SICKNESS COMPENSATION

We can endorse the statement contained in the Commission's Report which reads:

> It may be asked how incapacity arising from sickness and disease can be left aside. In logic there is no answer. A man overcome by ill-health is no more able to work and no less afflicted than his neighbour hit by a car. In the industrial field certain diseases are included already. But logic on this occasion must give way to other considerations. First, it might be thought unwise to attempt one massive leap when two considered steps can be taken. Second, the urgent need is to co-ordinate the unrelated systems at present working in the injury field. Third, there is a virtual absence of the statistical signposting which alone can demonstrate the feasibility of the further move. And, finally, the proposals now put forward for injury leave the way entirely open for sickness to follow whenever the relevant decision is taken.

FURTHER STUDY

The National Executive has set up a committee to study the Woodhouse Report and its implications, so that firm recommendations can be made concerning it. This committee consists of Messrs W. F. Molineux, L. A. Hadley, N. A. Collins, and D. B. McDonald, and is to report back to the National Executive.

REPORT OF THE ROYAL COMMISSION ON COMPENSATION FOR PERSONAL INJURY

An Academic Viewpoint

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Any assessment of the Woodhouse proposals must be provisional at this stage. The Government's White Paper is not yet available, which means that Sir Leslie Munro's reported assertion that the Royal Commission seriously underestimated the cost of its proposed scheme cannot be evaluated. The Law Society's final views—if the division within the ranks of the profession permits it to reach one—are not yet known. Moreover, a committee of the Federation of Labour is undertaking a further study: what appears in Mr Skinner's address cannot be considered its last word. There is no reason to assume that all relevant arguments have been aired. The Government has inevitably had to adopt a go-slow policy.

I most willingly respond, all the same, to the Editor's kind invitation to make a second contribution to the public discussion of the Woodhouse Report.[1] Is there any social issue of greater significance than the manner in which we ought to tackle the problem of compensating and rehabilitating the victims of accidents? I think not. A torts lawyer, such as myself, who starts thinking about the problems must at once jettison any notions he may have about a distinction between "public law" and "private law". What the Woodhouse Commission recom-

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mends cuts clean across any such artificial division.[2] With several directly interested groups involved in the debate he surely has a special responsibility to help the community to assess their arguments—to help it to discriminate between what is important and what merely self-serving. He ought, of course, to be as objective as possible but complete objectivity is impossible once one has formed a definite opinion about the way in which progress lies. I must therefore at once state my belief that a comprehensive scheme covering the compensation of personal injuries is greatly to be desired. The difficulties which the Woodhouse Report leaves unresolved are, as it seems to me, comparatively small and certainly not insuperable.

Assessment of Proposed Alternatives to Recommended Scheme

We may usefully begin with a consideration of the more important of the arguments advanced by the Insurance Industry in its *Initial Commentary* and the article contributed to this Review (see *ante* p. 46). If they have a slightly hysterical flavour they must still be taken very seriously. It may be correct to say that the Commission enlarged its terms of reference but it is hard to accept that this was "totally unexpected" by the Industry: its counsel knew, or at least ought to have known, that several witnesses made broad-ranging submissions to the Commission and, in particular, that they urged it to consider non-occupational as well as occupational accidents. Be this as it may, the objection—even if it is correct, which only the courts could have told us—is merely technical in character and may be forgotten unless someone or some group has been deprived of a chance to make submissions or otherwise prejudiced.

As I understand it, the insurance companies were given an inkling of what was in the wind and invited to direct their attention to the implications of a comprehensive compensation scheme. In any event they certainly have that chance now and are taking full advantage of it. The Committee points, however, to the recipients of the various classes of Social Security benefit and argues that "the vast majority will have suffered a serious reduction in their normal income", without being heard. A quibble: could the scattered and unorganised recipients of four different kinds of benefit have been adequately represented before the Commission? Of greater importance is the point that it is a serious misreading of the Woodhouse Report to take it as suggesting a reduction in benefits other than those which will merge with the new benefits. While there would be "great advantage in the integration of a comprehensive scheme of accident compensation into the present social security framework",[3] it is only "wherever relevant" that existing benefits under the Social Security Act 1964 would be "merged with the compensation payable under the new scheme".[4] One becomes a superannuitant by turning 65, not by having an accident. Existing superannuation payments would be administered separately, perhaps even by a different department. They would continue to be reviewed every few years as at present.

