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TORT LAW, FREE WILL, AND PERSONAL RESPONSIBILITY

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The tort law system is designed to assure that a harmed individual has recourse to the legal system. That serves the common good. Over the past few decades, however, tort law has changed so that it now encourages lawsuits designed to maximize recovery regardless of culpability. This comes at great expense to the community-affirming values of apology, acceptance of responsibility, and forgiveness. As legislators and judges consider reforms, the goal must be to return to a system which affirms the dignity of the person and affirms the community by placing blame only on those who are truly responsible.

I. Introduction

Laws shape behavior, express community values, and reflect the society's view of human nature. Legal rules not only outline that conduct which is acceptable, they also help form the views and opinions of members of the society. Perhaps no other area of law influences behavior and shapes attitudes more strongly than tort law.

When someone causes harm to another, it is appropriate that he or she rectify the situation. This affirms the notion of personal accountability. By accepting responsibility, a person asserts his or her humanity. If responsibility is not accepted, people are nothing more than products of their environment, accountable neither for grievous wrongdoing nor for great achievement.

The concepts of free will and personal responsibility are well in line with the Catholic understanding of justice. "The just man is worthy of praise for his honest deeds, since it was in his free choice that he did not transgress the will of God," explained Tatian the Syrian in 170 A.D.[1] Almost two and a half centuries later, St. Augustine wrote, "God's precepts themselves would be of no use to a man unless he had free choice of will, so that by performing them he might obtain the promised rewards."[2]

A criminal system that is functioning properly will hold a person responsible when he, "as a free agent, has exercised *his* choice in such a way as to make the punishment a necessary consequence."[3] Similarly, a civil legal system that is functioning properly will demand reparation when a person, as a responsible agent, has harmed another.

Holding wrongdoers responsible for restitution, or even punishing them in some cases, is "the systematic *moral* response to wrongdoing."[4]

Of course, when people act in a fully responsible manner, rectification might come without appeal to authority. The two parties simply work things out. In such cases, apology and at least partial forgiveness is likely to be included in the resolution. Some disputes, of course, require involvement of the courts.

Suits seeking reparations (called "damages") for a wrong suffered at the hands of another are called tort suits. To the extent that tort laws encourage a proper resolution of difficult situations, first by encouraging settlement without resort to the courts and then by providing a mechanism when litigation is necessary, they serve the common good by bringing commutative justice to the society. That is the traditional role of tort law.

Over the past several decades tort law has undergone some major changes. Many of these changes, taken alone, are fairly insignificant. The cumulative impact of these developments, however, has changed the very dynamic of a tort lawsuit. Rather than being a safety net to make certain that justice is done when person-to-person contact fails, the modern American tort system encourages lawsuits designed to maximize the recovery for the plaintiff, regardless of the culpability of the wrongdoer. It encourages "hard ball" litigation at the expense of forgiveness and understanding.

II. Torts and Justice

A tort is a type of legal action in which an injured party (the victim/plaintiff) sues the alleged wrongdoer (the defendant/tortfeasor) for the harm suffered.[5] When a tort lawsuit is based upon intentional conduct, there is little question about the justification for holding the defendant responsible for making the plaintiff whole. These cases are neither hard to understand, nor are they controversial (except, perhaps regarding the extent of the damages). When the facts are clear, one would even hope that the defendant would admit liability and satisfy the injured party without legal action.

In cases where a person has been injured by the unintentional actions of another, liability is usually based on a negligence theory. The traditional formula for negligence requires a showing that the defendant owed a duty to the plaintiff; the defendant breached that duty; the plaintiff suffered a foreseeable injury; and the breach of duty was the proximate cause of the injury. The law does not require the defendant to be perfect, but he or she must behave as a reasonably prudent person would do in the same circumstances.

