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## Analysis of the Principle of Trust in Criminal Law

## Análisis Del Principio De Confianza En El Derecho Penal

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### Abstract

*This research work is a tool that contributes to the proper assessment of objective imputation under the well-known principle of trust in criminal law. It is important to delimit responsibilities in different criminal acts. Therefore, it is crucial to understand and be familiar with the mechanisms of the principle of trust and its limits. In this regard, the research has been developed based on various and extensive investigations, and different bibliographical sources both physical and digital. Additionally, national jurisprudence and current comparative law have been used. The methods used include comparative, analytical, scientific, legal hermeneutics, inductive, and deductive methods. The aforementioned background allowed for an analysis based on experience, casuistry, law, and doctrine, enriching this research by providing various concepts related to the principle of trust and objective imputation. This opens up a discussion that could lead to future research on the topic of this article. Finally, as this is an investigative and doctrinal document, legal hermeneutics and documentary techniques were applied. This allowed for an understanding of different theoretical perspectives and limitations in specific cases, providing various viewpoints from legal professionals. This strengthens the recognition and the significant importance of the comprehensive study of various legal concepts, including objective imputation and how it relates to crimes against the efficiency of the Public Administration.*

**Keywords:** Criminal Law, efficiency, principle of trust, crime, public administration, objective imputation.

### Resumen

*Este trabajo de investigación es una herramienta que contribuye a la adecuada valoración de la imputación objetiva bajo el conocido principio de confianza en el derecho penal. Es importante la delimitación de las responsabilidades en los diferentes hechos delictivos. Por tal razón es muy importante entender y conocer los mecanismos del principio de confianza y sus límites. En este sentido, la investigación se ha desarrollado en base a investigaciones variadas y amplias, diferentes fuentes bibliográficas tanto físicas como digitales, así como también se ha utilizado jurisprudencia tanto nacional, como derecho comparado vigente. En igual sentido, los métodos utilizados fueron el método comparativo, analítico, científico, hermenéutica jurídica, inductiva y deductivo. Los antecedentes mencionados, permitieron realizar un análisis basado en la experiencia, casuística la ley y la doctrina, lo que enriqueció a esta investigación aportando diferentes conceptos tanto del principio de confianza, como también de la imputación objetiva, que deja abierta una discusión que permita futuras investigaciones sobre el tema de este artículo. Finalmente, por tratarse de un documento investigativo y de carácter*

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*doctrinario, se aplicó la técnica de hermenéutica jurídica y técnica documental. Esto permitió comprender las distintas apreciaciones teóricas, así como también las limitaciones en casos concretos que aportan diferentes puntos de vista de los profesionales del Derecho. Lo que permite fortalecer el reconocimiento y la gran importancia del estudio exhaustivo de los diversos institutos, que comprende la imputación objetiva, y cómo es su uso con relación a los delitos contra la eficiencia de la Administración Pública.*

**Palabras Clave:** *Derecho Penal, eficiencia, principio de confianza, delito, administración pública, imputación objetiva.*

## Introduction

It is important to note that in the last decade of the 20th century, there has been significant dogmatic-legal discussion regarding criminal responsibility. This discussion encompasses various thoughts of interest, including the problem of systematic application. When discussing criminal responsibility, it refers to the result that there is a direct impact on the legal interest protected by the State.

To analyze the principle of trust, it is important to make a logical inference from a set of propositions to reach a conclusion. This is why the principle of trust is considered transcendental. Therefore, it is necessary to start with causality. Claus Roxin, in his work on objective imputation in criminal law, establishes that while there is a level that posits that every cause has an effect and requires an element that relates to them, this is known as causality. However, this does not prevent legal scholars from continuing to attempt to define the concept of causality, and it also does not prevent one from having confidence that the laws used in daily legal practice can be relied upon with certainty.

