

THE AFTERMATH OF INJURY: CULTURAL FACTORS IN COMPENSATION SEEKING IN CANADA AND THE UNITED STATES

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Injury is common in all societies. Americans are perceived as quick to respond to injury by turning to the legal system. This article compares compensation seeking by Americans and Canadians, examining the degree to which cultural factors shape the response of injured parties in the two countries and the extent to which resources and experience influence individual action. Drawing on two large-scale telephone surveys, one conducted in five federal judicial districts around the United States and one conducted in the Canadian province of Ontario, the article looks at the factors that influence claiming and seeking legal assistance. The overall patterns indicate that residents of Ontario are somewhat less likely to claim but more likely to seek legal assistance than are residents of the United States. Moreover, while cultural variations (e.g., religion, type of residence) are good predictors of claiming in Ontario, these factors have little influence on claiming in the United States. As for seeking legal assistance, few predictors are found to influence behavior in the United States while a variety of factors (community size, type of problem, stakes, gender, and education) influence behavior in Ontario.

INTRODUCTION

Do the contrasting cultures of the United States and Canada lead to differing legal attitudes and behavior? A common perception is that Canadians and Americans think and behave differently when it comes to the law and the legal system, that Americans are far more contentious and litigious. For instance, the *Economist* (8

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Oct. 1988) compared Americans and Canadians, observing that Canadians “do not stalk their country’s businesses with negligence and class actions suits filed on behalf of all purported victims. Nor do they ambush their surgeons with complaints of medical malpractice.” An executive of a Canadian corporation with some operations in the United States observed that “we are currently involved in more litigation in the U.S. than in Canada even though our operations are in Canada” (Kritzer 1984:129). In a recent book comparing the values and institutions of the United States and Canada, Seymour Martin Lipset (1990) argued that substantial cultural differences exist concerning law and a wide range of economic behaviors.

This article compares Canadian and American behavior related to claiming for legal redress in the wake of incidents involving injury and/or property damage.¹ Our goal is to provide a partial empirical test of hypotheses concerning claiming behavior, specifically:

- Americans seek legal redress more often than do Canadians;
- Cultural factors can explain variations in compensation-seeking behavior;
- Cultural factors condition the relationships between compensation-seeking behavior and variables such as experience, resources, and education.

Our data sources are large-scale surveys conducted in both countries. The results confirm the existence of contrasting patterns in the way that people in the two countries respond to injurious experiences, although they do not always show the patterns that previous writings would lead us to predict. We do find evidence that the differences in compensation-seeking behavior are at least partially the result of cultural differences. Our study represents a good example of how comparative empirical analysis can shed light on behavior related to the legal system.²

In the first two sections that follow we offer the theoretical perspective that guided our research and then review relevant empirical literature. Next, we discuss a body of writings bearing on cultural and structural differences between Canada and the United States before turning to a description of our data sources and analyses. Finally, using the differences we observe between Canadian and U.S. patterns of claiming and lawyer use, we offer some observations about the relationship between culture and litigation.

¹ In the discussion that follows, we will use the shorthand reference “injury/damage.”

² For other recent examples, see Uslaner 1989, Sniderman et al. 1989, Tate and Sittiwong 1989, Merelman 1991, Doran 1984, Doran and Stigler 1985.

A THEORETICAL PERSPECTIVE ON LEGAL MOBILIZATION

The process of legal mobilization for potential compensation involves what Felstiner, Abel, and Sarat (1980–81; see also Vidmar 1981:409–13) labeled:

- naming*—identifying the existence of problem;
- blaming*—externalizing responsibility for the problem; and
- claiming*—seeking redress from those perceived to be responsible.

The theoretical analysis presented by Felstiner, Abel, and Sarat made it clear that legal mobilization does not consist simply of a decision by an injured party to turn to legal remedies; the process is complex, with the path from injury to lawsuit littered with barriers and alternative paths. We view this process as developmental in nature, and represent it in terms of what we have labeled the Developmental Theory of Litigation (see Fig. 1).

This approach to the analysis of legal mobilization models civil litigation as arising through a process with both social and individual elements. Each of the boxes in Figure 1 can be thought of as a stage, and the lines connecting the boxes as transitions marked by barriers (shown as double lines). The central question in the study of legal mobilization is how injurious experiences eventually become claims and lawsuits by “overcoming” the barriers that separate each of the stages, and passing through each of the successive stages.

Problems (“injurious experiences”) are relatively common occurrences; it is likely that many (perhaps even most) problems are tolerated (see Felstiner 1974, 1975), if not easily accepted, and that many things that might be perceived as problems by one person are not recognized as such by others. Unperceived injurious experiences (what Felstiner et al. termed “unPIEs”) may reflect differences in definitions as to what constitutes injury, a lack of awareness of rights, or a failure of diagnosis (e.g., an undiagnosed industrial disease such as asbestosis).³ Even if an injury is perceived to exist (i.e., the *recognition barrier* is crossed), it may be that the party involved accepts that injury as a normal part of life (see Engel 1980, 1984; Friedman 1987), or as something for which they bear responsibility; when this is true, the process shown in Figure 1 will end well before any mobilization of the law occurs.⁴

Crossing the *attribution barrier* requires a combination of information and a willingness to externalize the cause of an injury.⁵ That is, a potential claimant must be aware that there is (or might

³ The low rate of claiming in potential medical malpractice cases Danzon (1985) reported probably reflects a combination of all three of these factors.

⁴ There are some serious conceptual problems in studying the recognition process. There must be some way to identify *unperceived* injurious experiences if a comparison to perceived injurious experiences is to be carried out.

⁵ See Coates and Penrod (1980–81) and Vidmar (1981) for a review of psychological literature on attribution theory as applied to this question.

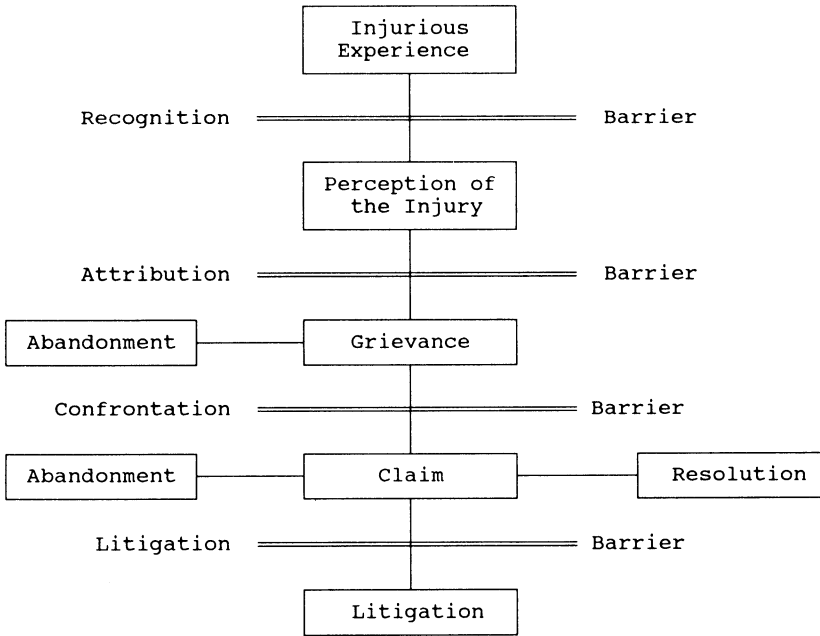


Figure 1. Developmental Theory of Litigation

be) an external source for the injury (e.g., a birth defect may be seen as part of the normal course of life *or* it may be attributed to some aspect of prenatal treatment), and the injured party must be prepared to attribute the responsibility for the injury to an external source (e.g., the prenatal treatment was a necessary risk *or* regardless of the necessity of the treatment, compensation is due because of the result of the treatment⁶). Once an injured party *blames* someone else for the problem, the problem becomes a *grievance* and is ripe for a claim.

The third potential transition is from the grievance to the claim stage. A person who has a grievance may or may not decide to seek redress from the responsible party. The decision to seek redress reflects a variety of factors: the injured party may not feel able, psychologically, to confront the other side; the injury may be so slight that claiming is “not worth the bother”; compensation might be forthcoming from other sources (e.g., from one’s own insurance company in the case of property damage); the injured party might not have the resources to pursue the claim; or there may be nonpecuniary personal or social costs (e.g., fear over disrupting a valued relationship or social expectations) that foster a disinclination to claim.

The last barrier that a potential litigant must cross is the litigation barrier. For a great many claims, the issue of crossing this

⁶ Obviously we are simplifying greatly the various interpretations that might arise in the birth defect example.

barrier never arises because the claimant is offered an acceptable resolution by the responsible party. In the area of consumer problems this is seen in the “customer is always right” approach that many large retailers apply to dealing with disgruntled customers. For claims for compensation arising out of automobile accidents, there may be well-established routines for resolving them (see Ross 1980 for a description of the process in the United States, and Genn 1988 for a description of the parallel process in England), so that most claims are resolved before formal court proceedings are initiated. However, when a claim is not satisfied, the potential litigant confronts a number of problems. First, the claim must be one for which remedies are in fact available through the courts. Second, legal representation is usually necessary, and this has to be paid for in some way. Third, the potential litigant must be willing to invoke the legal process and accept the *perceived* difficulties (delay, frustration, monetary expense, etc.) that it entails.

Our developmental theory of litigation resembles the model used by Silberman (1985) in his study of the “reactive mobilization of lawyers in civil matters” (*ibid.*, p. 1). Silberman describes his model as a “sequential, value-added” model” (*ibid.*, pp. 5–8, 24–25), and it is the sequential aspect that is the common element. Because of the data he used, Silberman concentrated his attention on the contacting of lawyers as an indicator of legal mobilization. For purposes of cross-national comparison in our analysis, “lawyer mobilization” is an interesting aspect of the broader issue of legal mobilization. Like the decision to claim, it is a decision controlled by the grievant but one that might be influenced by a combination of structural factors and a grievant’s financial and informational resources: one must know how to locate a lawyer who is knowledgeable about the kind of problem involved, and one must be able to purchase the services of the lawyer one has contacted.

In the analysis presented below we focus on claiming and on lawyer use, the two major decisions in the legal mobilization process most clearly under the individual’s conscious control. Of the other two major decisions, blaming is closely connected to the specifics of the incident creating the problem,⁷ and litigating is in significant part a function of the opposing party’s response to the claim. In this article, we limit our analysis to injury/damage cases because that type of dispute is most often referred to when broad statements are made about cross-national differences; consequently, it provides a good basis for examining those supposed differences.⁸

⁷ See Kritzer (1991a) for a comparative analysis of blaming and its role in claiming in Britain and the United States.

