

Turning, finally, to the third group, wrongs arising through negligence, we are confronted with a theory of responsibility which makes a standard of conduct the test of the wrongful character of the act done. That, of course, is entirely an objective basis of liability, the theory finding its *raison d'être* in the obvious justice of requiring one who has conducted himself carelessly in respect of a duty owed by him to another, to make amends for his carelessness in damages. If there can be said to be any *subjective* side to the legal doctrine of negligence it consists in a purely passive state of mind on the part of the wrong-doer toward the consequences of his carelessness, such a state of mind as negatives the presumption of intention to produce the injury suffered.

Clearly, then, if the authorities support the proposition that the element of intention does not enter into the theory of legal liability for injury arising from negligence, it is both incorrect and misleading to characterize negligence as a "form of *mens rea*." If *mens rea* denotes "criminal intent," and negligence is opposed to "intentional injury," surely it is a mere antilogy to make such a characterization.

Let us examine some of the leading authorities for the purpose of testing the soundness of the proposition that we have just stated.

A modern writer has very truly said that "the legal duty to exercise care has its foundation in the requirements of civilized society. . . . The Roman law recognized the duty of a citizen '*alterum non laedere*,' and appreciated the significance of the obligation requiring the exercise of care"^(e). It is undoubtedly true that the common law of torts has been worked out by English judges on lines more or less distinctive, but that the principles of the Roman law have been of incalculable assistance to them cannot be disputed. Particularly is this true of the subject of negligence. In respect of the state of mind of the wrong-doer, the doctrine of *culpa* in the Roman law is in entire agreement with the doctrine of negligence as it obtains in our law to-day; and we have never seen the Roman doctrine more accurately

(e) Jones on Negligence of Municipal Corporations, § 3.