

Legal Structures and Restoring Equity¹

Stewart Macaulay and Elaine Walster

University of Wisconsin

Psychological research suggests that harmdoers typically respond in one of two ways after injuring another: (a) sometimes harmdoers make voluntary reparation to the victim, or acquiesce when forced to make reparation; (b) sometimes harmdoers engage in defensive behavior. Instead of acknowledging responsibility for the victim's predicament, they try to justify their harmdoing. They may insist that the victim deserves to suffer or may deny that he was really injured by their actions. This article examines the factors that tend to encourage or prevent individuals from voluntarily reestablishing equitable relationships, and considers the extent to which current legal practices encourage or discourage the equitable resolution of legal disputes.

Individuals react in a wide variety of ways when they discover they have injured another. Harmdoers sometimes make voluntary reparation to the victim or acquiesce when forced to make reparation. Under other circumstances, harmdoers engage in defensive behavior. Instead of acknowledging responsibility for the victim's predicament, they try to justify their harmdoing. They may insist that the victim deserved to suffer or may deny that he was really injured by their actions.

The victim of an injustice undoubtedly prefers to be compensated for his suffering rather than have his suffering justified.

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Society, too, has a vested interest in encouraging disputants to voluntarily reconcile their differences rather than rationalize their wrongdoing. In this article we will: (a) examine the factors that tend to encourage or prevent individuals from voluntarily reestablishing equitable relations, and (b) consider the extent to which current legal practices encourage or discourage the equitable resolution of legal disputes.

THEORETICAL BACKGROUND

In order to discuss the impact of legal structures on the behavior of harmdoer and victim, one must first define "harmdoing." The always difficult problem of choosing a definition is increased by our wish to bridge three disciplines: sociology, psychology, and law. Definitions of harmdoing which are useful to lawyers are vastly different from those found useful by sociologists and psychologists. Since this paper will focus on the psychological impact various legal procedures have on an individual, we will define harmdoing in psychological terms: A harmdoing situation will be defined as one in which an *inequity* is produced in the relationship between two individuals. Our discussion, therefore, will utilize the conceptions of equity in human interaction which have been advanced by Homans (1961), Adams (1965), and Walster, Berscheid, and Walster (1970).

THE EQUITY FORMULATION

In general terms, an equitable relationship has been defined as one in which a person's ratio of outcomes to inputs is equal to the other person's outcome/input ratio (Adams, 1965). *Inputs* are defined as "what a man perceives as his contributions to the exchange, for which he expects a just return." The inputs which a person contributes to a relationship can be either assets, which entitle him to reward, or liabilities, which entitle him to punishment. In the employer-employee relationships with which Adams dealt, inputs were such contributions as skill, financial investments, education, and so on. However, in social encounters quite different assets or liabilities are judged to be relevant inputs by participants. For example, in accident cases such inputs as intent, fault, and negligence may be of primary importance. *Outcomes*, as defined by Adams, are the individual's "receipts" from a relationship. They may be positive or negative consequences of the individual's relationship with the other person. The person's total outcome from the relationship is the sum of the rewards he obtains from the relationship minus the cost he incurs.

Given this equity formulation, it is now possible to define harmdoing as the commitment of an act which produces an inequitable relationship between the members, such that the actor's outcome-input ratio becomes greater than that of the other member of the relationship. The perpetrator of such an act is designated as a *harmdoer*; the member of the relationship whose ratio has been reduced is a *victim*.

THE PSYCHOLOGICAL CONSEQUENCES OF DOING HARM

Virtually every theorist assumes that individuals experience distress after injuring others. This distress is variously labeled "guilt," "fear of retaliation," "dissonance," "empathy," "conditioned anxiety," etc. The distress harmdoers feel would seem to arise from two sources, both the products of early socialization.

