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## BOOK REVIEWS

**Basic Protection for the Traffic Victim.** By Robert E. Keeton and Jeffrey O'Connell. Boston: Little, Brown and Company. 1965. Pp. 624. \$13.50.

This book is one of a number of recent publications dealing with the problem of handling automobile accident claims. Much of the book is devoted to the development of two basic ideas: (1) The present system for compensating automobile accident victims is inadequate and the plight of these victims has become a social problem of community-wide concern about which something needs to be done—it pays too little, too late, at too great a cost, financially and psychologically, and inequitably distributes what is paid among claimants; and (2) The presentation of a proposal designed to eliminate many of the inadequacies and shortcomings of the present system so as to provide more efficient and effective compensation for automobile accident victims and to allocate part of the cost to the activity of motoring. The proposal substitutes a form of compulsory loss insurance out of which accident victims can be compensated directly for economic loss, subject to maximum limits, from injuries arising out of ownership, maintenance or use of a motor vehicle without regard to fault.

As part of the context in which these ideas are developed, the authors collect, briefly state and critically analyze a number of efforts and proposals by others for providing more effective compensation for automobile accident victims. In this area they examine legislative efforts, including compulsory tort liability insurance acts, financial responsibility laws, unsatisfied judgment fund acts, and uninsured motorist coverage, and conclude that none of them furnishes a satisfactory solution. Various proposals of individuals and groups who have studied the problem are also considered and rejected. Proposals examined include the Columbian Plan, the Saskatchewan Plan, a Proposal of the Committee on Personal Injury Claims of the California State Bar, the Ontario Proposal, Green's Loss Insurance, Ehrenzweig's "Full Aid" Insurance, and Morris and Paul's Plan, as well as the methods used in a number of foreign jurisdictions. Although these various proposals and plans

are summarily stated, the criticism of them is frequently repetitive, and one sometimes finds it necessary to suppress the vision of a line of straw men being successively toppled over; the discussion of them in the book adds to its contribution. First, the bringing together in one place, even in skeletal form, of the thinking of many of the people who have studied the problem is valuable. Second, the discussion demonstrates that, although the contribution of broad ideas has been useful, consideration now must be given to many of the details that necessarily must be dealt with before any proposal can be a realistic plan for legislative action.

Professors Keeton and O'Connell identify the "fault system" as the prime competitor to their proposal and accordingly spend much of their time lambasting it. In their condemnation of the fault system they burden basic arguments that its expense and delay prevent effective compensation of traffic victims and that part of the costs of injuries arising out of the ownership, maintenance and use of motor vehicles should be distributed to the activity of motoring with a barrage of lesser assaults which impinge the integrity of the system and everyone who participates in it. Thus, driving is too complex an activity to determine what acts in the process of driving amount to fault; it is too familiar an activity for witnesses to observe and remember accurately what happened when an automobile accident occurs; the concept of negligence is an unsure one which the presence of liability insurance has caused judges and juries to distort; the attorney's prime concern is the theatrics of the trial; the victim foregoes treatment and rehabilitation to preserve his injuries for the view of the jury; the injured and the injurer are induced to lie and cheat to foster their interests in the litigation and so on. After such a rousing condemnation one is somewhat surprised to learn that except for limited basic protection they include the fault system as part of their proposal to allocate to negligent drivers their added contribution to the costs of motoring in cases of more severe injuries.

Several fundamental decisions are inherent in the choice between compensating traffic victims on the basis of fault and compensating them without regard to fault. To which traffic victims is protection to be extended—to substantially all or only to those who have been injured by another's wrongful act? Does the public interest extend to the plight of the traffic victims and those dependent on him,

whether his injury arises from his own substandard conduct, from that of another person, from his own negligent conduct or from pure accident? Who should bear the cost of losses of the injured? Only those who caused the injury by substandard conduct? The victim? Motoring generally? Some combination of all?

