

Preface

People suffer injuries all the time: at work, at home, at play, while driving downtown—the list of ways to hurt oneself is endless. For the vast majority of these injuries, one simply accepts responsibility, endures the pain—physical and/or psychological—seeks appropriate medical care, and moves on. Yet some of these injuries seem *unjust*, in the sense that they appear to be someone else’s fault—because another person or entity (such as a business, product manufacturer, or the government) has allegedly caused the injury intentionally or through carelessness.¹ These are the injuries that may lead to involvement in the civil justice system, where the injured party seeks redress from the alleged injurer. The psychological principles that underlie this process are the focus of this book.

There are various forms of redress for an injury that has been caused by someone else, but perhaps the best known is a lawsuit for monetary damages (some of the other forms are discussed in Section IV of this book). The civil litigation process, especially when it involves juries, has been the source of much debate and has undergone significant reform in recent years (e.g., caps on punitive damages or pain and suffering awards; for more on reform efforts and their potentially inadvertent consequences, see the chapters by Bornstein and Robicheaux, and Sharkey). The debate is fueled by arguments that the U.S. civil justice system is the most expensive in the world, and it almost certainly processes the largest number of claims.

In the last decade of the 20th century and first decade of the 21st century, civil juries have been in the news more than ever before. Merely mentioning a well-known defendant’s name conjures up images of lengthy trials, rampant publicity, and, in some cases, very large damage awards. An incomplete list includes such household names as McDonald’s (hot coffee), Merck Pharmaceuticals (Vioxx), Ford/Firestone (rollovers and blowouts), BMW (bad paint job), State

¹ Under the doctrine of strict liability, one can also recover damages even when the alleged harmdoer (e.g., a product manufacturer) has acted without carelessness. Causes of action under strict liability are relatively rare and are often coupled with claims of negligence. The sections of the present volume that deal with torts (see especially Sections II and III) therefore do not consider strict liability.

Farm (insurance bad faith and fraud), and the major tobacco companies (cigarettes). These cases, as well as their seemingly outlandish and frivolous counterparts, garner considerable media attention. They have led many observers to conclude that there is a litigation crisis, that our civil justice system is in serious disrepair if not altogether broken, and that reform is necessary.

What is most lacking in the debate about the merits and shortcomings of the American civil justice system is data. Critics and defenders alike have a disturbing tendency to make claims without empirical support, and at times these ungrounded claims make their way into law or policy. This is where psycholegal research, which uses empirical methods to test the psychological assumptions underlying legal doctrines, helps to fill the void. The present volume takes this approach in addressing a number of controversial topics, such as the nature and causes of the perceived litigation crisis, in general, or of the medical malpractice crisis, in particular; the rationality of juries' damage awards; and non-litigation alternatives to civil dispute resolution. We are fortunate to have a team of contributors to this volume that not only represents individuals trained in law or psychology, but that consists of researchers who fully and successfully integrate both disciplines. By emphasizing empirical research on these and other topics, the editors and contributors to this volume hope to further the development of data-based policies regarding how individuals seek and obtain civil justice.

The book is divided into four sections, plus introductory and concluding chapters. Each section consists of two primary chapters, addressing the legal and psychological elements of a particular topic, followed by an analysis/synthesis chapter that integrates and extends the ideas raised in the previous two chapters. The analysis/synthesis chapters each provide a unique perspective, but they share a desire to advance our theoretical understanding while identifying inconsistencies and future research directions.

The Introductory chapter by Bornstein and Robicheaux lays out many of the book's major themes. In distinguishing between the rhetoric of the civil justice debate and empirical evidence on the topic, it explores why these two facets are often so divergent. Attempts to inform public policy through empirical research cannot proceed without a detailed examination of the methods used to generate the research findings. Section I, on "Approaches to Studying Civil Juries" (chapters by Hastie, Vidmar, and Wiener), raises a number of these methodological issues and provides important considerations to keep in mind while reading the empirical contributions that follow.

Section II, on "The Relationship between Compensatory and Punitive Damages" (chapters by Sharkey, Eisenberg et al., and Poser), includes examples of how empirical legal scholarship can be used to address contentious issues that are key to the tort reform debate. The focus of these chapters is the proper relationship between damages designed to provide restitution to the injured party (i.e., compensatory damages) and damages designed to punish the harm-doer (i.e., punitive damages), which typically arrive in the same package.

Section III, on “Medical Injuries and Medical Evidence” (chapters by Hans, Landsman, and Miller), focuses on one of the most contentious elements of the tort reform debate, namely, compensation for medical injuries. As the chapters in this section illustrate, there are many complex facets to this issue, ranging from how best to reduce medical error to how to preserve physicians’ autonomy to how to present evidence of medical injuries in court.

Although juries receive much, if not most, of the criticism for the alleged ills of the civil justice system, jury trials have always been relatively rare, and evidence exists that they are becoming rarer still (see Chapter 1). Thus, one could easily argue that the emphasis on juries (among both researchers and policy-makers) is misplaced, and that we need to consider civil justice and dispute resolution from a broader perspective. Section IV, on “Apologies and Civil Justice” (chapters by Robbennolt, Greene, and Tomkins and Applequist), explores some of these alternative mechanisms for obtaining civil justice. Finally, the concluding chapter (by Bornstein) summarizes the book’s major themes and speculates about the future of civil justice research.

Most of the chapters in this volume are based on papers presented at a conference on Civil Juries and Civil Justice, hosted by the Law-Psychology Program at the University of Nebraska-Lincoln, from May 15–18, 2006. The conference was funded by a UNL Program of Excellence award, which we gratefully acknowledge here. We also appreciate the support, financial and otherwise, of the Law College and Psychology Department at UNL. The conference papers and discussions they engendered did much to stimulate our and the contributors’ thinking about these issues, and I am very grateful to the contributors for their active, and often lively, participation in the conference. I also thank them for their responsiveness in turning oral papers into written book chapters. They have been a pleasure to work with.

Many people’s efforts are necessary for a conference to succeed and for a book thereon to be written. I was especially fortunate to have Evelyn Maeder as the graduate student assistant for the conference, who managed the myriad details of transportation, lodging, food, etc. without once losing her cheerful disposition. I also appreciate the conference contributions of Christie Emler and Craig Lawson, as well as the support and oversight of several individuals at Springer Publishing, especially Amanda Breccia, Sharon Panulla, and Anna Tobias. Finally, this project is the product of a team of editors who have worked diligently over a period of years, and I express my appreciation to my valued colleagues and co-editors (Rich Wiener, Bob Schopp, and Steve Willborn) for all of their efforts in helping to bring the project to fruition.

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