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THE AUTOMOBILE COMPENSATION CONTROVERSY*

WILLIAM E. KNEPPER†

INTRODUCTION

The Keeton-O'Connell plan for changing the automobile tort system and the present method of compensating persons injured in automobile accidents was announced in 1964. Its authors have charged that, "Measured as a way of compensating for personal injuries suffered in automobile accidents, the present system is a dismal failure."¹

In a *Time* magazine essay, the writer announced, "[T]here is no question that the U.S. desperately needs a highly effective auto-insurance system that would compensate traffic victims rapidly, fairly and at reasonable cost to policyholders."²

On October 21, 1968, the American Insurance Association, comprised of 167 capital stock property liability insurance companies, issued a report of its Special Committee to Study and Evaluate the Keeton-O'Connell Basic Protection Plan and Automobile Accident Reparations. It then announced that the present system "[i]s not responsive to today's social, economic and technological conditions involving use of the automobile and is in need of substantial change."³

Such statements are typical of the controversy about compensating persons injured in automobile accidents, a subject which is attracting so much attention today.

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⁴ *American Insurance Association Report of Special Committee to Study and Evaluate the Keeton-O'Connell Basic Protection Plan and Automobile Reparations* (1968).
There is nothing new about controversies on this subject. Professor Milton D. Green\textsuperscript{5} notes that, "The adequacy of traditional tort law as an instrument for adjusting claims for injuries arising out of automobile accidents has been challenged in legal periodicals for nearly fifty years."\textsuperscript{6} As long ago as 1932, a study conducted by Columbia University suggested a plan whereby automobile accident personal injury litigation would be removed from the courts and there would be substituted a new type of absolute but limited liability, supported by compulsory insurance, and administered by a government board in a manner similar to workmen's compensation.\textsuperscript{7}

At the present time some proposal for change appears almost daily. Most such proposals have three things in common: (1) They are plans conceived by law school professors who believe that our existing adversary system of tort law has out-lived its usefulness, (2) they contemplates payment for losses without regard to fault, and (3) they premise their conclusions on some concept of social justice.\textsuperscript{8}

Actually, today's conflict relates more to the adversary method of resolving disputes in tort actions than to the subject of automobile insurance. The American system of jurisprudence, based on the common law as modified by statutory enactments, contemplates that a person causing injury should be held liable for the damage resulting from his wrongdoing.\textsuperscript{9} The automobile liability insurance policy is designed to pay, on behalf of the policyholder, the damages for which he is legally liable, and to provide for his defense in lawsuits asserting such legal liability.\textsuperscript{10}

Recognizing that there is a need for corrective measures in the system of reparations in automobile accident cases, Bradford Smith, Jr., Chairman of the Board, Insurance Company of North America, points out that, "[V]ery few will agree on the extent and character of change that must be made in order to satisfy public requirement and,  

\textsuperscript{5}Professor of Law, Hastings College of Law.  
\textsuperscript{6}Green, Basic Protection and Court Congestion, 52 A.B.A.J. 938 (1966).  
\textsuperscript{8}See AMERICAN TRIAL LAWYERS ASSOCIATION, JUSTICE AND THE ADVERSARY SYSTEM (1968) which includes much of the material published to date regarding the Keeton-O'Connell plan described as Basic Protection for the Automobile Accident Victim. See note 1 supra.  
\textsuperscript{9}O. W. HOLMES, THE COMMON LAW, 2 (1946): "The general principle of our law is that loss from accident must lie where it falls, and this principle is not affected by the fact that a human being is the agency of misfortune."  
\textsuperscript{10}Smith, Some Thoughts on the Automobile Insurance Problem, 18 FEDERATION OF INS. COUNSEL Q. 10, 16 (1968).
more importantly, to conform to basic principles of social justice."  

It is the social aspect of this problem that is attracting much serious attention. There are those who contend that whoever accepts the privilege of operating a motor vehicle on a public highway should pay all costs resulting therefrom regardless of how the costs are incurred. Others have long asserted that the automobile is a social hazard, an inevitable result and a by-product of motor-minded American progress. Among today's writers are some who insist that: "[T]he social aspects of the problem must override virtually all other considerations... [and] the continued success of our private enterprise system is dependent upon our ability to respond efficiently to the requirements of social justice."  

On May 22, 1968, President Johnson signed into law the joint resolutions which set in motion the first comprehensive Federal study of the automobile insurance industry. This study will be conducted by the Department of Transportation. At the time of the White House signing ceremony, the President stated that, "[T]he investigation will cover all aspects of the present system of compensating accident victims under the doctrine of tort liability."  

Originally the proposed Federal inquiry was greeted with enthusiasm by insurance leaders, one of whom expressed the belief that, "[T]he Federal Government is best equipped to mobilize the talent resources and information that are available throughout the nation," and then stated that, "[T]he Department of Transportation is the proper agency to lead the study..."  

At the meeting of the Section of Insurance, Negligence and Compensation Law of the American Bar Association in Philadelphia, on August 7, 1968, the Hon. M. Cecil Mackey, Assistant Secretary in the Department of Transportation, was a speaker. In his remarks he stated:

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21Id. at 15.
24Smith, note 10, at 21 supra.
28Smith, note 10, at 21 supra.
Net premiums advanced from $2.6 billion in 1950 to more than $9 billion in 1966. In two decades the premium on a typical insurance policy has almost tripled—in some areas it has increased much more than that. Since 1958 insurance premiums have increased 2 and 1/2 times faster than the consumer price index, a rate of inflation that simply would not be tolerated if it characterized the economy as a whole....

Less than half of the dollars collected in insurance premiums are paid out to the intended beneficiaries....

What's more, auto accident victims must pay out as attorney fees at least a fourth, and perhaps as much as a third of their gross recovery....

In the allocation of compensation, the process of settlement is generally regarded as lethargic, cumbersome and bureaucratic.19

Vigorous protests against the “misconceptions and premature conclusions” of Mr. Mackey resulted promptly. J. Carroll Bateman, President of the Insurance Information Institute, responded by letter to Mr. Mackey.20 Vestal Lemmon, President of the National Association of Independent Insurers, comprising 480 insurance companies, expressed “shock and dismay” in an address to the Oregon Association of Insurance Agents, in Portland.21 The Federation of Insurance Counsel issued an analysis and rebuttal of Mr. Mackey’s statements.22 In all three protests the insurance industry spokesmen expressed concern about unsupported statements, preconceived ideas and facts about our present system which apparently have not been available to them up to this time, and which they should definitely take into account.

