider a process or a tendency to be dominant the necessity and the contingency preserve their difference. Should this process or tendency be considered to be irreversible (one of the main determining factors of it is the contingency itself which has developed from the heterogeneity of the mutual factors) one or the other factor may be "fitted" in a tendency which has developed from elements being in connection with each other on an accidental basis.⁵⁰

As it was pointed out by Lukács, with the development of more complex forms of existence there are frequent "crossings" within which tendencies from the point of view of result have "closed" causality (namely it could be regarded as necessity in a broader sense), their "crossings", however, should be considered only an accident. As an example we should investigate the case of the brick falling down from the roof to a pedestrian. The falling down in itself is "necessary", as well as, the movement of a pedestrian. However, the result of the "crossing" of two necessities is a mere chance. It should be emphasized that such occurrences may frequently be observed in nature and they become more and more frequent with the development of more complex forms of existence.

⁴⁷ FODOR, J. op. cit.

⁴⁸ His work published in 1952 has been quoted by Rupp: op. cit. p. 8.

⁴⁹ ЦЕРЕЛИ, Т. В.: *Деликты создания опасности. Советское государство и право*, 8/1970, стр. 56—64. (Cereteli, T. V.: *Delicts of creating danger*)

⁵⁰ LUKÁCS, Gy.: *A társadalmi lét ontológiájáról, II. kötet* (On the ontology of social existence, Volume II.) op. cit. p. 175.

Let me remind the fact that many institutions deal with the role of contingency. They are controlled analysed and classified. Their purpose is to utilize the favourable and to avoid the unfavourable trends. The traffic regulations are good example to the above.⁵¹

3. Contingency and probability

It may make one think that while the role of contingency and that of its counterpart, necessity has been analysed and elaborated in depth, the role of phases of transition between them (possibility, probability) has not been elaborated in due measure. It is understandable, however, that the function of the probability has been studied in the most complex way by mathematicians.⁵²

The possibility is the first station in the way of logics between contingency and probability. László Hársing⁵³ approached the problem from the point of view that the visible form of the substance would generate from its main characteristics, the movement. This can be considered to be — as its essence — a change. "The change may be regarded as a transition from possibility to reality and the development of new possibilities on the ground of reality. This dialectical contradiction may be interpreted as follows: every occurrence would have certain (real) characteristics in a given moment, these realized characteristics however, permit the manifestation of new characteristics in the future." The possibility has always developed on the ground of the reality — emphasizes the author. First of all the inner characteristics of a subject belong to the basis of a given possibility, but many times the outer factors (conditions) have an important role here too.

We speak about two aspects of possibility. Its qualitative characteristics render a ground to the development of new properties on the basis of the realized attributes and the given conditions. The quantitative aspect means the degree of the sound foundations of the possibility. The extent of the sound foundations of the possibility. The extent of the sound foundations is varying (increasing or decreasing) and according to it "it represents the proximity of possibility as the qualitative characteristics of an occurrence to reality and necessity. This quantitative definition of possibility has been called probability in the general sense of the word".

The attention should be drawn to the fact that probabilities may be described with the help of certain mathematical formulae which are called abstract probability calculi. This method abstracts every element of contents of the variables and determines the formal relations between them. Dealing with the computing of

⁵¹ LUKÁCS, Gy.: *A társadalmi lét ontológiájáról, III. kötet* (On the ontology of social existence, Volume III) op. cit. pp. 177—178.

⁵² Its summary see KIKÁLY T.: *Büntetőjételek a jog határán* (Criminal sentence in the verge of law) (Közgazd. és Jogi Könyvtudó) Budapest, 1972. pp. 225—234.

⁵³ Hársing, L. op. cit.

probability this point of view has been expressed by Alfréd Rényi.⁵⁴ The task of this theory is to study the transition of contingency to necessity, the process within which the rules of nature develop from thousand million accidental events. The theory probability has revealed in certain degree the process within which the objective rules of society have developed from accidents *en masse*.

