BOOK REVIEWS

THE FORENSIC LOTTERY—A CRITIQUE ON TORT LIABILITY AS A SYSTEM OF PERSONAL INJURY COMPENSATION. By Terence G. Ison. London: Staples Press. 1968. Pp. xi and 226. £3 3s.

This book is a plea for reform of the principles of tort liability which govern personal injury cases. The author spends the first thirty pages dealing with the deficiencies of the present system of tort liability. He dwells on the capricious factors of the system we now use. Also, he makes well the point that the cases which are tried and disposed of favourably to the plaintiff constitute merely the tip of the iceberg.

The author then discusses alternative proposals that are either in operation or that have been suggested by various persons. The advantages and disadvantages of each system are displayed. During this discussion the reader may feel that the author has not dealt adequately with some of the broader implications of these proposals. For example, it may be felt that the social cost of malingering may be disproportionately larger than the brief treatment accorded it in the section on "Sick Pay." This chapter finishes with a diagram of how much is spent in Britain *per annum* on the various forms of relief discussed.

Mr. Ison outlines his proposal in Chapter Four. This proposal involves the abolition of tort liability for personal injuries. To supplant this a compensation fund would be set up by the State and it would derive its income from a charge on such identifiable activities as can be shown to have resulted in injuries and diseases and from other sources (such as taxes). There would be no investigation into the cause of the injury or disability and no enquiry into fault. This would supersede any scheme of compensation for victims of crimes of violence as well as disposing of the costly and protracted resolution of the negligence issue which the court now undertakes. The ramifications of this and the levy which he proposes are very plausibly argued in detail by Mr. Ison.

At page 61 Mr. Ison suggests that the sums to be paid to an injured individual should be related to his previous salary and should be taxable. It is admitted that most modern States have a large machinery for the collection of tax but it does seem to be administratively wasteful for the State to pay out, then subsequently collect again, a sum which promises to be fairly large.

In Chapter Five the author deals with industrial injuries very competently, analysing all the relevant factors. In Chapter Seven he considers the international ramifications of his scheme, on the hypothesis that it has been introduced in Great Britain. The second, and larger, part of the book is devoted to appendices supporting the main thesis of the book.

Whether one approves of Mr. Ison's book or not depends largely on how receptive one is to the ideas contained in it.[1] In either case the

[1] Those who are not convicted by Mr. Ison's overtures are represented by Professor D. M. Walker in (1968) 84 L.Q.R. 399. I am indebted to Professor D. T. Anderson for this reference.

work is a useful contribution to the literature on the subject and will provide stimulating reading for all.

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OMBUDSMEN FOR AMERICAN GOVERNMENT? By Stanley V. Anderson (ed.). Englewood, N.J.: Prentice-Hall, Inc., 1968. Pp. 176.

This paper-bound book is yet another in the increasing number of recent contributions to the literature on the subject of the Ombudsman. The subject is one of special interest to Albertans, who have had the first Ombudsman in Canada since September, 1967. The principal other jurisdictions already having Ombudsmen are the Scandinavian countries, New Zealand, the United Kingdom and New Brunswick. In the United States of America, only the state of Hawaii has passed an Ombudsman statute (in 1967) but no Ombudsman was to be appointed by the Hawaii state legislature until at least 1968. In Canada, the government of the Province of Quebec undertook, in the last Speech from the Throne, to introduce the Ombudsman (or Public Protector) in that province. We in Alberta will naturally be primarily interested in seeing how the institution develops in our own province. Nevertheless, it will be of considerable interest to us to see the institution finding a home in other provinces and states in North America, in the knowledge that those other jurisdictions will be looking to the Alberta experience for guidance.

This book contains five essays, each on a different aspect of the subject. Professor Donald C. Rowat of Carleton University, Ottawa, opens with a general discussion of "The Spread of the Ombudsman Idea." He points out that in most jurisdictions where there is an Ombudsman, the latter rarely criticizes the substance of decisions because he realizes that in such matters he should not substitute his judgment for that of the responsible administrators.

> Since the line between the content of a decision and the way in which it is made is a thin one, the Danes have wisely given the Ombudsman a chance to intervene if necessary, by using a vague word to restrict his powers. He may challenge a decision if he thinks it 'unreasonable'. The Norwegian law restricts his powers a little more by saying that the decision must be 'clearly unreasonable.' The New Zealand law, on the other hand, may have gone too far in the other direction, by allowing him to intervene if he thinks a decision is 'wrong'.[1]

The Alberta Statute, s. 20,[2] sets out exactly the same grounds of intervention as s. 19 of the New Zealand Act, that is where the decision was "unreasonable, unjust, oppressive, improperly discriminatory," based on a "mistake of law or fact," or was "wrong," or where a discretionary power has been exercised for an improper purpose or on improper grounds, or on the taking into account of irrelevant considerations or where reasons should have been given for the decision.

Professor Rowat also criticizes the "Ombudsmouse," as the Parliamentary Commissioner for Administration, recently created in the United Kingdom, has been called. In Professor Rowat's opinion, the differences between the British scheme and the legislation found in the other Commonwealth jurisdictions are so great that "one hestitates to

1 At 17.
2 S.A. 1967, c. 59.