The social, political, and legal order of a rule-of-law state arises from a minimal evaluative presupposition: reciprocal recognition as equals. This means that "one must recognize another as if they were me." As Hegel stated, "The legal mandate is: be a person and respect others as a person" (Hegel, 1955). This statement gives rise to the world of law as something constructed through communication, that is, as something binding. If this reciprocal recognition of rules is lacking, through the recognition of others as equals, it gives rise to something objective that transcends the "bellum omnium contra omnes" (war of all against all). In a pro-social or natural state, one can behave thinking only of oneself without the empathy to think about something or someone else.

Through a unifying procedure, the law transforms the set of subjective arbitrariness into abstract freedoms, and the rule of law is regulated on a principle known as "autonomy," which is the self-determination of citizens. A citizen can define themselves as such, not as a subject, when they hold exclusive competence over responsibilities and decisions. These principles may imply the inherent respect of citizens for the law.

As mentioned earlier regarding respect for the law, it would be almost impossible to determine the responsibility of each citizen for their decisions. Freedom cannot be understood without the attribution of taking the responsibilities that constitute an irrevocable act as a citizen, or the responsibility to respect the rules. This disposition is to behave in accordance with the law.

## The Principle of Trust within the Legal Theory of Crime

The principle of trust, which stems from a perspective of others as rational and self-responsible individuals with a respectful view of the law, or the principle of non-distrust in behaviors that are

contrary to the law of third parties, is especially relevant with respect to certain institutions of the legal theory of the offense that deal with the typification of conduct according to the behavior of third parties, meaning that one cannot be criminally liable for an offense committed by another.

### **The Principle of Trust in the Dogmatics of Reckless Crime**

The principle of trust in this field introduces a certain limitation of foreseeability as the psychological basis for criminal liability. The practical consequence of this principle is that someone who behaves correctly in accordance with the law should not have to consider that their conduct could lead to a typical result due to the illegitimate and unlawful behavior of another.

The principle of trust plays a significant role in the dogma of recklessness, as in certain social contexts, the consequences of actions assumed by the legal system depend not only on the person who carries them out but also on others who participate in such subsystems or a particular activity.

### **Scope of the Principle of Trust**

The principle of trust, understood as an institute that helps determine the objective duty of care in relation to the actions of third parties, has practical relevance in the context of two specific phenomena in our society. The existence of anonymous contacts, in this regard, our actions depend on people we do not know. It can also be inferred that we never truly establish a sensitive contact as such.

### **The Dogmatic Position of the Principle of Trust and Objective Imputation**

The principle of trust can be understood as a general principle within legal theory when it comes to explaining conduct from a criminal perspective that is interconnected, interrelated, or dependent on a third party. This is where the importance of determining both the limits of criminal participation and the duty of care placed on third parties should be emphasized.

From the perspective of the behavior of third parties, to whom legal science has attributed a duty, the principle of trust comes into play when analyzing the breach of the duty of care. It becomes a specific criterion of unlawfulness only if it is considered in the judgment of guilt.

It should also be noted that the duty of care is a typical element, and to determine the "objective duty of care," one must consider the doctrinal scope. While some argue that the breach of duty is both a reckless and intentional offense, it should be analyzed within the context of typicality and connected with the principle of trust.

### **Principle of Trust and Objective Attribution Through Delegation of Functions**

In his work "Administrative Law," Gabino Fraga says the following about competence: Other expressions have been used to refer to what we have called "state attributions," such as "rights," "powers," "prerogatives," "duties," or "state competences." However, we have preferred the term "attributions," which is already accepted in the doctrine, both because of its appropriate and unambiguous grammatical connotation and because it does not prejudge other problems inherent in the theory of the state and therefore can be applied regardless of the political organization and structure of the several types of contemporary states. (Fraga, 2000).

Objective imputation by delegation arises from the breach of the principle of trust, that is, when a person delegates their competence in a certain position to a third party, and if the third party commits an illegal act, we are facing the juncture of the principle of trust, which affects the person who delegated a certain function.

## **Method**

The objective established in this research was developed from the positivist paradigm, supported by documentary bibliographic research, following well-founded guidelines, a descriptive research from a certain qualitative perspective.