The dialectical connentions between contingency, probability and necessity are well illustrated by the following definition: "our world is under the dominance of contingency, but however, that is the reason of the existence of order and law both developing from the mass of accidental events in accordance with probability."⁵⁵

The substance of probability has been exemplified by a standpoint according to which the probability of such an event the occurrence of which may not be sure, but also may not be considered to be impossible — in other words the occurrence of which depends on contingency — may be expressed numerically between zero and one. The probability level of those events which are called probable in everyday language will be close to one (the probability of absolute certainty) and that of those which are called improbable in everyday language will be close to 0 (the "probability" of impossible events).⁵⁶

To elaborate exactly the mutual connection between contingency and probability seems to be very important. The starting point of the mathematician is that the probability may be considered to be a fixed point around which the relative frequency would fluctuate on an irregular and unpredictable manner, depending on contingency. These occurrences would slightly differ from the probability value. The probability of an accidental event is an exactly determined numerical value (we do not know this value exactly sometimes, however) which does not depend on accidenty. The frequency of the same accidental event, however, does depend on accidenty. Its exact value can not be foreseen. This value may be determined only with the help of observations. With full knowledge of this value we may draw conclusions to probability with more or less accuracy. The greater number of measures is carried out the more exact approximation may be reached to the real probability value.⁵⁷

It is important to point out that every probability is a conditional value. The number of the real occurrences of an event is related approximatively to the number of every occurrence possibility like the probability to one, namely, the probability of the absolute certainty. If the conditions are known and do not change it is not necessary to take them into account.⁵⁸

⁵⁴ RÉNYI, A.: *A valószínűségszámítás elvi kérdései a dialektikus materializmus megvilágításában* (Some questions of probability theory with a view of dialectical materialism) op. cit.

⁵⁵ RÉNYI, A.: *Levelek a valószínűségről.* (Letters on probability) op. cit. p. 73.

⁵⁶ RÉNYI, A.: *Levelek a valószínűségről.* (Letters on probability) op. cit. p. 23.

⁵⁷ RÉNYI, A.: *Levelek a valószínűségről.* (Letters on probability) op. cit. p. 37—38.

⁵⁸ RÉNYI, A.: *Levelek a valószínűségről* (Letters on probability) op. cit. pp. 40. and 45.

4. Probability and necessity

Should the necessity be considered to be the synonym of full determination then the later would mean the "marginal case of principle of objectivity of probabilities", which could be considered to be an ideal marginal case which may never fully, occur in reality but only approximatively. The reason of this is that all the circumstances influencing an occurrence of a given event may never be taken into account with full accuracy.⁵⁹

The standpoint of the mathematician is in full conformity with that of the marxist philosopher's. György Lukács — pointing out that existence is a series of such infinite, continuous, interdependent and progressive trends which are heterogeneous and realize in concrete and irreversible processes which are in their part, as well as, relative totalities, has emphasized that these processes may be expressed only with the help of statistical methods. As a consequence of this the result of these processes may be predicted with more or less statistical plausibility depending on the circumstances. From the point of view of human activity (including science and technics) this means that the great probability of the occurrence of a given process is considered to be a necessity. This does not lead to failure in practice since the divergences from the expected or determined value are not important from the point of view of practice. Everything which is usually called a necessity is the most general form of the occurrence of such a concrete process.⁶⁰

III. The legal evaluation of accidence

From the point of view of our subject the above argumentation against a practical interest when we are to make a judgment — either in a psychological, moral or legal sense. In connection with this it is worth mentioning that fundamental changes occurred in this area during the last centuries or millennia. Considering the fact that I was dealing in details with these questions earlier⁶¹ here I would sum up shortly only those standpoints which have not been studied yet. Summer⁶² has stated that according to the practice of the Khabyl tribe if a man killed somebody by accident it would involve a revenge even if the victim was guilty or the commitment of another crime was prevented by this murder.

⁵⁹ RÉNYI, A. *Levelek a valószínűségről* (Letters on probability) op. cit. pp. 62—63.

