gative abuses are too easy when the accuser has complete domination over the accused. In short, both books discuss the bail legislation but not the bail process. As yet, there is no book on the latter topic although it is obvious that one is needed.

The other major criticism I have is that, in describing the bail legislation, neither book analyzes the policy, theory and assumptions underlying the Act and its amendments. It is disappointing that both books were written without any articulation, let alone critical analysis, of these assumptions.[57] There is not even any attempt to point out the possible inconsistencies in policy and theory between the original Act and the 1976 amendments. This omission is fatal if one hoped that either book might act as a catalyst for improvement or reform of the bail laws.

In summary, Scollin's book is likely to be of more value than Powell's for lawyers and judges who may be looking for an uncritical but accurate and complete summary of the bail legislation and cases. Although both authors are to be congratulated for their efforts in contributing to the scarce supply of Canadian legal literature, it is hoped that future editions will include some analysis of the assumptions, theories and processes underlying the bail laws.

G. A. FERGUSON *

FOUNDATIONS OF THE LAW OF TORT. By Glanville Willams and B. A. Hepple. Butterworth & Co., 1976. Pp. xv, 182. ($16.50, paperback $7.70)

A great many books on tort law have appeared recently in anticipation of the report of the Pearson Commission.[1] One of these is *Foundations of the Law of Tort* by Glanville Williams and B. A. Hepple.[2] This is a thoughtful, interesting and lucid analytical study of the subject written by two such eminent authors.

---

[57] For example, why did Parliament single out murder and the trafficking or importing of narcotics as the two offence categories in which the onus is on the accused rather than the Crown? Is it because persons accused of murder and drug offences are more likely to fail to appear for trial or to commit further offences than persons accused of other types of crimes? According to the data available to the Department of Justice and Parliament, the answer is no. Why then? In the case of murder, I feel the shift in onus was part of the "peace and security" sop fed to the public to pacify anger and fear over the abolition of capital punishment. In the case of drug offences, the shift in onus may be at least partially explainable by the fact that the Department of Justice, which is responsible for the introduction of the amendment, is also responsible for the prosecution of drug offenders.

* Faculty of Law, University of Victoria.

[1] ROYAL COMMISSION ON LIABILITY FOR INJURY TO PERSONS AND THINGS (Pearson L. Chairman, appointed December, 1972).

[2] G. WILLIAMS & B. HEPPLE, FOUNDATIONS OF THE LAW OF TORT (1976) [hereinafter cited as FOUNDATIONS]. *See also* C. BAKER, TORT (1976); R. DIAS & B. MARKESINIS, THE ENGLISH LAW OF TORTS (1976); H. STREET, THE LAW OF TORTS (6th ed. 1976); P. WINFIELD, WINFIELD AND JOLOWICZ ON TORT (10th ed. W. Rogers 1975); J. FLEMING, THE LAW OF TORTS (5th ed. 1977); J. CLERK & W. LINDSELL, CLERK AND LINDSELL ON TORTS (14th ed. 1975); J. SALMOND, LAW OF TORTS (17th ed. R. Heuston 1977).

Both authors are renowned for their work in several areas of law. B. A. Hepple is an authority on comparative social and labour law, Professor of Law at Canterbury University, a full-time Chairman of Industrial Tribunals and co-author of *Torts: Cases & Materials.*[3] He is the author of the last two chapters of *Foundations of the Law of Tort,* dealing with insurance and social schemes as alternatives to tort law in accident cases, and co-author of the first four chapters. Glanville Williams has made important contributions to so many areas of law including jurisprudence, legal education, criminal law, contracts and tort law. His work includes both the scholarly study and the actively creative. Professor Williams, who is shortly to retire from the University of Cambridge, where he has held a Chair since 1968, has been an active participant in law reform. His interest in tort law has spanned his whole career: his first book, in 1939, was a treatise on the *Liability for Animals.*[4] In 1950, *Joint Torts and Contributory Negligence* was published, followed shortly by an article on "The Aims of the Law of Tort",[5] which at that time was the first to deal with the basic question of whether the tort law of the 19th century ought to be replaced by alternative methods of injury compensation. The present book, *Foundations of the Law of Tort,* is an extension of that article and a re-examination of its theory. It reflects continuous involvement with a question which is now debated by many jurists in both common law and civilist countries. In England it has resulted in the appointment of the Pearson Commission in 1973. When the report of this Commission is handed down, substantial reforms in the large field of accident compensation may be expected.

