

Conference on Law & Morality

William & Mary School of Law

Tort Law

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Professor Heidi Hurd became the University of Illinois College of Law's 11th Dean in 2002. Dean Hurd is the author of *Moral Combat* (1999), which has been widely reviewed and translated into multiple languages. Her numerous articles in the areas of criminal law, torts, ethics and legal philosophy have appeared in the nation's top law and philosophy journals, including *Yale Law Journal*, *Stanford Law Review*, *Michigan Law Review*, *Legal Theory*, *Law and Philosophy*, *Notre Dame Law Review*, *Journal of Contemporary Legal Issues*, *Boston University Law Review*, *Australian Journal of Legal Philosophy*, and *Southern California Law Review*. Her most recent major articles include "Nonreciprocal Risk Imposition, Unjust Enrichment, and the Foundations of Tort Law" in *Notre Dame Law Review* (2003), and "Negligence in the Air," co-authored with Michael S. Moore, in *Theoretical Inquiries in Law* (2002). Dean Hurd serves as co-Editor-in-Chief of *Law and Philosophy*.

The Role and Relevance of Baselines in Tort Law

Numerous concepts in tort law rely on the notion that a plaintiff's or defendant's actions has brought about some deviation from a pre-existing baseline that is of moral consequence. Take just three examples. Numerous theorists have sought to describe an omission as an act (e.g., the unplugging of a respirator) that simply returns another to an antecedently-existing baseline (e.g., that of naturally dying). Others have sought to predicate liability for justified loss transfers (for example, the taking of another's food and shelter in a storm) on the claim that, without such liability, persons would be unjustly enriched, for they would have elevated themselves above their natural baseline (e.g., that of freezing to death in a winter blizzard). And others have sought to predicate the limits of good Samaritan obligations on the baseline conditions to which others are entitled, arguing, for example, that while one has an obligation not to allow another to sink below an antecedently-specified baseline, one need not go to lengths to lift another above that baseline (and thus, a doctor in a remote village must give a sick person what is in the standard medical inventory provided to the village, but not what is in his own, private collection, when that goes beyond what the standard supply would provide). This contribution proposes to demonstrate how numerous doctrinal and theoretical constructs in tort law presuppose the notion of a baseline condition, and further proposes to examine the conceptual coherence and moral relevance of such a commitment.