⁶⁰ LUKÁCS, GY.: *A társadalmi lét ontológiájáról. III. kötet* (On the ontology of social existence Volume III.) op. cit. pp. 172—173.

⁶¹ IRK, F.: *Nézetek a büntetőjogi gondatlanságról* (Some views on criminal negligence) in: *Criminological and Criminalistical Studies*, Volume József Gödöny, Budapest, Közgazd. és Jogi Könyvkiadó, 1980, pp. 255—300.

⁶² HANOTEAU, A. LETOURNEAUX, A.: *La Kabylie*. Paris, 1893. It has been quoted by *Simner*, Folkways. *A study of the sociological importance of usages, manners, customs, mores and morals*. Budapest, Gondolat, 1978, p. 753.

Among the ancient philosophers Aristotle was dealing with the connection between legal and moral estimation himself. He pointed out that if the damage realized under unpredictable circumstances we may talk about distress or misfortune. If the occurrence of the event may be predicted but it happened without a "mental viciousness" we may talk about a mistake. As an example: one makes a mistake if the cause of the event is within his personality. We may talk about a misfortune if the cause is outside the personality of the individual.⁶³

The change in the practical evaluation estimation (which has become more strict) has been exemplified by Sumner who refers to the opening ceremony of the Brooklyn Bridge when many people were trampled to death. As he pointed out, some centuries ago or in the ancient times one would have interpreted this accident simply as the obvious manifestation of the punishment of celestial powers. He has drawn the attention to the fact that the whole area of the accidental events is included into the field of general dogmas since fundamental principles are related to certain categories of events. The application of these fundamental principles is influenced by folk-ways which are in a close correlation with accidental events.⁶⁴ I think, however, that the further investigation of these problems would be beyond the scope of this study. It would be advisable to turn our attention to the legal problems in a narrow sense.

In the fields of the science of *criminal law* we meet — among others — the necessity of passing a decision or a judgment on the process ranging from accidentancy through possibility and probability to necessity:

1. While passing a human decision. Those questions — having been dealt with either criminal, or criminal proceedings law — are included there like the ideas of an active human being concerning the deleterious effects of his activity or the degree of the danger to society, the relations of an act and its result. The elements of probability are featuring wilful as well as negligent criminal acts.

2. Makes general or particular. The legislator decides only with consideration to the above problems. The attention has been drawn by Jenő Pintér that the legislator has qualified the acts as common crimes or minor offenses according to the probability of the deleterious effects of a given act.⁶⁵ He has pointed out that the "index of mass occurrences would indicate the frequency of the transformation of a given attitude to a concrete grievance. If the transition probability value of a given human attitude under this consideration is high it would generally express a near and real possibility of injury.⁶⁶ In connection with the above only those attitudes are included within the scope of criminal law which endanger the legally protected values in such a degree that

⁶³ ARISTOTLE: *Nikomakhaszi etika* (Ethics of Nikomakhos) Gyoma, Kner, 1971. p. 138.

⁶⁴ SUMNER: *op. cit.*

⁶⁵ PINTÉR, J.: *A veszély fogalma és jelentősége a büntetőjogban* (The notion and importance of danger in criminal law). Közgazd. és Jogi Könyvkiadó, Budapest, 1965. p. 55.

⁶⁶ PINTÉR, J.: *A veszély fogalma és jelentősége a büntetőjogban* (The notion and importance of danger in criminal law) *op. cit.* p. 57.

measures taken by other breaches of law can not render due protection against acts which may result serious danger to the society.⁶⁷

3. From the point of view of a proper decision-making the situation is the most complex and difficult within the scope of the application of law. Here the notion elaborated on the basis of the aspect under point 2. should be applied in the circle of and to individuals indicated under point 1. Considering the criminal proceedings, our subject in a narrow sense, the problem should twice be estimated from the point of view of probability. The first time when somebody commits the act and the second time when we elaborate our standpoint thereof.

