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978-1-107-47560-1 - The Impact of Ideas on Legal Development: Volume 7

Edited by Michael Lobban and Julia Moses

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THE IMPACT OF IDEAS ON LEGAL DEVELOPMENT

This book explores the intellectual contexts in which the development of tort law took place in Europe. With contributions from legal theorists, social and intellectual historians and comparative lawyers, it examines how conceptions of community and responsibility have changed over time, providing a context both for new notions of the role of the state in protecting its citizens and for new interpretations of older private law concepts. The book also examines how the law of tort was shaped and applied by judges in the codified and uncodified systems, comparing the common law system of England with the systems in France and Germany, whose codes were created in very different contexts. The book includes chapters that look at the role of experts in shaping the law's response to workplace hazards and concludes with a discussion of the role of academic networks in developing the notion of a European private law.

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COMPARATIVE STUDIES IN THE DEVELOPMENT
OF THE LAW OF TORTS IN EUROPE

Series editors

John Bell and David Ibbetson

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SERIES EDITORS' PREFACE

The European Legal Development series has arisen from a project funded by the Arts and Humanities Research Council from January 2005 until February 2008.

The aim of the project as a whole was to examine the nature of legal development in western Europe since 1850, focusing sharply on liability for fault. Behind this there is a more abstract purpose: to attempt to cast some light on the factors that have influenced the way in which the law has changed over this period. Legal historians have looked at the general question, usually focusing on the rather facile distinction between the English common law and continental European legal systems. Though rooted in the sources, these works have been marred by a somewhat unsophisticated methodology and an inevitably selective use of evidence. Comparative lawyers have developed far more sophisticated methodologies, but their theoretical perspectives have too often borne little relation to empirical data. Over the last twenty years, tort lawyers have looked at the same types of question; but their analysis has invariably been at a high level of generality and has rarely looked at the historical component. By bringing together experts with different disciplinary backgrounds – comparative lawyers and legal historians, all with an understanding of modern tort law in their own systems – and getting them to work collaboratively, we have aimed to produce a more nuanced comparative legal history, and one that is theoretically better informed.

The topic of legal development is broad, so, to make it manageable, we have undertaken a programme of work that has built up from a number of case studies and has moved towards a more general analysis and conclusions. Although we have been concerned with the development of the law, and although many of those involved in the project have been lawyers, we have also been concerned to include and benefit from the insights of historians and scholars in other disciplines.

Liability for fault between 1850 to 2000 has been our major area of study. Around 1850 there were many similarities in approaches to liability for

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fault across the legal systems of western Europe. Since then, however, there has been significant divergence. Our method has been first to chart the changes and then to seek the explanations for what happened. Although there have been many changes in tort and delict laws over the period, the idea of liability for fault remains central to private law approaches to the compensation of victims of harms caused by the actions of others.

As a first stage, the project worked on six case studies, which illustrate the general theme of liability for fault and its development within the period:

- product liability
- legal doctrine
- medical liability
- relations between neighbours
- technological change
- traffic and railways

Each of the topics gave rise to a volume published by Cambridge University Press in 2010. This research involved scholars from a range of countries, in particular England and Scotland, Spain, the Netherlands, Germany, France, Sweden, Austria and Italy. Each working group drew on the expertise of scholars, both senior and more junior, familiar with different European legal systems, and contained a mixture of comparative lawyers and legal historians.

A second stage has involved further groups examining a number of salient factors in legal development. The topics covered in this stage are:

- social and political ideas
- institutions and professions
- the economy (including the impact of insurance)

A final strand to the work is an overview book.

This book, edited by Michael Lobban and Julia Moses, is the first of the second stage reviews of factors that influence legal development. In the study of the impact of ideas, we begin to see how far the law is influenced by the general intellectual and social climate within which the law operates. We are grateful to them and to their multinational team for reflecting deeply on the issues involved in this relationship.

*John Bell
David Ibbetson*