


philosophical • administrative • historical



TORT LAW AND THE MODERN STATE

law & economics • comparative • empirical

September 15-16, 2006

Spaces are limited.
Pre-registration required.

Register by July 1, 2006.

For more information or to register, please contact
Thelma Twyman, ttwyman@law.columbia.edu.



Columbia Law School

TORT LAW AND THE MODERN STATE

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In connection with the launch of the peer-reviewed
Journal of Tort Law

Jules Coleman, *Yale*, Editor in Chief ◦ Mark Geistfeld, *NYU*

John C. P. Goldberg, *Vanderbilt* ◦ Ronen Perry, *University of Haifa*

Catherine M. Sharkey, *Columbia* ◦ Benjamin C. Zipursky, *Fordham*

The Conference will bring together many of the world's most prominent tort scholars representing a range of perspectives and methodologies including comparative, economic, empirical, historical, institutional, and philosophical analysis.

For millennia, legal systems have provided, under one name or another, remedies for injuries traceable to the acts of others. The modern law of tort in the Anglo-American system traces its roots to the establishment of the Writ of Trespass in the 13th century. Despite wide variations in substance and significance, the core idea that the legal system ought to grant citizens private rights of action against other citizens and government officials is woven deeply into the fabric of modern law. Yet, given that the state, the economy, and the society in which tort law operates has changed so markedly, particularly in the last 150 years, it is important to consider the potential implications of these changes.

- Is tort law best understood as a historical accident—a primitive form of regulation that was useful in pre-modern times, but that now ought to give way to modern alternatives that can incorporate superior information-gathering and expertise? Or is tort in some instances a superior form of decentralized regulation via monetary incentives enforced by private attorneys general? Or can tort and administrative law work in tandem to improve the operation of the regulatory system?
- Is tort even appropriately characterized as regulatory law, or is it designed to accomplish other ends? Might it instead be characterized as a scheme of legalized vengeance, a mechanism of corrective justice, or a device for rendering modern society more distributively just? Which if any of these roles is worth preserving in modern political and economic circumstances?
- After centuries of experience and decades of study, what do we know about the benefits and costs of the tort system? Does it deliver what it promises to deliver? Does it do so efficiently? Can it be made more effective, or should it be scrapped in whole or in part?
- What can a comparison of the American tort system with those of other nations teach us? Is tort law's relative prominence in the U.S. a product of our relatively weak central government? Our strongly individualist political culture? Do other nations' experiences suggest promising paths for reform or cautionary tales? Can the American model be successfully exported to other legal systems? Should it?

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Schedule

Friday, September 15th

- 8-9:15 am *Continental breakfast/ Welcoming remarks: Dean David Schizer*
- 9:15-10:45 am **Panel I: Historical**
Moderator: **John Goldberg**, Vanderbilt
Participants: **John Witt**, Columbia (presenter)
Ken Abraham, UVA (commentator)
- 11-12:30 pm **Panel II: Empirical**
Moderator: **Jennifer Arlen**, NYU
Participants: **Bert Kritzer**, Wisconsin (presenter)
Eric Helland, Claremont/ **Jon Klick**, FSU (presenters)
Tom Baker, U Conn/ Columbia (commentator)
- 12:30-2 pm *Lunch*
- 2-3:30 pm **Panel III: Law & Economics**
Moderator: **Mark Geistfeld**, NYU
Participants: **Bob Cooter**, Berkeley/ **Ariel Porat**, Tel Aviv (presenters)
Keith Hylton, BU (commentator)
- 4-5:30 pm **Panel IV: Junior Scholar**
Commentator: **Jules Coleman**, Yale
- 6-8 pm *Dinner & Randolph Lecture*
Keynote: **Hon. Guido Calabresi**, USCA, 2nd Cir.

