REVIEW

Lawyers and the American Dream

Stuart M. Speiser
New York: M. Evans and Company, Inc., 1993
x, 430 pp.

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*Mitchell McInnes**

UNLIKE MANY OF THE books reviewed in this space, *Lawyers and the American Dream* can be commended for its ability to inform *and* for its ability to entertain. Through four hundred plus pages, Stuart Speiser delightfully pursues his thesis with illustrations drawn not only from case reports, but also from newspaper headlines, popular culture, and his personal recollections as one of America's leading civil litigators. That unusual mix of resources should ensure a broad and satisfied audience.

The book's "American Dream" is the Dream seen, for example, in the novels of Horatio Alger and Edna Ferber, in the films of Frank Capra, and in the television series *L.A. Law*. It is one of both self-interest and idealism, of

> [a]chieving excellence on your own and using it to do well financially and have a happy life, while doing good for the less fortunate.[1]

Speiser argues that lawyers can achieve that Dream by representing plaintiffs in tort actions against powerful corporate entities and insurance companies. In doing so, they can enjoy entrepreneurial success, but so, too, they can serve as "equalizers,"[2] "boosting their weaker clients onto their shoulders so that they can stand as tall in court as their establishment opponents."[3]

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* B.A., LL.B. (Alberta), LL.M., Ph.D. (Cambridge).

[1] Stuart M. Speiser, *Lawyers and the American Dream* (New York: Evans and Company, Inc., 1993) at 13.

[2] Speiser holds that while lawyers may serve as equalizers in other areas of the law, in doing so they generally cannot fulfil the American Dream, as he defines it. For example, the civil rights champion certainly helps the underprivileged, but is unlikely to reap material rewards as a result. *Ibid*. at 42–3.

[3] *Ibid*. at 24.

The bulk of *Lawyers and the American Dream* describes the emergence of such equalizers. Well into the 1960s, tort lawyers were largely ineffectual, unable to compete against large enterprises on a level playing field and incapable of securing fair awards for their clients. Speiser attributes such impotency to many factors. For example, he describes how the rules of tort law were largely devised during the second half of the nineteenth century when *laissez faire* philosophies prevailed and lawmakers sought to protect nascent industries from the potentially stifling effects of liability. He also explains that most plaintiffs had little disposable income and that damage awards typically fell well below the level of adequate compensation; plaintiffs' lawyers could not recover enough to justify the expenses required to marshall evidence of negligence in complex cases, even if they were willing to face the condemnation attendant upon accepting a contingent fee. In consequence, the brightest legal minds were usually aligned with the money of the powerful corporations and insurers, and many victims were unable to secure competent representation. Business enterprises could visit misery upon the masses with little fear of being held accountable.

The seeds of change were sown by many hands. Throughout the United States, progressive judges, scholars and practitioners, like Chief Justice Roger Traynor of the California Supreme Court, Professor William Prosser, Melvin Belli[4] and the author himself, pressed hard for reforms and eventually succeeded, for example, in establishing a rule of strict liability for defective products and in winning higher, more realistic, compensatory awards. Contingency fee arrangements also achieved general acceptance, and with greater working capital, it became possible for plaintiffs' lawyers to undertake the costly forensic work often necessary for the proper prosecution of suits. Concurrently, on a social level, individuals like Ralph Nader had begun to expose the atrocities perpetrated by corporations,[5] and to establish national consumer groups which could lobby, in the courtroom and in the legislature, for safer products.

Having fulfilled the American Dream of achieving personal success while helping the less fortunate, plaintiffs' lawyers now face the challenge of repelling the forces urging tort reform. In the later chapters of *Lawyers and the American Dream*, Speiser argues that

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[4] Indeed, Melvin Belli's barnstorming efforts reached into Canada, as well: see for example M. Belli, "The Revolution in the Civil Law" (1968) 6 Alta. L. Rev. 29.

[5] R. Nader, *Unsafe at Any Speed: The Designed-In Dangers of the American Automobile* (New York: Grossman, 1965).

many of the targets of business and insurance lobbyists, such as the rule of strict product liability, punitive damages, damages for pain and suffering, and contingent fees, are necessary if lawyers are to continue acting as equalizers, empowering victims and forcing accountability upon those responsible for the wrongful infliction of injury and death.

The substance of Speiser's discussion generally cannot lay claim to originality; the shifting tides of judicial philosophies have been explored more fully elsewhere,[6] and the desirability of retaining the existing system of civil liability has long been the subject of comprehensive debate.[7] On the other hand, the style of *Lawyers and the American Dream* is entirely refreshing, and it is doubtful that the material has ever been presented in a more accessible manner. While Speiser's reputation as a scholar is well established,[8] it is his experience as a practitioner and his love of popular culture that makes his book so enjoyable. The former enables him to illustrate vividly the development of the equalizers with personal recollections of the conduct of actions involving, among others, Aristotle Onassis, the tyrannical shipping magnate; the Gucci family, of over-priced apparel fame; Roberto Clemente, the Pittsburgh Pirates' legendary rightfielder; the Ocean Ranger drilling platform, which collapsed off the Newfoundland coast in 1982; and Korean Air Lines Flight 007, which was gunned down over the Soviet Union in 1983.