⁸ Prior analyses of the data we employ refer to these cases as “torts” (see Miller and Sarat 1980–81; Bogart and Vidmar 1990). As the question sequences shown in Figs. 2 and 3 indicate, strictly speaking, the data include nontorts because no specific screening was done for blaming. Thus, claiming rates here

PRIOR EMPIRICAL RESEARCH

The empirical research on legal mobilization at the individual level⁹ is devoted primarily to claiming, particularly the likelihood that claims will be made for various kinds of grievances.¹⁰ The first extensive study was carried out by the Civil Litigation Research Project (Miller and Sarat 1980–81). This study involved a survey of 5,147 households in five federal judicial districts around the United States; 2,491 grievances were identified covering a range of issues (“torts,”¹¹ consumer, debt, discrimination, property, government, postdivorce, landlord) involving either an issue of principle or at least \$1,000. The likelihood of claiming reported by Miller and Sarat was remarkably consistent across the types of problems reported, with rates in most areas falling in the 80–90 percent range. The exception was discrimination grievances for which there was a reported claiming rate of only 29 percent (see Bumiller 1987 for a detailed discussion of this exception).¹² Analy-

are per injury rather than per grievance. Evidence from the United States indicates, however, that at least in automobile accidents producing injuries, torts and injury cases are virtually identical because the vast majority of auto accident injury victims blame someone else for the injury. Hensler et al. (1991: 157–59) report that 75 percent of all auto accident injury victims attribute the cause of the accident “mostly” to someone else, and only 17 percent attribute the cause “mostly” to themselves; excluding drivers in single-vehicle accidents, about 95 percent of victims blame mostly someone else and only about 3 percent blame mostly themselves. These figures are similar to ones reported 20 years ago in a U.S. Department of Transportation study (1970:364); for more on “blaming” see Kritzer 1991a.

⁹ We exclude from this discussion the somewhat larger literature on litigation rates based on aggregate data.

¹⁰ Another body of research that is important for the study of legal mobilization is that founded on ethnographic methods. These studies generally look at dispute-related behavior within a single community and examine the links between the culture of the community and how people choose to handle their disputes. There is a long tradition of such research in legal anthropology, particularly focusing on communities outside the major industrial countries (see Nader and Todd 1977 for a number of representative studies). In recent years a number of studies have employed ethnographic methods in American communities (Engel 1980, 1984; Merry 1979, 1985; Merry and Silbey 1984; Baumgartner 1985, 1988; Buckle and Thomas-Buckle 1982; Greenhouse 1986). Engel, for example, argues that “Sander” County is marked by a low level of litigiousness in the personal injury area because of local norms that create barriers to such action; Greenhouse’s study of the community that formed around a church congregation in “Hopewell” found similar norms against disputing that she traced to specific occurrences in the distant history of the community. Merry and Silbey’s research suggests that certain kinds of problems are unlikely to lead to litigation because the remedies sought are not the kind that the legal system can obtain (and are not the kind that people are likely to be willing to spend money to obtain). The studies in the ethnographic tradition do not provide systematic evidence concerning the influence of individual level sociological variables on decisions to mobilize the law.

¹¹ Miller and Sarat use the term “torts,” although as we discussed in note 8 above, this label is not strictly speaking correct. Here, and in later discussion, we use quotation marks to indicate prior authors’ terminology.

¹² Our analysis of the CLRP data on claiming in discrimination problems indicates that the figures reported by Miller and Sarat are incorrect because they used too restrictive a definition of claiming. We find a claiming rate on

Table 1. Studies of Claiming Rates in the United States

Study	Sample	Claim Rate
Conard et al. (1964) (automobile accident victims)	Michigan N=401	66%
Department of Transportation (1970:50) (automobile accident victims)	National N=1,376	64
Hunting and Neuwirth (1962) (automobile accident victims)	New York City N=640	87
King and McEvoy (1976) (consumer problems)	National N=2,513	72
Ladinky and Susmilch (1985) (consumer problems)	Milwaukee N=1,269	75
Mayhew and Reiss (1976) (general range of problems)	Detroit area N=780	71 (est.)
McNeil <i>et al.</i> (1979) (used-car problems)	3 states N=1,212	60
Ross and Littlefield (1978) (household appliance problems)	Denver N=398	80
* * * * *		
Best and Andreasen (1977) (consumer problems)	34 cities N=2,419	33
Caplovitz (1963) (low-income consumer problems)	New York City N=464	40
Warland et al. (1975) (consumer problems)	National N=1,215	50

ses of the factors influencing the claiming transition process showed only modest effects of variables like personal resources, education, and experience.

A number of other surveys examine the propensity to sue. The central feature of this body of literature is the fairly consistent claiming rates that they report, as shown in the summary in Table 1. The three studies that produced "deviant" claiming rates are listed at the bottom of the table, and they all involved consumer problems of one sort or another; given that several other studies of consumer problems show figures in the higher range, the low figures for the three surveys may reflect a combination of research design problems and/or survey populations that deviate in important ways from the general population (e.g., Caplovitz 1963).¹³

Survey-based studies have also examined the propensity to sue outside the United States (see Table 2). Bogart and Vidmar's (1990) replication of the survey reported by Miller and Sarat in the Canadian province of Ontario found patterns of claiming that are generally somewhat lower than in the United States. For example, in tort cases the Ontario claiming rate is 60 percent (*ibid.*, p. 18),

the order of 55–60 percent for discrimination problems (see Kritzer, Vidmar, and Bogart 1991).

¹³ Although the legal needs literature addresses the propensity to sue question (see Curran 1977, Zander 1978), it deals specifically with the use of legal services (the behavior of concern to Silberman 1985) and typically with many areas of "need" outside of the civil justice arena.

Table 2. Studies of Claiming Rates Outside the United States

Study	Sample	Claim Rate
Australia:		
FitzGerald (1983) (problems over \$1,000)	Victoria N=589	77%
Canada:		
Bogart and Vidmar (1990) (problems over \$1,000)	Ontario N=3,024	31–86%
Vidmar (1988) (consumer problems)	Middlesex County N=423	70%
Ash (1979) (consumer durables & services)	National N=500 (approx.)	50–60% (est.)
Great Britain:		
Abel-Smith, Zander, & Brooke (1973) Defective goods	London N=270	86%
Employment problems	N=89	51%
Office of Fair Trading (1986) (consumer problems)	National N=5,000	76% (approx.)
Harris et al. (1984) Injuries from road accidents	National N=318	34%
Injuries from work accidents	N=455	24%

compared to 86 percent in the United States (Miller and Sarat 1980–81:537). In consumer cases, the Ontario rate is 74 percent (computed from Bogart and Vidmar 1988:19) compared to 87 percent in the United States (Miller and Sarat 1980–81:537). Other problem areas show similar gaps.¹⁴ In an earlier study of smaller-scale problems in one Ontario county, Vidmar found an overall claiming rate of 70 percent (rates for specific problem types ranged from 43 percent for difficulties arising out of professional services to 100 percent for debts owed to the respondent). An earlier study of consumer problems (Ash 1979) reported somewhat lower claiming rates (50–60 percent), but the survey design diverged substantially from the other studies described here. The most comparable U.S. study of smaller problems was carried out by Ladinsky, who found a claiming rate for consumer problems of 75 percent (Ladinsky and Susmilch 1985), which is comparable to Vidmar's overall figure. Thus, using extant research from the United States and Canada (to the degree that Ontario is representative of Canada¹⁵), there is some evidence of divergence in claiming rates as one moves from the smaller, more routine problems of everyday life to more "middle range" disputes.

FitzGerald's earlier (1983) replication of Miller and Sarat found a number of marked differences in grievance rates (*ibid.*, p. 24), but the patterns for claiming (*ibid.*, p. 31) were notable primarily for their similarities; the only big difference was in the propensity to claim in discrimination grievances, which appeared to be

¹⁴ The one exception is discrimination problems, where the *reported* rates are similar. However, when the correction to the U.S. rate discussed in note 12 is made, the U.S. rate is again notably higher than the rate in Ontario.

¹⁵ It is possible that lower figures Ash reported, using a national sample, reflect differences between Ontario and the other provinces.

much higher in Australia than in the United States.¹⁶ As for the likelihood of a dispute maturing into a lawsuit, differences between Australia and the United States are substantial, with Americans more likely to invoke the formal legal process than Australians (with the notable exceptions of postdivorce and "tort" disputes). FitzGerald also found that Americans were more likely to seek legal counsel than Australians; he concluded that "the major difference in the patterns of disputing in the two countries appears to be the considerably higher levels of resort to law (as measured by the use of lawyers and especially of courts) in the United States" (*ibid.*, p. 42).

Two studies of compensation for personal injury in England (Pearson Report 1978 and Harris et al. 1984) both found that, compared to the United States (and to Australia), relatively small numbers of persons injured in situations where they might be entitled to compensation through the tort system actually sought such compensation. Specifically, Harris et al. (1984:51) report that only about a quarter of those persons suffering significant injury¹⁷ at work and about a third of those suffering significant injury in traffic accidents claim compensation through the tort system. Although the Pearson Report does not present figures on claiming rates, later analyses of the data collected by the Pearson Commission (Kritzer 1991a) found rates even lower than those reported by Harris et al.: 22 percent for traffic accidents and 14 percent for work injuries.¹⁸ In contrast, a recent study of consumer dissatisfaction in England found that more than three-quarters of consumers dissatisfied with goods or services they had purchased "took some action" (Office of Fair Trading 1986:22), either complaining directly to the supplier or manufacturer or contacting some official body. These figures for consumer problems are very similar to those reported by Abel-Smith, Zander, and Brooke (1973) from a smaller-scale study done in three London boroughs in the late 1960s; 86 percent of those who had encountered defective goods costing £5 or more had complained.¹⁹ None of the English studies provide analyses of the influence of individual sociological factors on claiming behavior.

The second aspect of legal mobilization that is closely tied to individual decisionmaking is the use of professional legal assist-

¹⁶ In fact, as we state in note 12 above, the discrimination figure in Miller and Sarat is incorrect. With our revised data, complaining/claiming in the United States is higher than in Australia.

¹⁷ Significant injury is defined as any injury that made it "difficult or impossible" to engage in routine activities for two weeks or more.

¹⁸ The design of the English studies differs greatly from that of the other studies, and so the figures may exaggerate the claiming gap between England and other countries; see Kritzer 1991a for more about comparing English and U.S. patterns.

¹⁹ Abel-Smith et al. (1973:140-41) also reported a claiming rate (51 percent) for employment-related problems.

ance—going to a lawyer. Silberman (1985) has reported the most extensive analysis of lawyer utilization in the dispute context. Using data from the 1967 Detroit Area Study, he examined the factors related to lawyer contacts for five general types of “serious” disputes (*ibid.*, p. 41): neighborhood, landlord-tenant, expensive purchase (consumer), public organization, and discrimination. The survey used a ten-year, retrospective time frame (i.e., “in the last ten years . . .”). Silberman (*ibid.*, p. 107) describes the results of his analysis as consistent with propositions in Black’s *The Behavior of Law* (1976):

Stratification, the unequal distribution of resources, and . . . the unequal distribution of social involvement play a significant role in [legal mobilization]. Although the effect of stratification on legal behavior is linear for property matters, it is curvilinear for everyday disputes that do not involve the transmission of control over private property. . . . Going to law is an upper-middle-class phenomenon. Neither the very rich nor the poor rely on attorneys to solve their everyday problems. . . . Wealth, property, and participation generate access to legal resources, which creates a framework for defining everyday disputes in legal terms.