Saturday, September 16th

- 8:15-9:15 am *Continental breakfast*
- 9:15-10:45 am **Panel V: Administrative**
Moderator: **Catherine Sharkey**, Columbia
Participants: **Richard Nagareda**, Vanderbilt (presenter)
Richard Epstein, Chicago (commentator)
- 11-12:30 pm **Panel VI: Philosophical**
Moderator: **Ben Zipursky**, Fordham
Participants: **Arthur Ripstein**, Toronto (presenter)
Greg Keating, USC (commentator)
George Fletcher, Columbia (commentator)
- 12:30-1:30 pm *Lunch*
- 1:30-3 pm **Panel VII: Comparative**
Moderator: **Ronen Perry**, Haifa
Participants: **Jane Stapleton**, Texas (presenter)
Helmut Koziol, Vienna (presenter)

TORT LAW AND THE MODERN STATE

Participants

Kenneth S. Abraham, *Robert E. Scott Distinguished Professor of Law, U.V.A. School of Law.*

Professor Abraham teaches Torts and Insurance Law and has published extensively in both fields. He serves on the Council of the American Law Institute, and in 2000 was awarded the American Bar Association's McKay award for "outstanding contributions to tort and insurance law." He is currently writing a book about the influence of insurance on the development of tort liability from the late 19th century to the present.

Jennifer Arlen, *Norma Z. Paige Professor of Law, New York University School of Law.*

Professor Arlen is Co-Director of the NYU Center for Law and Economics. She currently is visiting at Harvard Law School and has been a visiting professor at Yale Law School and Cal Tech. Professor Arlen received her B.A. from Harvard University and her J.D. and Ph.D. in Economics from New York University. She teaches Torts, Corporations, and Business Crime. Her scholarship focuses on medical malpractice and corporate liability.

Tom Baker, *Connecticut Mutual Professor and Director of the Insurance Law Center, University of Connecticut School of Law; Joseph F. Cunningham Visiting Professor of Commercial and Insurance Law, Columbia Law School.*

Professor Baker's research examines issues of risk and responsibility in the fields of torts and insurance from an interdisciplinary perspective. His recent book, *The Medical Malpractice Myth* (U. Chicago Press 2005), explores the misperceptions behind the tort reform movement and proposes an evidence-based approach to medical liability reform.

Guido Calabresi, *Judge, United States Court of Appeals for the 2nd Circuit, Sterling Professor Emeritus and Professorial Lecturer, Yale University Law School.*

Born in Italy, Judge Calabresi and his family arrived in America, as political refugees, on Sept. 16, 1939. He was sworn in as a Judge 55 years later, to the day. Prior to his appointment, he was Dean and Sterling Professor at the Yale Law School where he began teaching in 1959. A graduate of Yale College, Magdalen College, Oxford, and the Yale Law School, Judge Calabresi clerked for Justice Hugo L. Black of the U.S. Supreme Court. The author of four books, and over a hundred articles, he has received more than 40 honorary degrees.

Jules L. Coleman, *Wesley Newcomb Hohfeld Professor of Jurisprudence and Professor of Philosophy, Yale University.*

Professor Coleman has authored nearly a hundred articles and several books on all aspects of legal theory. Generally recognized as a leading figure in tort theory and jurisprudence, he is best known to tort lawyers and theorists for his elaboration and defense of the corrective justice account of tort law in his books, *Risks and Wrongs* and *The Practice of Principle*. In jurisprudence he is best known for his elaboration and defense of legal positivism. He is currently Editor of *Legal Theory* and working on a book, *Law, Language and Mind* designed to bring together themes in the philosophy of law, language, and mind.

Robert Cooter, *Herman F. Selvin Professor of Law, University of California at Berkeley.*

As a pioneer in the field of law and economics, Professor Cooter helped found the American Law and Economics Association and served as its President in 1994-1995. He is co-director of Berkeley's Law and Economics Program. He is a member of the American Academy of Arts and Sciences. Besides numerous articles, he is co-author of *Law and Economics* (4th edition, 2003, with Tom Ulen) and author of *The Strategic Constitution* (Princeton, 2000).

Richard A. Epstein, *James Parker Hall Distinguished Service Professor of Law, University of Chicago; Peter and Kirsten Senior Fellow, The Hoover Institution.*

Professor Epstein has written extensively on tort theory from both a historical and economic perspective. He is also the author of *Cases and Materials on Tort* (8th edition).