At its 1968 mid-winter meeting the American Bar Association created a Special Committee on Automobile Reparations, and a commission to assist it in its work. The committee and commission have been guided in their efforts by a comprehensive study outline but have been unable to complete their assignments to date.23

—Kuhn, note 16 supra; ABA Calls Open Hearing on Automobile Insurance, TRIAL, June-July 1968,
Meanwhile the State Farm Insurance Companies and the Allstate Insurance Companies are conducting wide-scale opinion studies and research projects; the Nationwide Insurance Companies have launched "a thorough-going investigation into all aspects of the problem"; and the National Association of Independent Insurers is "in the final stage of a massive study project of the entire system and will soon offer a recommended program of changes to the American people and to government officials." These programs along with other surveys too numerous to mention are indicative of the extent to which the subject of this article has captured the attention of the insurance industry in its concern to be responsive to the desires of the public.

**Liability Without Fault**

The concept of liability without fault contravenes legal tradition that goes back centuries. Mr. Justice McKenna wrote, "It seems to me to be of the very foundation of right—of the essence of liberty as it is of morals—to be free from liability if one is free from fault." The idea that people ought to be responsible for their own wrongdoing is too deeply ingrained in the public's sense of justice. This is not a concept of punishment: it is a view that one who causes injury to another should fairly and adequately compensate him therefor.

Despite the expressed conviction of leading authorities that the fault concept is not outmoded, some proponents of alternative

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24Press release of Public Relations Department, State Farm Insurance Companies, October 21, 1968. This company states that it has 11 million policyholders, all of whom are being asked their views on the key issues facing the auto insurance industry.

25Press release of Allstate Insurance Companies, quoting Chairman of the Board Judson B. Branch, October 21, 1968. This company states that it is "the world's largest stock automobile insurer."

26Letter from Virginia A. Donovan for R. A. Rennie to William E. Knépper, Jan. 30, 1968. Dr. Rennie is Vice-President of Planning, Finance and Systems of Nationwide Insurance Companies, which write automobile insurance for 1,760,000 policyholders.


28Ives v. The South Buffalo Ry., 201 N.Y. 271, 94 N.E. 431 (1911).

29Arizona Employers' Liability Cases, 250 U.S. 400 (1919).


automobile claims plans are contending that the institution of automobile liability insurance has, itself, destroyed the fault concept.\textsuperscript{32} They seem to believe that there is no validity to the fault concept unless payments for loss are made by the wrongdoer himself, instead of by insurance which he has provided and for which he has paid the premiums. Such an attitude reverts to a punishment principle instead of recognizing that both reason and morality sustain the view that the wrongdoer should make compensation to his victim for his actual loss.

Moreover, in some recent writings there has been an effort to distinguish between negligence and immoral behavior as a basis for liability. In one publication, the unidentified author states:

\begin{quote}
But after all, wrongdoing on the highway does not necessarily imply immoral behavior... Mistakes are inevitable and lead to many an accident. Negligence law holds you as much at fault for a momentary driving lapse as for drunken or reckless driving.\textsuperscript{33}
\end{quote}

Here, again, it would appear that the writer is thinking in terms of punishment rather than the legal obligation to pay damages to one’s victim as compensation for his loss.

Those who urge a substitute for the present legal system reflect an increasing determination to find some way to pay every injured person for at least part of his loss. They assert that by long delays, by court congestion, by harsh treatment of the severely injured claimant who cannot outwait the progress of the courts, by wastefulness, and otherwise, the present legal system is unsatisfactory. A California committee has said:

\begin{quote}
[T]he question for decision today is not whether fault should continue to be the basis of liability, but whether we should continue to recognize a privilege to inflict harm so long as the driver of an automobile acted with reasonable care.\textsuperscript{34}
\end{quote}

Strong words are found in a current best-seller wherein the author (a non-lawyer) states:

\begin{quote}
At present, personal-injury law fails to compensate a large fraction of the victims of accidents and unjustly enriches others, clogs the courts so badly that a fundamental institution in the society is degraded, corrupts a good fraction of the bar, the medical profession and the citizenry, and removes a basic
\end{quote}

\textsuperscript{32}See \textit{e.g.}, Keeton & O’Connell, \textit{Proponents Look at Basic Plan}, 51 J. AM. SOC’Y 153, 158 (1967).

\textsuperscript{33}Auto Insurance Reform, \textit{CONSUMER REPORTS}, Jan., 1968, at 12.

\textsuperscript{34}Committee on Personal Injury Claims, \textit{Report}, 40 J. CALIF. STATE BAR, 148, 200 (1965) (emphasis omitted).
question of social welfare and social justice from the realm of public policy to the trivial arena of squabbling among lawyers.35

Many people who read such statements will believe them. Without the means to search out the facts, the average member of the public will expect his state legislators or the Federal Government in Washington to do something to correct such abuses if they exist. When persons such as Professors Keeton and O'Connell and organizations such as the American Insurance Association talk in a similar manner, the situation becomes critical.

Yet there is much support for the liability-for-fault concept. Mr. Justice Holmes, discussing the subject, said that in the absence of fault, "[I]t is no more justifiable to make me indemnify my neighbor against the consequences, (of an accident) than...to compel me to insure him against lightning."36 Professor Calvin H. Brainard notes that the present system is founded in fairness and justice. "That those who cause loss should be required to pay for it satisfies an innate sense of fairness."37

Professor David J. Sargent takes the position that the present "[s]ystem recognizes the philosophy that a man should not profit from his own wrong."38 And even Professors Keeton and O'Connell39 concede:

Proposals to eliminate completely the common law action for negligence arising out of automobile accidents are perhaps doomed to founder as unable to muster the necessary widespread political support. Moreover, even apart from such pragmatic considerations, and on grounds of principle, to make a case for some protection regardless of fault is not necessarily to make a case for the total irrelevance of fault.40

As Glenn R. Winters, Executive Director of the American Judicature Society has pointed out:

Legal history has shown again and again that efforts to by-pass the courts cannot succeed. . . .

The judicial process has built up safeguards for the protection of litigating parties, and it is in the interest of justice for as many disputed claims as possible to be adjudicated or settled under those safeguards . . . . In so doing we may preserve

36O. W. Holmes, note 9, at 96 supra.
39See discussion of Keeton-O'Connell plan, infra.
40Keeton & O'Connell, supra note 1, at 65.
for every claimant and every defendant the oldest and most important kind of "basic protection"—the rules of evidence, representation by counsel and other elements of due process of law.\textsuperscript{41}

Those who are in touch with the efforts and activities of the insurance industry are well aware that its leaders are alert to the problems of the day. They are devoting constant efforts to provide the necessary protection to persons injured in automobile accidents. Most of them seek to obtain this result without destruction of the legal system which evolved out of centuries of struggle to balance the conflicting interests of various groups in our society.