The authors present their answers to these and a mass of lesser questions in proposed model legislation and a section-by-section analysis of it. Substantially all traffic victims should be compensated for economic losses, such as out-of-pocket expenses and work loss, up to a maximum of 10,000 dollars, subject to certain deductions, exclusions, and limits. Losses within this basic protection coverage will be distributed to all motorists through compulsory loss insurance. Generally, compensation will be obtained directly from the insurer of the vehicle in which he was riding or, if in no vehicle, from the insurer of the vehicle causing injury. Compensation will be paid as losses accrue rather than in a lump sum. Pain, suffering and inconvenience do not qualify as loss. Also all property damage is excluded from basic protection coverage. The greater of 100 dollars or ten per cent of all work loss is deductible from economic losses and thus are not compensable. Work loss benefits may not exceed 750 dollars monthly. To the extent that an injured is compensated from other sources, with exceptions, his entitlement to basic protection coverage is reduced.

Tort exception is granted to insureds, including additional insureds such as family members, unless damages for pain and suffering exceed 5,000 dollars or other damages exceed 10,000 dollars. If damages exceed the amounts stipulated, an exemption for the amount of basic protection coverage still exists although standard tort liability applies to damages above the basic exemption. Tort liability is also preserved for the 100 dollars deductible and property damages. Under this scheme a part of the loss within the basic protection coverage is left with the victim himself and part is allocated to motoring generally. Losses outside the basic protection coverage are distributed under existing tort principles.

The proposal and its detailed analysis certainly constitute a substantial contribution to the thinking in this area. The authors have attempted with some success to compromise practical and theoretical considerations in formulating a proposal which is effective to com-

pensate traffic victims and which is acceptable from a political standpoint.

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**Preachers, Pedagogues and Politicians—The Evolution Controversy in North Carolina 1920-1927.** By Willard B. Gatewood, Jr. Chapel Hill: The University of North Carolina Press. 1966. Pp. 268. \$5.95.

In 1633 the Catholic Church decreed its official view: the earth does not move. Galileo's books to the contrary were banned. The Inquisition, in an early effort at thought control, subjected Galileo to years of persecution, brainwashing, and "moral torture," finally forcing him to recant.<sup>1</sup> The principle involved in all this was a simple one: both the search for truth and the truth itself may be suppressed if either conflicts with the official view of the universe.

In the 1920's the evangelical protestant denominations in North Carolina, no doubt unconsciously, claimed the mantle of the Inquisition by attempting to suppress any belief in evolution.<sup>2</sup> There was, however, no single Galileo on whom to focus. For a time some of the Baptists tried to use William Louis Poteet of Wake Forest as a stand-in, but they never succeeded in forcing him to recant, and some of them ultimately joined a completely uncivilized group of Presbyterians in an appeal to a legislative pope for thought control by legislation. After seven years of intense and bitter struggle, the legislature finally rejected the measures and the issue died.

The North Carolina legislature, in rejecting the evolution gag laws, came out of the affair considerably better than did Pope Urban VIII in the comparable problem of Galileo. But the Protes-

<sup>1</sup> A simple account may be found in FERMI & BERARDINI, *GALILEO AND THE SCIENTIFIC REVOLUTION* 85 (Premier Books ed. 1965); it is from this source that the term "moral torture" comes.

<sup>2</sup> The first anti-evolution bill was not quite so broad, but the second provided for imprisonment of any teacher who taught "any doctrine or *theory* of evolution"; the earlier bill prohibited only the teaching of evolution as a "fact." GATEWOOD, *PREACHERS, PEDAGOGUES AND POLITICIANS* 222 (1966). (Emphasis added.) The "Platform" of the North Carolina Bible League opposed the hiring of any teachers "who hold and express views fundamentally contrary to the simple teaching of the Bible . . ." by which was meant views on evolution. *Id.* at 239.

tant Inquisitors looked considerably worse than their Catholic predecessors. Although Professor Gatewood's straightforward factual account of the whole bitter struggle in North Carolina does not draw the parallel, the facts themselves lay it bare.

The book is a scholarly one, presumably written for professional historians as a contribution to both intellectual and social history of North Carolina, but it is also a book a nonprofessional can enjoy. It is a clearly written factual account of the evolution controversy, without gloss or comment. Indeed, if there is a criticism of the book, it is that no real explanation is offered for the furor over what is surely only a scientific doctrine of little concern to laymen. It is true that a rather conventional reflection is offered to the effect that post-war anxieties of the 1920's produced a great deal of general foolishness, but this hardly seems an adequate explanation why a farmer who grows hybrid corn and who has no doubt seen innumerable mutant calves should behave like a demon when confronted with such facts. Nevertheless, the book is good reading, and it can be enjoyed on several levels.