First, when children harm others, they are sometimes punished. Soon the performance of harmful acts arouses conditioned anxiety (Aronfreed, 1970). Throughout one's lifetime, harmdoing is often followed by punishment, and thus continues to generate conditioned anxiety. Such distress may have a cognitive component: The harmdoer may attribute his distress to a fear that the victim, the victim's sympathizers, legal agencies, or even God will retaliate against him. Discomfort emanating from this source is labeled *retaliation distress*.

Harmdoing may produce discomfort for another reason. In our society there is an almost universally accepted (if not followed) moral code that one should be fair and equitable in his dealings with others (cf. Fromm, 1956, for an interesting discussion of the pervasiveness of the "fairness" principle).

In stating that "individuals accept a code of fairness" we do not mean that everyone internalizes exactly the same code, internalizes it to the same extent, and follows that code without deviation. Juvenile delinquents and confidence men, for example, often seem to behave as if the exploitation of others were completely consistent with their self-concept. However, evidence suggests that even deviants do internalize norms of fairness. It is true that they may repeatedly violate such norms for financial or social gain, but such violations do seem to cause at least some distress. Exploitation evidently causes deviants such discomfort that they try to convince others that their actions were equitable. For example, some deviants argue that the inputs of those they victimize are so negative that to exploit them is in fact to give them "what they deserve." Anecdotal evidence on these points comes from interviews with confidence men (Goffman, 1952) and delinquents (Sykes & Matza, 1957).

Doing a harmful act, then, should be inconsistent with a normal individual's ethical principles and with his self-expectations. The distress that arises from such unethical or inconsistent acts has been discussed in great detail by guilt theorists (Arnold, 1960; Maher, 1966) and by cognitive dissonance theorists (Bramel, 1969). Discomfort emanating from this source has been termed *self-concept distress*.

Presumably, retaliation distress and self-concept distress motivate a harm-doer to restore equity to his relationship with the victim.

TECHNIQUES BY WHICH A HARMDOER REDUCES HIS DISTRESS

Restoration of Actual Equity

One way a harmdoer can restore equity to his relationship with the victim is by making compensation to him. Cynics have argued that voluntary compensation is relatively rare (e.g., Junius's comments in his *Letters* that "a death bed repentance seldom reaches to restitution"). However, the evidence indicates that if a harmdoer is given the opportunity, he will often exert considerable effort to make restitution. For example, large retailers often have a policy of "money cheerfully refunded" if a customer is not satisfied with his purchase. Such restitution attempts have been repeatedly documented in experiments (Berscheid & Walster, 1967; Berscheid, Walster, & Barclay, 1969; Brock & Becker, 1966; Carlsmith & Gross, 1969; Freedman, Wallington, & Bless, 1967; Walster & Prestholdt, 1966; Walster, Walster, Abrahams, & Brown, 1966).

Restoration of Psychological Equity

Compensation is not the only way equity can be restored. If, for various reasons, a harmdoer is unable or unwilling to compensate his victim, he can still reduce his distress by distorting reality and convincing himself (and perhaps others) that his inequitable act was in fact equitable. Individuals use several techniques in rationalizing harmful acts.

Derogation of the victim. That individuals often justify their cruelties by derogating their victims was apparent even to the ancients. Tacitus argued, "It is a principle of human nature to hate those you have injured." Many studies have demonstrated that harmdoers who feel guilty about injuring another will derogate their victims (Berkowitz, 1962; Davidson, 1964; Glass, 1964; Sykes & Matza, 1957; Walster & Prestholdt, 1966). In a typical

experiment, Davis and Jones (1960) found that students who were hired to humiliate other students as part of a research project tended to convince themselves that the students in fact deserved to be ridiculed. Sykes and Matza (1957) found that juvenile delinquents often defend their victimization of others by arguing that their victims are really homosexuals, bums, or possess other traits which make them deserving of punishment. In tormenting others, then, the delinquents could claim to be instruments of justice rather than harmdoers.