\textit{Special Treatment for Persons Injured by Automobiles}

Proponents of alternative automobile claims plans seem to see nothing unrealistic about special attention to persons injured in automobile accidents, while ignoring the economic losses to those injured in other kinds of accidents. They advocate liability without fault to compensate automobile casualties, but relegate all other injured persons to the fault system which, according to \textit{Time} magazine, results in widely erratic settlements. In its January, 1968 essay, \textit{Time} said:

\begin{quote}
Insurance companies are notorious for over-paying small "nuisance" claims because it would cost more to fight them than to settle. At the same time, the seriously injured victim with high economic losses is often unable to wait for his case to come to trial and is forced to settle for whatever the company offers. If he does gamble on going to court, he may lose the case and get nothing. On the other hand, if he wins he may hit the jackpot.\textsuperscript{42}
\end{quote}

Most of that statement would be disputed by experienced trial lawyers and trial judges. However, the present legal system, whether or not it is correctly described, would continue to apply to all persons injured in mishaps other than automobile accidents, even if an alternative automobile claims plan were to be substituted as suggested. Such discrimination seems to confuse individual responsibility with social responsibility. The obligations of the individual are different from the responsibilities of society. Why then should the individual be expected to assume the burdens of society in respect to automobile accidents?

Moreover, if the present legal system is so much in need of change,


\textsuperscript{42}Note 3 at 20 \textit{supra}. 
its deficiencies should be corrected so it will provide proper remedies for those injured in other than automobile accidents.

It is difficult to believe that the public would be receptive to a system arbitrarily restricting automobile accident victims to recovery of their actual out-of-pocket wage and medical losses, or less. People have learned to expect compensation for amputations, deformities, scars and the pain, discomfort and inconvenience resulting from being injured. As Allstate's chairman, Judson B. Branch, stated in a recent press release:

There are far too many accidents where the suffering of the innocent is severe—the disfigurement tragic and the effect on family life devastating. Compensation for only "economic loss"—hospital bills, partial wages and the like—would be gross injustice.43

Causes of Conflict

It is easy to view the automobile tort liability system of law and the private automobile liability insurance business as parts of a single subject. With some 103 million drivers of 94 million automobiles injuring 4.3 million people, disabling 1.9 million and killing 53,000 in the last year for which statistics are available,44 it is no wonder that there is substantial public concern. The Journal of Insurance Information45 reports economic losses from traffic accidents as:

<table>
<thead>
<tr>
<th>Year</th>
<th>Loss</th>
</tr>
</thead>
<tbody>
<tr>
<td>1962</td>
<td>$ 8.8 billion</td>
</tr>
<tr>
<td>1963</td>
<td>9.6 billion</td>
</tr>
<tr>
<td>1964</td>
<td>10.8 billion</td>
</tr>
<tr>
<td>1965</td>
<td>11.1 billion</td>
</tr>
<tr>
<td>1966</td>
<td>12.0 billion</td>
</tr>
</tbody>
</table>

There are reports from the same source that the economic loss in 1967 from traffic accidents amounted to $12,442,413,000.46

Some who catalogue the ills that plague automobile tort litigation assert that the present tort liability system is "ripe for reform."47 However, it is debatable whether there is any real public clamor for replacement of the principle of liability for fault. While complaints involving rates, cancellations, insolvency and court delays relate to the present tort law system, there are strong arguments that corrections

42Note 25 supra.
44J. INS. INFORMATION, Jan.-Feb. 1968, at 25.
45See also Associated Press release May 16, 1968.
46Keeton & O'Connell, supra note 1, at 624.
may be made within the system without the necessity of changing to some program that would abolish the fault concept.

Active bar associations and enthusiastic trial judges across the country have been establishing effective pretrial procedures; developing new assignment systems; requiring extended hours, days and months for court sessions; and promulgating simplified procedures, methods and modernized programs that have been of substantial value in expediting trials without the loss of any material elements of justice. Today's methods have been improving established jurisprudence to the benefit of litigants and the public alike.

Rising Insurance Rates

Probably the most widely-voiced complaint about automobile insurance concerns the high and ever-rising premium rates. *Time* magazine asserts that in "[t]en years, the average premium has soared 55%". Yet *Time*'s news-stand purchase price has increased 150% in the same period.

The *Journal of Insurance Information* concedes that, countrywide, the increase of private passenger liability insurance averaged about 23 per cent between January 1, 1960 and December 31, 1966. Yet the family with a medium annual income pays a lower percentage of that income for automobile insurance today than it spent 10 years ago.

As The *Journal of Insurance Information* states: "[A]utomobile insurance rates are simply a reflection of the intolerable human and economic cost of slaughter and destruction on our highways." There were 94,192,599 motor vehicles on the roads in 1966 as compared with 49,161,000 in 1950; total annual premiums for each registered motor vehicle averaged $48.41 in 1950 and $98.20 in 1966; in 1967 of 112,000 accidental deaths in the United States 53,100 resulted from automobile accidents (47.4 percent), and of 10.8 million accidental injuries that year 1.9 million were automobile caused disabling injuries (17.6 percent).

In demonstrating the inflation in the three principal elements of auto insurance claim costs, the president of the National Association of Independent Insurers points to "[H]ospital expense, which has risen 354% in 20 years; medical costs, which have gone up 108.1%
in 20 years, and wages—the basis for loss of income payments—which have doubled the cost of living in 20 years.\(^{53}\)

Many families today purchase more insurance than they did a few years ago. They buy policies with higher limits to protect their improved financial standing. They also obtain more optional coverages to pay for collisions, theft, damages caused by vandalism and storms, medical expenses, towing charges, losses caused by uninsured motorists and the like. The trend today is toward two or more automobiles per family. Even though there is a special discount for insuring two or more cars under one policy, the total bill is naturally higher than for a single vehicle.\(^{54}\)

**Cancellations and Non-Renewals**

As noted in a recent law review article,\(^{55}\) there has been increasing public concern over the right of insurers arbitrarily to cancel existing automobile insurance policies and over the refusal to renew expired policies.\(^{56}\)

The insurance industry maintains that such blanket accusations are unjustified. Industry spokesmen cite statistics to show that the majority of policy terminations are made because of license revocations, excessive use of intoxicants, use of narcotics, impaired physical or mental condition of the driver, involvement in illegal activities other than traffic violations, unsafe vehicles, and other reasons that make some persons too risky to be insured at the rates charged most drivers.\(^{57}\)

In a recent article, the Commissioner of Insurance of the Commonwealth of Virginia spelled out the following facts:

Wisconsin, in a 1966 study, showed only .57 per cent of the automobile insurance policies in force are cancelled in mid-term for all other reasons than non-payment of premiums, and 2.06 per cent of the policies coming up for renewal are not renewed.