Even if the defendant has intentionally done something wrong to the plaintiff, the traditional rule is that a court will not award damages unless the plaintiff can establish that he or she has suffered some actual harm. Under this traditional approach to tort law, awards are limited to economic damages actually suffered. That tends to encourage settlement without resort to litigation.[6]

Whether the claim was based on intentional or negligent conduct, tort law traditionally required that the plaintiff establish that the defendant was responsible for the harm before the court would order the defendant to pay damages. This "causation" requirement played an important role in limiting the defendant's legal exposure. The plaintiff had to establish both that the injury would not have occurred "but for" the defendant's conduct and that the plaintiff's injury came about as part of the natural and continuous sequence, unbroken by any intervening cause, from the defendant's act. Stated differently, the plaintiff's action (or failure to act when there was a duty to do so) had to have been the foreseeable cause of the plaintiff's injury or the defendant would not be held liable.

As early tort law developed, judges recognized that there were times when a plaintiff might make out a technical case to support an award for tort damages, but other factors (often associated with societal values) outweighed the justification for awarding damages. Accordingly, courts developed certain defenses and immunities that limited a defendant's exposure in some cases. Governments and charities, for instance, were generally immune from lawsuits. The "assumption of risk" doctrine limited recovery for a plaintiff who voluntarily assumed a known risk. The "fellow servant" rule kept employees from recovering for workplace injuries caused by a fellow worker.[7] Contributory negligence limited the exposure of a defendant when the plaintiff was partially at fault. Similarly, the doctrine of privity of contract often prevented consumers from seeking a tort remedy for injuries caused by defective products. These limitations, like the required causal showing, tended to protect the innocent, reflect and re-affirm societal values, and serve the common good.

In recent years, many tort law defenses and limitations have been eliminated or modified. Individually, few of these changes to tort law are threatening, and several appear laudable. The cumulative impact of all of these changes, however, results in a significant threat to justice to the community, and even to our common perception of human nature.

Consider, for instance, that modern chemicals and environmental exposure can lead to injuries that do not show up for decades or that skip the exposed generation and impact only the next.[8]

Sometimes, even when there is evidence of a correlation between exposure and injury, the cause-and-effect status is much less certain.[9] This can make causation almost impossible to prove. As such, many courts have relaxed traditional causation requirements to help plaintiffs in this kind of case.

Another important development related to causation is the emergence of "market share" or "enterprise" liability. Under this doctrine, in a case where the plaintiff claims to have been harmed due to exposure to a chemical, liability can be apportioned so that each defendant/manufacturer of the chemical pays a percentage equal to the percentage of the market that it controls. In such a case, a manufacturer may be forced to pay even though it has not been linked to the plaintiff in any way.[10] Both of these changes helped overcome a weakness in the structure of tort law, but they also undercut the traditional message set forth by tort law.

The theory that most dramatically illustrates the impact of lessened causation requirements is strict products liability. Under this doctrine, the defendant is held strictly liable for physical harm regardless of whether the defendant did anything wrong. A manufacturer that exercised the highest level of care can still be found liable. In other words, traditional causation need not be established. Rather, the court treats manufacturers as insurers who are required to pay regardless of actual responsibility. That, of course, is at odds with the lessons that were historically taught by the tort law system and does not advance the cause of justice.[11]

Other recent trends in tort law include the emergence of trial attorneys who take out advertisements to solicit clients who were exposed to a specific substance (like asbestos) or who took a particular medication (like Fen Phen).[12] These attorneys then put together class-action lawsuits which often proceed without meeting traditional causation standards. With numerous plaintiffs joined in a single case, they can bring enough market pressure on the defendant to force a settlement even when liability may not actually be present.[13]

One of the reasons so many defendants settle cases is because in recent decades, the size of awards in tort cases has dramatically increased, well beyond the amount needed to compensate the injured plaintiff. Issues related to non-economic damages (such as pain and suffering, loss of consortium, and hedonic loss) and punitive damages dramatically increased the stakes and the likelihood of litigation.