This volume is not like Street or Salmond or Fleming. It is not and is not meant to be a comprehensive account of rules in all areas of tort law. Rather, it seeks to come to an understanding of the underlying principles and aims of tort law. The focus of this book is almost entirely upon accident cases, both traffic and industrial. The title, therefore, would be more indicative of the book's content if it specified this limitation. There is no doubt, however, that as it stands it will appeal to a wide audience, not only to lawyers and law students.

The book begins with an immensely readable account of some fundamental questions. The first chapter deals with the scope and function of tort law and lists six purposes of the law. The second chapter, entitled "The Ghost Story", is the obligatory excursion into history. A rather long third chapter deals with damage. Its length is understandable in light of the authors' interest in accident compensation. In the fourth chapter, entitled "Fault", the authors note that the fault principle is the basis of all traditional tort law. Limiting themselves to accident cases, they question the usefulness

---

[3] B. HEPPLE & M. MATTHEWS, TORTS: CASES AND MATERIALS (1974).

[4] G. WILLIAMS, LIABILITY FOR ANIMALS (1939). Since his first book on tort, Glanville Williams has published numerous important writings in many areas of law. *See, e.g.,* Williams, *The Risk Principle,* 77 L.Q.R. 179 (1961), which is regarded as a cornerstone of tort law.

[5] Williams, *The Aims of the Law of Tort,* 4 CURRENT LEGAL PROB. 137 (1951).

of this principle for the purpose of compensation. This leads, in the last two chapters, to the discussion of alternatives: various loss distribution schemes. Insurance, they conclude, even no-fault insurance, does not appear to be a more effective tool. Predictably, the authors point to social insurance schemes as the best solution, allowing a possible residual role for tort law. Much of this argument was developed in Williams' seminal article. [6]

The discussion evolves from the investigation into the purpose of tort law, which is first defined as "reparation" or compensation, but is qualified in a later context to follow the definition in Williams' article. Tort law is found to have no uniform purpose. For negligent torts, the aim is mainly compensation and deterrence is secondary; for intentional torts, deterrence is the primary aim, with punishment in the sense of retribution the secondary goal.

Restitution is among other functions of tort law which are recognized to a lesser extent. This is a topic that standard textbooks relegate either to a single footnote (Fleming) or to a brief mention (Street, Winfield & Jolowicz). The difference between an action in quasi-contract and one in tort is termed "almost metaphysical" but it is well defined by what these two remedies *do*: the emphasis in quasi-contract lies on the benefit unjustly received by the defendant; the emphasis in tort lies on the loss suffered by the plaintiff. A further difference would be the distinction between torts where the defendant has no financial gain, as in torts against the person. In that case the plaintiff's action in tort could only compensate him for the damage. If, however, through his tortious conduct the tortfeasor directly or indirectly derives a gain which ought to accrue to the plaintiff, the latter has the option of waiving his tort action and bringing an action in quasi-contract. This he will do if the gain from the committed tort exceeds his damages. The field of unjustified enrichment is reluctantly being admitted into common law reasoning and has not meshed into the body of common law. This accounts for a number of incongruities; for instance, restitution in quasi-contract can be had only for money, while restitution of a chattel may be effected only through an action in tort for detinue or conversion. [7] Increasing sophistication is indicated by *Phipps v. Boardman*, [8] an action for restitution against an inadvertent tortfeasor. It was decided that in such a case the repayment of the unjustified gain may be reduced by the amount of the defendant's input in money or labour as long as the damage is fully compensated. Recent as the acceptance of the concept of unjustified enrichment is to common law, Williams discussed it in his 1951 article—15 years before Goff & Jones! It is all there: restitution *via* tort law or restitution *via* quasi-contract, the parallel and the difference between these two remedies. Actions in property torts rest on the principle of deterrence, but also on the principle of unjustified enrichment.