Virginia, in a 1966 study, showed 1.8 per cent of all automobile insurance policies in force were cancelled for reasons
other than non-payment of premiums and 1.4 per cent of the policies coming up for renewal were not renewed.

   Maryland, in a 1964 study, found the percentages to be 1.4 per cent on cancellations and 0.7 per cent failure to renew.
   Washington State, in a 1964 study, showed 0.9 per cent on cancellations and no figure on renewals.68

   Many insurance companies have agreed to limit voluntarily their right of cancellation or non-renewal.50 Seventeen states have imposed statutory limitations upon the right of cancellation, eighteen states now require advance notice of cancellation, and seventeen states require advance notice of non-renewal.60

   The major trade associations of the insurance industry have taken a leading role in the reform of state laws regulating the cancellation and non-renewal of automobile insurance policies. The most recent of their proposals, which would limit cancellation by insurance companies to only two reasons—non-payment of premiums or loss of driving privileges—have been approved by the American Insurance Association and the American Mutual Insurance Alliance.61

   Allstate Insurance Companies and Nationwide Mutual have recently issued "guarantees of renewal," while the Kemper Group has agreed that if an insured has been a policyholder for at least five years prior to reaching sixty-five years of age, his policy may be renewed for life.62

   All states have some form of "assigned risk" plan, so that a motorist found unacceptable because of a poor driving record or for other reasons may nevertheless obtain an automobile insurance policy.63 The rights of cancellation under such a plan may be limited but cancellation will usually be allowed if the insured "[H]as obtained the insurance through fraud or misrepresentation."64

   The industry associations have supported reasonable cancellation legislation and have pledged their members to fair treatment for all policyholders. However, industry spokesmen insist that, "[W]hile

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51Chiardi & Wienke, note 5, at 231 supra.
52Id. at 251-53.
53Id. at 221.
54Id. at 232-33.
55See e.g., Wisconsin Automobile Assigned Risk Plan, distributed by National Bureau of Casualty Underwriters, 125 Maiden Lane, N.Y. 10038 (adopted pursuant to Wis. Stat. § 204-51(2)) (1967).
sharing of risk is a basic insurance principle, comparative rating based on loss experience is an equally basic principle."^65

**Insolvencies**

Another source of complaints is the gray market that has evolved to handle high risk cases. It is contended that companies specializing in high risks are going broke "leaving all their beleaguered policyholders with nothing to show for their premiums and some of their claimants with nowhere to go for compensation."^66 The existence of this situation, albeit in relatively few instances, has brought a cry for more strict regulation by government. Congressional investigators are seeking facts in order to determine whether the McCarran-Ferguson Act should be amended.^67 At the least, it is possible that state regulatory agencies may be required to enforce standards prescribed by federal law.

**Regulation**

Meanwhile, there is a pending struggle over the designation of the ultimate regulatory agency. In the Congress and in administrative statements calling for an investigation of the entire casualty insurance industry, some Congressmen and some members of the executive branch have insisted that the record of the states is such that federal regulation is essential in the public interest.^68 Some critics even contend that the federal government should take over the automobile insurance business in its entirety and finance its administration and the payment of claims with gasoline taxes.^69

Such complaints and their accompanying proposals for change have caused leading insurance executives to demand that the insurance industry itself must give leadership in solving the automobile problem. As one such writer recently stated:

> The private automobile liability insurance business is, at this moment, faced with the question of its survival as a part

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of the private enterprise system. Also, under no less serious threat is the present automobile tort liability system of law.\textsuperscript{70}

In an address before the Section of Insurance, Negligence and Compensation Law of the American Bar Association, Jacque W. Sammet, of the Continental National American Group of insurance companies, called upon the insurance industry to "join in sponsoring a totally candid, independent study of equal magnitude [with the Department of Transportation study], by an impeccable, nationally respected research organization."\textsuperscript{71} He emphasized the necessity of obtaining "solid facts" that would allow the insurance industry to carry its story "to the two hundred million-person jury that sits, maybe slowly and not always with the most sophisticated wisdom, but sits nevertheless, in judgment . . . ."\textsuperscript{72}

**Proposals for Change**

**The Keeton-O'Connell Plan**

When *The Automobile In Court* was published in 1960, it noted "a renewal of interest, in some quarters, in automobile accident compensation concepts which would compel the payment of compensation regardless of fault."\textsuperscript{73} This trend has increased. Despite the fact that statutes and common law now generally require a person injured in an accident to be paid his whole loss, if he is entitled to recover, the most-discussed of the current proposals\textsuperscript{74} would effect a substantial reduction in his benefits. The theory appears to be that if such a person is to be paid in every case regardless of fault, he


\textsuperscript{71}Remarks of Jacque W. Sammet before the Section of Insurance, Negligence and Compensation Law, American Bar Association, Philadelphia, Pennsylvania, August 7, 1968. Mr. Sammet also stated:

The system needs a change. But the change cannot be a unilateral one by the insurance industry. Tort liability law, fundamentally as it was before the invention of the automobile, also must be considered as an element that might be changed. The existing dissatisfaction with the automobile insurance mechanism is, in fact, a direct criticism of the underlying tort liability system. A system, which by its very nature, denies any recovery to some, awards varying relief to others and which is viewed as inequitable by many.

\textsuperscript{72}Id.


\textsuperscript{74}"Basic Protection," as explained by Professor Robert E. Keeton and Jeffrey O'Connell in their books, *Basic Protection for the Traffic Victim* (1965) and *After Cars Crash* (1967). The authors of this plan presented it to a U. S. Senate sub-committee on March 15, 1968, in support of the pending proposal to conduct a two-year study of the automobile insurance industry.
should be willing to accept less than his actual loss in view of his certainty of recovery.

