

1970

Book Review

C. Ellen Connally

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Recommended Citation

C. Ellen Connally, *Book Review*, 19 Clev. St. L. Rev. 202 (1970)
available at <https://engagedscholarship.csuohio.edu/clevstlrev/vol19/iss1/25>

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The intellectual thrust of the book, if indeed it has any, is that any work must be permitted to be published if any literary authority would say it had any literary value or importance whatsoever. In a "number-of-angels-dancing-on-a-pin" exercise, the author attempts to distinguish between the terms *literary value* and *literary importance*, realizing the ultimate conclusions his argument would require. It would be, he says, that literary importance requires more literary stuff than literary value. It is obvious that his thesis effectually emasculates any and all anti-obscenity laws, and completely destroys society's power to regulate in this area at all. For literary critics are like psychiatrists in that, if you look around enough, you will find one who will say anything you want him to say. The author places total reliance upon the genius of the Constitution and of the First Amendment guarantees as his weapons for victory, implying that the mores of the majority of society cannot be permitted to interfere with the absolutes of the law. Oddly though, the author goes so far as to suggest that books deemed by other nations to be violative of their laws, be printed in the United States under the protection of our First Amendment guarantees, and sent back to those other countries with returning visitors from our shores. This naked attempt to violate the laws of another country is hard to reconcile with Mr. Rembar's heroic assertion of the fundamental law as the defense for his clients' actions.

From the lawyer's point of view, the book has very little to offer. It may be a literary work of great social importance. I am unqualified to judge. It tells the story of successful litigation from the viewpoint of the victor. Philosophically, certain ancient arguments regarding the uselessness of social mores are rephrased and reissued. The book closes with the prediction that, because of the author's activities, the world will be a greater place in which to live. This may all be true, but legally to paraphrase, the book is "utterly without redeeming [legal] importance."

*Reviewed by C. Ellen Connally**

VENTURING TO DO JUSTICE. By Robert E. Keeton. Harvard University Press, Cambridge, Massachusetts, 1969. 179 pages.

The setting forth of one's personal ideas and opinions, and the right of others to raise questions and objections, are basic in the reforming of both private and public law in America.

In his recently published book, *Venturing to Do Justice*, Professor Robert E. Keeton has reiterated his controversial proposal for the reform of the system of automobile negligence law in American justice. Insofar

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as the setting forth of the proposal is concerned, the book is skillfully and comprehensively outlined. However, with the merits of the proposal, I must take issue.

The early chapters of the book discuss recent changes in the area of tort law, such as strict liability, the abrogation of the doctrine of assumption of risk, and other tendencies of the courts that have altered modern tort law. Whether these changes should be instituted by the legislature or by the courts is a question that Mr. Keeton raises but does not answer. Professor Keeton suggests one major proposal in which he basically recommends a system of recovery for automobile accidents which would cover the motorist against any economic loss stemming from injury sustained, and from damage done in any type of automobile accident, regardless of fault. Contrary to the usual basis of the law of negligence—the concepts of fault and liability—his proposal would create a system similar to workmen's compensation insurance for injured motorists.

Mr. Keeton compares our present system of tort law to a "lottery for victims" based on an outmoded and inadequate distribution of fault. His proposed system would broaden liability, and impose upon the entire motoring public an obligation to compensate all victims of automobile accidents, regardless of the circumstances. Although I would concede that the needs of our society are different from those of the agrarian society in which our present day tort law arose, I cannot concede the validity of giving up decision on the merits of each plaintiff's case to a bureaucratic welfare system that seeks to have the entire society bear the cost of the negligence of a few.

Professor Keeton has provided "food for thought" for those having some knowledge of tort law. It is of some interest that he has incorporated his proposal into the current (1969) supplement to the American Case Book Series *Cases & Materials on Torts* by Seavey, Keeton & Keeton, a text specifically geared for the first year law student. Such a partisan *proposal* hardly belongs in a basic tort law casebook for the first year student.

With all due respect for Professor Keeton, a system based *not on fault*, but on the mere *existence of an injury* in an automobile accident seems to be of questionable practicality and may even be potentially detrimental to our system of justice.

Is there a solution more equitable than liability based on fault? Is it equitable for *all* motorists to contribute to an uncompensated-injury fund for those injured by uninsured motorists? Has not this area been sufficiently covered by our present system? Should the concept of *damnum absque injuria* be stricken from the legal vocabulary? We think not!