

that supply-side principles have played in guiding many countries' tax reform efforts, one would hope that future reports on world tax reform will give the supply-side arguments greater attention.

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Liability: Perspectives and Policy

Robert Litan and Clifford Winston, eds.

Washington, D.C.: Brookings Institution, 1988, 241 pp.

One of the most persistent problems in public policy is the public's notoriously short attention span. The liability insurance crisis provides an excellent example. In 1986, the national media were filled with reports of skyrocketing liability insurance premiums forcing products off the market, driving doctors from their practices, and forcing the closure of day care centers, swimming pools, and boy scout camps. Spurred by the crisis, innumerable academics and policy experts turned their attention to exploring the causes of and devising potential solutions to the liability problem. Before much of this work could be completed, however, the problem had faded to the back pages of the newspapers and the backs of the public's minds. The liability system's problems were far from resolved, but insurance premiums had leveled off, and attention turned elsewhere.

We now are beginning to see the fruits of much of the research that was spurred by the crisis. Among these works is *Liability: Perspectives and Policy*. One hopes this book will receive serious attention by policymakers, despite the fact that the tort system is no longer the crisis of the moment. Editors Robert Litan and Clifford Winston, both senior fellows at the Brookings Institution, have gathered some of the nation's foremost experts on liability to explore the causes of and potential cures for the problems of the liability system. While the book is somewhat disappointing because of the subjects and ideas it does not adequately address, it nevertheless contains a wealth of data and insights concerning a broad range of insurance and liability issues. It should prove extremely useful to policymakers and other students of this still-important issue. Among the highlights are John Calfee and Clifford Winston on the economic efficiency of various liability rules; Scott Harrington on prices and profits in the liability insurance system; Patricia Danzon on medical malpractice; Peter Huber on environmental hazards; W. Kip Viscusi on occupational accidents and illnesses; and George Priest on product liability and the accident rate.

Calfee and Winston, after devising an economic model to measure different liability rules, find that no single rule is optimal in all circumstances.

Harrington provides a comprehensive description of the liability insurance industry and how it has functioned in recent years. He concludes

that the recent jump in insurance rates was the result of real losses, rather than mere profiteering by insurance companies. Moreover, he finds that attempts to regulate the industry—either directly or through the antitrust laws—could make things worse.

Danzon documents the recent increases in the number and severity of malpractice awards—especially those against specialists such as obstetricians. After surveying current malpractice rules and proposed alternatives, she also gives qualified endorsements to the establishment of firm schedules of damages for specified injuries and to lengthening the statutes of limitations applying to medical malpractice suits.

Huber, author of his own recently published book on liability, walks the reader through the hazard-filled and bizarre world of environmental torts, ranging from asbestos to x-rays. Working with some complex issues, he takes what could have been a deadly dull tome and makes it a fascinating story, describing the steady expansion of liability for environmental hazards over the years. Huber points to some potential solutions, such as a revival of a causation requirement, a renewed judicial respect for the language of insurance contracts, and increased regulatory, as opposed to judicial, control of environmental hazards. However, he sees such steps as unlikely in the near future.

Viscusi departs from the book's focus on civil liability and reviews the mechanisms, from worker's compensation to direct regulation, that are used to prevent and compensate for on-the-job injuries. According to Viscusi, however, the chief mechanism for ensuring worker safety is the market itself, as workers continually express their preferences for safety. Viscusi maintains that while sometimes useful, civil liability is a minor and often inefficient way to prevent accidents.

Priest, after reviewing accident rate data, finds no discernible positive effect on safety due to product liability law. He also examines selected product cases and finds that by compensating consumers who may have prevented their own injuries, product liability law may actually increase the accident rate.

These articles shed light on the problems of the liability system. Nevertheless, the reader may be frustrated because of the subjects and ideas that are not addressed. This shortcoming is even more annoying because many of the authors in this book have been pioneers in exploring the neglected areas. For instance, very little is said about how the liability system tends to stifle innovation and thus hinder rather than enhance safety improvements, as Huber has eloquently and thoroughly documented elsewhere. Nor is there much discussion of the tort system's tremendous inefficiency as a system of insurance, although Priest is perhaps the leading expert on that topic. Both of these issues would seem to be crucial to any exploration of liability problems.

Perhaps the book's most glaring omission is its lack of any serious discussion of the possibility of consumer choice of liability rules. Both Huber and Priest have argued forcefully elsewhere that consumers should

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not be forced to accept the mandatory insurance contract offered by tort law. Where there is a preexisting contract between the parties, a possibility in both the product liability and medical malpractice areas, the parties involved should be able to specify for themselves the duties each assumes toward the other. In this way, liability rules could be set by market processes rather than by judicial fiat.

Little is said in the book about this market-process option. Huber and Priest devote their space to other subjects, and while Calfee and Winston indirectly mention it, they dismiss the market option because of a perceived lack of consumer information. Several other authors deal with the concept in an even more cursory fashion. The idea of consumer choice is not yet generally accepted, but one would think it would appear more prominently in a book surveying liability reform options.

Although the tort crisis has dropped from the headlines, the U.S. liability system is still in serious need of reform. Despite its failings, this book could make a valuable contribution to that reform effort, as it provides both an overview of the subject and useful facts and figures for policymaking.

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