What about widows? Once the proposed scheme were in operation we would have to distinguish two categories, those whose husbands had been accidentally killed, and the remainder. Those in the first category, by coming under the comprehensive scheme, would ipso facto cease to be eligible for widow's benefit, present style; those in the second category will be no more and no less eligible, and no worse

off, than before. The essential point is that those in the first category will be no worse off either. Assume the case of a widow, aged 35. She was married to a factory worker who before his fatal injuries was earning an average of 60 dollars weekly. She has three dependent children. If anyone deserves substantial help from community resources, she does. Under the present system she is entitled to a flat-rate payment of 767 dollars p.a.;[5] under the comprehensive scheme she would receive 2,796 dollars p.a., plus the reimbursement of funeral expenses.[6] These figures speak for themselves.

It is noteworthy that the Committee does not challenge the reasons which the Report adopted for abolishing the common law action for personal injuries. To conclude that the Committee concedes them to be unchallengable would be unwarranted, but its general approach makes it possible for me to avoid re-traversing what is by now familiar territory. Elliott and Street have fairly summarised the indictment against the tort system in these strong terms:[7]

> It is a matter of chance whether particular . . . victims are compensated; it is the undeserving rather than the deserving who are the most fully compensated; the compensation never arrives when it is needed; the cost of operating the scheme is enormous; and the scheme is wasteful and slow . . . and does nothing to promote . . . safety.

The thrust of the Committee's attack is directed against the Royal Commission's differentiation of accidents from sickness and disease. Its two apparent reasons for criticising this part of the Report tend to contradict each other: there is the "prejudice" suffered by those unfortunates whose claims, it is said, are "far outnumbered and outweighed by the others", and there is the fear that political pressures will soon make an expansion of the scheme to include sickness inevitable, with financial consequences which obviously frighten the members of the Committee. Is it advancing the criticism that justice is being denied, or the criticism that the taxpayer's pocket will be hit too hard if justice is done? These two horses are hard to ride in double harness.

The exclusion of sickness and disease is admittedly very controversial. Some would-be reformers, Ison[8] for example, are prepared to deal with accidents and sickness comprehensively. In social terms there is no difference between the merits or needs of the two classes of victims—or, as Dr Hickling puts it, between the bacillus and the motor car. But in my opinion there is some merit in each of the Commission's arguments in favour of "two considered steps" as opposed to "one massive leap". The best argument—for it is the one most closely anchored to fact—is that there is almost a complete dearth of statistics: we know so little about the incidence of sickness. The data gathered by the Social Security Department over the years, however processed, *could not* be of much help.[9] Moreover, to have brought in sickness would have destroyed the plausibility (so far unshaken) of the Commission's analysis of cost. There is also the point that covering injuries only at first would not make the further move to a scheme including sickness more difficult or expensive than it would otherwise be.

If, however, we are prepared to push beyond these comparatively superficial arguments, we find that the ultimate justification of two steps rests in a colossal and controversial value judgement, namely that our affluent society is not yet affluent enough to afford a comprehensive income-related sickness scheme. There is considerable wisdom in the following words attributed to an un-named Cabinet Minister:[10]

"Perhaps some day society may feel itself rich enough to shoulder this very much heavier burden. If ever this is contemplated, it will be much simpler and much more likely to be brought in on an equitable basis where there has been previous experience in administering a scheme of accident insurance." Nor must we forget the present Chief Justice's point:[11] "If the basic aim is sound then the fact that all categories of misadventure cannot be provided for at once is not a ground for doing nothing."

Some remaining points may be dealt with rather briefly. That a new government department may be needed is scarcely very daunting. The worker now has his ultimate protection in the courts, certainly, but it is the protection of a right to damages only if someone else was negligent and he can prove it. Under the proposed comprehensive scheme the courts will still afford some ultimate protection since appeals on "questions of law" could still be taken to the Supreme Court. At the very least questions as to the proper interpretation of the legislation setting up the new scheme would be determined judicially. To conceive the three-tier system of adjudication as one whereby the Government is made judge in its own cause rather misses the point that, apart from the aforementioned safeguard, final appeals will be heard by the new statutory Board. This is to be an independent authority. Its members would be appointed for six-year terms by the Governor-General in Council and would be virtually irremovable.