---

[6] *Id.*

[7] R. GOFF & G. JONES, THE LAW OF RESTITUTION 429 (1966).

[8] [1965] Ch. 992, [1965] 1 All E.R. 849 (C.A.), *appeal dismissed*, [1966] 3 All E.R. 721 (H.L.).

One function of tort law that received a low rating by the authors was the declarative purpose, "to decide the rights of the parties". Yet, within a civilized society, a tool to ensure certain standards of conduct may be of great value. A tort action may well serve the vindication of underlying values through the award of nominal damages, if there was no real damage, or through exemplary damages over and above general damages. The continued existence of the ancient tort of trespass to the land may be explained as a remnant of the old nominate torts kept by an extremely traditional society. Another explanation would be its usefulness in laying down principles of consideration for one's neighbour.

An alternative method of studying the functions of tort law is historical review. The historical chapter is a brief, pleasant and lucid exposition which will ease the novice through the jungle of English legal history, at least as far as necessary to understand some of the terms still used. Besides, it is helpful to appreciate the purposes for which some tort remedies were introduced. Also, as the old forms of action on occasion may still rule us from the grave, we should have an acquaintance with them. Can it still be that "the mental process of the competent lawyer" is trying to fit the facts into one of the old forms of action?[9] This would be surprising since there has been time enough since the Judicature Act for practitioners to turn from a law of torts to a law of tort. The general principle of liability is now largely accepted; the categories of tort law are never closed, if there must be categories.

Most of the famous textbook writers are influenced by the old actions in the organization of their books. The authors of this book suggest we break away from this arrangement and divide the study of torts, as some have already done, according to interests protected: personality, family relation, property, reputation and so on. Each section is then sub-divided into intentional torts and negligence. There is, however, much to be said for the traditional arrangement with its two major sections, intentional torts and negligence. After all, the mental state of the offender is the first stage of a tort; moreover, different principles guide the two sections. This call for a more logical textbook structure, incidentally, reveals an attitude more like the civilist jurist's analytical approach. It may reflect Professor Williams' involvement with codification and law reform; it may also represent one more instance of increasing rapprochement between the two major legal systems.

Tort Law at Present

The main chapter is devoted to fault, the major area of tort theory. The message of this chapter may be summed up in this way: the heart of tort law is the fault principle, and this rests either on the notion of justice, which is questioned by the authors, or on the notion of deterrence, which also has its weaknesses.

---

[9] FOUNDATIONS, *supra* note 2, at 36.

Concerning justice, the authors find themselves discussing policy, the ultimate resort when deciding between two parties' rights, both of which seem valid. Even in less ambiguous cases justice may not be done when compensation for accidents is achieved only at enormous expense and after time-consuming procedures, resulting in ultimately reduced compensation, paid long after the greatest need has passed. Often the negligent defendant cannot be found, or may be unable to pay. Moreover, it is a demand of justice that compensation be made not by an insurance company but by the person who caused the damage. In his earlier article, [10] Glanville Williams, basing his thoughts on Kant, made the distinction between ethical retribution and ethical compensation. Ethical retribution is concerned with the effect on the defendant, who has to pay (suffer) for his wrong; ethical compensation takes the plaintiff's viewpoint, that compensation, wherever from, is the important thing. In the present book the authors discuss justice only as ethical compensation. Why has the idea of ethical retribution been given up? Is it progressive thinking, or yet another step replacing personal relationships with anonymous conflict resolution?

The ineffectiveness of tort law as a deterrent is cited in several examples, among them the inability of tort law to deter the insane, who are responsible in tort as if they were sane. [11] The insane are usually made responsible in tort "if they knew the quality or consequences of their act", a much stricter test than imposed by the criminal law. Yet any deterrence-factor is lost on an insane mind, and it is admitted that it is the quest for compensation (justice?) which prompts this approach. This remark opens up so many problem areas which are not within the scope of the book that one wishes the authors had planned for a format broad enough to allow for detailed treatment of such questions.