George Fletcher, *Cardozo Professor of Jurisprudence, Columbia University.*

Professor Fletcher writes and lectures in the fields of constitutional law, criminal law, torts, and jurisprudence. He has published eight books, including, most recently, *American Law in a Global Context: The Basics* (2005) (with Steve Sheppard). He speaks nine languages, and his work is well-known in Europe, Latin America, Japan, and Korea. He was elected a Fellow of the American Academy of Arts and Sciences in 2004.

Mark A. Geistfeld, *Crystal Eastman Professor of Law, New York University School of Law.*

Professor Geistfeld has written extensively on tort law and theory. As illustrated by his recent book *Principles of Products Liability* (Foundation Press, 2006), his scholarship attempts to show how a conceptual understanding of tort law is essential to understanding the practice of tort law.

John C. P. Goldberg, *Associate Dean for Research and Professor, Vanderbilt Law School.*

Professor Goldberg joined the Vanderbilt faculty in 1995 after clerking for Justice Byron White and Judge Jack Weinstein and practicing at the firm of Hill & Barlow. He has published numerous works on tort, jurisprudence, and legal history, as well as a torts casebook. A four-time winner of the Hall-Hartman Teaching Award, Goldberg is a member of the Executive Committee of the AALS Section on Torts and Compensation Systems and serves on the Consultative Group for the Third Restatement of Torts.

Eric A. Helland, *Associate Professor of Economics, Claremont McKenna College; Senior Economist, Institute for Civil Justice, RAND Corporation.*

Dr. Helland is a member of the plenary faculty at the Claremont Graduate School. During the 2002-03 Dr. Helland was a visiting fellow at the Stigler Center for the Study of the Economy and the State at the University of Chicago Graduate School of Business. In 2003-04 he served as a Senior Economist on the Council of Economic Advisers.

Keith Hylton, *Professor of Law and Paul J. Liacos Scholar, Boston University.*

Widely recognized in the areas of law and economics, Professor Hylton has published more than 50 articles in American law journals and peer-reviewed law and economics journals as well as a textbook, *Antitrust Law: Economic Theory and Common Law Evolution* (Cambridge University Press 2003). He joined the Boston University School of Law faculty in 1995 after teaching for six years and receiving tenure at Northwestern. He has served as Editor of the *Torts, Products Liability and Insurance Law Abstracts* since 1999 and is Co-Editor of *Competition Policy International*.

Gregory Keating, *William T. Dalessi Professor of Law and Philosophy at the Gould School of Law, University of Southern California.*

Professor Keating has taught at USC since 1991. He was a visiting professor at Harvard Law School and practiced law in Boston before joining the USC faculty. His torts scholarship includes papers on the morality of reasonable risk imposition in negligence law, on the history of and moral justification for strict liability in tort, and on the special difficulties presented by the imposition of significant risks of death and devastating injury.

Jonathan Klick, *Jeffrey A. Stoops Professor of Law, Florida State University.*

Professor Klick's research focuses on econometric studies of the effects of legal and regulatory changes on behavior. He has a PhD in economics and a law degree from George Mason University.

Helmut Koziol, *Director of the Research Unit for European Tort Law of the Austrian Academy of Sciences, Vienna, Austria.*

Professor Koziol is currently Director of the Research Unit for European Tort Law of the Austrian Academy of Sciences as well as Executive Director of the European Centre of Tort and Insurance Law, Vienna. He became Professor of Private Law at the University of Linz, Austria (1967-1969), subsequently being offered a chair at the University of Vienna, which he held until 2000. His main fields of legal research include Tort Law, Banking Law and Insolvency Law.

Herbert M. Kritzer, *Professor of Political Science and Law, University of Wisconsin-Madison.*

Professor Kritzer has conducted extensive empirical research on civil litigation with a particular focus on the work of lawyers in ordinary, everyday cases. His most recent book, *Risks, Reputations, and Rewards*

(Stanford University Press, 2004) focused on contingency fee practice. He is completing a project that involved observation in a defense-oriented law firm. He has authored or coauthored four other books and is the editor of the four-volume *Legal Systems of the World*. He currently serves as editor of *Law & Society Review*.

