

## ALFRED CONARD

*Guido Calabresi\**

I have never heard Al Conard lecture. Nor have I been in a seminar with him. In the twenty or so years that I have been teaching law I expect that I have seen him perhaps half a dozen, perhaps a dozen, times. Yet I, like countless others who may never have even met the man, and whose name he might not recognize, am his student. For I, like all those who have read his work, have in a profound sense been taught by him. He can no more control who all of us are than can a manufacturer of tennis balls control the dog to which some unknown child of an unknown customer will toss his product in order to make the animal run and jump.

Of course the manufacturer knows, or ought to know, that tennis balls can end up in the mouths of dogs. And it is not impossible that some will wish to hold such manufacturers responsible if the balls should chance to harm the dogs. Conard also knew, when he “committed” scholarship (as Grant Gilmore might say), that the uses to which his work would be put — the influences of his thoughts — would be distant from his own immediate concerns, and that the people who would be influenced would frequently be unknown to him.

Fortunately for many of us, product liability has not been extended to works of scholarship. Yet moral responsibility may nonetheless remain. It is *not* unfair to ask of the scholar: was there a defect in your product because of which it has proven noxious in a context with which you did not concern yourself, but which after all was not all that unlikely?

Too often, in fact, such serious defects do exist in our work. It may even be the case that the more original and important the product the more likely it is to prove noxious in the hands of some well meaning but ill-suited users, which may or may not explain our reluctance to impose liability. It is worthy of note, however, that Conard’s “products” give the lie to the universality of such a view. Thus, in my field, Torts, what he has done was, and is, highly original and important. Yet the care with which he “made” his products has been

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such that they have proven beneficent in the hands of the ill-suited no less than in those of the adept. It is impossible, for example, to reread *Automobile Accident Costs and Payments* without enjoying that special pleasure one feels when one uses again a finely tooled, beautiful instrument or machine — truly innovative when made — and finds that after many years it still works well and is as elegant as ever. His unknown students can't complain; they, and their students, have only gained from Al Conard.

I, however, have an advantage over them — I know Al in addition to his work. His work has made me his student; knowing him allows me to claim him as a friend. How can this be when we have seen each other only rarely? The answer lies in the kindness, wisdom, yes, and sharpness, with which on each occasion he has given direction, and affection too, to this his younger colleague. The first time was when I was about to enter into law-teaching, the next when I had first written something new — and therefore imperfect — in Torts, the last was a year ago when I gave the Cooley lectures at his law school and for the first time tried to take a retrospective look at my own field; three special times, and hence three crucial times to see and talk with Al Conard.

I am no longer the young man starting out who first met Al, but I am young enough, and so is he! I therefore relish future special times when I shall need the benefit of his warm, wise, and never flabby guidance, just as I look forward to reading him in years to come and being his student in that classic way as well. I am honored to join in honoring him and to greet him with the greeting used among friends in ancient times: *ad multos annos!*