Other areas that negate the deterrent effect in tort law are statutory rules, strict liability and vicarious liability. In the discussion of negligence and statutory duties one is aware that the book is written in England. While the basic questions of tort law are not bound to any legal system, and while the cited cases represent "common" common law, the statutes discussed are of limited interest to the non-British reader. However, a general observation concerning the strict liability aspect of statutory duty applies to the Canadian scene as well:

> The picture that emerges is that the law of negligence slips easily into something barely distinguishable from strict liability. Although the line between the two is sharp by definition, in practice it depends upon the stringency with which the court interprets the standard of care, the use of devices such as *res ipsa loquitur*, the willingness to create torts out of statutory duties, and the exceptions that will be read into the statute. The

---

[10] *Supra* note 5.

[11] FOUNDATIONS, *supra* note 2, at 120 n. 2 refers to Lord Denning's dictum in White v. White, [1950] P. 39, [1949] 2 All E.R. 339 (C.A.), a divorce case. The earlier Canadian case of Buckley v. Smith Transport Ltd., [1946] O.R. 798, [1946] 4 D.L.R. 721 (C.A.) with its different solution is not mentioned.

> tendency to turn liability for fault into strict liability results from the sympathy felt for the injured victim. [12]

The authors complain about the erratic use of the strict liability principle. They argue that strict liability as formulated by Blackburn J. in *Rylands* v. *Fletcher* [13] has either been replaced by statutory regulation or may for all practical purposes be replaced by actions in negligence. The authors express [14] dissatisfaction at the unwillingness of the courts to allow damages in a tort action for breach of statutory duties regarding the use of defective vehicles on the highway, citing *Phillips* v. *Britannia Hygienic Laundry Co.* [15] in support. This may apply in England, but a number of North American cases of more recent vintage point in another direction. In *Sterling Trusts Corporation* v. *Postma* [16] Cartwright J. allowed tort liability when he declared that violation of statutes gives rise to *prima facie* evidence of negligence. He referred to two earlier cases: in the *Falsetto* case [17] the Ontario Court of Appeal decided that violation of statutory duty did not give rise to a civil action; the opposite view was taken by the same court, in the same year, in *Irvine* v. *Metropolitan Transport Co.* [18] The Supreme Court preferred the *Irvine* decision over the *Falsetto* decision. [19]

The authors find vicarious liability totally irreconcilable with fault, and therefore of no deterrent value. They list and reject three justifications for the principle of vicarious liability: the "benefit theory" is explained sketchily and is easily discredited; the "deterrence theory" is expanded in the direction of responsibility for work-routine; the more familiar "selection theory" is not mentioned, although it is a way to rationalize vicarious liability by placing fault on the employer's initial act of selecting his employee. Finally the authors list the "theory of social insurance" and argue against it as an inefficient and improper tool which misuses tort law and the judiciary to provide a system of social insurance. It follows that vicarious liability can be explained, although not justified, by the judges' desire for an equitable decision.

Another feature of tort law which the authors consider in conflict with the deterrence theory is the possibility of double punishment (or perhaps double deterrence) through criminal law and tort law, for the same act. In many cases it is exactly the additional threat of being made liable for damage and injury that will be the real deterrent factor. This aspect of tort law may be one of its strongest points. In other cases where there was a danger of inequity through double punishment, the civil courts have shown themselves aware of it and have not awarded exemplary damages, even

---

[12] *Id.* at 103-04.
[13] L.R. 3 H.L. 330, 37 L.J.Ex. 161 (1868).
[14] FOUNDATIONS, *supra* note 2, at 115.
[15] [1923] 2 K.B. 832, 93 L.J.K.B. 5 (C.A.).
[16] [1965] S.C.R. 324, 48 D.L.R. (2d) 423 (1964).
[17] Falsetto v. Brown, [1933] O.R. 645, [1933] 3 D.L.R. 545 (C.A.).
[18] [1933] O.R. 823, [1933] 4 D.L.R. 682 (C.A.).
[19] *See* Linden, Comment, 45 CAN. B. REV. 121, at 127 (1967).

though the circumstances of the crime warranted it. When a heavy sentence or fine had already been imposed, the civil courts awarded only general damages. [20] The authors are not unaware of the points that can be made in favour of the deterrence theory. After saying that it is "at least superficially" attractive, they give an overview of situations which illustrate the educational and prophylactic value of the legal remedy of a tort action.