This plan, conceived and espoused by two professors of law, seeks to substitute limited payments to all injured persons computed as to “net economic loss only”, paid in installments on a month-by-month basis, restricted in amount over a minimum deductible, and confined within an arbitrary top figure imposed without regard to the nature of the loss or the identification of the injured person.75

Subtractable Benefits

One aspect of the Keeton-O'Connell plan that is usually not emphasized by its advocates is that it virtually eliminates all benefits now recoverable under the collateral source rule. The Keeton-O'Connell benefits are designed to reimburse “net economic loss” only. Other benefits such as those derived from workmen's compensation, Blue Cross, Blue Shield, Medicare, Social Security, accident and health insurance, wage continuation plans and sickness benefits, would first be deducted before any Keeton-O'Connell allowances would be payable. Also a standard deduction of $100 would be applied to each claim; the first $5,000 of pain and suffering loss could not be recovered; 15 percent would be deducted from wage losses to account for income taxes; wage losses would be limited to $750 per month, and $10,000 would be the maximum total payment for out-of-pocket losses per person.

Actuarial discussions of the Keeton-O'Connell plan disclose that about 75 per cent of the benefits theoretically payable as “basic protection” would be eliminated by the non-duplication provisions, referred to in the proposed law as “subtractable benefits”.76 In an article by James H. Durkin, a member of the American Academy of Actuaries and a consulting actuary with Peat, Marwick, Mitchell & Co., the author concludes:

It is then perfectly evident that, after taking into account the enormous weight of 'subtractable benefits', Basic Protection liability turns out to be significant for only a small part of the population, and trivial for the big majority.77

77AMERICAN TRIAL LAWYERS ASS'N, supra note 8, at 222. See also Basic Protection—Diminished Justice at High Cost, 8 FOR THE DEFENSE 73 (1967).
Cost Reductions

By virtue of such reductions in benefits, some proponents of the Keeton-O'Connell plan assert that it would reduce the cost of automobile insurance. Conversely, other estimates are that this plan might increase costs by as much as 19 to 35 percent.

Since claims in excess of the limited amounts for which "basic protection" would be provided could still be litigated on a fault basis, some observers see no let-up in the prosecution of automobile accident cases and, accordingly, only rising costs because of payments to now-uncompensated victims. It is fair to assume that claimants would look to Basic Protection for recovery in non-liability cases, but would seek full benefits and pain and suffering allowances in cases where fault could be shown. This would be expensive!

There are not sufficient figures now available to make reliable estimates of cost and, as is usually the case, some experience would be necessary in advance of dependable conclusions.

Regardless of the merits of their proposal, Professors Keeton and O'Connell have made a significant contribution. The interest and attention generated by their publications, lectures and seminars have helped immeasurably to promote discussions and studies of the automobile problem. In this connection, one prominent insurance executive has said that the fact that the insurance industry has not instantly embraced such a revolutionary proposal does not denote indifference or resistance to change. "It can just as well, and in this case does, denote a prudent concern for the public interest."

The Complete Personal Protection Automobile Insurance Plan

On October 21, 1968, the report of the American Insurance Association's Special Committee to Study and Evaluate the Keeton-O'Connell Basic Protection Plan and Automobile Accident Reparations was released to the public. In a cover letter, T. Lawrence Jones, President of American Insurance Association (AIA), noted that the report was the result of a year-long study having as its purpose the

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78Keeton & O'Connell, supra note 2, at 155; see TRIAL, Oct.-Nov. 1967, at 45. See note 81, at 8 infra.
81Report of Special Committee to Study and Evaluate the Keeton-O'Connell Basic Protection Plan and Automobile Accident Reparations, issued by American Insurance Association, 85 John Street, New York, N.Y. 10038 (September 9, 1968), 16 pp. and 10 exhibits.
analysis of present problems and dissatisfaction with the existing system of automobile insurance, and the analysis of modifications and alternative systems which might better meet the needs of the motoring public and the insurance industry.

This plan is obviously patterned on the Keeton-O'Connell Basic Protection Plan and is much like it, although AIA suggests some modifications. For instance, the AIA proposal asserts that:

The first and foremost change is the treatment of collateral sources. The cost of motoring can be equitably distributed among automobile owners only if automobile insurance is made primary, which the Keeton-O'Connell plan failed to do. Basic protection insurance should be made primary, but duplication of other benefits should be avoided wherever possible.\(^{82}\)

Again, the AIA proposal contends that, the Keeton-O'Connell mandatory dual option property damage provision is cumbersome, unnecessary and inefficient. Also, where Keeton-O'Connell’s plan fixes a limit of $10,000 for payment of "net economic loss", the AIA proposal recommends that the insurer's liability for economic loss be \textit{unlimited} as to total dollar amount. It does establish a maximum of $750 per month for work loss, which would involve a 15 percent reduction to reflect income tax advantages for non-taxable payments, and it fixes a limit of $1,000 for funeral and burial expenses.\(^{83}\)

Finally, the AIA committee "emphasizes that it recommends a complete automobile accident reparations system as distinguished from any part fault, part non-fault proposal."\(^{84}\) The proposal would exclude payment for pain and suffering but would "provide extra payment to persons who sustain permanent impairment or disfigurement in automobile accidents to compensate them for such injuries which cannot be measured by economic loss."\(^{85}\)

Appended to the report of the AIA committee are ten exhibits which are schedules claimed to support the committee’s contention that premium savings with respect to automobile insurance could amount to 29 percent under the AIA proposal as compared to 28

\(^{82}\)Id. at 8. The somewhat ambiguous final clause of that statement may be explained on page 15 where it is said: "By making the benefits for economic loss primary, the system can be administered more efficiently and the insured can avoid the expense of duplicate benefits through voluntary election of non-duplicating collateral sources."

\(^{83}\)Id. at 6.

\(^{84}\)Id. at 8.

\(^{85}\)Id. at 5. It is suggested that this additional benefit should not exceed 50% of the amount payable to the claimant for his hospital and medical expense and should vary according to the degree of impairment or disfigurement.
percent under Keeton-O'Connell's plan as introduced in Rhode Island [S.B. 512 (1968)], or 23 percent under a modified Keeton-O'Connell plan.\textsuperscript{86} In arriving at these percentages the committee conducted a controlled claims survey to collect data,\textsuperscript{87} and compared the estimated costs under the three plans with "fully adequate present rates [for] liability insurance with limits of 25/50/5; $1000 medical payments insurance, uninsured motorists insurance and collision with a $77 deductible."\textsuperscript{88}

Other Proposals

There are various other proposals for radical changes in the present system of compensating automobile accident victims,\textsuperscript{89} although the Keeton-O'Connell plan and the American Insurance Association proposal are the most complete of any presented to date. While the AIA recommendations has not yet been offered in the form of proposed legislation, it is so much like the Keeton-O'Connell plan that legislation to enact a Keeton-O'Connell basic protection plan could readily be converted into a proposal for the AIA recommendation.