Other recent developments that have further changed tort law include the expansion of joint and several liability and the elimination of contributory negligence, charitable immunity, and governmental

immunity. In addition, modern plaintiffs, unlike those in the first part of the 20th century, can recover for non-economic damages such as wrongful death, pain and suffering, and for the infliction of emotional distress. Perhaps most disbursing of all, today some courts permit parents to sue doctors for negligently failing to give them information that would have caused them to abort their baby. At least three states also permit an individual to sue, arguing that he or she should have been aborted, but the doctors did not advise the mother properly.[14]

The most recent innovation to tort law is that in over a dozen states, legislatures have eliminated the statutes of limitation that govern lawsuits concerning sexual abuse of minors.

No caring person wants children to suffer, and some of the plaintiffs who will benefit from this change were deeply hurt when they were children. The lawsuits that will be affected by this change, however, all are based on activities that took place long ago. In virtually every case, the actual wrongdoer is departed, incarcerated, or otherwise removed from society. The changes to these statutes of limitation will not impact criminal prosecutions, nor will they hold the actual perpetrators liable. They will not make the children of today safer. The movement, in fact, is driven largely by trial lawyers who represent plaintiffs in suits against the Catholic Church.

Statutes of limitation reflect the communal good of social harmony and place it above retributive justice after a prescribed period of time has lapsed. There is a value to finality and certainty; it promotes social cohesion and fosters a stronger community. Moreover, after a long period of time, it becomes much more difficult to litigate a case. Evidence spoils, witnesses disappear, and memories fade. In such circumstances, it becomes very difficult to disprove false charges (which, unfortunately, are not uncommon in sexual abuse cases). For that reason, all crimes except murder have a statute of limitations. Civil actions typically have even shorter limitation periods.

When it comes to lawsuits against entities such as the Catholic Church for sexual abuse that took place so long ago that the existing statutes of limitations have expired, assume that all of the claims are valid. Monetary settlements cannot truly undo the pain suffered by those plaintiffs, but more importantly, the money paid to settle such cases does not come from the wrongdoers. The people paying for the settlement of these cases are innocent parishioners who had no part in the events of the past. They are not even like stockholders in a for-profit corporation who might be held responsible because they profited from the wrongdoing of corporate executives. Punishing the innocent is wrong, yet that is exactly the intent behind the elimination of these statutes of limitation.

As Archbishop Charles Chaput of Denver has explained, this modification to the law of torts "will have enormous implications for the future of Catholic life in the United States."[15] Frankly, the implications will extend well beyond Catholic life.

III. Tort Law and the Impact on Society

The recent explosion of litigation, coupled with the tremendous increase in large damages awards and commercial exploitation by trial lawyers, has had several negative impacts on American society. The impacts relate to the economy, the healthcare system, the community, and even individual self-perception. Clearly, the American tort system imposes significant burdens on American businesses, especially on the healthcare system. Those are not, however, the impacts that we will focus on today. Rather, we will examine the impact that these developments have had on the community and on our view of human nature.

When courts separate actual fault from responsibility to repair, they cease to be a place for justice and become a general insurance company that pays whenever someone is harmed. When this happens, legal advice wins out over human instinct and great harm is done to the common good. As one commentator explained:

> Behind the explosion of litigation is a great sense of loss of community, and inordinate focus on rights without a correlative sense of duties, a tendency to try to put financial value on every harm and wrong, the failure of our social institutions to provide support for people who hurt and suffer, and our lack of capacity to observe even minor wrong.[16]

In particular, great harm is done to the crucial value of forgiveness which is so necessary for the peacefulness of society.[17]

Today, those who suffer an injury or who have been exposed to a certain substance are urged by television, radio, and print advertisements to call a lawyer who will sue anyone who might be blamed for the harm. People make those telephone calls regardless of the real cause of the injury and even though there is often no one to blame. Undoubtedly, any effective government needs to have a tort law system in place. That system should not, however, encourage lawsuits as the first option.