Provided that readers do not take matters too seriously, they should equally enjoy the illustrations drawn from the world of television and film.[9] Thus, in Chapter 2, the role of the equalizer is explained through references to the early episodes of the program *L.A. Law*. And in the final chapter, Speiser calls upon the director and principal players of Warner Brothers' 1941 classic, *The Maltese Falcon*, to

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[6] See for example G.E. White, *Tort Law in America: An Intellectual History* (New York: Oxford University Press, 1980).

[7] See for example T. Ison, *The Forensic Lottery: A Critique on Tort Liability as a System of Personal Injury Compensation* (London: Staples Press, 1967); S.D. Sugarman, "Doing Away With Tort Law" (1985) 73 Calif. L. Rev. 555; W. Olson, *The Litigation Explosion: What Happened when America Unleashed the Lawsuit* (New York: Trumna Talley-Dutton, 1991); D. Dewees & M. Trebilcock, "The Efficacy of the Tort System and its Alternatives: A Review of the Empirical Evidence" (1992) 30 Osgoode Hall L.J. 57.

[8] See for example S.M. Speiser, C.F. Krause & J.M. Madole, *Recovery for Wrongful Death & Injury* (Deerfield, Ill.: Clark, Boardman, Callaghan, 1992); S.M. Speiser, C.F. Krause & A.W. Gans, *The American Law of Torts* (Rochester, N.Y.: Lawyers Co-operative Pub. Co.; San Francisco: Bancroft-Whitney Co., 1983).

[9] A minor quibble: the role of Jett Rink in the 1956 film *Giant* was played by James Dean, and not Rock Hudson, as Speiser reports: *supra* note 1 at 9.

debate the major issues raised throughout *Lawyers and the American Dream*. John Huston moderates as Humphrey Bogart and Sydney Greenstreet entertainingly argue the pros and cons of contingency fees, strict liability, punitive damages, and the like. In light of the author's obvious agenda, he can be forgiven for providing Bogart, as the champion of plaintiffs' rights, with the choicest lines.

Thus, despite its title, *Lawyers and the American Dream* should find an audience on both sides of the 49th parallel. The prevalence of American culture in this country ensures that most readers will be readily familiar with the novels, films, television programs and legal disputes to which the author refers. It has probably also resulted in a Canadian Dream which is substantially the same as Speiser's American Dream. Moreover, there is evidence that the two countries' legal systems are more alike than might be assumed. The purported tort explosion and insurance crisis which underlie the proposed reforms which Speiser rails against are not uniquely American phenomenons.[10] And the use contingency fees, which he believes to be so necessary for the empowerment of victims, may yet become commonplace in this country thereby providing Canadian tort lawyers with a greater ability to act as "equalizers."[11]

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[10] It has been suggested that while Canada is not yet "California North" in terms of tort law, it may become such: Ontario Task Force on Insurance, *Final Report* (1986) (Chair: D. Slater) at 34 (hereafter *The Slater Report*). See also F. Sellers, "The Potential Effect of Liability Claims on the Canadian Public Health Care System: A Need for Legal Reform and/or An Alternative to Litigation for the Compensation of Persons Disabled because of Medical Misadventure," *The Slater Report* at 363f.

The American experience may also be mirrored outside of North America: B.S. Markesinis, "Litigation-Mania in England, Germany and the U.S.A.: Are we so very Different" [1990] 49 C.L.J. 233.

[11] Though contingency fees are permitted everywhere in Canada except Ontario (*Solicitors Act*, R.S.O. 1990, c. S. 15, s. 28; *cf. Class Proceedings Act*, S.O. 1992, c. 6, s. 33), they are used far less commonly in this country than in the United States: M.J. Trebilcock, "The Case For Contingent Fees: The Ontario Legal Profession Rethinks its Position" (1989) 15 Can. Bus. L.J. 360.

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BARRISTERS AND ATTORNEYS·AT·LAW

Commodity Exchange Tower
2500•360 Main Street
Winnipeg, Manitoba
Canada R3C 4H6
Tel: 204•956•0560
Fax: 204•957•0227

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*Also of Alberta Bar

12TH FLR. ROYAL TRUST CENTRE
330 ST. MARY AVENUE
WINNIPEG, MANITOBA
CANADA R3C 4E1
TELEPHONE (204) 942-2271
FACSIMILE (204) 943-4242