On one level the whole affair is simply comical. Some of the preachers—a number from out of the state—who filled their tents and tabernacles and coffers by preaching fiery sermons against evolution were plainly charlatons; others, like the empty-headed William Jennings Bryan, were simply silly. Their antics were often ludicrous; in current college vernacular they were, like Batman movies, "high camp." A few politicians joined the insane anti-evolution clamor: Governor Morrison forbade the use of certain biology textbooks in public schools on the thoughtful ground that they showed a picture of a man and a monkey on the same page. "I don't want my daughter . . . to have to study a book that prints pictures of a monkey and a man on the same page," he philosophized.<sup>3</sup> Variations on this statement should offer endless possibilities. We might, on this principle, purge the Dick and Jane books from the first grades, since they show a man and a dog on the same page. ("Come, Spot, come.") Innumerable others might be eliminated on the similar principle that they show a man and—heaven forbid—a woman on the same page. (Evolution, incidentally, was widely said to be responsible for all the world's ills, including sexual license.)

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<sup>3</sup> *Id.* at 106.

The sheer foolishness of people like Governor Morrison leavens the grim malice that was deeply involved, but the malice was there and the story of it makes depressing reading in spite of the comic relief. For whatever reason, there were deep emotional commitments against "evolution" (which came to mean Germanism, Russianism, Modernism, and Evil in general); and the emotional cripples who could not bear different opinions in others were often venomous in their attacks. Some were not above outright lies. They widely said, for example, that all better scientists had rejected evolution, though as Dr. Poteet of Wake Forest pointed out, some of these "better scientists" had been dead even before Darwin had been born. The clerical bitterness ran so deep that at one point a Methodist minister attempted to beat up a man who disagreed with him—in a church sanctuary. Without the comic side to such incidents, the ignorance and malice demonstrated by the preachers of the gospel could easily leave a reader more or less permanently depressed.

But this book need not be read either for the intellectual slapstick involved or the social history. North Carolina readers will no doubt enjoy the gossip element always present in history, for a number of well-known names appear, and those who lived in the twenties will also remember the lesser lights. If there was any one defender of the schools—which, of course, were the targets of the anti-evolutionists—it was Dr. W. L. Poteet, whose courage on the evolution issue was remarkable and fully documented here. He believed, he said, both in evolution and in Genesis; for him, God had created the world through evolution. Although evolutionary theory postulated a "creation" taking millions of years and Genesis specified a creation in seven days, Poteet pointed out that Genesis did not specify the length of a day. Since a day, like everything, was God's, He could make it as long or as short as He pleased.<sup>4</sup> Poteet was not alone in standing against the censors. President Chase of the University of North Carolina took his stand as well, as did many legislators. One of the legislators was Sam Ervin, Jr., who argued that if religion needed the crutch of legislation, it could hardly have any saving power. Ervin added that he opposed the anti-evolution gag laws as an effort to "absolve monkeys of their

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<sup>4</sup> Cf. *Psalms* 90, 4: "For a thousand years in thy sight *are but* as yesterday when it is past, and *as* a watch in the night." See also 2 *Peter* 3, 8.

responsibility for the human race.”<sup>5</sup> The period covered is replete with names of men who stood on the issue. Impressive, too, was the newspaper participation. Not only the “big city papers,” but a large number of rural and small town papers opposed enactment of anti-evolution bills; indeed, it was a “big city paper,” one in Charlotte, that gave the greatest support to the gag laws.

For lawyers the book is of interest on still other levels. It is, in a sense, a case study of the politics of ideology and as such should be at least as interesting as one on the politics of personality. Lawyers, of course, had roles in the controversy on both sides. Unhappily two judges abused their judicial positions to spout anti-evolutionary views in the courtroom. More often lawyers appeared to be against the censorship. The most telling political blow against the anti-evolutionists came from lawyers. The Committee of One Hundred, which proved to be the most vicious organization formed to force adoption of anti-evolution measures, met in 1926. Two lawyers led a group into this meeting, secured permission to speak, and drew so much intemperate invective from the anti-revolutionists that, when the rowdy meeting was reported, the anti-evolution cause was all but lost. In fact a law student helped administer the final blow to the anti-evolution bill of 1927. After committee hearings in which one after another anti-evolutionists had spoken, a law student who had not been scheduled to speak “jumped to his feet when he could no longer bear to listen to ‘all this foolishness’” and assured the assembled legislators that evolutionary doctrine was harmless. The bill died in committee.