There has been almost no attention to lawyer use outside of the United States. In a review essay on Hazel Genn’s book *Hard Bargaining*, Kritzer (1989:170–72) takes note of almost universal use of lawyers in the England in personal injury claims (see Harris et al. 1984:81) compared to a relatively low use in the United States.²⁰ Kritzer speculates that by refusing to deal with unrepresented claimants, tort defendants and their insurers may reduce the number of grievants pursuing claims. The one explicitly comparative analysis of lawyer use by grievants is an unpublished study by FitzGerald and Miller (undated) that compares lawyer use in Australia and the United States. Across a range of dispute types, they find a slightly lower proportion of Australian grievants going to lawyers compared to American grievants, 12.2 percent compared to 14.6 percent (*ibid.*, p. 14).²¹ They find that for grievances which become disputes, Australians are, for many kinds of problems, more likely than Americans to employ lawyers, but that for nondispute grievances (those for which either no claim is made or resolution is achieved without difficulty) Australians are less likely than Americans to turn to lawyers once type of grievance is controlled for (*ibid.*, p. 19). A multivariate analysis of the factors influencing lawyer use in disputes shows that dispute type is a significant predictor of lawyer use in the United States but not in

²⁰ There is some indication that the likelihood of lawyer use in personal injury claims is increasing; see All-Industry Research Advisory Council 1988.

²¹ They take note of the fact that the magnitude of the difference in lawyer use is “almost the exact magnitude of difference in the ratios of practicing lawyers to the general population in both countries.”

Australia (*ibid.*, pp. 27–28); interestingly, income is not a significant predictor in either country.²²

PERSPECTIVES ON DIFFERENCES BETWEEN CANADA AND THE UNITED STATES

In one of the most insightful recent comparative studies of the United States and Canada, Lipset (1990) argues that the differences in the two countries are deep (although perhaps converging in some respects) and can be traced fundamentally to the division of Canada and the United States at the time of the American Revolution.²³ The supporters of the British Crown who moved north took with them a very different set of values, more communal and elitist in line with monarchical Britain, than the values of the supporters of the successful American Revolution. Lipset (*ibid.*, p. 10) endorses S. D. Clark's observation: "Whereas the American nation was a product of the revolutionary spirit, the Canadian nation grew mainly out of forces of a counter-revolutionary character."

The impact of these historical antecedents of the two nations are manifested in the law-related experiences of the United States and Canada. For example, during both gold rush periods of the nineteenth century, circa 1850 (in California and British Columbia) and the 1890s (in Alaska and the Klondike), there were sharp contrasts between the United States and Canada. The mining towns in the United States were scenes of violence and disorder; law came from the barrel of the six-shooter. In Canada, the Royal Canadian Mounted Police (RCMP) maintained a sense of order, relying on "a more deeply internalized sense of obligation, . . . [a] need to conform to the rules even when there was no visible threat of coercion" (*ibid.*, p. 90). The hero of western settlement in Canada is the Mountie (who often preceded the arrival of cattlemen and other settlers), in contrast to the United States where the "rugged individualists—the cowboy, the frontiersman, and even the vigilante— . . . are the heroes" (*ibid.*, p. 91). Lipset asserts that these differences have endured to the present, and quotes one of Canada's leading economists, Richard Lipsey (*ibid.*): "I have stood on a street corner in Toronto with a single other pedestrian, and with not a car in sight, waiting for the light to turn green—behavior unimaginable in most U.S. cities."

²² If anything, lawyer use goes down as income increases in Australia while going up with income in the United States (neither of these patterns is statistically significant, although one might question the presumed linear relationship that is specified in the models). Given the availability of contingent fees in the United States and not in Australia, one would predict the opposite pattern.

²³ Lipset is not a newcomer to the study of Canada. While he is perhaps best known for books like *The First New Nation* (1963) and *Political Man* (1963), his very first book was *Agrarian Socialism: The Cooperative Commonwealth Federation in Saskatchewan* (1950).

The idea that contemporary Canadians and Americans differ in their orientation toward the law is widely held. The perception of greater litigiousness in the United States constitutes what might fairly be labeled an accepted wisdom, although the systematic statistical evidence does not necessarily reveal a large difference in litigiousness in the United States and Canada (see Galanter 1983). Lipset (1990:100) correctly points out that the United States is more densely populated with lawyers; in 1982 there were more than twice as many lawyers per capita in the United States as there were in Canada.²⁴ On the other hand, the statistics reported by Galanter (1983:52) show a slightly higher litigation rate (civil cases per thousand population) in Ontario (46.58) than in the United States (44.0).

Two kinds of explanations are typically cited to account for supposed differences in litigiousness in the Canada and the United States. The first focuses on the legal system itself. Many observers in Canada see the contingent fee as encouraging litigation in the United States; Kritzer (1984:129) quotes two corporate executives:

There's a lot less [litigation in Canada] because of no contingent fee . . . the contingent fee in the United States makes people more litigious.

If there were a contingent fee in Canada, lawsuits would increase by 50 percent.

Kritzer's (*ibid.*, p. 130) own analysis, however, points out that all Canadian provinces except Ontario do in fact have some form of a contingent fee,²⁵ and there is no suggestion that litigation rates in Ontario are substantially lower than elsewhere. Kritzer argues that in terms of structural explanations for any differences in propensity to sue, the risks created by fee-shifting rules probably constitute a better explanation than do the availability of contingent fees. A more recent analysis by Kritzer (1991a) seems to undercut structural explanations. He points out that claiming rates in Australia are almost identical to those in the United States even though structural factors (such as the absence of contingency fees, fee shifting, the use of juries, and limits on awards) are more like those of Canada than those of the United States.

The other kind of explanation is cultural. Lipset (1990:100) suggests that the greater litigiousness of Americans arises from a generally greater emphasis on due process in the United States. He observes (*ibid.*, p. 72) that Canadian writers "focus their social crit-

²⁴ The sharp difference in lawyers per capita may reflect larger differences in the role of law and lawyers in society; see Kritzer 1991b for a discussion of such differences between England and the United States.

²⁵ The U.S. contingency fee is in reality a percentage or commission fee (the lawyer is paid a percentage of the recovery), while the contingent fees in Canada involve the addition of a contingency element (i.e., "no win, no pay") added to a standard fee computed on an hourly or value-billing basis. While we have no systematic data, our impression is that contingent fees are not heavily used in the Canadian provinces where they are available.

icism on the United States, in the context of seeing their own society as a better, less aggressive, gentler, [and] more peaceable." More fundamentally, Lipset argues that the U.S. heritage is one of revolutionary independence, which translates into a sense of assertive individualism, while the Canadian culture is more communitarian and group oriented, with citizens accepting state authority as the appropriate vehicle for achieving communitarian ideals (ibid., p. 3). For example, in Canada the legislatures are looked to as a primary vehicle for social and economic change, spurred on by politics marked by a resilient left-wing party and with a temperate right that features strains of Toryism, tolerating hierarchy and inequality but insisting upon restraint of individualism to enhance the common good. In the words of Canadian scholar Gad Horowitz (1968:18): "Here Locke is not the one true god; he must tolerate lesser tory and socialist deities at his side."

Broad comparisons of the two legal cultures since roughly the end of World War II seem to reveal pronounced differences in the roles that judges and legislatures play in initiating social change. In social change, protection of frail interest groups (e.g., women, social minorities, welfare recipients, environmentalists), and even limited redistribution of wealth, U.S. courts often appear to have been ahead of the legislative and executive branches. In exploring the contrast between the U.S. vision of the state and the Euro-Canadian one, Nettle (1968:585) has pointed to the powerful role of lawyers and litigation: "[I]n the United States, the law and its practitioners have perhaps been the most important single factor making for political and social change and have time and again proven to be the normal instrument for bringing it about." In contrast, in Canada the creation of income security programs, the protection of minority rights, recognition of the changing role of women (including such issues as pay equity), and the importance of the environment, to list only some examples, have emerged largely from the national and provincial legislatures.²⁶

Our understanding of the existing analyses of cultural differences related to the role of law, courts, and other governmental and legal institutions leads us to hypothesize that these differences

²⁶ These broad differences in the development of social and political issues may diminish with the coming of the Canadian Charter of Rights and Freedoms. Even though the Charter differs greatly from the U.S. Bill of Rights, it has greatly enhanced the role of judges and may bring Canada closer to the "American stress on protection of the individual and acceptance of judicial supremacy with its accompanying encouragement to litigiousness" (Lipset 1990:3; see also Manfredi 1990). Even apart from allowing a substantial new array of issues into the arena of litigation, the Charter may markedly shift expectations about the desirability, or perhaps the inevitability, of courts as arbiters of complex societal questions. Interestingly, there is *already* a body of opinion in the academic and public debate that is deeply skeptical of the legitimacy of the exercise of such power by Canadian courts. That questioning rests largely on a view of what role litigation has played and ought to play in Canadian society (Bogart, forthcoming).

should be reflected in individual level behavior in the two cultures. In this article we explore U.S.-Canada differences with regard to one aspect of law-oriented behavior: the assertion of claims for redress in the wake of injury and/or property damage producing incidents. Specifically, we explore how patterns of action in Canada (more specifically, Ontario) differ from those in the United States with respect to

- claiming compensation connected to injury and damage arising from traffic accidents, injuries or health problems arising in the workplace, and other kinds of injury- or property-damage producing events;
- seeking advice and assistance from legal professionals in connection with considered or actual claims for compensation.

In addition to mapping variations and similarities in patterns, we examine the factors that might account for individual-level decisions to make a claim or seek professional assistance. Are the differences in the factors explaining (or not explaining) these behaviors in the two countries consistent with the broadbrush comparisons that rely on structural effects (e.g., contingent fees, fee shifting, etc.) and/or cultural effects?

DATA SOURCES

The data we used in the analysis here come from two surveys. The first was the household screening survey conducted by the Civil Litigation Research Project (CLRP) in 1980 that served as the basis of the analysis presented in Miller and Sarat (1980–81). These data are from 5,148 households in five federal judicial districts around the United States.²⁷ Interviews were conducted by telephone with household representatives; households were selected through a random digit dialing method that produces a clustered random sample. Figure 2 shows the questions used to identify grievances related to injury and property damage (questions were asked about a wide variety of other problems as well) and to assess compensation-seeking behavior.²⁸

²⁷ The five districts are Eastern Wisconsin, Eastern Pennsylvania, South Carolina, New Mexico, and Central California.

²⁸ For the analysis presented here, the original data collected by CLRP were completely restructured and reanalyzed. For reasons that we cannot fully account for, we found some major discrepancies between our analysis and that reported in Miller and Sarat 1980–81. Efforts to replicate exactly some of the earlier analyses were not successful. Specifically, Table 5 in Miller and Sarat (1980–81:553) shows a logistic regression analysis separately for various areas of law. We could not duplicate the results shown for terminated “tort” grievances, partly because we did not have access to the weight variables used in the earlier analysis. Nonetheless, we suspect some error in the earlier analysis, which reported a “Reduction in Predictive Error” of .501; we came nowhere close to this figure. Two of the dispute types Miller and Sarat reported in their Table 5 achieved relatively high “reductions in predictive error,” but they do not comment specifically on this, which suggests that there may have been some error in reporting the results or in performing the analysis, since

The following question sequence was used to identify tort grievances:

1. Have you or anyone in your household been involved in any auto accidents since January 1977?

IF YES:

- 1a. Did this involve your household's car?