In his work referred earlier Tibor Király has discussed in details the connections between probability and certainty (which is essentially the same as the notion of "necessity" from the point of view of philosophy) in the criminal proceedings, in the course of the passing of a sentence. It is hard to add anything to this work. His ideas concerning the aspects of certainty are undoubtedly wise pedagogically and from the aspect of legal policy measures, but however, they might be challenged from a "professional" point of view. I think, too, that a decision should be "dressed" in the guise of certainty. It is particularly desirable from the point of view of the notion of special, and especially of general prevention. It is correct "outwards" that the role of probability is the most important in the course of presenting evidence during the proceedings. This type of probability could be considered to be a probability, only numerically, but practically it means certainty.⁶⁸ We can fully accept the statement according to which "there is an agreement in the theory and practice of the socialist law that the guiltiness of the accused can not be established on the basis of probability only."⁶⁹ If the guiltiness has been established on a high level of probability in the course of the criminal proceedings then it can practically be considered as certainty. The ground of this argumentation is the practical consideration, because otherwise, only a relative small group of people could be punished since there is always a knot in the labyrinthian net of proofs which may not be untied. This statement is correct from the point of view of the legal policy, otherwise the criminal proceedings could not be able to perform the twofold task indicated earlier. "In an optimal case the maximal probability is included in a sentence which may be produced by the man"⁷⁰ — this statement is true since the inner certainty does not mean the objective certainty. The judge should not pass his sentence in the state of probability, but he should clarify the truth with the available means (the italics are mine: F.I.) — this expectation is very rightful.⁷¹ However, the great number of the commuted sentences confirmed us,

⁶⁷ PINTÉR, J.: *A veszély fogalma és jelentősége a büntetőjogban* (The notion and importance of danger in criminal law) op. cit.

⁶⁸ KIRÁLY, T.: *Büntetőítélet a jog határán* (Criminal sentence in the verge of law) op. cit. p. 261.

⁶⁹ KIRÁLY, T.: *Büntetőítélet a jog határán* (Criminal sentence in the verge of law) op. cit. p. 225.

⁷⁰ This point of view has been quoted by Király, T.: *Büntetőítélet a jog határán* (Criminal sentence in the verge of law) op. cit. pp. 256—257.

⁷¹ KIRÁLY, T.: *Büntetőítélet a jog határán* (Criminal sentence in the verge of law) op. cit. p. 279.

- that objective and subjective certainty are not always in harmony,
- that the subjective certainty is indeed subjective, and is sometimes contrasted with objective certainty.

The degree of the discrepancy between the subjective decision and objective certainty can not be measured or even estimated. If there are no appeals or protests this problem simply could not come to the front.

I think the situation is somewhat disturbing. In the course of the criminal procedure (not only in the phase of passing the sentence but also in each decision-making phase ranging from the local inquiry through the hearing of the witnesses to the elaboration of expertise) the decisions shall sustain the objective certainty only with a more or less probability.

The situation is more complex if we analyze the scope of the criminal acts committed by negligence. With some rough simplification we may say that in the case of the intentional acts we should prove only the "occurrence" of the criminal act while within the scope of negligence we have to (or ought to) decide some further uncertain questions as well, namely, whether the individual should have acted otherwise than he did or whether he did have any possibility to do so or he did not.

I think this is the most problematical aspect of the criminal sentence-making process, within the fields of technical negligence, at least. However, this aspect has been studied the least. We are inclined to accept as an axiom that the rules of law (criminal law) can always be kept and it should never occur that the prohibitions are broken under the pressure of necessity.

Here I can only refer to the fact that some Hungarian and other socialist countries' scientist dealing with problems of social differentiation (particularly those dealing with legal consciousness, strata norms or sub-cultures) have strongly challenged — and not only within the framework of negligent crimes — the constant interpretation and application of the old and formal principle of equality before the law even if they do not refuse its value. With common consideration of aspects of special and general prevention of crime there will be strong discussion in the future, too, between the followers of the punishment theory proportional to personality of the offender and the punishment theory proportional to the act (result). This discussion between the followers of the above theories grows acrimonious in the future all the more since recent researches — on the ground of Marxist philosophical and human standpoint — make more and more groundless — particularly within the field of crimes by negligence — the view which considers only the result. Today this view is still almost exclusive. The technical negligent acts are the most sophisticated area in this respect. In order to reconcile our legal practice with the sciences (of criminology, sociology, psychology and pedagogy) it is necessary to alter the view of legislation and the application of law.

