SCHOOL OF LAW
CASE WESTERN RESERVE UNIVERSITY

Case Western Reserve Law Review

Volume 10 | Issue 1

1959

# Traffic Victims by Leo Green

Walter Probert

lution through which we are passing has rendered war obsolete as a method of solving disputes among nations. It remains to be seen whether man will have the intelligence and perspective to develop institutions adequate to prevent the threatened annihilation of humanity. The Clark-Sohn proposals may vastly increase our chances of survival.

ROBERT E. BINGHAM

TRAFFIC VICTIMS, by LEON GREEN. Northwestern University Press, 1958, 127 pages, $4.00.

Something must be done about the traffic cases. Lawyers and nonlawyers alike are finding themselves on the same platform in criticism of the manner in which the victims of the auto age are being handled — or mishandled — within the legal processes. Now that venerable gentleman of the law of torts, Leon Green, has come forward with something more than a modest proposal for handling one of the most serious legal problems of our time. This is the man who thirty years ago turned negligence doctrine one hundred and eighty degrees about and disclosed how it really worked,[1] to the great advantage of the student of law and I suspect to the benefit of many who have not even heard of his work. Today, in a comparative few but significant words, he suggests abandoning that doctrine, that "professional ritual" as he calls it, altogether in favor of a new realism.

There should no longer be any shock in the way Dean Green pierces through the legal fictional process as part of his persuasion toward a new approach. In a neat historical package, he quickly traces the general movement of tort law from what has been called a "fault" kind of basis to a "spread the risk" concept of liability. While it does appear that the negligence-doctrine product of the "horse and buggy" era has caused a lag in the parallel drift in today's traffic cases, still even here the lag is more in the legal fiction than in the actualities of litigation and settlement. The way Dean Green looks at it, for instance, the doctrine of proximate cause really serves little more function than to allow the appellate judge to exercise a heavy hand over the trial process.

Whether you habitually represent a particular side of a personal injury case or play the field, you cannot ignore the social significance of liability insurance. Nor has the legal process ignored this relative newcomer. Yet, despite the widespread change in attitude toward the victim of traffic, some judges are blinded by the fictions of fault. The rest

1. GREEN, RATIONALE OF PROXIMATE CAUSE (1927); JUDGE AND JURY (1930).

are shackled by the administrative process, the tradition. They cannot break away as they would like or as they must.

So, if enough of the people who count are agreed that we should use the "free enterprise" institution of insurance to spread the cost of traffic damage over the whole of at least the driving public, then go ahead. Simply require insurance on all vehicles of the road. Do away with negligence doctrine for this purpose. Require only that the injury be caused by a motor vehicle. Let the victims recover for their loss directly from the insurance company. (Of course this does happen already to some clouded extent). Go ahead and use the jury system simply for such matters as assessing the amount of damages, but take away the element of pain and suffering, sticking closely to those matters which can be reasonably measured for compensation. And so on.

This is not a mere adaptation of Workmen's Compensation, as a complete reading discloses. Yet it is an experiment as daring as was that new protective scheme in its birth. There were opponents then. The experiment staggered but finally kept its feet. That experiment needs new study, but nobody would go back to the old scheme of things. There will be opponents to the Green proposal, but something like it will happen, partly I believe because Dean Green put his pen to it.

WALTER PROBERT*

* Associate Professor of Law,
Western Reserve University.