IF NO:

- 1aa. Were you or anyone in your household injured?

- 1b. Did this accident involve \$1,000 or more (including injuries and damages)?

2. Have you or anyone in your household been injured at work or had any health problem because of work since January 1977?

IF YES:

- 2a. Did this injury or health problem involve \$1,000 or more, including medical expenses and lost pay?

3. Have you or anyone in your household had any property damaged or been injured through the fault of someone else?

IF YES:

- 3a. Did your household have this problem since January 1977?

IF YES:

- 3b. Did this injury or damage involve at least \$1,000 or more?

At a later point in the interview, those with a tort grievance^a were asked:

Traffic accidents:

Did you [or another person in your household] ask for any payment or other compensation from someone else involved in the accident, or from an insurance company or anyone else?

Work injury or illness, or other injury or damage:

Did you [or another person in R's household] ask for any payment or other compensation for this (injury/damage/problem) from the one who caused it or from an insurance company or anyone else?

All tort grievants were asked:

Did you use a lawyer to help with this problem?

^a An injury/damage grievance was indicated if respondent answered (1) yes to 1 and to 1b, and either yes to 1a or no to 1a and yes to 1aa; or (2) yes to 2 and to 2a; or (3) yes to 3, 3a, and 3b.

Figure 2. Questions used to assess claiming and lawyer use in the United States

The second data set is from a replication and extension of the CLRP survey carried out in Ontario in 1988. This survey was sponsored by the Ontario Ministry of the Attorney General in order to obtain systematic data for Ontario on the incidence of the kinds of problems that typically lead to litigation²⁹ and how those problems

the numbers of significant predictors for these variables do not differ from the numbers of significant predictors for the other five problem types that had much lower "reductions in predictive errors."

²⁹ Earlier work by Ash (1980) and Vidmar (1984, 1988; see also Vidmar and Schuller 1987) concentrated on problems that might lead to small claims

Thinking back over the last three years, have you or anyone in your household

- a. Been involved in any automobile accidents involving \$1000 or more including injuries and damage? [A later followup question for auto accident victims asked:

Thinking about the automobile accident you mentioned earlier, were you or anyone in your household injured?]

- b. Been injured at work or had any health problem because of work that involved medical expenses, lost pay or other losses of \$1000 or more?
 c. Had any problem or damage or been injured through the fault of someone else (excluding automobile accidents or work injuries) that involved at least \$1000 or more?

At a later point in the interview, those with a tort grievance^a were asked:

Traffic accident victims:

Did you or someone in your household or someone else on your behalf ask for any payment or other compensation from someone else involved in the accident or from an insurance company or anyone else?

Work-related injury or health problem:

Did you [or someone else in R's household] ask for any payment or other compensation for this injury from the one who caused it or from an insurance company or anyone else (e.g., Workers compensation Board)?

Other property damage or injury:

Did you or someone in your household ask for any payment or other compensation for this (injury/damage/problem) from the one who caused it or from an insurance company or anyone else?

Still later in the interview, all those with a tort grievances were asked either:

Did you contact a lawyer for advice or help about this problem?

or

Did you ever contact a lawyer for advice or help about this problem?^b

^a An injury/damage grievance was indicated if the respondent answered yes to a, b, or c.

^b The first form was used for those who did not claim and the second form was used for those who did claim. This minor wording difference was not intentional in the questionnaire design.

Figure 3. Questions used to assess claiming and lawyer use in the Ontario

were handled. The survey was conducted by telephone. Random digit dialing techniques were used to sample 3,024 Ontario households; interviews were conducted with the "heads" of each household contacted. The sequence of questions used to identify injury/damage grievances in the Ontario survey is shown in Figure 3; similar questions were asked about other kinds of problems. Initial analyses of these data were presented at the Conference on Access to Civil Justice (see Bogart and Vidmar 1990).

We have provided the text of the questions here because there is enough difference that we must be cautious in interpreting any cross-national variation. One major difference, which will be significant, is the ability in the Ontario survey to distinguish between

cases; the new survey focused on "middle range" problems that might lead to litigation in higher courts.

auto accident cases that involved physical injury and cases that involved only property damage.³⁰

ANALYSIS

Preliminary Comparisons

Claiming

Miller and Sarat (1980–81:537) report an overall claiming rate for terminated “tort” grievances of 86 percent for the five districts. The comparable figure in Ontario is 60 percent (Bogart and Vidmar 1990:18); the reported figures for Ontario are also broken down for auto accidents (58 percent), work injury (70 percent), and other injury (62 percent). Thus, the odds of claiming versus not claiming in Ontario are about one quarter of the comparable odds in the United States; specifically, the odds of claiming (versus not claiming) are 6.14 (86:14) in the United States but only 1.5 (60:40) in Ontario.

Because of the variation in claiming among types of cases in Ontario, we need to examine what, if any, variations exist among types of cases in the United States. In the CLRP data it is possible to distinguish between traffic accident cases, work-related injuries and illnesses,³¹ and injury and property damage arising in other circumstances. Table 3 shows separate claiming rates and odds for each of these types of cases for both Ontario and the United States. The size of the difference varies across the different types of injury/damage problems. The claiming rates (and corresponding odds) are substantially higher in the United States for all types of problems; the type of problem with the smallest claiming gap is the “other injury and damage” category, for which the odds of claiming in the United States is about 1½ times the odds in Ontario. The biggest gap is in auto accidents, where the odds differ by a factor of more than 5.

One question raised by the Ontario breakdown between property damage and personal injury, which shows very different patterns for the two kinds of cases, is whether the big difference between Ontario and the United States has something to do with differences in the way property-damage-only traffic accidents are handled in the two countries.³² For example, in England the insurance companies have what is referred to as a “knock for knock”

³⁰ As shown in Fig. 2, the U.S. survey asked if anyone in the household had been injured only when the accident did not involve a vehicle owned by the household (which could happen if either the accident victim was riding in someone else’s vehicle or if the victim was a pedestrian or a cyclist).

³¹ The workers compensation systems in the two countries are quite similar (see Ison 1989 for a discussion of the Canadian system).

³² As we stated in note 30, the traffic accident injury question in the U.S. survey was asked only when the accident had not involved the respondent’s car. This question was asked for only 29 of the 362 respondents involved in traffic accidents. The claiming rate for this subgroup was slightly lower (79

Table 3. Claiming Rates in the United States and Ontario Controlling for the Source of Injury or Damage

	United States		Ontario ^a	
	Claim Rate ^b	Odds of Claiming ^c	Claim Rate ^b	Odds of Claiming ^c
Traffic accidents	88%	7.62	60%	1.49
	(362)	(2.03)	(319)	(0.40)
Personal injury			74%	2.84
			(119)	(1.04)
Property damage			52%	1.06
			(200)	(0.06)
Work injury or illness	82%	4.44	70%	2.31
	(98)	(1.49)	(53)	(0.84)
Other injury or damage	72%	2.64	64%	1.75
	(80)	(0.97)	(33)	(0.55)
All cases	85%	5.59	61%	1.60
	(540)	(1.72)	(405)	(0.47)

^aThe Ontario figures in this table do not employ the sample weights.

^bThe figures in parentheses in the claiming rate columns are the *n*'s on which the rate and the odds are based.

^cThe figures in parentheses in the odds columns are the natural logarithms of the odds.

policy; claims for property damage compensation are generally paid by one's own insurance company, even when the other party is at fault. Insurance companies do not normally seek intercompany reimbursement for damage caused by another company's insured on the principle that across a large pool of claims things should come out about even, and the costs of working out disputes over intercompany claims would not work to a company's benefit. The result is that claimants usually must collect from their own insurance company for property damage and in doing so must absorb the "excess" (what is referred to as the "deductible" in North America) and be prepared to lose some or all of their "no claims bonus," *even when the accident was clearly not their fault*. One effect of this is to discourage claims. As far as we can determine, there are no insurance company practices in Ontario that would have an effect like the "knock for knock" policy of the motorist insurers in England.³³ Thus we must seek alternative explanations.

If propensity to claim is a function of the amount at issue, then the apparent difference in claiming could result from differences in the value of a dollar and inflation: the \$1,000 threshold used in the United States in 1980 translates to about \$1,750 in 1988 Canadian dollars. For Canadian grievances involving at least

percent, odds 3.83), which suggests, if anything, that claiming may be higher in property-only cases than when injuries were involved.

³³ When we described both our findings and the English practice to John Weir, the former Superintendent of Insurance in the Ontario Ministry of Financial Institutions, he expressed surprise at our findings (particularly since our grievances excluded damages of less than \$1,000) and could offer no explanation based on insurance company practices.

Table 4. Lawyer Use Rates in the United States and Ontario Controlling for the Source of Injury or Damage

	United States		Ontario ^a	
	Lawyer Use Rate ^b	Odds of Using Lawyer ^c	Lawyer Use Rate ^b	Odds of Using Lawyer ^c
Traffic accidents	23%	0.30	30%	0.44
	(357)	(-1.19)	(315)	(-0.82)
Personal injury			58%	1.39
			(117)	(0.33)
Property damage			14%	0.16
			(198)	(-1.80)
Work injury or illness	21%	0.26	15%	0.18
	(97)	(-1.35)	(53)	(-1.73)
Other injury or damage	14%	0.16	28%	0.39
	(80)	(-1.84)	(32)	(-0.94)
All cases	21%	0.27	28%	0.39
	(534)	(-1.30)	(400)	(-0.93)

^aThe Ontario figures in this table do not employ the sample weights.

^bThe figures in parentheses in the lawyer use rate columns are the *n*'s on which the rate and the odds are based.

^cThe figures in parentheses in the odds columns are the natural logarithms of the odds.

CN\$1,750, however, the claiming rate (61 percent) is virtually identical to that for all injury/damage grievances in the Ontario sample.³⁴ When the figures are broken down by type of injury, there is essentially no change from the figures without regard to stakes (for traffic accident injuries, 75 percent; traffic accident damage, 52 percent; work injury or illness, 71 percent; and other injuries, 62 percent).

Lawyer Use

In their preliminary report, Bogart and Vidmar found (1990:Table 4.1) that a lawyer was contacted by 33 percent of those persons involved in auto accidents, 17 percent of those with work injuries or illnesses, and 32 percent of those with "other injury" grievances.³⁵ Of all the injury/damage grievants, 31 percent at least talked to lawyers.³⁶ Table 4 shows the lawyer contact/use rate (and the odds of contacting or using a lawyer) by country and grievance type. Interestingly, in contrast to the United States, persons in Ontario with injury/damage grievances seem to be more likely to turn to lawyers (although the question in the United States survey referred to "using" a lawyer while the Ontario sur-

³⁴ The "all cases" category includes those for which no information was available on stakes. Comparing only those with stakes of \$1,750 or less to those with stakes of more than \$1,750 does not alter the results.

³⁵ Bogart and Vidmar also report that 22 percent of those who were the subject of "tort" claims (i.e., alleged tortfeasors) had contacted a lawyer.