The Report of the Royal Commission which has just reported in British Columbia[12] has been extraordinarily misrepresented. While it is true that that Commission recommended that private insurers should retain their automobile insurance business, it was very critical of the insurance industry and it recommended governmental involvement in the form of strict supervision and premium rate-fixing. This was coupled with the threat that unless competition between the insurance companies became more vigorous the State should take over. There is really no answer to the point made by the Woodhouse Report[13]—certainly none is attempted in the Committee's paper—that if the State is to undertake a huge new enterprise, private companies have no right to run it. The case for the State undertaking it is chiefly founded on the consideration that only in this way can administration, and hence overall, expenses be kept down to a reasonable level.

One final point of detail: both the Labour and Conservative parties in Britain are committed to the repeal of the contracting-out scheme introduced in Britain in 1961. What is more, the Government has never allowed any contracting-out from its existing national insurance and national insurance (industrial benefits) schemes—only from its retirement scheme.

It has been suggested that from a medical point of view it would be desirable to provide some predetermined rulings on medical matters (see e.g. *ante* p. 45). I find this puzzling. If it is merely asking that any legislation embodying the Woodhouse distinction between sickness and accident should demarcate these concepts as precisely as possible, if only to stem a flood of litigation, I entirely agree.[14] If, however, it seeks to eliminate investigation into the facts of particular contested cases, this is simply unrealistic. The most elaborate criteria will not prevent *some* borderline problems from arising and other kinds of factual dispute must be expected, even in procedures which are essentially non-adversary. Was a particular injury "deliberately self-

inflicted",[15] for example? There must be an evaluation of the evidence by some body, whether it be court or tribunal. Particular cases cannot all be ruled on in advance.

The suggestion made (*ante* p. 45) as to the right method of obtaining reliable medical opinion is valuable and stimulates the question whether provision should be made, within the structure of the assessment process, for a separate medical panel to *decide* medical issues,[16] or whether doctors should merely present evidence or reports at the various stages of that process.[17] The advantage of permitting the doctors to decide is that we would thereby avoid the well-known problems associated with the presentation of medical evidence in court (undue formality, partiality and the waste of valuable professional time). The disadvantage would be that in the difficult marginal cases an applicant for compensation against whom a doctor had presented an adverse report would be denied the advantage of cross-examination, before a tribunal at least one of whose members would be expert in the evaluation of evidence.

From the President of the Federation of Labour has come the suggestion (see *ante* p. 61) that the Woodhouse Report should be welcomed, but with two reservations. That the employers will continue to pay into the fund a sum equivalent to 1 per cent of their wages bill should not, however, it seems to me, be welcomed on the ground that they would otherwise "tend to be less concerned about safety measures" but rather on the general ground that risk-creating enterprise should be made to bear, and distribute, its share of the risk. There is no evidence that the prospect of having to pay premiums or higher premiums leads to the adoption of better safety measures[18]. The pressure of a watchful union, the financial consequences of a disruption of work, the possibility of a prosecution if statutory safety regulations are breached, these are the real incentives both to take care and to pursue even more safe methods of work.

Does the Commission's suggested levy on drivers contradict its principle of collective responsibility? Surely, No. The sources of a compensation fund are always borne unequally between the members of a society. Even if its cost were all to be borne by general taxation, so that the burden was more obviously a collective responsibility, there would still be the acutely political problem of the distribution of the tax burden; the underlying problem would simply have to be faced head-on at a different level.

There is a good case for making drivers contribute and not concentrating solely on vehicle-owners. True, it is likely that most non-owner drivers fall into one of the two categories, teenagers driving Dad's car, and employees, and making them pay more when they pay for their driving licences will simply result in accounts being handed over for payment, instead of being paid directly.[19] But a substantial number of drivers in neither category remains, e.g. car-hirers and those who have borrowed friends' cars temporarily. Is it not right that those who take dangerous machines on to the road should contribute more to an accident compensation fund than those who, say, have the same amount of income, and therefore the same tax liability, but who never drive?[20]

