

Foreword

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Reasonableness and Risk: The Torts Scholarship of Gregory C Keating

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This issue brings together the papers presented at a symposium held at the University of Girona on 13 March 2024, organised by the Chair in Legal Culture, to discuss Gregory C Keating's latest book, *Reasonableness and Risk: Right and Responsibility in the Law of Torts* (Oxford University Press 2022). The event featured insightful contributions by Jenny Steele (University of York), Felipe Jiménez (USC Gould), Silvia Zorzetto (University of Milan), and Diego M Papayannis (University of Girona), followed by a thought-provoking reply from Gregory C Keating himself. The entire symposium was captured on video.¹

The discussions in the symposium revolved around Keating's ambitious effort to articulate the foundational principles of tort law through the prominent ideas of reasonableness, risk, responsibility, and justice. His approach bridges distributive and interpersonal justice while rejecting both the strict formalism of Kantian theorists and the reductive tendencies of economic analyses. The contributors engaged with these themes from varied angles, reflecting the richness and interdisciplinary character of Keating's work.

The contributions are published in the order in which they were presented at the symposium:

First, Jenny Steele's article emphasises the importance of heterogeneity in understanding tort law. She defends Keating's dynamic and flexible approach, which

¹ See <<https://youtube.com/playlist?list=PLkf6kBA56LKz6an2JIL1cEJMSqXF1d8MS&si=Fuwnzi-n6qW8Jp3Z>>.

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prioritises the stable function of tort law as a mediating institution rather than fixating on a rigid protection of specific rights or interests. Her analysis examines the balance between acts and activities within tort law and focuses on how these distinctions inform questions of risk management and responsibility. In particular, Steele's discussion of liability in the context of autonomous vehicles illustrates the adaptability of Keating's framework to contemporary challenges.

Second, Felipe Jiménez's article develops the question of adaptability further, contrasting Keating's instrumentalist account of tort law with the Kantian formalism espoused by authors such as Weinrib and Ripstein. Jiménez praises Keating's pragmatic approach to legal institutions and argues that instrumentalism makes Keating's theory context-sensitive and thus more plausible. However, he also points out a potential problem for those who adhere to the conventional view of tort law: by understanding the ability of tort law to achieve particular social goals as contingent, Keating opens the door to a reassessment of the justification of existing legal doctrines. Far from undermining Keating's theory, this emphasises its openness and responsiveness to evolving social needs.

Third, Diego M Papayannis critically examines the interplay between distributive and interpersonal justice in Keating's framework. While recognising the importance of Keating's treatment of core interests such as safety and bodily integrity, Papayannis challenges the implications of Keating's account of strict liability. He argues that Keating's way of distinguishing between negligence and strict liability undermines the interpersonal dimension of tort law by overemphasising distributive concerns. Papayannis proposes adjustments to Keating's framework to better reconcile tort law's dual commitment to interpersonal responsibility and social justice.

Finally, Silvia Zorzetto's article turns to the philosophical underpinnings of Keating's concept of reasonableness and explores its ethical and methodological dimensions. Zorzetto examines the interplay between reasonableness – which is distinct from rationality – and principles such as non-harmful interference, universalizability and proportional balancing. She argues that Keating's conception of reasonableness captures both the ethical orientations embedded in tort law and the limitations of purely mathematical approaches to cost-benefit analysis. Her analysis underpins the idea that reasonableness is not only a central principle in tort law, but also a bridge between diverse legal traditions, making Keating's insights relevant beyond the Anglo-American context.

Together, these articles form an overarching dialogue that not only evaluates Keating's contributions to tort theory, but also expands on them and points to new directions for future developments. Keating's detailed reply, published alongside the articles, responds directly to these comments and fits perfectly with the dialogic nature of the symposium and the vitality of ongoing debates in the field.

This collection invites the reader to engage with the complexities of tort law and its fundamental principles, and demonstrates the continuing relevance of Keating's work to both theoretical enquiry and practical application. We hope that this issue will stimulate further reflection and engagement with the ideas explored in the symposium among both American and European scholars.