³⁶ In their unpublished paper, FitzGerald and Miller (undated, p. 19) report that 21.5 percent of "tort" grievants in the Australian state of Victoria sought the assistance of a lawyer.

vey's question dealt with "contacting" a lawyer). The one exception is for work injuries or illnesses, which may reflect the nature of the workers compensation system in Ontario (a system designed to limit the need for professional legal assistance at the initial review level—see Ison 1989). The most striking figure in Table 4 is the relatively high lawyer contact rate for persons injured in automobile accidents in Ontario—58 percent.³⁷

The CLRP data do not permit us to identify the percentage of persons injured in the United States who seek assistance from lawyers. However, another U.S. study conducted by the All-Industry Research Advisory Council (AIRAC) (1988:1) reported that 22 percent of persons injured in traffic accidents in the mid-1970s *hired* a lawyer. In the mid-1980s, 35 percent of those injured *hired* an attorney and another 10.5 percent *talked* with an attorney but did not hire one; if one limits the analysis to cases involving an "economic loss" of more than \$300 (85 percent of which was medical expenses and 15 percent of which was lost wages; *ibid.*, p. 11), the percentage hiring lawyers rises to 39.4 and goes up to 45.5 percent for losses of more than \$500. AIRAC also reports, based on other studies, that 45 percent of those who sought compensation for traffic accident injuries had legal representation; in a study that included claims for property damage only, as well as claims involving bodily injury, AIRAC found that 5 percent of the respondents hired attorneys for claims against their own insurer and 15 percent hired attorneys to assist with claims against someone else's insurer (1988:9n).

In the Ontario survey, 62 percent of traffic accident injury grievants who made claims contacted a lawyer.³⁸ Not counting those who only obtained advice from the lawyer (as opposed to assistance such as contacting the opposing side or filing a formal action), 46 percent of the Ontario auto injury claimants hired a lawyer to assist with their claims. On the assumption that total "loss" was some multiple of economic loss, it seems that the likelihood of using lawyers in cases involving injuries arising in traffic accidents is slightly greater in Ontario than in the United States.

Exploring the Factors That Lead to Claiming

Introduction

Simply demonstrating that there are differences in claiming rates does not further our knowledge of the factors that give rise to those claims. In this section, we present multivariate analyses

³⁷ To some extent, the results in Ontario may be mostly of historic interest. That province has recently enacted a regime that will resolve most claims arising out of auto accidents through a no-fault administrative-based system, one aspect of which is to limit the need for legal assistance in order to claim.

³⁸ Note that, as shown in Table 4, 58 percent of *all* persons injured in traffic accidents contacted a lawyer; 62 percent of those who were injured *and* claimed contacted a lawyer.

that relate a variety of contextual and social characteristics to the decision to claim and the decision to contact a lawyer. The characteristics that we examine are determined by a combination of theoretical interest and availability.

In the analysis below, we employ logistic regression, a form of regression analysis designed to be used with a dichotomous dependent variable.³⁹ Figure 4 shows the variables used as predictors in the logistic regression. Somewhat different sets of variables were used for the two countries as a result of differences in by data availability. Most of the variables included in the analysis were structured as dummy variables, either because they were nominal in nature or because of the need to allow for nonlinear relationships.

Claiming

Tables 5 and 6 show logistic regression results for claiming in injury/damage cases in the United States and Ontario. While the models for both the United States and Ontario are both statistically significant, there are substantial differences in the measures of *relative fit* (PRE_{LL} and PRE_{CL}),⁴⁰ of the models, for the two countries. The log-likelihood PREs are similar (.131 and .119) but the Classification PREs are very different (.058 for the United States vs. .233 for Ontario⁴¹). There are two reasons for the differences in PRE_{CL} . First, because the claiming rate in the United States is closer to the maximum achievable, the proportion of baseline classification errors is relatively low; this makes it difficult for *any* classification equation to further reduce classification errors.⁴²

³⁹ The dependent variable in logistic regression can be thought of as the natural logarithm of the odds (the "log odds"). The log odds is used because, among other things, it avoids the problem of a truncated range that exists with the probability (which can only vary between 0 and 1). The key difference between the odds and the log odds is that the variations in odds must be interpreted in terms of ratios (i.e., one odds is 1.5 times the other) while variations in log odds may be interpreted in terms of differences (the gap between one log odds and another is 1.5). For multivariate analysis, this means that statistical models on odds must be nonlinear (multiplicative) while models on log odds may be linear (additive). In the interpretation of the analysis presented below, we will focus on the odds, expressing effects as multipliers, because the odds are more familiar to most readers than are log odds; the tables also show two measures of additive effects on the claiming rate and the lawyer use rate. The rationale for and computation of both the multiplicative odds effects and the additive rate effects are discussed in the Technical Appendix; the Appendix also includes a discussion of measures of fit for the logistic regression equations.

⁴⁰ These PRE measures are explained in the Appendix. Briefly, PRE_{LL} is a measure of improvement in the log likelihood (LL) and is similar to R^2 ; PRE_{CL} is a measure of reduction in classification (CL) errors.

⁴¹ Miller and Sarat (1980–81:553) report a very different value for what may be a version of PRE_{CL} for their analysis of tort cases. See our discussion in note 28.

⁴² On the other hand, if there are relatively few baseline errors, a small absolute improvement translates to a higher relative improvement than would

A. The U.S. Analysis

<i>Variable</i>	<i>Description</i>
Type of community where respondent resides	Rural area as base category (dummy set)
Location of community where respondent resides	Eastern Wisconsin as base category (dummy set)
Type of problem	"Other injury or damage" as base category (dummy set)
Gender of respondent	0=female, 1= male
Race-ethnicity of respondent	White, non-Hispanic as base category (dummy set)
Education of head of household	1=8th grade or less completed 4=some college 2=some high school 5=college graduate 3=high school graduate 6=post-graduate
Age	Coding starts with 2 to match coding for Ontario 2=18-24 5=45-54 3=25-34 6=55-64 4=35-44 7=65 and older
Income	Missing income as base category. Categories were selected to correspond roughly with categories in Ontario data, after adjusting for inflation and exchange rates.
Number of different kinds of problems identified in survey	
Opposing party was an organization	1=yes, 0=no
Respondent had prior relationship with opposing party	1=yes, 0=no
Respondent had prior problem of same general type	1=yes, 0=no
Respondent had previously used lawyer	1=yes, 0=no
Respondent had previously been plaintiff in a lawsuit	1=yes, 0=no

Figure 4. Independent variables for predicting claiming and lawyer use

B. The Ontario Analysis

<i>Variable</i>	<i>Description</i>
Size of community where respondent resides	Toronto as base category (dummy set)
Type/source of injury/damage	"Other" as base category (dummy set)
Stakes	<p>Missing stakes as base category (dummy set)</p> <p>The question used to measure this variable was one of the following:</p> <p><i>Car accidents:</i> How much would it cost to correct the problem?</p> <p><i>Work-related injury/health problem</i> Thinking about the work injury or work related health problem you mentioned earlier, how much money would it have taken to correct the problem?</p> <p><i>Other property damage/injury</i> Thinking about the property damage or personal injury problem that you mentioned earlier (other than automobile accidents or work related problems), how much money would it have taken to correct the problem?</p> <p>Due to an error in the data set provided to the authors by Canada Market Research, stakes is missing for tort grievances <i>not</i> arising in automobile accidents or from the work-place.</p>
Gender	0=female, 1= male
Education	1=public school (i.e., no high school) 4=university 2=high school 5=postgraduate 3=community college or equivalent
Age	Also tried as a set of dummy variables to check for nonlinear relationships; none were found. The age values were: 1=under 18 5=45–54 2=18–24 6=55–64 3=25–34 7=65 and older 4=35–44
Income	Missing income as base category
Religion	Non-Protestant/non-Catholic as base category (dummy set)
Number of different kinds of problems identified in survey	
Primary language	1=French, 0=non-French
Personal efficacy: Response to:	Some people say they have a lot of knowledge about their legal rights when problems arise, but others say they have almost no knowledge. Would you say you personally have [1] a lot, [2] some, [3] a little, or [4] almost no knowledge about your legal rights.

Figure 4. (Continued)

Second, a substantial portion of the improvement in the PRE_{CL} for Ontario reflects the much lower claiming propensity in property-damage-only traffic accidents in that jurisdiction; repeating the analysis omitting that set of cases substantially reduces PRE_{CL} for claiming in Ontario.⁴³

Table 5. Logistic Regression Model for Claiming in the United States

	β	Odds Effect	p -Change (Max.) [$\pi = .500$]	p -Change (Mean) [$\pi = .888$]
Constant	-0.4799 (1.302) ^a			
Location (district)				
South Carolina	-0.652 (0.518)	0.521	-0.163	-0.065
Eastern Pennsylvania	0.075 (0.593)	1.078	0.002	0.007
Central California	0.184 (0.583)	1.202	0.046	0.018
New Mexico	-0.668 (0.527)	0.513	-0.167	-0.066
(Eastern Wisconsin) ^b	[$p = .276$] ^c			
Type of community				
Medium or large city	0.467 (0.461)	1.595	0.117	0.046
A suburb	0.639 (0.662)	1.895	0.160	0.064
Small city or town (under 50,000)	0.022 (0.464)	1.022	0.005	0.002
(Rural area) ^b	[$p = .531$]			
Type of problem				
Traffic accident	1.326*** (0.463)	3.766	0.332	0.132
Work injury or illness	0.328 (0.526)	1.384	0.082	0.033
(Other injury or damage) ^b	[$p < .001$]			
Age of household head (coded 2-7)	0.168 (0.125)	1.183	0.042	0.017
Gender of respondent (0=female, 1=male)	0.101 (0.335)	1.106	0.025	0.010
Race-ethnicity				
Nonwhite	-0.442 (0.419)	0.643	-0.110	-0.044
White Hispanic	0.231 (0.513)	1.260	0.058	0.023
White, non-Hispanic ^b	[$p = .564$]			
Education of household Head (coded 1-6)	0.094 (0.133)	1.099	0.024	0.009

the same absolute improvement in a situation with a large number of baseline errors.

⁴³ Simply collapsing the two types of traffic accident grievances reduces PRE_{CL} somewhat but not as much.

Table 5 (Continued)

	β	Odds Effect	<i>p</i> -Change (Max.) [$\pi = .500$]	<i>p</i> -Change (Mean) [$\pi = .888$]
Income				
\$15,000 or less	-0.353 (0.695)	0.703	-0.088	-0.035
\$15,001-\$25,000	0.455 (0.728)	1.576	0.114	0.045
\$25,001-\$35,000	-0.137 (0.745)	0.872	-0.034	-0.014
More than \$35,000	0.452 (0.843)	1.571	0.113	0.045
(Missing income) ^b	[<i>p</i> = .342]			
Number of problems	0.267* (0.157)	1.306	0.067	0.027
Opposing party is an organization	0.692* (0.397)	2.000	0.173	0.068
Prior relationship with opposing party	-0.323 (0.387)	0.724	-0.081	-0.032
Prior problem of same general type	-0.053 (0.364)	0.948	0.013	-0.005
Other use of a lawyer	0.211 (0.345)	1.235	0.053	0.021
Have sued someone	-0.437 (0.470)	0.646	-0.109	-0.043
Measures and tests of fit				
-2*log likelihood (for fitted model)	282.98 (df = 438)			
Likelihood ratio χ^2 (compared to null model)	40.05** (df = 24)			
PRE _{LL}	.131			
PRE _{CL}	.058			
No. of cases	465			

^aThe figures in parentheses in the β column are standard errors.