In this article, it was necessary to apply an inductive-deductive method, in order to discover reality and not be based on speculation. The synthetic analysis method is also proposed, which is broken down into parts to extract relationships, characteristics, and elements.

Legal hermeneutics was also used, in which the relationship of man with the regulations is expressed, an important activity because through hermeneutics it is attempted to find the indisputable meaning of words, both written and verbal.

These methods are viable for analyzing normative bodies, doctrines, legal documents, and bibliographies. After analyzing them, it allows for generating criteria and contributions for a better application of constitutional and criminal law.

## **Results**

After applying the proposed methodology and conducting documentary literature research, the following results were obtained:

The study has been carried out on the different dogmatic foundations of the principle of trust. This is evident when examining the various sources that dogmatics have recognized. Currently, the dynamics revolve around the idea that this principle of trust is considered a matter of self-responsibility. In other words, individuals are only responsible for their own actions or behaviors. Otherwise, no one can be held accountable, and responsibility cannot be established for the outcomes of the actions of others. It means that by neglecting the duty of care of a third party, an attempt to attribute blame to the one who granted this principle of trust should not be made.

It can also be understood that the ability to trust a third party arises from the impossibility of individuals being responsible for violations of the duty of care committed by third parties. There should be no concern that we might be charged with an unlawful act due to the conduct of a third party, an act that goes against the law.

In simpler terms, one must adhere to the objective duty of care when placing trust in a third party and have the full conviction that, if they engage in unconstitutional acts, they alone should bear responsibility.

### **Principle of Trust According to Doctrinaires**

Social relationships find strong support in trust. It is not an individual, psychological, or emotional trust but, in any case, trust mediated by the social context. One reasonably trusts that other citizens will respect the norm. It is possible to be mistaken, but under normal conditions, trust exists, and that trust drives the social relationship.

Example: When a pedestrian prepares to cross at a crosswalk and observes that the vehicle on the road is slowing down, they begin to cross because they reasonably trust that the vehicle will come to a complete stop. This, among other things, enables the smooth flow of traffic. Social trust fosters citizen interaction and, in addition, facilitates the functioning of society. Therefore,

trust requires a plurality of individuals (to trust is a transitive verb: one trusts in something or someone), as is evident in cases of hierarchical division of labor...According to the principle of trust, those who fulfill their role and reasonably trust that others will do the same are exempt from responsibility, even if they have, in some way, co-organized the organizational context from which a risk arises. (GLASER, 1860).

### **Theory of Objective Imputation**

The theory of objective attribution has undergone constant evolution in terms of its theoretical postulates, changing significantly according to Hoing and Lorenz. Claus Roxin, to whom the title of a significant contributor to the theory of objective attribution can be bestowed, presents the idea that the result caused by the person who acts should only be attributed to the one who caused the outcome. The objective element is only fulfilled when the author's behavior creates an impermissible risk based on the object of action, where the risk materializes in the specific result and when the result falls within the scope of the legal definition.

### **Analysis of the Principle of Trust That Excludes Objective Imputation**

The principle of trust excludes objective attribution and represents a set of different legal expectations that society imposes on an individual. These expectations must be preserved when each person respects their assigned social role. Each individual should trust earnestly and responsibly in the fulfillment of duties by others.

This is a limiting critique of punitive liability, primarily applied in the realm of participation and various criminal offenses. While the Court ruled in Cassation Appeal No. 3030-2012 that "one is not responsible when intervening in a conduct that corresponds to the fulfillment of their social role," this exclusion of objective attribution stems from a quantitative perspective. In other words, it requires a case-by-case analysis of the extent to which the person who delegated this role to a third party was involved.

### **The Objective Imputation According to Doctrinaires**

Regarding objective attribution, Reyes mentions that: "A normative conception of the theory of crime begins by acknowledging that a punishable act is not a natural phenomenon but a product of human life in society (...)." It is highlighted that any potential reproach arises from the comparison between the behavior actually carried out by the author and what is expected socially. "The basis for criminal liability then lies in the areas of competence of each individual because only those who, with respect to certain actions, have a position of guarantor can be reproached for their deviant behavior" (Reyes, 2002).