Denial of responsibility for the act. If the harmdoer can perceive that it was not his behavior but rather the actions of someone or something else (e.g., fate) that caused the victim's suffering, then his relationship with the victim remains a psychologically equitable one. That harmdoers will often deny that the harm was their fault has been documented by Sykes and Matza (1957) and by Brock and Buss (1962, 1964). At the societal level the notion that another's suffering is not one's fault, that one does not owe the victim any reparation, is incorporated in formal legal rules.

Minimization of the victim's suffering. To the extent that the harmdoer can deny that the victim was harmed, he will be able to convince himself that his relationship with the victim is still equitable. Sykes and Matza (1957) and Brock and Buss (1962) demonstrated that harmdoers consistently underestimate how much harm they have done. The latter study found, for example, that college students who administer electric shock to other students soon come to markedly underestimate the painfulness of the shocks they are administering.

PREDICTION OF A HARMDOER'S RESPONSE

The important question, of course, is which equity-restoring technique—compensation or justification—is a harmdoer likely to employ in various circumstances?

Logically, it would seem unlikely that a harmdoer could restore equity in a given situation by using both compensation and justification techniques in concert. It should be difficult for a harmdoer to convince himself that the victim deserved to suffer, that the victim was not really injured, or that he was not at fault for the victim's suffering at the same time that he is acknowledging fault for the victim's undeserved suffering and is exerting himself in an attempt to assist the victim. There is also experimental evidence that supports the contention that compensation and justification are alternative rather than complementary ways in which a harmdoer reacts to the victim (Lerner & Simmons, 1966; Walster & Prestholdt, 1966).

Although a harmdoer may care little whether he restores equity by compensating the victim or by rationalizing his harm-doing, the victim and society cannot be so neutral. Both have vested interests in inducing the harmdoer to make restitution. A victim is naturally most eager to secure compensation. If he is denied restitution, he is left in sad straits. Not only has he been deprived of material benefits, but he may face both the indignity of derogation and the added difficulty that the harmdoer, because of his derogation, may feel free to commit further injustices (Berscheid, Boye, & Darley, 1968). Society, as well, would naturally prefer that its citizens restore equity after committing injustices rather than engage in a series of justifications which could end in shared bitterness.

How can society best increase a harmdoer's motivation to make restitution? (a) In socializing children, parents and teachers can try to engender a greater commitment to maintaining equity. (b) In addition, society can increase the likelihood that harmdoers will make restitution by developing and strengthening those social structures which facilitate restitution.

Several situational variables have been found experimentally to encourage individuals to make restitution to their victims. (For a list of many of the variables, consult Walster et al., 1970.) Among those which the authors have found to be important determinants of a harmdoer's response are:

Adequacy of available compensation. If a harmdoer believes that he can make a complete and exact restitution to the victim, he will be much more likely to volunteer compensation than if he is led to believe that even his best efforts at compensation will be inadequate. Naturally enough, harmdoers are also reluctant to make excessive restitution.

Public commitment. If a harmdoer is encouraged to defend his inequitable behavior publicly, it will become especially difficult for him subsequently to admit to error and to change his mind.

Possible segregation of the victim. Harmdoers are especially likely to rationalize their harmdoing when they believe they can avoid ever seeing the victim again.

THE EFFECT OF THE LEGAL SYSTEM

Let us turn to an examination of some of these variables in operation. We can now ask: To what extent do our legal structures support or socialize the goal of restitution and reconciliation? To what extent do they foster self-justification—i.e., derogation, denial, and minimization—in the harmdoer? In light of the wide variety of situations dealt with by law in American society, as a

preliminary step one can only rely on example and offer conclusions which are generally true.

Support for Actual Equity or Support for Derogation and Rationalization?

On its face, American law is consistent with the goal of supporting compensation (provided the harmdoer is at "fault" for causing the injury). For example, the common law of torts consists of rules which say that a wrongdoer must compensate his victim. In addition, the legal system in operation provides more avenues to restitution than are available in its formal rules. A wide variety of informal procedures encourage compensation. For example, criminal sanctions are sometimes used as leverage to induce restitution. A police officer may decide not to arrest a shoplifter if the wrongdoer is not a professional thief and if the stolen items are returned; a district attorney may decide not to prosecute if the amount embezzled is returned.