The extensive chapter on damages deals both with torts in general and with accidents. It includes some major problem areas, such as how to take into account the plaintiff's benefits from other sources when assessing damages. Surprisingly no mention is made of considering the plaintiff's savings on income tax, which in England has been settled by the *Gourley* case. [21] The House of Lords ruled that when assessing damages for loss of future earnings, allowance must be made for income tax which would have reduced these future earnings. In this way the defendant obtained a benefit at the expense of the treasury of the state, amounting to a considerable saving if the plaintiff was in a high tax bracket. The reasoning behind this decision was a strict adherence to the compensatory principle: the assessment of damages is worked out from the point of view of the plaintiff's *restitutio in integrum*, to award him, as best as can be calculated, the exact amount of his damage. This reasoning has freed itself completely from the notion of retributive compensation and is also unconcerned with the deterrent effect of a payment of damages. *Gourley* [22] has not been followed in Canada. In *The Queen* v. *Jennings* the Supreme Court of Canada adopted Lord Keith's dissent in *Gourley* and held that tax advantages should accrue to the plaintiff, as the award "represented compensation for loss of earning capacity and not for loss of earnings". [23]

The review of Lord Devlin's three categories permitting exemplary damages is of interest to Canadian readers even though this limitation is not formally followed here. The typical *Cassell & Co. v. Broome* [24] situation, where the defendant's anticipated gain from a tort surpasses the damages, allows for punitive damages. This could be based on the principle of unjustified enrichment, giving the plaintiff the gain made by the tortfeasor, or on the principle of deterrence, "to teach a wrongdoer that tort does not pay", [25] in which case the damages may be even higher than the gain. The position of other common law countries on punitive damages is dealt with in a footnote.

The authors also discuss the vexing problem of lump-sum payments. The alternative, periodic payments with the possibility of reassessment

---

[20] Radovskis v. Tomn, 21 W.W.R. (N.S.) 658, at 663, 9 D.L.R. (2d) 751, at 755 (Man. Q.B. 1957).

[21] British Transport Commission v. Gourley, [1956] A.C. 185, [1955] 3 All E.R. 796 (H.L.).

[22] *Id.*

[23] [1966] S.C.R. 532, 57 D.L.R. (2d) 644.

[24] [1972] A.C. 1027, [1972] 1 All E.R. 801 (H.L.).

[25] FOUNDATIONS, *supra* note 2, at 68, quoting Lord Diplock.

according to the plaintiff's changing needs, is too quickly discarded as not feasible, even though social insurance schemes seem to have no difficulty in awarding and administering periodic payments. If payments were indexed to the rate of inflation it would only be necessary to reassess them in the event of drastic changes in the situation of the plaintiff or cancellation of the debt at death of the plaintiff. A reform in this direction would make tort law a great deal more useful and less arbitrary, and the opportunity of later review would take some of the agony from the assessment of general damages. This system works well in civil law countries where even the insurance companies have learned to live with it.

At the end of the chapter on fault the stage has been set. Tort law has been found unsatisfactory in many respects for the compensation of victims of accidents. Professor Hepple prepares for the coup-de-grâce. He deals with the alternatives to tort law, all of which are forms of risk distribution: private insurance, compulsory private insurance and comprehensive government schemes. The author is obviously a partisan of social loss distribution schemes.