^bThis is the "base category" against which the other categories are compared.

^cThe information in brackets in this column are significance levels for tests of significance for sets of dummy variables (e.g., the overall significance of *income*, *stakes*, etc.).

*Significant at the .10 level (two-tailed).

**Significant at the .05 level (two-tailed).

***Significant at the .01 level (two-tailed).

Of more interest for theoretical purposes are the results for the individual predictors. In the United States, only three predictors influence claiming behavior in a statistically significant way: the type of problem, the total number of different kinds of reported problems encountered during the previous three years,⁴⁴ and whether the opposing party was an organization. For type of

⁴⁴ In addition to injury problems, the survey covered a wide range of potential grievances; this variable is the count of the number of problems reported to the interviewer.

injury/damage problem, the odds of claiming was almost four times as high (3.766/1.000) in traffic accident problems as in "other injury or damage" problems, and almost three times higher (3.766/1.384) than work injury or illness. When the opposing party is an organization, the odds of claiming are twice (2.000/1.000) what they are when the opposing party is an individual. This may reflect the fact that seeking compensation from an organization involves less of a personal confrontation than seeking compensation from an individual who will be responsible for paying the claim; alternatively, potential claimants may perceive greater likelihood of success in obtaining compensation when the potential payer is an organization. The odds of claiming go up by about one-third (1.306/1.000) for each additional type of problem reported to the interviewer during the survey; this suggests that people may be more willing to claim when they have had more experience with a variety of types of problems.⁴⁵

Of equal interest are the variables that did not relate to claiming behavior in the United States. None of the variables that might be seen as reflecting *intranational* cultural variations—location, type of community, or ethnicity—influenced claiming decisions in a statistically significant, systematic fashion.⁴⁶ The lack of influence of the type of community on claiming in injury/damage cases is particularly noteworthy in light of the research by Engel (1980, 1984) and Greenhouse (1986), who suggest that the culture of close-knit communities, such as that found in rural areas, discourages claiming, particularly in injury cases. This analysis provides no statistical support for such effects on a more cross-sectional basis.⁴⁷ The variables that measure tangible and intangible resources (income, education of head of household, prior disputing experience, age, gender,⁴⁸ etc.) have no significant influence on claiming in injury/damage problems in the United States, with the possible exception of the "number of problems" variables.⁴⁹

⁴⁵ An alternate interpretation is that people who see problems are more likely to claim and that it is more an orientation toward seeing and acting on problems than experience gained from dealing with other problems.

⁴⁶ Miller and Sarat (1980–81) reported a significant effect for their ethnicity variable "black"; we could not replicate their results, and as mentioned in note 28, we suspect some error in their analysis for "tort" problems.

⁴⁷ On the other hand, the coefficients shown in Table 5 are not inconsistent with a size of community effect; the odds of claiming *may* be greater in urban settings than in small towns or rural areas, but the failure of the coefficients to achieve statistical significance suggests that any such effects are probably very modest.

⁴⁸ One might conclude that the failure of the respondent gender variable to achieve significance might reflect the possibility that many problems involved persons in the household other than the respondent; however, confining the analysis only to those problems directly involving the respondent did not markedly change the results of the analysis.

⁴⁹ This finding is inconsistent with Miller and Sarat (1980–81:553), who found significant age effects, significant income effects, and significant "prior problems" effects when no controls were introduced for type of problem.

Overall, and consistent with the general thrust of Miller and Sarat's (1980–81) earlier analysis of the U.S. data, the most striking aspect of the results is the general lack of influence of the kinds of variables one might expect to influence decisions to claim in the United States. Our tentative interpretation of this finding is that claiming in the United States, particularly when it is defined to include nonfault-oriented claiming (i.e., claims filed with one's own insurer as well as claims filed against a party deemed to be responsible for the problem), is so completely routinized that these variables have little room to influence claiming decisions. Over time, the system of compensation and reimbursement in the United States, both through the tort system and through insurance, has led people to expect to be compensated and to claim the compensation they believe is due.

The logistic regression for the Ontario data yields very different results (see Table 6). Direct comparison must be done cautiously because of differences in the information that was available for inclusion in the analysis.⁵⁰ However, even with this caveat, the differences are striking. First, many more variables have statistically significant effects on claiming. Before discussing those results, we should note the most interesting noneffect: the amount potentially at issue (stakes) appears to have no statistically significant influence on claiming. The coefficients *are* consistent with an argument that claiming is more likely as the amount at issue rises (the odds effect for over \$10,000 is about one and a half the effect for \$1,000–\$2,499), and the lack of significance may reflect relatively small numbers of cases in the higher stakes category.⁵¹ Still, even if stakes do influence claiming, other variables are much more important.

Given the preliminary comparison in the previous section, it should not be surprising that type of problem influences the decision to claim. While none of the individual coefficients for type of problem shown in Table 6 are statistically significant, the complete set is significant as shown the type of problem *p*-value in brackets.

Some of these inconsistencies may reflect the introduction of controls, but as mentioned in note 28 above, we suspect that some error was made in the Miller and Sarat logit analysis for "tort" problems.

⁵⁰ We had originally planned to formalize our analysis of differences between the two countries by combining the data and estimating a logistic regression equation using a common set of variables. However, the strong significance of variables available in the Ontario data but not in the U.S. data would have resulted in major problems of misspecification.

⁵¹ Vidmar (1988) reports data on claiming involving \$1,000 or less from an Ontario sample. For automobile accidents, the claiming rate was 74 percent, and for other injury/damage cases the rate was 48 percent. Thus, extending our perspective to include both small and large claims does not yield a consistent pattern.

Table 6. Logistic Regression Model for Claiming in Ontario

	β	Odds Effect	<i>p</i> -Change (Max.) [$\pi = .500$]	<i>p</i> -Change (Mean) [$\pi = .623$]
Constant	-0.528 (0.930) ^a			
Size of community				
Under 10,000	0.775** (0.353)	2.171	0.194	0.182
10,000–49,999	0.731* (0.411)	2.076	0.183	0.172
50,000–99,999	1.024 (0.501)	2.784	0.256	0.241
100,000–250,000	0.246 (0.370)	1.278	0.062	0.058
Over 250,000 excluding Toronto (Toronto) ^b	-0.366 (0.441) [<i>p</i> = .036] ^c	0.693	-0.092	-0.086
Type of problem				
Traffic accident injury	0.486 (0.469)	1.627	0.122	0.114
Traffic accident damage	-0.725 (0.447)	0.484	-0.181	-0.170
Work injury or illness	0.079 (0.517)	1.082	-0.020	-0.019
Other injury or damage ^b	[<i>p</i> < .001]			
Stakes				
\$1,000–\$2,499	0.147 (0.429)	1.159	0.037	0.034
\$2,500–\$4,999	0.219 (0.474)	1.244	0.054	0.051
\$5,000–\$9,999	0.475 (0.540)	1.607	0.112	0.112
\$10,000 or more	0.136 (0.534)	1.145	0.034	0.032
(Missing stakes information) ^b	[<i>p</i> = .920]			
Age of respondent (coded 1–7)	0.072 (0.092)	1.074	0.018	0.017
Gender (0 = female, 1 = male)	-0.449* (0.245)	0.638	-0.112	-0.105
Francophone (1 = yes, 0 = no)	-0.914 (0.747)	0.401	-0.228	-0.215
Religion				
Catholic	-0.892*** (0.338)	0.410	-0.223	-0.210
Protestant	-0.453 (0.332)	0.636	-0.113	-0.106
(Other or none) ^b	[<i>p</i> = .024]			
Education (coded 1–5)	0.203* (0.120)	1.225	0.051	0.048

Table 6 (Continued)

	β	Odds Effect	<i>p</i> -Change (Max.) [$\pi = .500$]	<i>p</i> -Change (Mean) [$\pi = .623$]
Income				
Under \$25,000	-0.530 (0.440)	0.588	-0.132	-0.124
\$25,000-\$44,999	0.358 (0.394)	1.431	0.128	0.084
\$45,000-\$64,999	0.769* (0.420)	2.158	0.192	0.181
\$65,000 or more	0.203 (0.460)	1.225	0.062	0.048
(Missing income) ^b	[<i>p</i> = .018]			
No. of problems	0.078 (0.095)	1.082	0.020	0.018
Personal efficacy	0.183 (0.139)	1.200	0.046	0.043
Measures and tests of fit				
-2*log likelihood (for fitted model)	450.95 (df = 361)			
Likelihood ratio χ^2 (compared to null model)	61.04*** (df = 24)			
PRE _{LL}	.119			
PRE _{CL}	.233			
No. of cases	386			

*The figures in parentheses in the β column are standard errors.

^bThis is the "base category" against which the other categories are compared.

*The information in brackets in this column are significance levels for tests of significance for sets of dummy variables (e.g., the overall significance of *income*, *stakes*, etc.).

*Significant at the .10 level (two-tailed).

**Significant at the .05 level (two-tailed).

***Significant at the .01 level (two-tailed).

This apparent anomaly is due to the choice of which category to use as a baseline; if traffic accident property damage had been chosen, individual coefficients would have been significant. The odds of claiming in traffic accident injury cases is more than three times (1.627/.484) the odds of claiming in traffic accident damage-only cases and about one and a half times the odds of claiming in both work injury/illness (1.627/1.082) and in other injury/damage cases (1.627/1.000). In traffic accident damage-only cases, the odds of claiming are about half the odds of claiming in either work injury/illness (.484/1.082) or in other injury/damage cases (.484/1.000). These effects are consistent with the tabular results discussed previously, but it is now clear that the influence of type of problem is not diminished by introducing controls for other kinds of variables.

Several intranational cultural differences are also significant. The first is type of community. For residents of smaller communities (here referring to those with populations under 100,000), the odds of claiming in injury/damage cases is about twice that of the

odds of claiming for those in large communities (odds effects for the smaller communities range from 2.076 to 2.784 compared to 0.693 to 1.278 for the larger communities⁵²). Interestingly, this is exactly opposite what one would expect based on previous studies of smaller communities in the United States (e.g., Engel 1980, 1984); additionally, while the coefficients from the U.S. data reported above were not statistically significant, they ran in the opposite direction (i.e., if anything, claiming was more likely in larger communities). We chose to use size of community rather than location of community in our analysis because of the theoretical literature, but these results raise a question about an issue that has been of concern in Canada: the problem of access to justice by those living in more remote communities (see Hutchinson 1990). The Ontario survey categorizes the location for each respondent as Toronto area, Northern Ontario, and Other Ontario; because of the close connection between these categories and the size of community, both could not be included in the logistic regression equation. When we modified our model to use location of residence in place of the size of community variable, the results were consistent: the odds of claiming in an injury/damage case in Northern Ontario were about twice (2.056/1.000) the odds of claiming in Toronto and about one and a half (2.056/1.418) the odds of claiming in other parts of Ontario.