In addition to the alternative claims systems noted in The Automobile in Court,\textsuperscript{90} the Saskatchewan Plan,\textsuperscript{91} the Puerto Rican Law,\textsuperscript{92} the Ontario Proposal,\textsuperscript{93} the California State Bar proposal,\textsuperscript{94} the Insurance Company of North America plan,\textsuperscript{95} and the recommendations of Professor Alfred P. Conard and his associates\textsuperscript{96} are being espoused by various proponents.

\textsuperscript{86}Id. at 8.
\textsuperscript{87}Id. at 13.
\textsuperscript{88}Id.
\textsuperscript{89}Most of the other proposals are discussed in R. Keeton & J. O'Connell, Basic Protection for the Traffic Victim (1965).
\textsuperscript{90}Knepper, The Automobile in Court, 17 Wash. & Lee L. Rev. 213, at 222-26 (1960).
\textsuperscript{91}A low-level, government-financed plan to provide compensation for medical expenses, lost income and death, without regard to fault.
\textsuperscript{92}Similar to the Saskatchewan Plan with benefits payable through a monopolistic commonwealth fund. Motor vehicle registrants are charged $35 each for this coverage, during the first year.
\textsuperscript{93}A 1964 suggestion for basic elements of compensation on a schedule of benefits without discarding jury trials.
\textsuperscript{94}Basic private compulsory insurance not based on fault, permitting tort litigation.
\textsuperscript{95}First party direct benefits made mandatory for all car registrants, with tort liability coverage included in the policy. Pain and suffering awards would be available only if assessed by a "medical panel."
Professor Walter Blum and Harry Kalven of the University of Chicago Law School have written a book exploring various proposals including the possibility of handling automobile claims under Social Security.\textsuperscript{97} Interestingly, they conclude that no one, including Keeton and O'Connell, has yet presented a plan that in all respects is the equal of the present system of compensating automobile accident victims.

A very elaborate plan providing guaranteed benefits is the so-called Inverse Liability Automobile Accident Insurance proposed by James B. M. Murray of Montreal.\textsuperscript{98} To date it has attracted little interest.

In the studies now under way in various areas, attention is also being directed to plans now in effect in several foreign countries. Most are based on liability without fault, yet Keeton and O'Connell find them generally unsatisfactory in comparison to their own proposal.\textsuperscript{99}

Those who advocate one of the proposed alternative claims systems in substitution for the present tort liability method endorse "the idea that our society should shoulder the responsibility for alleviating injury inherent in its mechanization."\textsuperscript{100} Professors Keeton and O'Connell say:

Motoring should pay its way in our society. Injuries are part of the inevitable toll of using as many cars as we choose to license on the kinds of roads we choose to provide. Yet the present system imposes this loss on victims.\textsuperscript{101}

\textit{Criticisms of the Proposals}

The Keeton-O'Connell plan seeks to substitute for reasonable compensation limited gratuities to all injured persons, regardless of fault, beyond which the injured person could attempt, in a third party action, to recover in tort for his additional losses. It is a split system, abolishing the fault principle for certain injuries but retaining it

\textsuperscript{97}W. BLUM & H. KALVEN, PUBLIC LAW PERSPECTIVES ON A PRIVATE LAW PROBLEM, AUTOMOBILE COMPENSATION PLANS (1965), reviewed in 41 NORTHE DAME LAWYER 834 (1966).

\textsuperscript{98}\textit{Best's Fire and Casualty News}, Oct. 1967. The insured would be reimbursed by his own insurer for out-of-pocket losses as incurred, without regard to collateral sources, and with subrogation rights reserved to the insurer. Property damage is not included.

\textsuperscript{99}\textit{See R. KEETON & J. O'CONNELL, note 1, at 189-219 supra.}

\textsuperscript{100}\textit{Weigel, Preliminary Report on Plans for Inquiry into the Wisdom of a California Automobile Accident Commission, 34 CALIF. STATE B.J. 393, 403 (1959).}

\textsuperscript{101}\textit{Keeton & O'Connell, Automobile Compensation Plans: Proponents Look at Basic Protection Plan, 51 J. AM. JUD. SOC'Y 153, 154 (1967).}
for the more serious injuries. It removes pain and suffering from its basic protection benefits, but then recognizes pain and suffering as an appropriate element of damages if in excess of a jury's estimate of $5,000. It does not make automobile coverages primary, but subordinates them to the collateral sources from which other benefits can be derived.

While numerous other aspects of the Keeton-O'Connell plan have been criticized, it is so much like the "Complete Personal Protection Automobile Insurance Plan", recommended by the American Insurance Association (AIA)\(^\text{102}\) that criticisms of the latter apply with equal force to the former. The same day that the AIA plan was announced,\(^\text{103}\) there was a surge of criticism released to the press by insurers and insurance associations not part of AIA.

State Farm Mutual, through its president, Edward B. Rust, stated:

The present fault system developed over a period of centuries to protect people from damages caused by the wrongful acts of others.... To change the system simply because such changes would better serve the requirements of a portion of the insurance industry isn't a good enough reason.... We are not convinced that the public wants the cost of accidents shifted from the reckless driver to his victims.\(^\text{104}\)

Allstate Insurance Companies denounced the denial of the right to recover for the suffering and inconvenience resulting from the actions of irresponsible motorists. Its board chairman, Judson B. Branch, asserted:

[T]he savings claimed for the plan are illusory. Our actuaries tell us that ultimately the proposed plan may well cost more than the present system, while providing less protection to the innocent.... Allstate believes that the negligent motorist should bear the cost and not the victim.\(^\text{105}\)

Vestal Lemmon, President of the National Association of Independent Insurers, lashed out at the claimed economies of the AIA proposal. He declared:

The glowing predictions of premium reductions under such a plan can be likened to the baker who cut the price of bread by cutting the loaf. There is no way to simultaneously increase protection and decrease policies.... There is no evidence the American motoring public wants such a scheme. On the con-

\(^{102}\)Note 81 supra.
\(^{103}\)Note 81 supra.
\(^{104}\)Note 21 supra.
\(^{105}\)Note 25 supra.
trary, every survey and poll we know of show that a big majority of the people feel that the guilty driver should be held responsible to his victims. The trend in this country today is toward requiring the lawbreaker and wrongdoer to account for his actions.\textsuperscript{106}

