BOOK REVIEWS


All lawyers, and a lot of other people, know something about the theory of insurance. They know even more about its practice – particularly the practice of insurers in paying slowly, if ever, and the practice revealed in the curious nature of the contractual materials, often nearly incomprehensible and marked by a mixture of long windedness and skimpiness. But who knows anything about the London Code?

The London Code is an insurance code written in London in the late 1570s and early 1580s. This book studies the London Code against the background of sixteenth-century customs and compilations. It examines the extent to which the London Code departed from earlier Lombard Street customs. It also examines the extent to which the London Code consolidated earlier practice in the light of foreign customs.

The author describes the difficulties facing him as follows. Compilations of insurance rules and customs have not been the subject of any critical edition. Some of the most commonly employed editions are grossly outdated or infelicitous or both. Early modern insurance codes are not always easy to read and understand. The analyst has to study the economic, commercial and legal historical developments of the place where a given code was written and used. Some of the codes are only to a limited extent organised and coherently structured, and they need to be re-organised before they can be compared. Particular rules are announced as general principles, whereas they are in truth only exceptions or particular instances of more general rules which are not spelt out, or are not unambiguously spelt out. Hence knowledge of customary law applicable to the place where the code was written is essential to interpret it by filling gaps and by using it as a check on misleading deductions. The author has employed principally archival documents and insurance compilations roughly contemporary with the London Code, in preference to the treatises of lawyers and decisions of courts – for there is conflict between the views of jurists and contemporary mercantile practice, followed by a rise in the power of courts.

These factors have led, the author argues, to errors on the part of scholars. Early scholars have assumed without verification that law treatises reflected reality. Later scholars followed suit, while twisting what their forerunners had written to suit contemporary needs.

The first principal chapter describes the main developments in London insurance in the sixteenth century and suggests a strong Italian influence on English insurance. The second principal chapter describes the commercial significance of commercial insurance in London in the late sixteenth century. It also describes the institutional background after the setting up of the Assurance Chamber – a tribunal of merchants who did not participate in insurance set up to adjudicate on policies which had been registered with the Chamber. The bulk of the book before the Appendices consists of an account of the origins of the London Code in, but its departures from, the Ordinances of the Spanish Consulate in Bruges. This is followed by an analysis of the contents of the London Code by reference to the object of insurance, the premium, the parties, risks, ship and voyage, recovery, abandonment to insurers, reinsurance and life insurance. This has involved a process of reorganisation,
simplification and critical discussion of the London Code. That discussion is both meticulous and lucid.

This book reveals a high degree of complexity and sophistication in London insurance customs in the late sixteenth century. The author suggests that the London Code exhibited a considerable bias against the interests of the insured. The author offers various explanations for this, notably the new and undeveloped character of the insurance market. For insurers that market posed great dangers and risks, which were therefore regulated in their favour. The book also reveals strong ties with Continental practice and a body of English customs (closely related to Continental customs) operating as a viable alternative to the common law. But the concluding lines of the book foreshadow the progressive replacement of mercantile courts with law courts.

There is one modern trend to which the book has relevance. The book examines in different places the weaknesses and strengths of arbitration compared to courts external to the mercantile community. The procedural unattractiveness of sixteenth-century courts made a preference for arbitration understandable. Today arbitration is almost totally triumphant over modern courts. Yet those modern courts are incomparably superior in point of procedure, not only to their predecessors, but also to modern arbitration. Modern arbitration, made compulsory by many ill-advisedly entered contractual clauses, is in many respects a scandalous institution. It is a procedure dominated not by the parties, but by their grasping lawyers, who secure delays and financial advantages connived at by arbitrators desirous by repeated re-engagement and unconcerned about the lack of drive and pace in the progress of proceedings. And the “law” enforced by arbitration is often not the actual law of the land against which the contract was written, but some new and unpredicted departure from it – a practice radically antithetical to Hayekian conceptions of the rule of law.

The non-specialist reader must stand in humble awe at the author’s massive scholarship. It is scholarship conducted in numerous places. It is scholarship in primary sources written in several languages. It is scholarship obtaining little assistance from secondary works. The book is beautifully written. There is an occasional non-English usage. But the instances of this have not impeded communications. If anything, they have added charm and force, as non-mainstream writers of English often can. The work is a supremely impressive addition to the series of which it is a part, Cambridge Studies in English Legal History.

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The rapid economic development of the People’s Republic of China (“China”) after it opened up its economy in 1978 has been nothing short of phenomenal. The growing international attention being paid to rising economies in Asia, the proposed new trade routes in China’s announced “One Belt One Road” programme, and the renewed energy with which the country is throwing its weight behind the forces of international trade in the face of an unexpected wave of protectionism from the US, signal the rising importance of the role of China in international commerce.