According to the scholar Yesid Reyes Alvarado, there are two levels of attribution: the first is the creation of legally disapproved risk, and the second is the realization of the risk. Therefore, the principle of trust falls into the first level, assessing the guidelines of social behavior. This indicates that each person must carry out their role and trust that others are also doing the same, even though in practice, this is not always the case.

This is why it is considered that in the principle of trust, the position of guarantor must be considered since it is derived from permissible risk. Therefore, when a person needs to invoke this ground for exemption from liability, they must demonstrate that they have acted in accordance with their own role and have not engaged in conduct different from what is legally required of them. (Peláez, 2018)

## **Objective Attribution as a Liability Exemption In Colombia**

Criminal science in the field of criminal law, faced with a multitude of evidential indications and factual events that can be clarified on a daily basis, such as embezzlement, personal injuries, violent deaths, improper contract celebration, etc., burdens the social environment. When we hear from various media outlets, we question, "To whom should these injurious outcomes that deserve legal and social reproach be attributed?" Similarly, when there are various peculiarities in each legal situation, both in terms of facts and the case itself, this requires significant study of criminal dogma and a solution that ensures them.

As an essence of comparative law applicable to Colombian criminal law, it is worth recalling that in the 1990s, in German doctrine, "objective attribution" was considered a "trendy" topic within the realm of criminal law. However, over the years, multiple efforts and scholars have strived to provide clarity to this theory throughout its history. Over the last 30 years, two predominant viewpoints for understanding objective attribution have emerged, sparking controversy. On one side, there is objective attribution within a procrastinating conception of the theory of the crime, and on the other, objective attribution within a normative conception of the theory of the crime (Reyes, 2002).

## **Discussion**

The Traditional Administrative Sanctioning Authority Has Traditionally Shown Complete Resistance to techniques of strict liability under the "principle of trust," the "versare in re ilícita," which are based on non-standardized presumptions. This leads to limitations in sanctions due to a certain inefficiency in corrective techniques in cases of multiple offenses or in modifying and excluding liability. In other words, the "principle of trust" could be misused to hold a third party accountable, not only concerning the role delegated to them but, based on the principle of trust, one could argue that a person who fulfills their role and reasonably trusts that others will also fulfill their role with commitment should be exempt from liability, even if they have, in some way, co-organized the idea that there might be a risk of the opposite happening.

The principle of trust is quite broad, and even more so when it comes to excluding liability from the responsible party. There is limited jurisprudence and conflicting doctrine on certain points.

## **Conclusions**

The Principle Of Trust In The Law Is Considered A General Principle Of Doctrinal And Jurisprudential rank. It is undoubtedly useful but serves as an interpretative and normative criterion for imputation in the legal theory of criminal liability, representing a certain normative limit when assigning punitive responsibility.

In the context of the Ecuadorian state, the principle of trust is doctrinally applied, specifically in cases of objective attribution, mainly in offenses against public administration.

The application of the principle of trust to exempt liability in cases related to public administration offenses is not quite common. Therefore, it is essential to recognize it as a valuable and necessary element to restrict criminal liability for contractors and public servants based on their roles and contractual obligations.

To apply the principle of trust, it is necessary to consider the function and the multiplicity of tasks within public administration, which requires task division. It is also crucial to have a

competency and job function manual, as well as specific contractual obligations when executing state contracts, to hold individuals criminally responsible for actions that harm or jeopardize protected legal interests.

In conclusion, the principle of trust, following jurisprudential efforts to provide better solutions, acts as a limit to objective attribution. It suggests that the conduct exhibited by the agent claiming exemption should not create a prohibited risk. The expansion of various social interactions and the division of labor has given rise to issues of trust, and, to some extent, its limits are present at all times in social life, both professionally and privately. The principle of trust is essential for determining the duty of care concerning liability due to negligence. In other words, this principle of trust is present in all "directions," thereby affecting the duty of care concerning the behavior of third parties.

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