Случайность — вероятность — необходимость — неосторожность

Ф. Илк

Подавляющее большинство неосторожных преступлений, влекущих за собой неблагоприятные уголовноправовые последствия, носит на себе все характерные черты несчастных случаев (на транспорте, производстве и дома). В частности, и то, что связь между дефектом в поведении и вредным его результатом имеет ряд черт, отличающихся от умысленных преступлений. При оценке причинной связи равно как и при установлении человеческой ответственности эти точки зрения должны быть учтены в повышенной степени, по сравнению с истоящей практикой. В противном случае заранее исключено то, чтобы санкциям подверглись только те, поведение которых хорошо отделимо от поведения большинства. Основной задачей является то, что факторы, являющиеся случайными как с точки зрения явления так и результата, должны быть хорошо отделимыми от необходимых факторов. Это может составлять основу для того, чтобы личность не несла ответственность за случайные с ее позиции факторы и последствия, не поддающиеся ее влиянию. Об этом говорится в первой части статьи.

Оценка деятельности представителей естественных и общественных наук (с особым учетом математиков, философов) делает возможным, чтобы — имея в виду и совершение преступления — точному определению и всесторонней оценке поддавались два конечных пункта, а именно — случайность и необходимость, а также тесная связь между ними, проявляющаяся в различных системах вероятности. Это рассматривается во второй части.

Познанные научной закономерности не интегрировались ни в теорию ни в практику права, признанной прекратить неосторожное поведение. Ряд фактов неопределенности ставят под вопрос, что неблагоприятные уголовноправовые последствия действительно налагаются ли на лиц, являющихся в высокой степени опасными для общества. Это изучается в третьей части статьи.

Accidentalité — probabilité — nécessité inéluctable — négligence

F. ILK

La grande majorité des délits commis par négligence menacés de conséquences négatives du droit pénal, portent sur eux tous les traits caractéristiques des accidents (de circulation, d'entreprises, de ménage etc.) Notamment le trait que le rapport entre la faute de comportement et le résultat néfaste qu'elle entraîne montre de nombreuses caractéristiques différentes de celles des délits d'intention. Lors de l'appréciation des rapports de cause à effet, comme au moment de la constatation de la responsabilité humaine, ces points de vue doivent être pris en considération dans une mesure accrue, par rapport à la pratique actuelle. Dans le cas contraire, il est exclu d'avance que la sanction ne frappe ceux dont le comportement est facile à isoler de celui de la majorité. C'est une tâche fondamentale que les facteurs accidentels soient facilement séparables des facteurs inéluctablement nécessaires. Ceci crée la base de ce qu'au cours de la pratique judiciaire l'individu ne soit pas obligé d'assumer la responsabilité de facteurs qu'il ne peut pas influencer, donc de facteurs ou de conséquences qui sont — vus de sa position — accidentels. Voici ce que résume la première partie.

L'évaluation de l'activité des sciences exactes et sociales (en premier lieu de celle des mathématiciens et des philosophes) permet de déterminer et d'apprécier multilatéralement — d'une manière exacte aussi du point de vue du délit — les deux points finals les plus en vue: l'accidentalité et la nécessité inéluctable, ainsi que l'étroitesse de leurs rapports, perceptible aux divers degrés de la probabilité. Voici ce qui est traité par la deuxième partie.

Les lois reconnues par la science ne se sont pas intégrées ni dans la théorie, ni dans la pratique du droit qui est appelé à repousser le comportement négligent. De nombreux facteurs d'incertitude remettent en question si ce sont vraiment les individus fortement dangereux pour la société qui sont frappés par les sanctions du droit pénal. C'est le sujet de la troisième partie.