These formal rules and informal procedures undoubtedly encourage wrongdoers to make compensation. However, when one looks at the total legal process, it is also apparent that other rules and procedures exist which may discourage a harmdoer from making compensation and encourage him instead to justify his wrongdoing.

Dilution of Incentive to Restore Equity

In our society the automobile "accident" probably is the most common case in which one individual does serious physical and economic harm to another. Let us use this case as an example of how common law civil litigation aimed at compensation may actually discourage participants from making exact compensation.

At the formal level, the relevant legal rules most commonly rest on some aspect of fault, requiring a determination of who did what under what circumstances (Rabin, 1969). The legal concept of fault is based, in part, on harmdoer intentions or negligence. (Purely accidental harmdoing involves no "fault" in a legal sense.) The requirement of determining who is at fault may dilute the harmdoer's incentive to restore equity. Fault and fact frequently, if not commonly, are unclear. Although the victim may see no question about the harmdoer's responsibility, judges and juries and the harmdoer himself may see great doubt as a result of a series of difficult judgments required by the law. For example, the trier of fact must decide whether or not the defendant was driving at an appropriate speed for the conditions and was paying attention. But what is an appropriate speed in a residential neighborhood on an overcast afternoon? Can someone who has the car

radio on and is holding a conversation with a passenger be said to be paying proper attention to driving? While we can all agree that some kinds of conduct while driving a car involve fault and some do not, there are numerous in-between situations where there is room for a wide difference of opinion. If the harmdoer feels the victim is seeking excessive compensation, the rules resting on fault and fact often offer the harmdoer the opportunity to escape legal liability by contesting his responsibility for the harm he has caused. Unwittingly the ambiguities in our concepts of fault may encourage him to utilize denial and minimization techniques instead of volunteering exact compensation.

In most states, substantive tort law also gives the harmdoer an incentive to derogate his victim. The victim who is himself contributorily negligent cannot recover from an injury partially caused by another's negligence. If the harmdoer can convince others that the victim was partially responsible for his own injury, he can avoid the possibility of having to make what he would deem an inequitably large settlement.

Effects of delay in judgment. The long time which generally elapses between commission of the accident and the possibility of compensating makes it easier for the harmdoer to deny fault. In time, memory dims and it becomes easier for the harmdoer to distort reality, either consciously or unconsciously. Also, as time passes, the harmdoer becomes more committed to resist pressures to compensate. This increases his motivation to put his actions in a better and better light. Thus the entire process that results from the necessity of establishing fault predisposes the harmdoer to say, "I'm not really at fault. I really didn't cause the accident. I'm legally right, and if we went to court, I'd win."

Costs of litigation. The actual operation of the legal system as it relates to other social systems may further dilute a wrongdoer's incentive to restore exact equity. (a) In practice, litigants must pay high cost to bring and defend lawsuits. The common law courts are not adequately staffed to respond quickly. Both these factors predispose individuals to bargain rather than to seek the restoration of exact equity. Some injuries are so small as to fall beneath the economic barriers to litigation. One does not pay a lawyer \$500 to attempt to recover \$100, although to a particular injured person that \$100 may be significant. The plaintiff's need for money today and his inability to wait for months or years for the legal system to process his case may force him to be receptive to an offer for settlement at a level far below full compensation. In short, costs and delay join fault and fact to push for bargaining and compromise rather than reestablishment of equity after harm has been done. Given the chance to ignore some injuries and to

buy off others at a sharply discounted price, the evidence suggests that many harmdoers will deal with their own distress by strategies other than compensation of the victim.