A properly operating tort system encourages acceptance of responsibility. Those who have been harmed know that the legal system

is there to assure that they will be compensated, and those who have committed the harm know that society ultimately will not let them avoid responsibility. This subtle pressure encourages potential litigants to work things out. The wrongdoer is encouraged to "do the right thing," and the person who has suffered harm is encouraged to be understanding and accept an apology and any inconvenience associated with the tort. Parties frequently resolve the matter without resort to the courts.[18]

A tort law system that features potentially enormous monetary awards and a requires little proof of causation, however, can easily throw people into a litigation mode. Rather than feeling shame for having caused harm to another, potential defendants jockey to get into a better legal position. Expressions of regret are discouraged because there may be legal ramifications. Plaintiffs are encouraged to maximize their damages (and minimize their legal responsibility) so as to increase the ultimate settlement. Forgiveness is also discouraged because it can hurt the forthcoming lawsuit. The net result is more distrust between members of the society, less human understanding, and violence to the common good.

Acceptance of responsibility by the wrongdoer and reasonable accommodation by the person who was harmed are forms of charitable conduct that are essential to a just society because they affirm the dignity and intrinsic value of the person. This form of human interaction is supported by a tort system that serves as a "backup" designed to reassure citizens that those who are responsible, and only those who truly are responsible, will be forced to restore the victim should they not willingly do so. The just conduct of an organized community does not, however, include forcing those who were not responsible to pay for the damages, nor does it include forcing those who were responsible to pay excessive amounts. Even though such remedies might seem charitable to the victim, they violate the principle of just distribution.

When the tort law system stops encouraging people to behave correctly; when it causes injured people to seek a financial windfall; when it causes wrongdoers to deny responsibility and to look for excuses; when it causes people to doubt the motivations of others, it does not serve the common good. These factors must be brought to the table for consideration as legislators and other officials hammer out the details of the coming tort reform.

IV. The Impact on the Individual

The Catholic Church teaches that: "Man is rational and therefore like God; he is created with free will and is master over his

acts."[19] "By free will one shapes one's own life. Human freedom is a force for growth."[20] Following the Protestant Reformation, Sir Thomas More famously challenged Martin Luther's denial of free will.[21]

The American legal system also has traditionally operated on the assumption of free will. Justice Benjamin Cardozo, writing for the Supreme Court in 1937, explained that the American legal system is "guided by a robust common sense which assumes the freedom of will as a working hypothesis in the solution of its problems."[22] The Court later reaffirmed this proposition by stating that a "belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil" is a proposition "universal and persistent in mature systems of law."[23]

When a properly functioning tort law system promises to hold individuals responsible for their actions, intentional or not, it reaffirms the importance of the individual. This encourages people to take responsibility for their actions on their own. That, in turn, is a clear benefit to society. As an illustration, consider the case of A:

> Upon hearing someone call his name [at a party], he inadvertently knocks over the glass [on a nearby table]. Suppose that A could not have been expected to be more careful than he was. Still, it would be perfectly natural for him, as well as expected of him, to feel some embarrassment and to offer to wipe up the spilled wine.... By his responsible stance, A reclaims his body from the status of a mere object that he most of the time successfully manipulates and invests it instead with the significance and meaning of an aspect of himself as subject.[24]

Without recognition of such responsibility, A is nothing more than a product of his environment, accountable neither for mistakes nor for great achievement. It is only when the individual chooses to do what he or she does as a matter of free will that responsibility attaches.

The contrary view of human behavior, that mankind lacks free will, can have a devastating impact on the society.

> [L]ike a cockroach, you are in no position to make moral choices of your own free will. When you commit some hideous brutality, it is not that you decided to do so. No, on the contrary, external circumstances made you do it. Once that message is fully absorbed by potential [wrongdoers] as well as by their judges and juries, civility and safety will be doomed.[25]

Obviously, society cannot function if people are not willing to take responsibility (or, absent that, if the society is unwilling to hold them responsible).

