

BOOK REVIEWS

ACCIDENTS, COMPENSATION AND THE LAW. By P. S. Atiyah. London: Weidenfeld and Nicolson. 1970. Pp. xxvii and 633.

I could not agree more with the sentiments of Professor Linden that the book under review will be ignored by Canadian lawyers and legislators only at their own peril.¹ For the author has performed a *tour de force*. Not just a description and critical analysis that places the law of torts, the workings of the private insurance industry, and the social security and welfare schemes of the State in watertight compartments he has perceived these as society's instruments for resolving the manifold difficulties accompanying the plight of the accident victim and has tried, therefore, to construct a synthesis of the various solutions. Briefly, almost half the book is spent in discussing the present tort system and demonstrating how poorly it, whether in the form of fault or non-fault liability, performs its self-appointed tasks. The author then moves on to the topics of private insurance and of public welfare legislation which in its detail, though less so in underlying philosophy, may have somewhat less relevance for the Canadian reader. The synthesis that is then pursued leads quite naturally into the objectives which any proposed scheme in this area will have to satisfy and into joining issue with some of the vast array of opinion that one finds recently written on this subject.

For it would not be unfair to say that a great deal, probably a surfeit, of ink has been spilled upon it. Just recently, for example, in these very pages, one finds expressed two opposing points of view.² Insofar as accidents are concerned, should the tort system, in its present or modified form, be retained? Should it be altered or exorcised in favour of a (private or public, compulsory or voluntary, fault or no-fault) far more comprehensive and victim-oriented insurance scheme? Should such a scheme include accidents of all kinds and disease, or should it be confined to injuries on the highway? In addressing himself to these and other questions, Professor Atiyah, though now in Australia, is conscious of the British context in which many aspects of his work have been written,³ but however much the experiences of reformers from Britain and the Antipodes may favour more comprehensive social welfare plans,⁴ the reams written by Americans on the subject underline generally a far different philosophy, one that bespeaks the more conservative and *laissez-faire* bias founded on a diet of individualism and the apotheosis of Economic Man.⁵ However, it is fortunate that Canadians are slowly, and in their usually pragmatic fashion, producing solutions of their own

¹ Linden, *Book Review*, (1971) 49 Can. B. Rev. 146 at 152.

² Laycraft, *Reforming the Automobile Tort System*, (1971) 9 Alta. L. Rev. 22; Palmer, *Abolishing the Personal Injury Tort System: The New Zealand Experience*, (1971) 9 Alta. L. Rev. 169.

³ E.g., Atiyah, *Accidents, Compensation and the Law* 606 (1970).

⁴ E.g., Ison, *The Forensic Lottery* (1967); *supra*, n. 3; Palmer, *supra*, n. 2.

⁵ E.g., Calabresi, *The Costs of Accidents* (1970); *Symposium on Nonfault Automobile Insurance*, (1971) 71 Col. L. Rev. 189.

making. Albeit confined as yet to the automobile accident, an older Saskatchewan plan is now being joined by a variety of enactments from British Columbia, Ontario, Manitoba and Alberta. These may be serving only as a breathing-space, for the reader of Atiyah's book, as well as the writings of others such as Calabresi and Palmer, cannot but immediately remark upon a universality in their scope that presages the relentless erosion of other areas over which the law of torts as it relates to personal and property loss presently enjoys hegemony.

From another vantage point, this book illustrates a utility and effectiveness which are likely to accompany the more functional study of what is now often fed to the law student. For example, once safely past the intricacies of a first-year course in Torts, he may wonder why the courts,⁶ and, more pertinently, the scope of his own course on the subject, eschewed much if any reference to private insurance coverage and other forms of compensation available to an injured litigant. How very much less satisfying and instructive it must seem to him to study Torts, Insurance and Social Legislation as discrete entities when, either as one interested in the policy questions that so much permeate what Professor Atiyah and others have written or even as someone concerned almost exclusively with the solicitor's task of working within the system as it now is, he might study them as lively and interacting components of a larger whole. What better emphasizes this than the political drama that accompanied the enactment of Manitoba's programme, the "hard-sell" publicity campaign presently being pursued by private automobile insurers in Ontario and elsewhere, and, simultaneously, their response to criticism and the demands of the market in the form of new and broader coverage.⁷

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⁶ *E.g.*, *Koebel v. Riv* [1958] O.R. 448; *Hellenius v. Lees* [1971] 1 O.R. 273 at 279-281, *affirmed* by Supreme Court of Canada, 27th April, 1971. *But cf.*, *Lauchbury v. Morgans* [1971] 2 W.L.R. 602 (C.A.).

⁷ *E.g.*, Ross, *New Development in the Settlement of Automobile Liability Claims*, (1971) 48 J. Urban L. 449; *The Edmonton Journal*, 28th April, 1971, at 53.

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FOREIGN INVESTMENTS AND INTERNATIONAL LAW. By George Schwarzenberger. London: Stevens; New York: Praeger. 1969. Pp. xxiii and 237. £ 3.18s.

Until after the Second World War the number of international lawyers interested in international economic law was somewhat small, and most of these were concerned with international financing and monetary matters. The tendency was to regard many of the issues falling within this field as questions of private international law. One of the main causes for this was that there was, with the exception of the socialist countries, comparatively little state control of international business relations and but few treaties concerned with such issues. Among the few writing in the field of the public international law aspects of the problem was Professor Schwarzenberger, and he