(b) Certain injuries like automobile accidents are predictable on an actuarial basis. In such cases, another social institution—insurance—joins the legal, to affect the resolution of the problems caused by our system of private transportation. One who drives a car is given every incentive to buy insurance to ward off liability for large sums as a result of his accidents. Practically, the thrust of insurance coverage is to avoid paying victims too much rather than to see to it that exact compensation is made. The practice of insurance companies and insurance adjusters of minimizing compensation has given impetus to another institutionalized role—that of plaintiff's attorney, who specializes in personal injury litigation and negotiation with adjusters and who often is paid a percentage of any recovery he can obtain.

The result is a system of institutionalized bargaining, which is impersonal. Both the harmdoer and the injured usually stand at the sidelines. The adjuster and the plaintiff's attorney play the game. This impersonality probably tends to dilute the harmdoer's sense of obligation to make full and adequate compensation. The harmdoer may think that his obligation to restore equity is met fully by referring his victim to the adjuster. Even if he realizes that his victim is likely to be inadequately compensated, the harmdoer can easily avoid unpleasant confrontations. The defendant need only tell the plaintiff to call the insurance company. From then on, he has washed his hands of the matter in most instances. (Assuming that the amount of injury he has caused does not exceed the policy limits, in all probability he will never again have to interact with the victim.) Rather than directly compensate, the harmdoer can delegate and derogate.

Plaintiff, or his attorney, then deals with an adjuster. The adjuster's primary goal, however, is not to make exact compensation for the harm his insured has caused; he has no guilt feelings about the particular case since he did not cause the injury. His goal is to obtain a settlement which minimizes the liability and total cost to his insurance company. Adjusters may compound the insured's wrongdoing by unfair denials of responsibility or offers of inadequate settlement. Adjusters themselves often derogate victims with tales of fraudulent claims and dishonest plaintiff's attorneys.

In addition to impersonal delegation, another facet of the typical insurance policy tends to blunt the harmdoer's urge to compensate. One who attempts to help his victim obtain compensation from the insurance company could lose his rights under

the policy. Insurers typically suggest that policy-holders say and do no more than that which is necessary after an accident, and they must cooperate with the defense against the victim's claims.

Exact compensation is rarely the result of this bargaining between adjuster and plaintiff's attorney. Often the victim is inadequately compensated. Sometimes plaintiffs get settlements which exceed the harm actually caused because of their skill in manipulating the facts, or get settlements when they have only a weak case measured against the likely outcome in court because it is cheaper to buy off the plaintiff than to defend against his claim. But such tactics do not reestablish equity. They simply convert the victim into a harmdoer of sorts. Bargaining here, as elsewhere, tends to merge the extremes to the middle, giving people with good cases less than their loss and those with weak cases more than they would have received in court (Conrad, Morgan, Pratt, Voltz, & Brombaugh, 1964).

Bargaining at expense of compensation. While in theory the common law rules tend to emphasize compensation by a wrongdoer to his victim, in practice the actual process pushes towards bargaining. Bargaining tends to produce—because of the necessary give and take—less than adequate compensation. The tendency in the law, then, is not to support the ideal of having the wrongdoer make good the harm he has done, but to support the best balance of self-interest possible between harmdoer and victim, in light of bargaining skill and position. Rather than develop the harmdoer's best motives, the system tends to guard against his worst since the potential of litigation forces him to try to strike some bargain rather than to ignore totally the victim's claim (Friedman & Macaulay, 1969).

Up to this point, our discussion has been focused on the common law and the structures for its enforcement in automobile accident cases. Some might object that this is a socially trivial problem since one major index of the social importance of a problem is whether or not specialized structures have been created to deal with it. One might argue that traditional common law is only a backstop for problems not important enough to warrant the high cost of an administrative agency. Whether or not one accepts this view, our discussion is also relevant to other areas of the law.