Paul S. Wise, President, and James S. Kemper, Jr., Chairman of the Board, of the American Mutual Insurance Alliance, pointed out that all non-fault proposals previously presented had failed to win public support because they were based on the discredited assumption that the concept of personal responsibility is irrelevant—that drivers who cause accidents should not have to stand accountable for their actions. Noting that a system such as that proposed by the AIA would cause radical shifts in pricing insurance coverages, the Alliance spokesmen stated:

If drivers are to be rated, not on the basis of the damage they might cause others, but solely on the basis of the damage they themselves might suffer in case of an accident, then people with large families would be considered "poor risks"—and thus pay higher rates—while the unemployed, teen-age hot-rodder would be considered a better risk—and pay lower rates—because his own losses would be minimal, though such young drivers are known to be the cause of far more than their share of auto accidents, injuries and economic damage to others.\textsuperscript{107}

The AIA method of insuring commercial vehicles\textsuperscript{108} was also noted in the above criticisms. Since then Business Insurance reported that a spokesman for AIA conceded that: "[L]egislatues might want to make an exception to the no-fault system and impose some liability on commercial vehicles. But we have not provided for such a change in our announced plan."\textsuperscript{109}

Virtually every kind of insurance proposed by the AIA plan can now be purchased by persons who want to protect themselves from injuries sustained in automobile accidents. The main thrust of the AIA plan is that it would make the purchase of such insurance compulsory and would then eliminate all benefits

\textsuperscript{106}Note 27 supra.

\textsuperscript{107}Press release of American Mutual Insurance Alliance, October 21, 1968. This organization states that it is an association of 121 mutual auto and property insurance companies.

\textsuperscript{108}The plan, note 81, at 9 supra, states that "[C]ommercial vehicles [except public carrying vehicles] will have little exposure because of the absence of family and guests in commercial vehicles. Accordingly, the present cost borne by commercial vehicles will be shifted to some extent to private passenger vehicles. This will happen under all varieties of the Keeton-O'Connell basic protection plan. . . ."

\textsuperscript{109}Business Insurance, Nov. 1968, at 1.
that an injured person can today obtain in a tort action against the wrongdoer who caused the injury.

**IMPROVEMENTS IN THE PRESENT SYSTEM**

Critics who contend that automobile insurance coverages do not meet modern conditions and needs are apparently unaware of recent developments. New concepts of "Medical Pay," "Advanced Payments" and "Guaranteed Protection" are elements of an entirely new program of settlement techniques that have cast a new light on the handling of claims under our present system of compensation.

"Medical Pay" is a policy provision—usually known as Coverage C—which takes care of much of the expense of immediate medical treatment and rehabilitation that is needed to deal with urgent problems. This is the two party insurance, payable without proof of fault, that some would make the exclusive remedy for all injured persons, instead of a combination of some two party insurance with the type of three party liability insurance in common use today.

Under the "Advance Payment" concept, the "No Release" and the "Voluntary Payments" programs, the insurance company pays medical, hospital and other expenses as they accrue and takes care of automobile repairs promptly, instead of waiting until all bills have been collected and a signed release is obtained. Funds are advanced to cover the loss of earnings during the recuperation period and, in some cases, even advance payments for physical and emotional suffering are offered. This change in the practices and attitudes of claims administration under the present system recognizes the fact that accident and injury may cause a financial catastrophe resulting in havoc rather than recoupment, when settlement is postponed for a period of years.

The "Advance Payment," the "No Release" and "Voluntary Payments" programs are being used in automobile accident cases and other claims by casualty insurers throughout the nation. The procedures operate to help shift urgent needs from the tort liability system, while still preserving the fundamental concept of liability based on fault.

\[\text{Footnotes:}
\begin{align*}
110 & \text{"Two party insurance" is direct insurance in which the insurer agrees to pay to the insured a specified sum when a particular loss occurs.}
111 & \text{"Three party insurance" is indemnity or liability insurance in which the insurer agrees to pay to a third party the liability imposed by law upon the insured.}
\end{align*}\]
The Guaranteed Benefits Plan

Under the Guaranteed Benefits plan now being tested in Illinois and New York, auto accident victims who have valid bodily injury liability claims against policyholders of the participating insurance companies are being offered specific benefits.

The over-all limit per injured person is $12,500, including $5,000 in medical benefits plus $7,500 under one or a combination of all other categories. The medical benefits will be paid automatically to all eligible persons. The additional benefits will be paid to those persons who elect to accept them and who promise orally to make no further claim against the other driver.

Basic disability payments are intended to sustain the injured person and his family during the period of disability. Payments start as soon as the injured person elects to accept the Guaranteed Benefits option. They continue on a regular basis for as long as 12 months, and are pegged at 70 per cent of the claimant's usual wage. The maximum benefit per week may not exceed 125 percent of the average weekly wage in the injured person's state of residence, and the total amount paid under this provision may not exceed $7,500.

There is an alternative to the basic disability benefits for persons who are generally not wage earners. Those who choose this alternative may collect 70 percent of the cost of hiring someone to perform their usual services during the disability period. Their inability to perform these services must be medically certified. A minimum payment will be made even if the family manages to get along without hiring anyone. Payments may continue up to one year or $7,500.

The American Mutual Insurance Alliance which is testing this program, contends that the over-all limit of $12,500 per person for all Guaranteed Benefits combined is sufficient to cover the losses sustained by all but a small percentage of auto accident victims. The few persons whose bodily injury losses greatly exceed this figure presumably will seek larger settlements under traditional claims procedures, if they can prove that the other driver was at fault.

What Does The Future Hold?

Paul S. Wise, General Manager of the American Mutual Insurance Alliance, has written and spoken on numerous occasions on the subject of automobile accident compensation. In Chicago last November, he stated:

The issue is not whether we are for or against change. The only issue worth talking about today is how responsible groups
involved in the present system can bring about the improve-
ments which we recognize as being urgent and necessary.\textsuperscript{112}

A year ago few, if any, insurance industry executives had spoken
out in favor of abandoning the fault concept. Since the American
Insurance Association proposal has been released, however,\textsuperscript{113} it is
necessary to recognize that at least a substantial segment of the insur-
ance industry has taken a stand in favor of eliminating tort litigation
in automobile accident cases.