Unfortunately, most of the recent developments in tort law theory—particularly those developments related to causation—have moved away from the concepts of free will and personal responsibility. An example of the way that changed causation requirements in mass tort litigation have affected human accountability is illustrated in the tobacco liability cases. The successful plaintiffs were governmental entities, not injured citizens. They recovered not because they were physically harmed, but because people who live in those states, exercising their own will, might in the future decide to smoke and thereby contract cancer and drain money from state coffers.

The courts gave state governments a new, independent cause of action to recover Medicaid expenditures. The tobacco companies argued that the smokers should take personal responsibility for their health. Under traditional tort law analysis, that would preclude recovery from the tobacco companies. In this litigation, however, the states were not subjected to that type of traditional defense. The states did not have to connect any individual's smoking to any particular injury, nor was there any need to link any particular defendant to a particular injury.[26]Ultimately, the tobacco companies had to pay, and the result was that the concepts of free will and personal responsibility were—at the very least—called into question.

By failing to reaffirm free will, self-responsibility, and basic humanity, the modern tort law system does great harm to the common good. It evaluates defendants on the basis of their wealth or insurance coverage. Plaintiffs advance their legal position by presenting themselves as victims. (When police arrive at the scene of a bus or train accident, one of the first things they have to do is to secure the area, lest false "victims" pretend to be injured so that they can recover in a lawsuit.)[27] Defendants, too, often claim that matters beyond their control led to the event at the heart of the litigation.[28] We end up with what author Catherine Crier calls "a nation of victims."[29] Politicians are correct to recognize the need for tort reform. Unfortunately, they too often overlook these important non-economic issues.

V. Conclusion

The late economist, Ben Rogge, one of my professors at Wabash College, expressed his view of responsibility quite succinctly:

> I cannot accept a view of man which makes him a helpless pawn of either his id or his society. I do not deny that the mind of each of us is a dark and complex chamber, nor that the individual is bent by his environment, nor even the potentially baneful influence of parents. As a matter of fact, after a few months in the dean's office, I was ready to recommend to the college that henceforth it admit only orphans. But as a stubborn act of faith I insist that precisely what makes man man is his potential ability to conquer both himself and his environment. If this capacity is indeed given to or possessed by each of us, then it follows that we are inevitably and terribly and forever responsible for everything that we do. The answer to the question, "Who's to blame?" is always, "Mea Culpa, I am."[30]

Unfortunately, American tort law no longer abides by this view. As one commentator wrote: "Recent developments in Tort can be understood as... a shift from moral to amoral Tort law; from a body of law assisting private ordering to a court ordered public policy."[31]

When the court orders a defendant to pay money to the plaintiff, there must be a reason that both parties respect. The traditional reason, the existence of harm and causation, becomes an appeal to the values of free and responsible people. "It communicates to both parties that, even though we live in a world in which losses cannot be avoided, one can, by properly leading one's life, avert tort liability."[32] A system like this reaffirms the free will and self determination of the parties by carefully evaluating their voluntary actions and decisions.

Changes in the tort law system over the past 40 years dramatically expanded the number of cases that could be brought and the amount of damages that might be awarded in any given case. This expansion not only had serious consequences for the economy and the healthcare system,[33] it also brought the entire legal system into question.[34] Congressman John Kasich, referring to a notorious tort suit, explained: "Everybody in America is fed up with being sued by everybody for everything. I just have to refer to the case of the lady that sued and won for having been scalded by a cup of coffee she bought in McDonald's 5 minutes earlier."[35]

Since 1986, at least forty-five states and the District of Columbia have recognized the need to place some limitation on plaintiffs' tort rights and remedies.[36] Perhaps the most common proposal is the imposition of a limitation on punitive damages, but some states have raised the burden of proof from preponderance of the evidence to the clear and convincing evidence standard in order to justify punitive

damages. A few states have limited multiple punitive damages in mass tort cases. Others have capped the size of punitive damages, limiting it to a given ratio of compensatory damages.[37] A few states allocate a portion of punitive damages to state funds rather than letting the plaintiff keep it all. Three states have adopted judge-assessed punitive damages measures. Some states have limited joint and several liability, and at least one state has provided protection for "innocent sellers."[38]