When we turn to Mr Skinner's plea for a compromise on the abolition of the common law action, we meet two curious words. There is nothing "arbitrary" about depriving workers of a right which has existed for so long if this is effected only after careful study and a delay permitting a hard look at the pros and cons. And there is nothing "inflexible"

about a compensation scale which would enable a discretion to be exercised in an applicant's favour at several points.[21] A compromise must be fiercely resisted. Awkward compromises have accompanied, and marred, advances in this area in the past.[22] To allow a straight common law alternative, or an action for the balance, for even one year could wreck the funding of the scheme by perpetuating the need to pay premiums on liability policies—for what employer could be sure that he would not be one of those unlucky enough to face a residuary common law action? Nor is there any need for a transitional period to allow the merits of the new scheme to be assessed; if it cannot be completely measured for size now, because some of the details are obscure—as I shall be emphasising shortly—this difficulty is bound to disappear long before the Governor-General is asked to give his assent to a comprehensive Accident Compensation Act.

There are also two other schemes advanced by academics in recent years which should be mentioned in this context. Professors Elliott and Street produced their recommendations last year.[23] A person injured in a road accident would be entitled to compensation without proof of fault. They think it would be possible to retain the private insurance companies,[24] although they give several reasons for preferring a State scheme. They support periodic payments to lump-sum awards, and their compensation level would be fixed by taking a figure two and a half times the average weekly earnings of men and women respectively.[25]

The most obvious limitation of the E-S Scheme is that it is confined to road accidents. For this we are given several reasons, none of them very convincing. It is highly doubtful whether the claims of traffic victims are "thought [s.c., by the man in the street] to be particularly in need of fair settlement".[26] Even within the area of road accidents the learned authors offer reasons for excluding certain kinds of accident, such as those caused by pedal-cycles and horse-drawn vehicles,[27] and they draw a lawyerly distinction between the different kinds of accidents which may be caused by parked vehicles.[28] From the viewpoint of social need this is merely tinkering around. The traditional classification of accidents into industrial, highway and miscellaneous has been too strong to resist; nor does the E-S Scheme really face up to the need to view compensation not in isolation, as lawyers have almost always done, but in its bearing upon rehabilitation.

We may also profitably compare the even more cautious plan propounded by Keeton and O'Connell,[29] who recommend a system of "basic protection": this would be a loss insurance system, only partially replacing tort liability insurance. A victim, but once again only of a road accident, could claim directly against an insurer for basic protecton payments regardless of fault. Maximum liability would be 10,000 dollars (U.S.). Present tort claim procedures would, astonishingly, be preserved. Ordinary tort claims would also remain, the plaintiff giving a credit for basic payments received.

Our own Royal Commission offers us, by contrast: generous compensation for all injuries, irrespective of fault and usually regardless of cause. And this compensation will be available to every member of the community, wage-earner, married woman, student, or retired, on a round-the-clock and no-matter-where basis; the whole scheme being geared to the demands of effective rehabilitation of the injured and to the need to get money into their hands *when* they need it.

Some Other Possible Objections to Recommended Scheme

It may be profitable to consider the merits of some objections to the Woodhouse proposals which have not as yet been raised, at least in print. It might, in the first place, be argued that the scheme should cover property damage as well as personal injuries. It is submitted, however, that property damage is usually already the subject of insurance on a loss, not a liability, basis; and that this is a legitimate field for private insurance, primarily for the reason that the community as a whole cannot be said to have any stake in the perfect functioning of my motor car, or to be affected, even indirectly, when it is laid up. Moreover, if one considers, as I do, that litigation over the mistaken judgements made in split seconds many months before is an odd and a highly expensive phenomenon needing some justification, we can derive some comfort from the prevalence of knock-for-knock agreements which keep the amount of litigation in this area down to a minimum. In short it makes good sense to treat property damage separately.

