

ABSTRACT

Beyond Debiasing: Overconfidence in Tort Law

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Overconfidence is a distortion of perception, resulting in an inflated estimation of one's future success. Overconfidence is considered one of the most widespread psychologically-generated biases in human judgment. Overconfidence may undermine the accurate and calculated estimation of risks. Behavioral law and economics scholars have addressed the issue of overconfidence, considering the possible role of tort law in restraining or correcting this judgment error. Debiasing overconfidence through tort law is not an easy task. For example, overconfidence may lead to the assumption of excessive risks, undermining the deterrent effect of liability rules. Even if the potential tortfeasor knows that overconfidence may be construed as negligence, the imposition of such liability would not as such correct the overconfidence problem and will be unlikely to encourage the adoption of optimal ex ante precautions. In this paper we unveil an interesting paradox: legal forgiveness of overconfidence may be a valuable second-best solution, when debiasing through tort law cannot effectively be achieved.

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