

# Death of Contract and the Rise of Tort

Robert H. Bork

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### Recommended Citation

Robert H. Bork, *Death of Contract and the Rise of Tort*, 77 Cornell L. Rev. 1021 (1992)  
Available at: <http://scholarship.law.cornell.edu/clr/vol77/iss5/17>

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# PANEL III THE DEATH OF CONTRACT AND THE RISE OF TORT

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*Hon. Robert H. Bork* †

## INTRODUCTION

The subject for discussion is individual responsibility in the context of tort law and contract law. However one feels about it, and I assume there is considerable diversity of opinion among the panelists, it seems beyond dispute that the law has changed radically in the past couple of decades. These changes often relieve persons of obligations they have undertaken. Such changes do not occur in isolation; changes in judge-made law may reflect strong currents in the culture. Law reflects those changes and tends to reinforce them. There will, of course, be resistance to change and when that resistance occurs, we are entitled to call the conflict a cultural war.

It is not clear to me how to describe in a single phrase what is happening in our legal culture. One thing we are seeing is, as Peter Huber put it in his book, a move from individual responsibility to collective responsibility. Nowhere is this more true than in tort law, and the movement away from individual responsibility may be very strong in constitutional law as well.

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