For example, in some areas law has departed from the adversary, winner-take-all approach and has turned to experts. One such area is social service. Welfare workers prepare a budget for their clients based on some conception of client need. Many agencies assume they are dealing with people who are unable to cope without help. Typically, these agencies are concerned with people

who are not the victims of a particular person or whose status does not come from a single event. We could view the situation as one where the harm has been done by the social system itself and where the welfare worker is the agent of society charged with restoring equity in the particular case. Some might object to this characterization. (Indeed, opponents of welfare programs commonly derogate welfare victims and use the other techniques of rationalization we have described.) However, even welfare workers who accept this metaphorical view of welfare programs rarely can come close to achieving exact compensation because of limited resources, because of ideology about what welfare clients want or ought to do, and because generous levels of welfare are politically unacceptable. Thus, even in such agencies a type of bargaining often evolves. Officials carry out their tasks in certain ways and not others in order to achieve support from the community and the legislature; a kind of tacit bargain is struck between these officials and the relevant public. Workers dealing with clients often tacitly bargain, too; funds needed to make up for injuries such as the lack of good schools are offered but at a price—the client must accept certain values and a dependent status. Here, too, the system in operation results in bargaining for partial restitution rather than full compensation. Attempts to force welfare agencies to conform to a due-process model are beset with difficulties (Handler, 1967, 1969).

Summary

In this section we have argued that social ideals and the formal rules of American law state that harmdoers must compensate their victims, and that the actual operation of the legal system makes exact compensation unlikely and bargaining likely. We now point out that such bargained settlements, although failing to restore exact equity, still offer some support for the compensation value. That one might be sued and might lose is probably a major reason why many buy insurance to cover liability for injuries which they may cause. Although the equity norm is met only indirectly and through bargains which may offer less than the real loss, it seems clear that insurance offers far more compensation to all those injured than would be available without it. Even the most well-intentioned harmdoer is limited by the resources available to him. Given the choice of good intentions backed by little money or the bargain with an adjuster, which typically produces some money in the bank, most victims would choose the latter. Indeed, it is possible that some believe they are doing equity when they buy insurance and when they direct their victims to the adjuster after the accident. Insofar as harmdoers

believe this, they are unlikely to commit further injustices based on derogation and rationalization. To this degree then, the current system encourages "justice rather than justification."

Moreover, the norm of compensating one's victim may be given somewhat greater force and legitimacy by the fact that it also is a rule of law. Legal norms may, perhaps very indirectly and to a very limited extent, influence public perceptions of legitimacy (Berkowitz & Walker, 1967; Kaufman, 1970). The fact that equity is a formally prescribed value might motivate some to reconcile who would not voluntarily elect to do so.

Also, recently some of the barriers to using the legal system to gain compensation for some injuries have been lowered. Various kinds of subsidized legal assistance programs now operate in many cities so that people with lower incomes can have legal advice, help in bargaining, and representation in trials. As a result, test cases have been brought and some results favorable to lower income people have been won. One would expect these test cases to influence future bargaining and to change evaluation about the wisdom of initiating voluntary compensation.

Then, too, there is a recent trend to subject certain kinds of harmdoers to regulation (particularly those whose institutionalized practices affect consumers). As a result, compelled compensation may eliminate some common impersonal refusals to compensate victims. For example, if manufacturers were required to provide new cars with service measured by certain standards, they could no longer refuse to make good harm done to buyers caused by the manufacturers' own inadequacies. This is an area where today derogation and rationalization by the manufacturers is the norm and compensation the exception; regulation, or even just the threat of it, may produce a significant change.

EVALUATION OF THE SYSTEM

It seems clear that in our society we would find wide agreement with the proposition that when one has done harm to another, he should do all that he can to repair the injury. Some might want to restrict the norm to cases involving fault. Even with this restriction, we have seen that the legal system offers only limited support of the goal of equity. The nature of its rules, the costs of using the system, and the limited power granted to experts combine to produce a less-than-ideal bargaining system. More generally, what we have seen is the difference between society's strong support for a goal and its minimal support for the means of achieving it.

Just because it is desirable that harmdoers compensate those

they injure, it does not necessarily follow that a legal system ought to pursue this goal at all costs. Society is often unwilling to pay the price to achieve a goal even though most of its members agree that it is important. This is particularly true when resources are limited (or are perceived as limited), when society is committed to competing goals, and when choices about allocations must be made.

