Aurelia Colombi Ciacchi/Christine Godt/
Peter Rott/Lesley Jane Smith (Hrsg.)

Haftungsrecht im dritten Millennium
Liability in the Third Millennium

Liber Amicorum Gert Brüggemeier

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Vorwort

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Die vorliegende Schrift ist Gert Brüggemeier zum 65. Geburtstag gewidmet. Freunde, Weggefährten und Schüler sind zusammengekommen, um ihm etwas für die vielfältigen Anregungen zurückzugeben, mit denen er die an diesem Buch Beteiligten schriftlich wie mündlich über Jahre hinweg bereichert hat.


die prozessorientierte Organisation anknüpft. Hier erntet er nicht nur die juristischen Früchte dessen, was er zuvor gesellschaftstheoretisch durchdrungen hatte (Vorstudien zu einer Wettbewerbsrechtstheorie, 1974; Entwicklung des Rechts im organisierten Kapitalismus, 2 Bde. 1977/79). Vor allem lässt er Haftung aus der singulären Betrachtung heraus und bettet sie ein in ein modernes system- und verfahrensbezogenes Denken über Sicherheitsregulierung und Qualitätsmanagement (Sicherheitsregulierung und EG-Integration, 1984; Rechtsprobleme von Qualitätsmanagementvereinbarungen im EG-Binnenmarkt, 1998).


31. Januar 2009

Preface

Aurelia Colombi Ciacchi, Christine Godt, Peter Rott, Lesley Jane Smith

This volume is dedicated to Gert Brüggemeier on the occasion of his 65th birthday. Friends, companions and mentees have come together to share with him the benefits of his wide-ranging inspirations over the years that are now reflected in their contributions to this work.

In the course of his academic life, Gert Brüggemeier has dealt with many issues, ranging from economic history, theories of private law and competition, comparative law, the modernisation and Europeanisation of private law, insurance law, through to law and economics. His particular influence – and that which is wholeheartedly acknowledged by his contemporaries – has been the decisive impact on the legal theory of liability in torts. In his earlier years in Frankfurt as assistant to Rudolf Wiethölder (1973-78), Gert Brüggemeier was concerned with the structure of delict and the regulatory function of civil liability (Entwicklung des Rechts im organisierten Kapitalismus, vol. 1, 199-219). If it transpired, this subject was never to lose its hold on him. His work on civil liability today claims international recognition (Prinzipien des Haftungsrechts, 1999; Common Principles of Tort Law, 2004; Haftungsrecht, Struktur, Prinzipien, Schutzbereich, 2006). His books have been translated into many languages and latterly into Japanese and Chinese. The contributions included in this volume all deal with "his" main topic, liability.

What was so particular about his approach to the law of liability? At the outset, there was his critique of the monolithic German law concept of legal rights (Rechtsgüter) and doctrine of outcome-oriented wrong (Erfolgsschutz). Early on, he re-positioned negligence liability and the individual duties of care (Verkehrspflichten), into the main focus (Deliktsrecht 1986, 125). His fine-tuning of the doctrine of wrongful conduct (Verhältnisrecht) leading to liability for direct and indirect harm brought clarification. Finally, he developed the double track model of two-tier liability for negligence and three-tier liability for intentional wrongdoing. Beyond the narrower confines of delict, Gert Brüggemeier's name is also associated with central issues of civil liability. Three further ideas were thereafter developed: firstly, his understanding of the link between civil liability and compensation for damage on the one hand, with insurance law on the other, as two pillars of "liability" (AcP 182 (1982), 385; Deliktsrecht 1986, 54). It was Gert who introduced students to insurance law, not as a special subject for the select few, but as part of the general civil law of damage regulation. This was more than merely importing real-life parameters into teaching. His second move was in re-defining civil law judges as regulators (IJ 1986, 969). Gert Brüggemeier provided a dialogue-based, democratic justification for the increase in judicial governance, carving out a direction for the law of civil liability (case law, the decrease in steering effect of Parliamentary statutes, the regulatory downflow of private law), which he and many of his companions thereafter focussed on over the years. Thirdly, and of greatest importance is his contribution in 1991 to organisational liability (AcP, 191 (1991), 33). In this, he justifies—for the first time for a broader audience — the law of modern enterprise liability linked to process-structured organisation. With this contribution, he was able to draw on previous
work on social theory (Vorstudien zu einer Wettbewerbsrechtstheorie, 1974; Entwicklung des Rechts im organisierten Kapitalismus, 2 vols 1977/79). He separates liability altogether from any one singular perception and embeds it in a modern system and procedurally linked structure of safety regulation and quality management (Sicherheitsregu- lierung und EG-Integration, 1984; Rechtsprobleme von Qualitätsmanagementverein- barungen im EG-Binnenmarkt, 1998).