Loss Distribution Schemes

In the chapter "Insurance" Hepple finds that although the insurance system provides compensation, it offers neither deterrence nor justice. An insured person, motorist or entrepreneur, may be rather less careful than if he were to pay personally for the consequences of his acts. The counter-argument, that he will ultimately pay for his lack of care through higher premiums, may not always hold true. In a competitive system with a number of insurance companies wooing the public, a competing company may forgo the increased premium. Every insurance policy contains a limitation clause to protect the insurer against "catastrophe risks" that could wipe him out. Here the government has to step in and provide assistance. The government has also intervened in every field where insurance has been made compulsory. Automobile liability insurance and workmen's compensation are the most important areas, but there are many others such as compulsory liability insurance for solicitors in England. Government intervention making it obligatory for certain groups of people to insure themselves against liability is a stepping stone to further government interference. In present court procedure, however, fault is still considered the underlying principle of tort law and whether the defendant is insured is irrelevant to the determination of this question. Therefore, it is not possible to discuss insurance in court despite the fact that most actions arise in those segments of tort law where insurance is a matter of course. This represents a collision of two principles, that of fault and that of risk distribution.

The insurance system does not provide justice either. A defendant's personal liability to pay for damage done will depend on whether he is insured rather than on being at fault. A plaintiff will receive compensation for damage suffered only if an insured or well-heeled defendant can be

found. The arguments between insurance companies may be time consuming and premiums may go up after a claim. All in all, Hepple finds the insurance system almost as inadequate as tort law.

In assessing the efficiency of both the tort system and loss distribution schemes, Hepple give an interesting description of the position of various Commonwealth countries. With respect to industrial injuries he sees tort law as expensive and time consuming, and derived of a wicked past. Concerning the latter he enumerates three 19th century "judicial inventions" designed to help the entrepreneur: *volenti,* contributory negligence as a total defence, and the common employment doctrine. Statutory intervention has gradually brought England from a system of loss distribution at first based on voluntary private insurance to a social scheme governed by the Social Security Act 1975, first enacted in 1946 as the National Insurance (Industrial Injuries) Act. Unlike the Canadian Workmen's Compensation Act, the English Act permits an additional action in tort for damages higher than those covered by the insurance. Hepple also discusses the situation in Canada and the U.S.A. where insurance exists either with or without the right to a tort action, as workmen's compensation for industrial accidents and, in some jurisdictions, as no-fault insurance for motorists. In workmen's compensation schemes the employer pays the dues; in no-fault automobile insurance everyone insures himself. The Canadian workman has an option between a tort action and a claim under workmen's compensation, the one choice expensive and time consuming, the other limited as to the amount of compensation. In the case of no-fault automobile insurance tort law may be employed to obtain damages in excess of the maximum or for non-economic damages not provided for by those schemes. Hepple concludes that these government imposed insurance schemes do not improve much on tort law.

In the tradition of other English jurists such as Atiyah and Ison, he finds salvation in a comprehensive state-run social insurance. One is already in operation in New Zealand for all categories of accident, including workers and automobilists. A scheme proposed in Australia is more comprehensive, including sickness and even congenital diseases as well as accident. If the needy are being looked after, why distinguish between them and exclude some? Does the Australian proposal carry the idea of risk distribution to its logical conclusion or *ad absurdum*? Under the English National Insurance Act, 50,000 appeals are heard annually, as well as 2,500 second appeals. There are also a large number of administrative decisions and appeals under the New Zealand Accident Compensation Act. This raises the question as to the costs and efficiency of a social compensation scheme. A recent study [26] indicates that administrative costs within the tort system are equal to the compensation paid out, while administration of industrial injuries schemes cost only 11-12% and for "other social insurance benefits" just 4%. One

---

[26] *Id.* at 158 n. 1 quotes Lewis & Latta, *Compensation for Industrial Injury and Disease,* 4 J. Soc. Pol'y 25, at 50 (1975).

would have to check carefully to see what these figures exactly mean. Are government bureaucrats, though large in number, that much cheaper than lawyers? Comprehensive schemes are funded through general taxation as well as special taxation of specific risk groups. It does not seem justified, therefore, to talk about social welfare; the payments received, even in the proposed Australian scheme, are not alms, they are legal rights.

Has Tort Law a Future?