A second intranational cultural variable, religion, also has a strong effect: the odds of claiming for Catholics is about two thirds of that for Protestants (.410/.638) and less than half (0.410/1.000) that of those whose religion is something other than Catholicism and Protestant Christianity.⁵³ While the dummy variable for primary language ("Francophone") does not achieve significance in this analysis, that partly reflects the fact that most Francophones are Catholic; dropping religion and retaining only language produces a significant effect for the Francophone dummy variable with a log-odds effect of -1.174 and an odds effect of .309.

Turning to resource and experience variables, two—income and education—have statistically significant effects. Claiming goes up as education goes up: the odds of claiming increase by about 25 percent (the odds effect is 1.225) for each jump in level of education. Claiming tends to go up with income as well, although there is something of a curvilinear relationship since claiming drops off for the highest income group (perhaps reflecting that financial losses decrease in relative importance as income increases); the

⁵² The baseline category, in this case the Toronto area, can be thought of as having a odds effect of 1.0.

⁵³ In her study of claiming in consumer problems, Zahorik (1990) found that in Milwaukee, Jews were more likely to claim than those who identified with other religions. We repeated our analysis including a separate dummy variable for Jews, but could find no indication that Jews differ significantly from other respondents in our "other" category.

most extreme comparison is between those with incomes under \$25,000 and those in the \$45,000–\$64,999 range, where the odds of claiming differ by more than a factor of 3 (2.158/0.636). The one experience-related variable available in the Ontario data set is the number of problems reported during the interview;⁵⁴ in contrast to the results for the United States, this variable is not related to claiming behavior. One final variable that might be categorized under resources is “personal efficacy”—an individual’s belief about his or her own ability to handle problems when they occur; that variable, as measured in the Ontario data set, has no influence on the decision to claim.⁵⁵

The final variable, gender of respondent, produces an interesting result we cannot explain. Based on our analysis, men are less likely to claim than are women; the odds of a man claiming in the wake of an injury/damage problem are only about two thirds (0.638/1.000) of the odds that a woman will claim.⁵⁶ We do not have a ready explanation for this result.

In summary, many variables influence claiming in Ontario. These variables include problem-related factors (i.e., the type of problem), resource-related factors (education and income), and intranational culture-related variables (size or location of community, religion, and gender). The large number of significant variables stands in sharp contrast to the meager results for claiming in injury/damage cases in the United States.

Lawyer Use

Tables 7 and 8 show logistic regression results for lawyer use (United States) or contact (Ontario) in injury/damage cases. In terms of the overall patterns, the similarities to the logistic regression results for claiming are striking. Again, the models for both Ontario and the United States achieve statistical significance, with the measures of relative fit much stronger for Ontario than for the United States. Both PRE measures for the lawyer use analysis are much lower for the United States than for Ontario: .088 versus .272 for PRE_{LL} and .018 versus .287 for PRE_{CL}. The latter contrast is

⁵⁴ It is likely that this variable reflects a combination of perceptual and experiential factors; some respondents may have experienced more problems, while others may have perceived more problems. We have no way of disentangling this distinction given our data.

⁵⁵ Using a different measure and including a wider range of problems (problems other than personal injury or property damage and problems involving less than \$1,000), Vidmar and Schuller (1987) found that personal efficacy did correlate with claiming behavior. It may be that personal efficacy plays more of a role in small claims, with other variables canceling out these effects as stakes increase.

⁵⁶ Because the survey asked about problems at the household level rather than the individual level, we replicated this analysis, excluding problems that did not directly involve the respondent. Essentially the same gender effect appeared in the alternative analysis. See note 59 for speculations concerning the gender effect.

particularly strong: the logistic regression model can reduce classification errors in Ontario by about 30 percent, while making essentially no dent at all in the classification errors in the United States.⁵⁷

Only three variables significantly predict the rate of lawyer use in the United States, and they are all experience or context related. The odds that someone who has previously been a plaintiff in a lawsuit will use a lawyer to deal with a injury/damage problem is more than twice (2.3) the odds for someone who has not sued. The odds of using a lawyer go up by about 20 percent (1.209) for each additional problem identified by the respondent during the interview.⁵⁸ When the opposing party is an organization, the odds of using a lawyer go down by almost 50 percent (0.563); this finding probably reflects two different insurance company effects: the highly routinized settlement process of insurance companies in potential injury/damage claims (insurance companies strive to resolve accident claims before a lawyer can become involved; see Ross 1980) *and* the relatively infrequent use of lawyers to resolve property-damage-only claims between an insured and his or her own insurance company. Interestingly, injury/damage victims are more likely to claim when they identify the potential opposing party as an organization but are more likely to use a lawyer when confronting an individual; perhaps the more interpersonal nature of the confrontation barrier when the opposition is an individual

⁵⁷ One explanation that we offered for the low PRE_{CL} for claiming was the relatively small room for improvement because the overall claiming rate for injury/damage cases in the United States was so high. In the lawyer use analysis, neither of the rates for the two countries approached the minimum or maximum bound to the degree that claiming rates in United States did. Even though the U.S. lawyer rate is somewhat closer to the lower bound than is the Ontario rate, the limiting explanation advanced with regard to differences in classification results for claiming cannot account for the gap in classification results for lawyer use.

Because of the extremely low value of PRE_{CL} , we tried an alternate logistic regression model for lawyer use in the United States; this model contained one additional variable: whether the opposing party used a lawyer. The are some difficult statistical issues raised by this model (i.e., simultaneity—whether there is a system of mutual causation in the decision of the two sides to use a lawyer, *and* causal direction—whether the use of a lawyer by a tort defendant primarily is a response to a claimant's use of a lawyer); we do not have the information to sort out such issues, but this alternate model provides a test of whether it is possible to obtain meaningful improvements in PRE_{CL} . It should not be surprising that the odds of a injury/damage claimant using a lawyer go up when the opposing party uses a lawyer: in fact, the odds go up by a factor of more than 23 (the log odds effect is 3.144). With lawyer use by the opposing party in the logistic regression equation, the only other statistically significant coefficients are for respondent's prior lawyer use (and that coefficient is negative) and number of other problems reported in the interview. PRE_{LL} for this alternate model is .255 and PRE_{CL} is .330. Clearly, one can devise a model that provides a substantial improvement in classification; however, this particular model is difficult to interpret for the reasons we have noted.

⁵⁸ Recall again that interviewers asked about a wide range of problems other than those that were injury related.

Table 7. Logistic Regression Model for Lawyer Use in the United States

	β	Odds Effect	<i>p</i> -Change (Max.) [$\pi = .500$]	<i>p</i> -Change (Mean) [$\pi = .235$]
Constant	-1.1379 (0.940) ^a			
Location (district)				
South Carolina	-0.005 (0.376)	0.995	-0.001	-0.015
Eastern Pennsylvania	0.121 (0.370)	1.129	0.030	0.022
Central California	-0.088 (0.368)	0.916	-0.022	-0.016
New Mexico	-0.273 (0.403)	0.761	-0.068	-0.049
(Eastern Wisconsin) ^b	[<i>p</i> = .916] ^c			
Type of community				
Medium or large city	-0.190 (0.372)	0.827	-0.048	-0.034
A suburb	0.195 (0.432)	1.215	0.049	0.035
Small city or town (under 50,000)	-0.008 (0.385)	0.992	-0.002	-0.001
(Rural area) ^b	[<i>p</i> = .531]			
Type of problem				
Traffic accident	0.287 (0.398)	1.332	0.072	0.052
Work injury or illness	0.360 (0.476)	1.433	0.090	0.065
(Other injury or damage) ^b	[<i>p</i> < .717]			
Age of household head (coded 2-7)	-0.010 (0.088)	0.990	-0.002	-0.002
Gender of respondent (0=female, 1=male)	-0.063 (0.242)	0.939	-0.016	-0.011
Race-ethnicity				
Nonwhite	0.519 (0.347)	1.680	0.130	0.093
White Hispanic	-0.636 (0.404)	0.529	-0.159	-0.114
White, non-Hispanic ^b	[<i>p</i> = .137]			
Education of household head (coded 1-6)	0.012 (0.095)	1.012	0.004	0.002
Income				
\$15,000 or less	0.084 (0.491)	1.088	0.021	0.015
\$15,001-\$25,000	-0.172 (0.484)	0.842	-0.043	-0.031
\$25,001-\$35,000	-0.609 (0.533)	0.544	-0.152	-0.109
More than \$35,000	-0.778 (0.549)	0.459	-0.194	-0.140
(Missing income) ^b	[<i>p</i> = .212]			
No. of problems	0.190** (0.097)	1.209	0.048	0.034
Opposing party is an organization	-0.574** (0.289)	0.563	-0.144	-0.103

Table 7 (Continued)

	β	Odds Effect	<i>p</i> -Change (Max.) [$\pi = .500$]	<i>p</i> -Change (Mean) [$\pi = .235$]
Prior relationship with opposing party	-0.230 (0.316)	0.795	-0.058	-0.041
Prior problem of same general type	0.252 (0.319)	1.287	0.063	0.045
Other use of a lawyer	-0.399 (0.255)	0.671	-0.100	-0.072
Have sued someone	0.833*** (0.470)	2.300	0.208	0.150
Measures and tests of fit				
-2*log likelihood (for fitted model)	466.56 (df = 438)			
Likelihood ratio χ^2 (compared to null model)	39.33** (df = 24)			
PRE _{LL}	.088			
PRE _{CL}	.018			
No. of cases	464			

^aThe figures in parentheses in the β column are standard errors.

^bThis is the "base category" against which the other categories are compared.

^cThe information in brackets in this column are significance levels for tests of significance for sets of dummy variables (e.g., the overall significance of *income*, *stakes*, etc.).

*Significant at the .10 level (two-tailed).

**Significant at the .05 level (two-tailed).

***Significant at the .01 level (two-tailed).

leads potential claimants to shy away from making such claims and to use an intermediary when a claim is in fact made.