Although many reforms have already been enacted, there is a clear need for more work on the tort law system. In the 2004 presidential elections, candidates from both of the major parties (even Democratic Vice Presidential nominee John Edwards, himself a trial attorney) spoke openly of the need for tort reform. Two states during that election passed voter initiatives designed to reform tort law.[39] The only problem is that the focus has all been on the impact that the tort system has had on business competitiveness and health care.[40] The non-economic impacts, however, are perhaps an even more profound. These matters must be considered in all future debates concerning tort reform.

The goal of future tort reform should be toward a return to that type of even-handed system based on fault and causation that places blame on those who caused the damage and restores the plaintiff without punishing those who happen to have deep pockets. Restored to this form, the tort law system would not only deal more appropriately with economic and healthcare concerns or punitive damages, it would affirm the value of the community and of the individuals within that community. That *must* be the goal of the tort reform measures that are certain to come.[41]

Endnotes

1. *Address to the Greeks* 7.

2. *On Grace and Free Will* 2:5.

3. Edmund L. Pincoffs, *The Rationale of Legal Punishment* 8 (1966); *see also* Lloyd L. Weintreb, *Desert, Punishment, and Criminal Responsibility*, 49 Law & Contemp. Probs. 47 (1986).

4. Robert J. Lipkin, *The Moral Good Theory of Punishment,* 40 U. Fla. L. Rev. 17, 81 (1988).

5. A tort suit may be based upon an intentional act or an unintentional act. The normal remedy is that the defendant/ tortfeasor must correct that harm. This usually means paying money damages so as to "make the plaintiff whole" (putting the plaintiff in the same position he would have been in had the injury not occurred). Unlike a crime, in which the criminal is held responsible for the harm caused to society, with a tort, the defendant is held responsible to a harmed individual. Thus, traditional tort law does not "punish" the offender. Rather it makes the defendant render the plaintiff "whole." If the tort is on-going in nature, the court may give injunctive relief rather than or in addition to a monetary award. Thus, a plaintiff who successfully sues for trespass is usually entitled to an order that the defendant vacate the premises. Similarly, successful plaintiffs are usually entitled to an order that a nuisance be abated. *See* Ronald J. Rychlak, *Common Law Remedies for Environmental Wrongs: The Role of Private Nuisance,* 59 Miss. L. J. 657 (1989).

6. The current system still results in many settlements, but they much more frequently come after litigation has commenced and the stakes have dramatically increased.

7. In its place, states have adopted Workers' Compensation programs, which require employers to purchase insurance to cover workers for all injuries. Under the new regime, workers can recover for their injuries under the insurances, with no consideration of the employer's responsibility or lack thereof.

8.When pregnant women were given a certain medication to help them with their morning sickness, the adverse impact was not seen until their daughters reached child-bearing age. *Sindell v. Abbott Laboratories,* 607 P.2d 924 (Cal. 1980).

9. *See In re "Agent Orange" Product Liability Litigation,* 597 F. Supp. 740 (E.D.N.Y. 1984); *In re "Agent Orange" Product Liability Litigation,* 611 F. Supp. 1223 (E.D.N.Y. 1985).

10. Although market share liability does not necessarily link the responsible defendant to the correct injured plaintiff, it does seem rather fair to hold all similarly-situated defendants responsible in such a situation (assuming, of course, that the product at issue actually caused harm). The primary concern about this evolution in tort law is the role that it has played in the development of large class action lawsuits and in a general lessening of causation requirements.

11. Jude P. Dougherty, *Accountability Without Causality: Tort Litigation Reaches Fairy-Tale Levels,* in *Western Creed, Western Identity: Essays in Legal and Social Philosophy,* 136-54. Washington, D.C.: Catholic University of America Press, 2000.

