

■ *Book Reviews* (cont. from page 55)

ory would have to come into play, to draw those connections. Casper leaves them undrawn.

Perhaps, though, that is his point. Perhaps he is only trying to say that just as there is no unambiguous doctrine of the separation of powers to be found in the case law, or in scholarly commentary in the law reviews, so there is no shelter from complexity to be found in the study of the founding period, either.

Yet if that is the point, it is less than one ought to expect. Yelling "I can't help you" is unhelpful, even when it is true. And, it is not true as often as it is said. One hopes other writers, as qualified as this one, will bring greater ambition to this field of inquiry. ■

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Endnotes

¹*INS v. Chadha*, 462 U.S. 919 (1983).

²*Raines v. Byrd*, U.S.L.W. 4705 (U.S. June 25, 1997).

³Martin S. Flaherty. *The Most Dangerous Branch*, 105 YALE LAW JOURNAL 1725 (1996).

⁴Steven G. Calabresi. *Some Normative Arguments for the Unitary Executive*, 48 ARKANSAS LAW REVIEW 28 (1995).

■ *Accidental Justice: The Dilemmas of Tort Law*, by Peter A. Bell and Jeffrey O'Connell; Yale University Press, New Haven, CT, 1997. 266 pages, \$30.00

Reviewed by Michael Foster

For over two decades, tort reform proposals have been introduced almost annually in state legislatures and the U.S. Congress at the urging of insurance companies and business groups. The reasons given for the ur-

gency of reform vary. Usually, proponents of limits on tort claims refer to a "flood of litigation" having caused a crisis in liability insurance coverage, or they cite "runaway" jury verdicts and huge punitive damages awards. Among their favorite targets are intangible damages for pain and suffering and the contingent fee, the primary means for paying attorneys' fees in tort cases. To support their agenda, they have presented testimony to legislative committees, from doctors forced to close their practices by increasing insurance premiums, or from CEOs whose companies are driven to the brink of financial ruin by class actions. Almost always the reform efforts have borne fruit, and one restriction or another has been imposed on tort claims. Among the measures enacted have been caps on intangible damages, pre-suit screening procedures for medical malpractice cases, limitations on punitive damage awards, elimination of joint and several liability, tougher proof requirements, and broader powers of remittitur and additur to give courts the power to correct jury verdicts that "shock the judicial conscience." These early successes have not satisfied the reformers, who are now challenging the tort system again, this time with even broader goals in mind.

The assumption at the core of the assault is that the system is broken, has become counterproductive and oppressive, and must now be fixed or abandoned. Critics consider it too slow, capricious, and expensive. They contend that it imposes an unreasonable burden on American productivity and innovation, making it tougher for businesses to compete in the global marketplace against competitors who do not suffer the same hindrance. They assert that tort law does not accomplish its ultimate goal: to achieve justice.

The title of this book, *Accidental Justice: The Dilemmas of Tort Law*, refers to those criticisms of our fault-based method of compensating individuals for negligently inflicted injuries. The authors explore the debate

over whether justice under tort law is a hit or miss affair in a system inextricably caught in dilemmas of its own making, or whether critics are driven by "bottom line" money concerns having little to do with justice.

The authors, professors at Syracuse University College of Law and the University of Virginia Law School, respectively, have produced a balanced and readable account of the views held by the opposing sides in this debate. Those who want to dramatically change our civil justice system will no doubt conclude that the book does not fully explain the reasons supporting their efforts, and those who see reforms as draconian restrictions on the right of access to the courts, will feel the book fails to give adequate expression to the positive effects tort principles have on the lives of negligence victims. While advocates of the opposing viewpoints may feel short-changed, the authors should be given their due for having provided a useful description of the battle going on outside of American courtrooms, a battle that will determine the future of a large part of our legal system. Lawyers and non-lawyers alike will find a lucid and accessible explanation of the lines currently being drawn. The book will be particularly useful for those who are not immersed in the system on a daily basis.

Critics of the tort system cite its transactional costs as proof that it is inefficient and needs reform. They assert that costs are too high for the benefits received, and compare it to other methods of compensating accident victims, such as workers' compensation and social security disability benefits, where administrative costs are far lower. Tort reform advocates contend that damage awards in tort cases over-compensate those with minor injuries and under-compensate those with major injuries. They see the system as regressive, favoring the wealthy rather than the poor, because those with higher income losses will receive higher awards than those with lower incomes for commensurate losses. They find fault with allowing