

Contents

Preface	<i>page</i> xi
The Justificational Project	xii
Corrective Justice Theories	xiii
Law and Economic Theories	xvi
The Integration Project	xviii
The Coherence Project	xix
A Comment About Our Conception of Law	xx
Acknowledgments	xxvii
PART I OTHER-REGARDING BEHAVIOR	
1 Law as a Social Institution	3
1.1 The Coordination Problem	3
1.2 Other-Regarding Behavior as a Coordination Device	7
1.3 Other-Regarding Behavior and Personal Decision Making	11
1.4 Other-Regarding Behavior and Social Cohesion	12
1.5 Social Cohesion and Other-Regarding Behavior	16
1.6 An Example	18
1.7 Conclusion	22
2 Social Cohesion and Social Values: The Reasonable Person	24
2.1 The Current Understanding	24
2.2 The Hand Formula as Other-Regarding Behavior	29
2.3 The Creation of Social Values and Other-Regarding Behavior	32
2.4 Applying the Hand Formula	37
2.5 The Hand Formula and Compliance Errors	47
2.6 Various Levels of Care	55
2.7 Conclusion	57

PART II THE NORMATIVE JUSTIFICATION	
3	An Integrated Normative Analysis 61
3.1	An Outline of the Main Argument 61
3.2	Economics and Corrective Justice 64
3.3	Conclusion 73
4	Kantian Duty 74
4.1	Existing Understanding 75
4.2	Kantian Methodology of Decision Making 77
4.3	The Morality of Thinking About the Well-Being of Others 80
4.4	Kant's Consequentialism 83
4.5	Kant and Humans as a Resource 85
4.6	Conclusion 90
5	Rawlsian Consequentialism: Rawls and Social Cohesion 91
5.1	The Veil of Ignorance in Tort Theory 93
5.2	The Veil of Ignorance 94
5.3	Interpersonal Comparisons 99
5.4	Conclusion: The Metaphysics of Social Cohesion 101
PART III THE THEORY APPLIED	
6	Social Cohesion and Autonomy: The Justificational Boundary of Duty 105
6.1	The Duty Wars 106
6.2	The Hand Formula and the Limits of Responsibility 108
6.3	Choice and the Requirements of Social Cohesion 109
6.4	Choice of Activities and Risk; Two Kinds of Negligence Cases 114
6.5	Activities That Imply Accepting Risks 119
6.6	Conclusion 125
7	Social Cohesion and Moral Agency: The Justification for Proximate Cause 127
7.1	Nonjustificational Approaches 127
7.2	A Fault-Based Theory 133
7.3	Moral Agency and the Reasonableness Concept 136
7.4	The Justification for Moral Agency Limitations on Responsibility 138
7.5	The Analytics of Circumstances 140
7.5.1	The <i>Palsgraf</i> Example 140
7.5.2	Relevance and Reasonable Assumptions 141
7.5.3	Information About Victim's Behavior 144
7.5.4	Multiple Effects 146
7.6	Conclusion 149

8	Social Cohesion and Strict Liability	150
8.1	The Inadequacy of Existing Theory	152
8.1.1	Reciprocal Risks	153
8.1.2	The Evidentiary Rationale for Strict Liability	155
8.1.3	The Loss Spreading or Enterprise Liability Theory	157
8.2	Liability for Abnormally Dangerous Activities	158
8.3	Activity-Level Decisions and the Negligence Rule	160
8.3.1	Activity-Level Decisions	160
8.3.2	The Negligence Regime Reaches Unreasonable Activity-Level Decisions	162
8.3.3	Liability for Frequency Decisions	168
8.4	Liability for Residual Risk	172
8.4.1	Measuring Residual Risk	173
8.4.2	Responsibility for Residual Risk	175
8.5	Conclusion	177
9	Using Another's Property	179
9.1	The Justificational Problems of <i>Vincent</i>	179
9.2	Recent Justificational Analysis	183
9.3	The Obligation of the Other-Regarding Actor to Compensate	186
9.4	Conclusion	192
10	Product Liability: Social Cohesion and Agency Relationships	194
10.1	The Justificational Errors	194
10.2	An Overview of This Chapter	198
10.3	The Dichotomy Between Products and Services	200
10.4	Historical Development of the Scope of Other-Regarding Behavior of Suppliers	201
10.5	Torts and Agency Relationships	206
10.6	Torts and Information	208
10.7	Manufacturing Defects	211
10.8	Conclusion	213
11	Customer-Centered Enterprise Liability	214
11.1	The Other-Regarding Customer	215
11.2	The McDonald's Hot Coffee Case	218
11.3	The General Model	222
11.4	Conclusion	224
12	Social Cohesion and Knowledge: The Intentional Torts	226
12.1	Introduction	227
12.2	Knowledge of Consequences and Social Cohesion	229
12.3	Unreasonable Consequences	231
12.4	Reasonableness Defenses	233
12.5	Conclusion	234

PART IV SUMMARY AND IMPLICATIONS	
13	The Whole in One 237
13.1	General Methodologies 239
13.2	The Analytics of Torts Cases 242
	Index 249