12. *Trial*, the journal of Trial Lawyers of America, regularly runs advertisements encouraging plaintiff lawyers to buy advertising packages to be run on local television markets. In this manner, attorneys can have celebrities such as William Shatner or Robert Vaughn act as their spokesmen, soliciting personal injury plaintiffs.

13. In *Castano v. American Tobacco Co.,* 84 F.3d 734 (5th Cir. 1996), the trial court originally certified a plaintiff class that would have included all nicotine addicted persons in the United States, regardless of any cause (or influence) other than the efficient-cause influence of smoking a cigarette. *See* T. Dean Malone, *Comment: Castano v. American Tobacco Co. and Beyond: The Propriety of Certifying Nationwide Mass Tort Class Actions Under Federal Rule of Civil Procedure 23 When the Basis of the Suit Is a "Novel" Claim or Injury,* 49 Baylor L. Rev. 817 (1997).

14. *See, e.g., Gleitman v. Cosgrove,* 227 A.2d 689 (N.J. 1967); *Becker v. Swartz.*, 386 N.E.2d 807 (N.Y. 1978); *Curlender v. BioScience Laboratories,* 106 Cal.App.3d 811 (Cal. Ct. App. 1980); Webber, Jay, *Better Off Dead?,* First Things, May 2002.

15. Most Reverend Charles Chaput, *Suing the Church, First Things, May 2006, at 13-15.*

16. Lynn Buzzard, *With Liberty and Justice: A Look at Civil Law and the Christian* (Victor Books, 1984) at 135.

17. *See* Pope John Paul II, *No Peace Without Justice, No Justice Without Forgiveness,* Message Of His Holiness Pope John Paul II for the Celebration of the World Day of Peace, January 1, 2002. *See also* Desmond Tutu, *No Future Without Forgiveness* (New York: Doubleday, 1999).

18. This is well in keeping with the doctrine of subsidiarity. *See* Ronald J. Rychlak, and John M. Czarnetzky, *The International Criminal Court and the Question of Subsidiarity*, Third World Legal Studies 2000-2003.

19. Catechism of the Catholic Church 1730. In his controversial remarks at the University of Regensburg on September 12, 2006, Pope Benedict spoke of even God's will as being limited by reason or logos. "This should not be understood as the ability to act in an unreasonable manner: the faith of the Church has always insisted that between God and us, between his eternal Creator Spirit and our created reason there exists a real analogy, in which unlikeness remains infinitely greater than likeness, yet not to the point of abolishing analogy and its language (cf. Lateran IV). God does not become more divine when we push him away from us in a sheer, impenetrable voluntarism; rather, the truly divine God is the God who has revealed himself as logos and, as logos, has acted and continues to act lovingly on our behalf. Certainly, love transcends knowledge and is thereby capable of perceiving more than thought alone (cf. Eph 3:19); nonetheless it continues to be love of the God who is logos. Consequently, Christian worship is worship in harmony with the eternal Word and with our reason (cf. Rom 12:1)."
Text available at
<<http://www.cwnews.com/news/viewstory.cfm?recnum=46474>>

20. Catechism of the Catholic Church 1731.

21. Gerard B. Wegemer, *Thomas More: A Portrait of Courage* (Scepter Publishers, Princeton: 1998) at 64, 97, 123.

22. *Charles C. Steward Mach. Co. v. Davis,* 301 U.S. 548, 590 (1937).

23. *Morissette v. United States,* 342 U.S. 246, 250 (1952). *See also Ronald J. Rychlak* and Joseph F. Rychlak, *Mental Health Experts on Trial: Free Will and Determinism in the Courtroom,* 100 W. Va. L. Rev. 193 (1997).

24. Meir Dan-Cohen, *Responsibility and the Boundaries of The Self,* 105 Harv. L. Rev. 959, 978 (1992).

25. Daniel Lapin, *Darwin is Dead,* Crisis, November 1995, at 56.

26. *See* Robert A. Levy, *Shakedown: How Corporations, Government and Trial Lawyers Abuse the Judicial Process* (Washington: Cato Institute, 2004) (discussing the tobacco settlements).