It might, in the second place, be argued that the two linked recommendations of the Woodhouse Report that 80 per cent of a claimant's average pre-accident tax-paid income should be the maximum compensation for a total incapacity, and that 120 dollars should be the weekly ceiling, are both objectionable in principle. Why shouldn't a highly-paid business executive, or one of the Beatles, recover his full economic loss from the compensation fund? The main reason for the 80 per cent is the need to provide a margin for personal incentive.[30] The number 80 is arbitrary only in the sense that there is not much reason for preferring it to 75 or 85. Below the former we should probably begin to feel that the level had dropped so low that it had ceased to be income-related; if it rose above the latter it is likely that a significant number of drones would prefer the pleasures of idleness for a season. It may, however, be said that it is wrong to strike each applicant's percentage at a uniform level; and that justice demands that each applicant should be individually assessed, taking all the circumstances, including the chances of his successful rehabilitation, into account. This would unfortunately mean that someone, the departmental officer at first instance or one of the higher committees, would have to study character and delve into past absence records. An investigation of this kind would be invidious as well as swelling the administration costs. As for the 120 dollar ceiling, this would be indefensible only if accident insurance were not so readily available as it is (and comparatively cheap for someone who *ex hypothesi* is in receipt of a much higher than average income). At the highest levels society may reasonably ask its members to cover themselves against losses in excess of some such figure; budgeting is assisted; and a few large claims each year are not allowed to drain away huge sums.

It might, in the third place, be raised as an objection that the Woodhouse Report makes no proposals for the compensation of non-economic losses. What about pain and suffering in particular? The Commission accepts the principle that loss of bodily function should be the test, rather than actual loss of earnings.[31] The Report is at its most taciturn here. If we may speculate about its probable reply, it would probably be along the following lines. Economic hardship is very much more important, from the point of view of both the individual and the society, than non-economic loss. We must take a broad view. This necessitates

our leaving pain and suffering out of account, in order to meet the demands of cost-feasibility while paying out adequate sums to those who do badly under the existing régime. In any event pain and suffering are notoriously hard to assess, so that to provide for their assessment in the new comprehensive scheme would once again push administration costs up severely. It is respectfully suggested, however, that the rationale here attributed to, or rather fathered upon, Mr Justice Woodhouse and his colleagues would be much strengthened if it were accepted that in compiling the table of percentage disabilities allowance should be made for the typical pain and suffering—and the typical degree of loss of amenity—associated with a particular kind of functional loss. Let the average and reasonable three-fingered man be the medico-legal committee's guide. Awards would accordingly have an automatic quality, but we could deliberately decide to do less than perfect justice as between the members of the class of two finger-losers in order to be able to dispense a more even justice as between the members of the class comprising all accident victims. *Transitory* pain should be left out of account[32] and exclusive attention directed to the compensation of *long-term* pain: it must be recognised, however, that this represents a modification of what the Woodhouse Report actually proposes, and would almost certainly involve an increase in the total cost of running the scheme. In my opinion this should be accepted. After all, very few victims of accidents suffer pain enduring beyond their stay in hospital, and the total extra cost should not be enormous. Why should there be no recognition of this head, especially when to do so would knock the stuffing out of one otherwise plausible reason for sticking with the more generous-hearted common law?

Some Unresolved Difficulties

The foregoing objections may reasonably be regarded as objections in principle to the Woodhouse Report. The points which I am now going to list are, by contrast, all matters of detail. Sooner or later a decision must be reached on them all. Space precludes anything more than a very brief explanation, and I shall not make further reference to items which have ben touched on already.

1. Facial disfigurement without accompanying loss of bodily function. This factor is of special importance in regard to injuries suffered by young unmarried women, and in appropriate cases constitutes an important factor in the assessment of common law damages. The Report does not deal with this problem specifically. There are three possibilities—let the scars go uncompensated, treat disfigurement and similar cases as appropriate for the "suitable discretion . . . available to deal with unusual circumstances",[33] or build it in to the percentage disability table in some way. The third solution is prima facie the most attractive but I confess it is not easy to see how a predetermined percentage could begin to do justice to the diverse variations of fact which may be foreseen.

2. *When* should lump sums be paid? I have raised this question elsewhere.[34] The Woodhouse criteria, as they stand, are too vague. Messrs Keeton and O'Connell propose the definite, but perhaps unduly narrow, criterion that a lump sum should be paid if there were a medical finding that "a final disposition will contribute substantially to the health and rehabilitation of the injured person".[35] The charge of

undue vagueness on this point does not extend, of course, to the Commission's clear and wise recommendation that lump sums should be paid for minor permanent partial disabilities. We need what might be called a philosophy of the lump sum, linked to some clear idea about how lawyers should be allowed to collect their fees (in the difficult cases) now that there will no longer be a large sum in their trust accounts from which deduction can conveniently be made.