As long as resources are limited, it is difficult to conceive of a legal structure which would not end up offering support for bargaining rather than exact equity restoration. For example, one can imagine a legal system in which the state created an agency staffed by investigators and lawyers charged with seeing to it that harmdoers compensated their victims. However, even this expensive step would not necessarily result in more equitable compensation to victims. First, many citizens would argue that, in a world of limited resources, public welfare is not a very high priority item. As a result, such an agency would likely find itself under-funded for all the tasks given it, and it would have to allocate its resources to do the best job it could. In order to save time and money, it would likely bargain for settlements so that it could offer something to everyone, or nearly everyone, who was a victim.

Even if a fairly adequate level of resources were allocated to such an agency, some of the factors that support the present bargaining system would remain. Most people would probably think that an accused harmdoer ought to be able to challenge the charge—"It was *not* my 1969 blue Ford which hit the victim." Few would advocate charging one person with the acts of others, excepting special circumstances, but most might cling to some view of fault—"While I was driving very carefully, the plaintiff ran out in front of my car from between two parked cars." Finally, since the use of machines (primarily automobiles) is not confined to those rich enough to pay full compensation, most harmdoers would not be able to pay more than a fraction of the losses they cause. Insofar as this is true, the agency would have only two alternatives: (a) it could leave losses uncompensated, (b) it could turn to private or public compensators. Insurance companies are the private compensators who spread losses for a price. Given the profit system we have in our society (and the resulting interests of the stockholders of insurance companies, their managements, and their adjusters), insurers cannot be expected voluntarily to turn their full attention to doing equity at the cost of greater expense and less profit. Public compensators, too, would undoubtedly have real incentives to cut costs. Unless there developed a strong general social pressure for full compensation, public agencies charged with this burden would be likely to establish elabo-

rate procedures designed to deal with cheating by victims and those claiming to be victims in order to please a cost-conscious public. In short, it is difficult to envision a legal system which would offer unqualified support for the equity goal.

Perhaps, too, there are benefits from the indirect role the legal system plays in fostering the bargaining process. It has been suggested that cost barriers to litigation create socially desirable "reciprocal immunities," socializing people to be tolerant of the slight injuries that naturally accompany everyday life and fostering voluntary restitution. These barriers also inhibit the use of litigation as a harassment technique or as a sport (Friedman, 1967). An injury must be perceived as serious in order to justify invoking the elaborate litigation process. All of these difficulties may tend to support adjustments between the parties which are less costly to almost all concerned. One can go to court if things are serious and efforts at settlement fail, but there are disincentives to heading to court before all other avenues are exhausted. If a bargain struck by the parties has advantages over a formal legal resolution where one party must be found "at fault," then we would not want to make the use of formal process too easy.

In conclusion, the American legal system is likely to reflect ethically preferable goals: Harmdoers should compensate their victims rather than rationalize their harmdoing. For the most part, the legal system's basic rules reflect simple common sense ideas of fault, choice, and status since legal norms do reflect the community sense of fairplay. Nonetheless, the legal system cannot act without costs, both monetary and social. Typically, legal questions involve deciding what costs one is willing to pay to achieve what proportion of what values.

Social science findings can bring much to a study of the legal system. They can broaden our picture of man (the subject of legal action and, hopefully, the beneficiary of it). They also can lead us to consider the system as it exists in operation and can force us to look at more of the consequences of legal action (or inaction) than legal scholars have done in the past. Of course, one cannot take social science findings and just plug them into legal analysis without considering the costs of trying to support one style of conduct and to inhibit another. While findings about harmdoers and equity do not automatically dictate an appropriate legal response, they do suggest important issues concerning our largely unstudied legal system. For example, the psychological equity formulation and the picture we have drawn of interchanges between the legal and insurance systems lead us to wonder to what extent automobile drivers are freed from a sense of responsibility for the harm they may cause as a result of this process. One cannot know, of course, without studying them further.

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