From the beginning of the 1980s, he became involved with the Europeanisation of private law. From this perspective, he made a marked contribution to the reform of the German law of obligations (Contribution to the 60th Assembly of the German Lawyers Society, 1994). He explored the "Constitutions for a civil Europe" (Verfassungen für ein ziviles Europa, ed. 1994), with the divergencies and convergence of legal cultures in Eu- rope (Unterschiedliche Rechtskulturen – Konvergenz des Rechtsdenkens, ed. with H.-D. Assmann and R. Sethe, 2001), and with the transnationalisation of law (Transnationalisierung des Rechts, 2004). He is a long-standing member of the Society for Comparative Law and from the 1990s onwards, became a committed leader within the project "The Common Core of European Private Law" (ed. with A. Colombi Ciacchi and P. O’Callaghan: Personality Rights in European Tort Law, forthcoming).

Gert Brüggemeier joined the University of Bremen in 1978 (his doctoral degree was submitted to Frankfurt University in 1973 after his state examinations in Saarbrücken, 1969, and Wiesbaden, 1973). Within the various functions he fulfilled, he contributed decisively to the development of the Law Faculty as Faculty Spokesman and Dean (2001-2003) as co-organiser of the Graduate School of Risk Regulation and Private Law (1991-1998), as long-time Director of the Centre of European Law and Politics (ZERP, 1991-2004), as co-editor of the "Alternativ-Kommentar" (1979-83), as co-founder of the Hanse Law School (2002) and as co-ordinator of the EU Research Training Network (RTN) "Fundamental Rights and Private Law in the European Union" (2002-06). In all these activities his work was perceptible to the outside world. He was a visiting scholar at UC Berkeley Law School for the first time in 1980. Later on he undertook research at Yale Law School, New Haven (May 1996-Feb. 1997). He was a Visiting Professor at Tulane Law School, New Orleans (Feb.-Apr. 1999), at the Université de Fribourg, Switzerland (Apr.-May 2004) and at the Université de Paris I (Panthéon-Sorbonne) (May-August 2004). Finally, he spent a remaining sabbatical at the University of Strathclyde, Glasgow (Oct. 2004-Feb. 2005) whilst completing his review of comparative tort law.

Gert Brüggemeier was at all times concerned to maintain his contacts to legal practice. From 1988 to 2003 he sat as a Member of the Hanseatic Court of Appeal of Bremen, returning to full time academic work in 1995. He was also a central figure within the Society of Law in Bremen (Juristische Gesellschaft Bremen), coordinating and inviting many high-ranking guest speakers to the Hanseatic City of Bremen to contribute towards its culture of legal debate.

His contribution to scholarship is outstanding, a true academic personality, a pro- moter and mentor. For Gert Brüggemeier it was not merely a question of intellectualism or his own professional advancement. Nor was it the responsibility towards the institutions in which he moved. He offered continuous and loyal support, even in difficult times. The editors of this book wish to thank him sincerely for this.

31 January 2009

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