



A Revisionist History of Tort Law: From Holmesian Realism to Neoclassical Rationalism

Alan Calnan

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A Revisionist History of Tort Law explodes the myths of modern tort historiography. It challenges both the methodology and the conclusions of Oliver Wendell Holmes, Jr., America's first and most influential tort historian. It contends that Holmes' jurisprudence corrupted his view of history, and that his historiography corrupted the outlook of his successors. Yet Revisionist History offers much more than simple deconstruction. It identifies the principles for historical analysis and uses those principles to propose a revolutionary new history of tort law.

As a social science, history requires deep, comprehensive and unbiased investigation. Thus, Revisionist History does not trace the development of any specific tort doctrine. Rather, it uncovers the political, philosophical, social, and moral influences which gave the law its life. Moreover, this book does not simply reinterpret the law's primary sources. Instead, it marshals a vast array of secondary authorities which place those sources in context. Finally, Revisionist History does not set its focus on a single, isolated epoch. Rather, it traces the law's entire intellectual history — from its earliest beginnings to its emergence in the modern era.

Enriched by its broadened scope, A Revisionist History of Tort Law provides revelations about the law's past and opens insights into its present and future. It disproves the notion that early tort law was primitive and thoughtless, locating its origins in the intellectual revival of the twelfth century renaissance. It debunks the view that tort law fluctuated with changing notions of public policy, arguing, conversely, that the law's structure and content remained consistently grounded in classical principles of liberalism, naturalism, and rationalism. Finally, it refutes the theory that tort law switched from strict liability to liability based on fault, revealing instead a system remarkably steadfast in its commitment to the timeless dictates of reasonableness.

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