3. The complications of legal aid apart, how should the legal profession be paid? In my submission a lawyer's taxed solicitor and client costs should be regarded, along with medical fees and comparable disbursements, as a legitimate charge on the compensation fund.

4. What about the case of the man with a hobby which he can no longer indulge as the result of an accident? In talking to students in Britain I have had posed to me with almost unfailing regularity the case of the amateur pianist who can no longer play in the local dance band—a familiar enough type of plaintiff in the courts, no doubt. I am fairly clear about the answer. The typical loss of enjoyment through losing some or all of one's fingers should be reflected in the percentage given in the disability table for the loss of x number of fingers. This will seem unfair to the hobbyist who suffers not only the typical but also a very special loss. It is not really unfair, however, for he can get much better compensation than any scheme could possibly provide by insuring against the loss of his fingers. Moreover, at the risk of being labelled an iconoclast, do personal injury lawyers tend to make too much out of "hobbies" before juries? If we think of our amateur pianist unsentimentally, his loss appears to differ not so much in kind as in degree from the loss suffered by a non-pianist with identical physical injuries, who can now get not quite so much enjoyment out of a whole range of activities, eating, drinking, playing with his children, or what have you—each activity so ordinary that we should not refer to it as a "hobby".

5. The Woodhouse Report gives reasons for refusing to contemplate any downwards revision of periodic payments.[36] But what is to happen if a man receiving periodic payments benefits from a newly-discovered "miracle cure"? He is cured completely and resumes his ordinary employment. Should he still continue to be entitled to receive the payments? Surely, No. Consideration should be given to making an exception for this kind of case, though it will hardly arise frequently.

6. What regard should be paid, if any, to collateral benefits received by an applicant for compensation? The House of Lords has now decided that the fruits of voluntary and compulsory pension schemes are not to be taken into account when assessing a plaintiff's damages at common law, just as moneys received under a contract of insurance are ignored.[37] Some problems have arisen with sick pay in the past. Since some of the points already made depend upon the existence of various kinds of supplementary insurance it is clear that payments received upon the materialisation of a risk must not enure to the benefit of the accident compensation fund. I am inclined to believe that no special provision need be made about other sources of financial relief. *Ex gratia* payments would presumably tend to dry up as the need for them disappeared, and there is no reason why the receipt of money from a friendly society should be taken into account; if it were, the thrifty would be penalised.

There are probably as many other difficulties which I have not even thought of as those which I have here listed. I shall resist the temptation to enlarge upon the demarcation problems that are going to arise. What, for instance, is meant by an "unexpected" accident: will that vexing figure in the law of torts, the man who accepts a ride knowing that the driver is drunk, be held to have expected or not to have expected an accident? The Woodhouse Report recognises the difficulties here: "no system of compensation or damages is able to avoid all the 'hard' cases."[38] I do not, in any event, wish to incur the reproach of obscuring the social wood with legalistic trees. The main issue is relatively clear: are we to opt against it in deference to the clamour of entrenched pressure groups? In the latter event we shall almost certainly have to bear the uncomfortable sight of other countries adopting the ideas of the Woodhouse Report and putting them into operation, and the uncomfortable thought that our chance to recapture our reputation as the social welfare leader of the western world has been sacrificed to placate those conservatives (of whatever political complexion) who simply find the Report too bold for their taste.