In answer to one inquiry made by the writer to an insurance
leader about predictions for the future, came the comment (not to
be quoted as to source) that:

The next five years are likely to see the growth of the seeds of
change which have their roots in the inability of the traditional
common law tort systems to satisfactorily compensate the Ameri-
can public for loss arising out of automobile accidents.

Another insurance executive, writing from the West Coast but
unwilling to be quoted by name, predicted comparative negligence
to replace contributory negligence, compulsory liability insurance in
addition to compulsory benefits insurance, and the expansion of
medical payments coverage to provide reimbursement for all economic
loss incurred within a specified time.

The rights of free Americans to go into their courts for redress
of wrongs committed against them can soon be lost, if the liability
without fault proposals here under consideration should become the
law of our land. True, these proposals deal only with losses caused by
automobile accidents. But if such losses are to be taken out of the
courts, it may be only a short step to abolish all of tort litigation. As
Blum and Kalven have noted:

The welfare universe is not limited to victims of auto accidents
but includes victims of all other kinds of human misfortune.
We can think of no ground for singling out the misfortune of
auto accident victims for special welfare treatment.\textsuperscript{114}

When any new law is enacted, the people must determine for
themselves whether its benefits are overwhelmed by the rights which
it takes away from the individual. In the instance of compensation
for losses resulting from automobile accidents, a decision must be
made whether the social responsibility to pay some scheduled amounts

\textsuperscript{112}Address by Paul S. Wise, Mutual Insurance Technical Conference, Chicago,
Ill., Nov. 13, 1967.
\textsuperscript{113}Note 81 supra.
\textsuperscript{114}Blum & Kalven, note 30, at 721 supra.
for all losses should transcend the right of an injured person to obtain adequate compensation from one whose fault has caused his damages: whether all who own and operate automobiles should share all losses derived from traffic accidents, or whether only those whose faults cause injuries should be compelled to pay for them.

It cannot be denied that the best defense against automobile accident injuries is their prevention. The first social responsibility to be recognized is that of the automobile driver to avoid accidents. However, when accidents occur and losses result, as they are bound to do, some improved means to compensate the injured must be provided.

In facing up to this objective, it is appropriate to recognize that there is a difference between (1) the responsibility of society to alleviate the distresses of its members, and (2) the duty of an individual to pay fair and adequate damages for injuries he causes his neighbor to suffer. Unless those who seek to reform our present system will recognize that difference, their efforts cannot succeed in a democratic society.

The moral aspects of this problem are not entirely one sided. A damage system based upon a rigid predetermined schedule will necessarily deprive an injured party of the right to have his own losses evaluated on the basis of the facts of his particular case. The social desirability of some payment for every person injured in an automobile accident must be weighed against the detriment resulting to one who has lost his free right to recover his total loss.

Our society has progressed sufficiently far toward the welfare state that it is probably necessary for it to provide by law for the payment to all of their basic losses resulting from automobile accidents. Such basic losses will include medical and hospital expenses, loss of wages and the repair of one's automobile. Because the ordinary injured person has made insufficient provision to secure himself from such losses, it is apparently the obligation of society to do so. Otherwise the injured person will probably become one of society's burdens, unless he can prove that his injury resulted from the fault of a responsible person and he is permitted to seek redress from that person.

At the same time, it is unrealistic to expect any social welfare plan to provide complete and adequate compensation for all the other losses that will probably result from mishaps on highways. What would be sufficient for some people might well be entirely inadequate for others. And there is no practical way to prepare
schedules sufficiently comprehensive to make total provision for all. This means that the principles of tort law and liability for fault ought to be preserved while, at the same time, a method is devised to make certain of the payment of basic losses. One practical method of so doing is the Guaranteed Benefits program mentioned above. Under it, the injured person has freedom of choice whether to accept certain fixed sums for his basic losses or to assert fault and, if successful, recover his total damages.

Another possible method might be to require every licensed driver to carry sufficient two-party insurance to cover the basic losses (up to reasonable limits) for himself and the occupants of his automobile without impairing any rights to recover from third parties for fault. This might resemble the Insurance Company of North American plan. In the case of pedestrians, out of state travelers, and others not reached by such a program, the people must decide whether the state should compel every person to be insured against loss from automobile accidents. In the final analysis, if all are to be protected, then all must expect to share the cost in one way or another.

**Conclusion**

The eight years since *The Automobile in Court* was written have produced even greater challenges for change than were then anticipated. Professors Keeton and O'Connell did indeed plant a bomb in the marketplace. Its explosion has shaken the insurance industry and the trial bar out of their lethargy and complacency. The expanding concept of social justice has focused public attention on the serious problems resulting from the holocaust on the highways of our nation. "It's a time for change," is the cry of the hour.

But those who view the problem with calmness, reasonableness, and the intelligence that knowledge of relevant facts produces, are convinced that evolution, not revolution, is the answer. Government, the courts, the bar, the insurance industry, and especially the people, have a common interest in this subject.

In a recent study four of the leading tort defense organizations

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15 See, Guaranteed Benefits Plan supra.
16 Note 95 supra.
17 The Defense Research Institute, *Justice in Court After the Accident* (1965). This report is endorsed with the approval of The Defense Research Institute, the International Association of Insurance Counsel, the Federation of Insurance Counsel and the Association of Insurance Attorneys.
have asserted that substitution of an administrative procedure for judicial process can be recognized only as an omen of governmental rule, which is not the path of a free people with full rights based on Constitutional guarantees. The report of this study further states:

The objective of law and court trial is to attain the nearest human approximation of truth. Such an end is most likely to be gained by contest where opposing attorneys, committed to the causes of their clients, present the best possible evidence for consideration by jurymen who reach decisions through argument and counter-argument. Such a fundamental process should not be replaced by some system of compensation which rewards all injured regardless of fault. Administrative decision which determines the rights of litigants is not an adequate substitute for the thorough means [of searching for truth] provided by the courts.\textsuperscript{118}

Concerned persons are understandably disturbed about existing conditions and what should be done to improve them. The conflict between the principles of jurisprudence and the tenets of social engineering is not an easy one to solve. The concept of reparation for all loss seems fundamentally antagonistic to the prescript that one should not be held liable for damages in the absence of his own fault.

Yet contemporary attitudes toward social justice lead to the conclusion that past and present methods of paying for automobile accident losses must be improved and updated. The solution to the automobile compensation problem should conform to our social and cultural values; it should be realistic from an economic standpoint; it should make use of existing institutions and procedures and create new ones as needed to implement them. Finally, and most importantly, such a solution must be in the public interest.

\textsuperscript{118}Id. at 3.