27. Stephen B. Burbank, professor at the University of Pennsylvania Law School, explained: "There is unquestionably a certain amount of fraud going on in this type of litigation... People who have not been injured and people who have been injured in the most minor ways get swept in with those who are seriously injured."
Mass DietPill Litigation Inflates Settlement Costs to $13.2 Billion, The Philadelphia Inquirer, April 9, 2002.

28. *See* Ronald J. Rychlak and Julie Jarrell, *Compulsive Gambling as a Criminal Defense,* 4 Gaming Law Rev. 333 (2000).

29. Catherine Crier, *The Case Against Lawyers: How Lawyers, Politicians, and Bureaucrats Have Turned the Law into an International Instrument of Tyranny–and What We as Citizens Have to Do About It* (New York: Broadway Books, 2002).

30. Ben Rogge, *Can Capitalism Survive?* (1979) available in full on the Internet at
<<http://www.econlib.org/cgibin/search.pl?query=buy+it&results=0&book=rggCCS&andor=and&sensitive=no>>

31. Michael I. Krauss, *Tort Law, Moral Accountability, and Efficiency: Reflections on the Current Crisis,* 2 Journal of Markets and Morality (Spring, 1999).

32. Id. ("In Kantian language, it treats them as ends, capable of moral self-determination.")

33. Congressman Porter J. Goss may have summed up American attitudes best: "I would guess that most Americans probably agree that the $3 million judgment recently awarded to a woman who spilled hot coffee in her lap was unreasonable. While the plaintiff in that case, and likely her lawyer too, now may rest comfortably on that judgment, the rest of America can expect to pay more for lukewarm coffee in the future." 141 Cong. Rec. H2661 (Mar. 6, 1995) (statement of Rep. Goss).

34. One author notes that nasty jokes about lawyers did not become common until 1980, and their rise in popularity was directly related to the tort system. Marc Galanter, *The Turn Against Law: The Recoil Against Expanding Accountability,* 81 Tex. L. Rev. 285, 299, 303 (2002).

35. 140 Cong. Rec. H9766 (Sept. 27, 1994) (statement of Rep. Kasich). *See Liebeck v. McDonald's Restaurants, P.T.S., Inc.,* No. CV-93-02419, 1995 WL 360309 (Bernalillo County, N.M. Dist. Ct. Aug. 18, 1994).

36. Adam Cohen, *Are Lawyers Running America?* Time (July 17, 2000); American Tort Reform Association, *ATRA's Accomplishments,* on the Internet at <<http://atra.org/about.htm>>.

37. *See State Farm Mut. Auto. Ins. Co. v. Campbell,* 538 U.S. 408 (2003).

38. David W. Clark, *Mississippi's Significant Improvements in Civil Justice Fairness and Predictability,* Engage, Oct. 2004 at 127-28.

39. A Florida constitutional initiative passed the November 2004 ballot to limit contingency fees in "medical liability" cases to 30 percent of the first $250,000 in damages and 10 percent of any additional damages. *Florida, Nevada voters protect access to care,* American Medical Association web page, November 3, 2004 <www.amaassn.org/ama/pub/article/17518926.html> (also noting a similar initiative that passed in Nevada).

40. Trial attorneys are, of course, opposed to most (if not all) of these reforms. *E.g.,* Robert S. Peck, *ATLA's law firm takes 'reform' to the courts*, Trial, July 2004 at 50.

41. *See* Patrick J. Kelley, *Tort Reform,* in *Natural Law and Contemporary Public Policy,* edited by David F. Forte. Washington, D.C.: Georgetown University Press, 1998); Daniel Connolly, *Malpractice returns to spotlight*, Memphis Commercial-Appeal, October 1, 2006 (discussing tort reform issues on the Tennessee ballot in November 2006).