The lawyer’s question—constitutionality of anti-evolution legislation—is not a subject of this book. The book does, however, document thoroughly the religious inspiration of the anti-evolution bills, and certainly the facts reported suggest that adoption of such legislation would run afoul of the Constitution. The anti-evolution bills, had they been passed, would have been supported solely by an effort to create a “Christian commonwealth,” and that, surely, is an establishment of religion. Perhaps the more pressing constitutional problem is something else altogether. It is conceivable that a democracy might sustain a religious group and still in some sense remain a democracy. But it is not conceivable that a democracy may impose an official view of science or history; the essence of

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<sup>5</sup> GATEWOOD, PREACHERS, PEDAGOGUES AND POLITICIANS 143 (1966).

democracy is that there shall be no official views to which adherence is demanded, that there shall be no brainwashing, that there shall be no thought control. Of course, the state may control its own schools by prescribing curriculum. But to order that a course in mechanical drawing or automobile repairing be added or dropped does not prescribe an official view of man. It is a very different thing when government insists that significant facts be repressed so that an official view can be sustained. Surely government—state or federal—cannot shroud in silence the meeting at Yalta or MacArthur's disobedience of orders in wartime; and surely it cannot provide that the world is flat and lies at the center of the universe. The fact that a majority of citizens would like to believe the world is the center of the universe only points up the danger of prescribing an official "truth." On the crudest level, one need only imagine an official truth in physics and atomic chemistry; which nation would be more powerful, the one with an official truth about physics or the freely inquiring one? The authoritarian rewriting of history and fact described in Orwell's *1984*, where Big Brother prescribes the official thought for everyone, should be sufficient to convince Americans that a governmentally prescribed view cannot be dictated under the guise of controlling curriculum. What is involved is not the right of free speech as an individual right, nor even the corollary "right to hear." What is involved is free speech in the sense that free speech is a limitation upon governmental power.

Happily, if the constitutional problem is ever reached by the Supreme Court in an evolution case, it will not be reached in a case from North Carolina. But in one form or another the problem will always be with us, because we can always forget in the heat of an emotional turmoil the principle of limited government and our commitment to the pursuit of truth. That is the tragedy of the evolution controversy; so many people forgot.

Perhaps that is not the only tragedy. From a purely religious point of view the tragedy may lie elsewhere. When the Church—Catholic or Protestant—commits itself against truth and the free pursuit of it, it admits its own weakness. A number of editors recognized this in the twenties and warned repeatedly that the effort to suppress would only disillusion young people with the churches—especially since the suppression efforts were so thoroughly malicious. Certainly the Catholic suppression of Galileo turned people

away from the Church. If the Church has not the strength to face the truth, what power has it, as Sam Ervin, Jr., put it, "to save men's souls"? From the purely religious point of view, then, the tragedy of the evolution controversy was that it was a significant step in making the churches a ghetto for the mentally and emotionally crippled who did not want the truth nor the pursuit of it. Perhaps the churches today have "evolved" a healthier attitude, but the prospects in the twenties, despite such men as Poteet, looked dim indeed.

There was yet another tragic element in the affair. Whatever doubts and weaknesses drove opponents of evolution into such frenetic activity, they had spotted, in a distorted way, one reality: the "arrogance" of scientists. What they saw was at best a blurred reflection of reality, but there was something to it. The unconcern of many scientists with human values were certainly there, and today that unconcern is a pressing problem, for there is abundant evidence that both the physical and "behaviorial" scientists believe that research justifies even human experimentation by fraud and trickery.<sup>6</sup> The tragedy is that the anti-evolutionists probably sensed something of this sort of moral vacuum in the scientists and yet were unable to focus on this very real problem instead of turning it into a silly circus sideshow over evolution. Perhaps had they been able to see the real and the human problem—the lack of human values among some "scientists"—we would not today find a noted cancer researcher injecting live cancer virus into the veins of unsuspecting patients in the name of "research."<sup>7</sup>

Professor Gatewood's book is, then, full of the stuff that makes a book—explicit comedy and implicit tragedy, human ability and human inability. It is good reading on any level.

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<sup>6</sup> See Saturday Rev., Feb. 5, 1966, p. 61.

<sup>7</sup> *Id.* at 64-70.