1 I attempted to summarise and evaluate the Woodhouse Report (less colloquially, the Report on Compensation for Personal Injury in New Zealand) in (1968) 31 M.L.R. 544. This drew a critical letter from Mr J. L. Charters: (1969) 32 M.L.R. 239. See also Joan Matheson (1969) 18 I.C.L.Q. 191.
2 This is well brought out by Keeton and O'Connell, "Basic Protection—A Proposal for Improving Automobile Claims Systems", (1964) 78 Harv. L.R. 329, 332.
3 Report, para. 249.
4 *Ibid.*, para. 489 (3)—the summary of conclusions and recommendations.
5 *Ibid.*, Appendix 8.
6 *Ibid.*, para. 302 (a)-(d). One might of course argue that it is inequitable to treat two classes of widow differently, but that is not what the Committee is here arguing; and the argument is merely a specialised version of the injury/sickness issue.
7 Elliott and Street, *Road Accidents*, 249.
8 See Ison, *The Forensic Lottery* (Staples Press, London, 1967), 58.
9 For these reasons: (1) "sickness benefits" are payable only to those who have suffered a loss of income, whereas the comprehensive scheme would extend to students and retired persons; (2) a married woman is eligible only if the Social Security Commission is satisfied that her husband is unable to maintain her—not a condition of entitlement under the comprehensive scheme; (3) sickness benefits can be obtained for sickness *or accident* so that the statistics would fudge the distinction which the Woodhouse Report makes, and the Insurance Industry Committee is criticising; (4) many sick people are presently debarred by the means test and therefore make no claim upon the S.S. Fund whereas it is of the essence of Woodhousian benefits that they are income-related. See the Social Security Act 1964, s. 54.
10 "The Evening Star", 31 May 1969.
11 Report of the Committee on Absolute Liability, p. 52, para. 31—an approach adopted by the Woodhouse Commission in para. 167 of its Report.
12 Royal Commission on Automobile Insurance: British Columbia (2 volumes: 30 July 1968). For summary and criticism see Ison (1969), 47 Can.B. Rev. 304. I owe the point made in the text to Mr P. S. Atiyah.
13 Report, para. 491.
14 Cf. my comments on the difficulties which will be encountered at the boundary in (1968) 31 M.L.R. 544.
15 Contributory negligence is not to disqualify a claimant but injury which has been deliberately self-inflicted will not qualify for compensation: Report para. 289 (f).
16 As envisaged by Elliott and Street.
17 As envisaged by the Report: see para. 308 (b).
18 See, generally, Ison, *The Forensic Lottery, supra,* n. 8.

19 Elliott and Street, *op. cit.*, 254, who think the case for driver insurance under the plan they propose is weak.
20 If there were an identifiable group of car-*users* the same argument would apply to them. The whole community, however, either uses, or benefits from the use of, vehicular transport. For the theory of loss distribution generally, see Calabresi, "Some Thoughts on Risk Distribution and the Law of Torts", (1961) 70 Yale L.J. 499; Keeton and O'Connell, *op. cit.*, Part 1 (adapted from *Basic Protection for the Accident Victim—A Blueprint for Reforming Automobile Insurance,* chs. 5 and 6); Atiyah, "Negligence and Economic Loss", (1967) 83 L.Q.R. 248, 269 *et seq.;* Braybrooke, "The Impact of Liability Insurance upon the Conceptual Basis of Loss Allocation", (1968) 3 U. Tas. L.R. 53.
21 See the Report, para. 292 (c) and para. 309 (c).
22 e.g., the almost inevitable compromise permitting the retention of the common law action after the 1946-8 adoption of the Beveridge proposals. On this see Ison, *op. cit.*, 46 *et seq.*
23 *Road Accidents* (Penguin Books, 1968), ch. 9. For investigations of the extent to which those who are injured in road accidents are compensated from tort and non-tort sources respectively, see the *Report of the Osgoode Hall Study on Compensation for Victims of Automobile Accidents,* by A. M. Linden (Toronto, 1965); also Harris and Hartz, *Report of a Pilot Survey on the Financial Consequences of Personal Injuries Suffered in the City of Oxford in 1965* (as yet unpublished). The special value of these surveys is that they give us some idea of the typical losses and recoveries of injured persons, *whether or not they pursue claims at common law.* Contrast Ison's analysis of claims: *The Forensic Lottery,* Appendix C.
24 *Ibid.*, 252.
25 *Ibid.*, 268.
26 *Ibid.*, 250.
27 *Ibid.*, 260.
28 *Ibid.*, 261.
29 *Loc. cit.*, n. 18, *supra.*
30 Report, paras. 218, 219 and 292.
31 *Ibid.*, para. 291 (d).
32 Cf. Ison, *op. cit.*, 65.
33 Report, para. 292 (c).
34 (1968) 31 M.L.R. 544, 547.
35 *Loc. cit., supra,* at 363.
36 Report, para. 293 (e).
37 *Parry* v. *Cleaver* [1962] 2 W.L.R. 821.
38 Report, para. 289 (b).