Hepple's view concerning the future of accident compensation is in accord with that which Williams expressed in his 1951 article, where he predicted with approval the move to state insurance for traffic accidents. There Williams said that for an ordinary traffic accident caused by "casual inadvertent negligence" [27] a deterrent system is ineffective, and the justification of ethical retribution (with a punitive accent) is weak. All that the victim and society would want in such a case is compensation, as full and as speedy as possible. This, Williams maintained, can be done better outside of tort law. Hepple sees a similar shift in regard to industrial accidents, from pure tort liability, to a combined tort-cum-insurance system [28] and ultimately to a social insurance system. The close collaboration of both authors become noticeable when Hepple, in his text uses literally the sentence with which Glanville Williams ended his article in 1951: "The general picture is one of administrative action supplementing and even supplanting the spasmodic action of the law of tort, on the principle that prevention is better than punishment, control better than compensation." [29]

Hepple is willing to admit the continued role of the law of tort concerning intentional torts and the regulation of economic activity, an important sector of modern life for which he shows little interest. Finally, he also admits a residual role of tort law even in accident cases, where the threat of a tort action may produce a generous settlement (thalidomide cases) or improved government supervision (Asbestos Regulations). The citation of these incidents near the end of the book may counteract a great deal of what was said before and leave the reader with the hope that tort law will remain as a regulative factor of social life.

A quotation from Oliver Wendell Holmes, written in 1897, which introduces chapter six sums up the common denominator of all compensatory schemes: "[T]orts . . . today are mainly . . . . [i]njuries to a person or property by railroads, factories, and the like. The liability for them . . . sooner or later goes into the price paid by the public." It seems then, that loss distribution is the essence of all accident compensation schemes. It is admittedly so for insurance schemes where large settlements are defrayed by raising the premiums which in turn will be generated by higher prices for the goods or services provided by the insured. Similarly, in social programs

---

[27] *Supra* note 5, at 173.
[28] In Canada this stage is possible only in relation to traffic accidents.
[29] FOUNDATIONS, *supra* note 2, at 170 (uncited).

where the members of society contribute to the fund, they will all ultimately pay for the settlements. The proponents of loss distribution through insurance or social programs believe that only those schemes provide wide and relatively painless means of defraying costs. It can be argued, as Holmes said, that in a majority of accident cases tort law will do just the same. Large amounts awarded in manufacturer's liability cases or in industrial accident cases will be gleaned from the public through higher prices of the product. The same effect occurs in malpractice suits against professionals, even if insurance covers the damages, because the loss will ultimately be passed on to the public when professionals raise fees to meet higher insurance premiums.

Assuming that all damage compensation in accidents ultimately leads to loss distribution, the only question remaining is which is the most effective way. Will the social security schemes breed an army of bureaucrats and a clumsy apparatus? Is the frank renunciation of the deterrent principle advisable? Shall we give up all relationship between tortfeasor and victim after tort has been committed, or should it continue in the making of amends? Would something else be lost? Would we want to give up the continuous monitoring of practices through our courts? Would we deprive ourselves of the courts' rulings as a means to reaffirm the boundaries of acceptable behaviour? On the other side, could a facelift of the common law, especially a thorough overhaul of rules of procedure, remove its weaknesses while leaving us its advantages? Could tort law borrow periodic payments, with the possibility of reassessment, from the loss distribution schemes?

The immense number of accidents occurring daily in our industrialized, overpopulated world make the most efficient and most equitable way of paying for damages and injuries a necessity. There are two views: the one advocates efficiency in accident compensation through a comprehensive social insurance system; the other is reluctant to part with past practice because it is not perfect and trade it for something that will be far from perfect. The report of the Pearson Commission will help to decide. Meanwhile, *Foundations of the Law of Tort* serves as an admirable presentation of the social security approach.

DOROTHEA WAYAND *

THE COMPOSITION OF LEGISLATION. LEGISLATIVE FORMS AND PRECEDENTS. (2d ed. rev.). By Elmer A. Driedger. The Department of Justice, Ottawa, 1976. Pp. xxix, 408. (Canada, $10; Other countries, $12)

Every draftsman should have this book in his library. There is simply no other text on the subject of legislative drafting as comprehensive in scope,

* Department of Law, Carleton University.