Richard A. Nagareda, *Professor of Law and Director, Cecil D. Branstetter Litigation & Dispute Resolution Program, Vanderbilt Law School.*

Professor Nagareda's scholarship focuses on aggregate civil litigation, particularly in the mass tort context. His articles have appeared in the *Columbia Law Review*, *Georgetown Law Journal*, *Harvard Law Review*, *Michigan Law Review*, and *Texas Law Review*. In 2003, the American Law Institute appointed him one of the reporters for its new project "Principles of the Law of Aggregate Litigation." He currently is writing a book entitled "Mass Torts in a World of Settlement" (U. Chicago Press).

Ronen Perry, *Professor of Law, University of Haifa (Israel).*

Professor Perry received his Ph.D. in Law *summa cum laude* from the Hebrew University in Jerusalem in 2001, and has been teaching at the University of Haifa since. He has published various articles on tort, insurance, remedies, jurisprudence, and legal education (mostly in Hebrew). His book, *Economic Ricochets*, discusses the problem of relational purely economic loss from historical, comparative, and theoretical perspectives. He is currently writing a book on empowerment of women through tort law.

Ariel Porat, *Dean, Tel Aviv University Faculty of Law.*

Dean Porat has been a Visiting Professor at the University of California at Berkeley, the University of Chicago, Columbia University, and the University of Virginia. From 1997-2002, he was the Director of the Cegla Center for Interdisciplinary Research of the Law. He is the founder of the journal *Theoretical Inquiries in Law*, author of *Contributory Fault in the Law of Contracts* (1997), co-author (with Alex Stein) of *Tort Liability under Uncertainty* (Oxford University Press 2001), and author of numerous articles in torts and contracts.

Arthur Ripstein, *Professor of Law and Philosophy, University of Toronto.*

Professor Ripstein was Laurance S. Rockefeller Visiting Fellow at Princeton in 1995-96, and held a Connaught fellowship in 2000. In addition to numerous articles in legal theory and political philosophy, he is the author of *Equality, Responsibility and the Law* (1999). He is currently writing a book on Kant's Legal and Political Philosophy. He is an Associate Editor of *Philosophy and Public Affairs*, and a former Associate Editor of *Ethics*.

Catherine M. Sharkey, *Associate Professor of Law, Columbia University.*

Professor Sharkey teaches and writes on torts, punitive damages, class actions, and products liability. Her articles appear in the *Journal of Empirical Legal Studies*, *Maryland Law Review*, *N.Y.U. Law Review*, *Texas Law Review*, *UCLA Law Review*, and *Yale Law Journal*. She is an Advisor for the *Restatement Third of Torts: Liability for Economic Loss* and Executive Committee Member of the AALS Section on Torts and Compensation Systems. She clerked for Judge Guido Calabresi and Justice David H. Souter.

Jane Stapleton, *Professor, Australian National University; Ernest E. Smith Professor of Law, University of Texas; Statutory Visiting Professor, Oxford University.*

Originally a scientist, Jane Stapleton resigned her post-doctoral position at Cambridge to train as a lawyer, first at the Australian National University and later at Oxford. From 1987-1997 she was Fellow in Law at Balliol College (where she remains a Fellow). She also serves as a Council Member of the ALI.

John Fabian Witt, *Professor of Law and History, Columbia University.*

Professor Witt's research and teaching interests focus on the history of American law and on torts. His book, *The Accidental Republic: Crippled Workingmen, Destitute Widows, and the Remaking of American Law* (Harvard Press, 2004) received the Thomas J. Wilson Prize from Harvard Press, the Willard Hurst Prize from the Law & Society Association, and the Cromwell Prize from the American Society for Legal History. His next book, *Patriots and Cosmopolitans: Hidden Histories of American Law* (Harvard Press, fall 2006) explores law and American nationalism at key moments in legal history since the Founding.

Benjamin C. Zipursky, *Professor of Law, Fordham Law School*.

Professor Zipursky is the author of more than two dozen articles and book chapters in torts, jurisprudence, and constitutional law, as well as a torts casebook. Since 1995, he has taught at Fordham Law School, where he served as Associate Dean for Academic Affairs from 2001-2003. Zipursky's Civil Recourse theory of tort law provides an alternative to both Law-and-Economics and Corrective Justice theories, of which he has been a persistent critic.