In Ontario, we again find a number of factors that significantly predict whether a lawyer is contacted. However, these predictors seem less tightly bound to the intranational cultural variables that were important predictors of claiming. Of the variables that might be seen as culture related, only size of community significantly predicts lawyer contacting. While claiming propensity was highest for the smaller communities, lawyer contacting is lowest in the smaller communities: the odds of contacting a lawyer in the smallest communities (under 10,000) was only about a quarter (.233/1.000) of the odds in the Toronto baseline, and in the next smallest group (10,000–49,999) the odds were about a third (.361/1.000) of the Toronto baseline. Above these smallest communities (i.e., in communities of 50,000 or more), there were only minor variations in odds. One interpretation of this finding has to do with access to lawyers: there may be few, if any, lawyers in the smallest communities. An alternate explanation has to do with cultural differences in what constitutes self-reliance. Engel has argued that part of the reason injury-related claims are not made in Sander County is an ethic of self-reliance in the rural setting; it may be that in Ontario the ethic of self-reliance does not inhibit claiming

Table 8. Logistic Regression Model for Lawyer Use in Ontario

	β	Odds Effect	<i>p</i> -Change (Max.) [$\pi = .500$]	<i>p</i> -Change (Mean) [$\pi = .269$]
Constant	-1.253 (1.127) ^a			
Size of community				
Under 10,000	-1.458*** (0.530)	0.233	-0.364	-0.287
10,000-49,999	-1.019* (0.526)	0.361	-0.255	-0.200
50,000-99,999	0.108 (0.536)	1.114	0.027	0.021
100,000-250,000	0.163 (0.458)	1.178	0.041	0.032
Over 250,000 excluding Toronto (Toronto) ^b	-0.241 (0.522) [<i>p</i> = .023] ^c	0.786	-0.060	-0.047
Type of problem				
Traffic accident injury	1.441*** (0.497)	4.224	0.360	0.283
Traffic accident damage	-0.774 (0.514)	0.461	0.194	-0.152
Work injury or illness	-0.878 (0.622)	0.416	-0.220	-0.173
Other injury or damage ^b	[<i>p</i> < .001]			
Stakes				
\$1,000-\$2,499	-1.205** (0.485)	0.300	-0.301	-0.237
\$2,500-\$4,999	-1.480*** (0.569)	0.228	-0.370	-0.291
\$5,000-\$9,999	-0.529 (0.566)	0.589	-0.132	-0.104
\$10,000 or more	-0.439 (0.576)	0.645	-0.110	-0.086
(Missing stakes information) ^b	[<i>p</i> = .023]			
Age of respondent (coded 1-7)	-0.166 (0.124)	0.847	-0.042	-0.033
Gender (0 = female, 1 = male)	-0.666** (0.298)	0.514	-0.166	-0.131
Francophone (1 = yes, 0 = no)	0.540 (0.925)	1.716	0.135	0.106
Religion				
Catholic	0.102 (0.408)	1.107	0.025	0.020
Protestant	0.351 (0.400)	1.420	0.088	0.069
(Other or none) ^b	[<i>p</i> = .634]			
Education (coded 1-5)	0.316** (0.149)	1.371	0.079	0.062

Table 8 (Continued)

	β	Odds Effect	<i>p</i> -Change (Max.) [$\pi = .500$]	<i>p</i> -Change (Mean) [$\pi = .269$]
Income				
Under \$25,000	0.435 (0.560)	1.545	0.109	0.085
\$25,000–\$44,999	0.225 (0.499)	1.252	0.056	0.044
\$45,000–\$64,999	0.367 (0.510)	1.444	0.092	0.072
\$65,000 or more	0.498 (0.559)	1.645	0.124	0.098
(Missing income) ^b	[<i>p</i> = .901]			
No. of problems	0.396*** (0.106)	1.344	0.099	0.078
Personal efficacy	0.150 (0.176)	1.162	0.038	0.029
Measures and tests of fit				
–2*log likelihood (for fitted model)	318.81 (df = 352)			
Likelihood ratio χ^2 (compared to null model)	119.39*** (df = 24)			
PRE _{LL}	.272			
PRE _{CL}	.287			
No. of cases	377			

^aThe figures in parentheses in the β column are standard errors.

^bThis is the “base category” against which the other categories are compared.

^cThe information in brackets in this column are significance levels for tests of significance for sets of dummy variables (e.g., the overall significance of *income*, *stakes*, etc.).

*Significant at the .10 level (two-tailed).

**Significant at the .05 level (two-tailed).

***Significant at the .01 level (two-tailed).

by injured persons but does lead them to prefer to assert their claims directly rather than relying on an intermediary. Alternately, the rural social structure, with its greater emphasis on primary relationships, may make lawyers unnecessary.

Two problem-related factors predict lawyer contacting. As the preliminary analysis indicated, those suffering physical injury in a traffic accident were much more likely to seek legal assistance; when we controlled for the other variables in the model, we found that the odds of a traffic accident injury victim seeking help from a lawyer were about nine (4.224/.461) times that of a person who suffered only property damage from a traffic accident, and about ten times (4.224/.416) that of someone with a work-related injury or illness. The patterns for stakes show that, as one might expect, the odds of seeking legal assistance increase as the amount at issue goes up: the odds for problems involving more than \$10,000 are about double the odds when less than \$5,000 is involved. Interestingly, the persons most likely to seek help from a lawyer were those who did not provide us with stakes information; perhaps un-

certainty about appropriate compensation is an important factor in deciding to contact a lawyer.

The remaining three significant predictors of lawyer contacting are gender, education, and number of prior problems. The odds of a man contacting a lawyer are about half (0.514/1.000) the odds of a woman doing so, controlling for the other variables in the logistic regression equation. While one might view this as a function of confidence, the personal efficacy variable does not predict lawyer contacting at all.⁵⁹ Education increases the odds of seeking assistance from a lawyer, with the odds going up about a third (1.371) for each incremental level of education. This effect does not reflect a simple resource effect (those with more education can better afford legal services), because income does not predict lawyer contacting; more likely, those with more education recognized the potential help that a lawyer might provide. Lastly, as the number of problems reported to the interviewer increases, the odds of contacting a lawyer increase, with each additional problem increasing the odds by about a third (1.344).

The lack of relationship between lawyer contacting and income is interesting, particularly given the supposed advantages of various methods of paying lawyers. One argument advanced with regard to the contingent fee in the United States is that it makes legal help more accessible. In Ontario, as illustrated by the quotations in the introductory section of this article, the conventional wisdom is that the absence of contingent fees discourages litigation, presumably by making legal services less accessible. Ironically, persons in Ontario involved in personal injury automobile accidents are slightly more likely to seek legal assistance than are persons in the United States where the normal way of financing legal representation in personal injury cases is the contingent fee. This supports a statement made by one of Kritzer's Ontario respondents (1984:131): "Where the client has a good case, he can find a lawyer."

The overall greater use of lawyers in Ontario may reflect a variety of factors. First, it may be, as Lipset described (1990), that the Canadian culture, with its greater deference to authority, leads people to want to use an intermediary if they are going to confront an institution like an insurance company. Second, in comparison to Ontario, insurance companies in the United States may be more successful in reaching injury victims before a lawyer becomes involved. If this is the case, the findings do *not* reflect differences in

⁵⁹ Noting that women are disproportionately claimants before informal institutions, Abel (1982:286) speculates that this may be because "to assert a claim is to render oneself vulnerable by admitting that one has been injured or bested and by acknowledging weakness (at least if the adversary is an equal or superior)." Whether this accounts for the pattern here (and how one might account for the lack of relationship in the United States) we have no way to assess.

how claims settlement is approached in the two countries; we have been told that insurers in Canada are just as anxious to settle claims before the lawyer arrives⁶⁰ as are insurers in the United States (see Ross 1980).⁶¹ Third, the system of fee shifting in Ontario, whereby about half the lawyer's fee is usually paid by the opposing insurance company and half out of the claimant's recovery, may make it financially feasible for lawyers to accept clients with smaller cases; given the absence of stakes data for the U.S. sample, it is difficult to assess this explanation with the information available.

CONCLUSIONS

Overall, our analysis reveals two contrasting patterns. First, injury/damage victims in the United States are more likely to pursue a claim for compensation than are such victims in Ontario; second, at least in personal injury cases arising from automobile accidents, injury/damage victims in Ontario are slightly more likely to seek professional legal help in dealing with compensation-related issues than are victims in the United States. This contrast raises questions about a common explanation for the supposedly overlitigious American: the too easily available lawyer (or perhaps even the ambulance-chasing lawyer). The patterns suggest that the sources of differences in legal mobilization must lie in other factors. One such factor, advanced by Kritzer (1984), might be the risk aversion arising from Ontario's system of fee shifting where the loser in litigation must pay at least a part of the winner's legal bills. Another possible explanation lies in the broader cultural factors suggested by Lipset. For example, in his description of Canadian writers' visions of their own country, he drew a contrast to the supposed "adversary culture" of the United States (1990:72): "Canadian writers . . . [see] their own society as a better, less aggressive, gentler, more peaceable . . . country, one that wants to live and let live." Pierre Berton, a popular Canadian writer quoted by Lipset (1990: 44), describes Canadians as "[l]aw-abiding, deferential toward authority, cautious, prudent, elitist, moralistic, tolerant (of ethnic differences), cool, unemotional and solemn." Lipset summarizes Berton's comparison of the people of the two countries (1990:44): "Americans, from the days of the Revolution on, have resisted authority, demanded their rights, and preferred weak government, while Canadians have complained less, been less aggressive, and desired a strong paternalistic government."

While we cannot directly test the impact of cultural variations, our research clearly suggests one hypothesis about the role of cultural differences between the United States and Canada. In our

⁶⁰ As reported by John Weir (see note 33).

⁶¹ In England insurance companies prefer to deal with a solicitor rather than directly with tort victims; see Kritzer 1989:170-71.

analysis of U.S. data none of the variables that could be indicators of intranational cultural variations—location, type of community, ethnicity—accounted for any of the variation in claiming (or in lawyer use). In contrast, a number of culture-related variables—religion, type of community, and possibly language—influenced the decision to claim in Ontario. One interpretation of the contrasting results is that there has been greater cultural homogenization in the United States than in Canada. This would be consistent with the contrasting cultural metaphors of the American melting pot and the Canadian mosaic (see, e.g., Porter 1965). Despite recent recognitions of diversity in the United States, the dominant thrust historically has been one of assimilation and conformity (hence, the *melting pot*). In Canada, on the other hand, cultural differences are accepted, if not encouraged, and these differences cut across broad areas of social life (hence the *mosaic*).⁶² Our analysis reveals the role of cultural variation within Canada (or at least within Ontario) in the realm of legal mobilization in response to physical injury and property damage.

So even for litigation whose dominant purpose is to resolve disputes involving individual parties, there appear to be important differences between Canada and the United States.⁶³ Moreover, as we suggested earlier, there is a substantial divergence between the two countries in how the courts are used to develop and/or resolve social and political issues. What we found out about these two areas—resolution of routine disputes and of social and political issues—suggest that statements concerning the significance and impact of litigation, which always must be made with care for a single society, must be approached with even more caution when comparing two countries—even countries as close geographically and culturally as the United States and Canada. Whether one society is more “litigious” than another is a conclusion that can be reached only after establishing a firm understanding of how litigation operates and what roles it plays in each of the societies.

⁶² There are significant limits on how far Canadians will go to preserve the mosaic-like quality of Canadian culture, particularly with regard to non-Western cultures, as was evident in recent controversies concerning allowing Sikh members of the Royal Canadian Mounted Police to forgo the broad-brimmed Stetson for their religiously mandated turbans (*Chicago Tribune*, 20 March 1990, p. 8).

⁶³ Interestingly, our analyses of two other kinds of problems—those relating to discrimination (Kritzer, Vidmar, and Bogart 1990, 1991) and those relating to consumer purchases (Zahorik 1990; Kritzer, Bogart, and Zahorik 1991)—do not show the same patterns of culture effects. Thus, not only is it important to be cautious in making generalizations across countries, it is as important (perhaps more important) to be cautious in making generalizations across problems types (see Kritzer, Bogart, and Vidmar 1991).

TECHNICAL APPENDIX
INTERPRETING LOGISTIC REGRESSION RESULTS

There are two major disadvantages of logistic regression. First, there is no commonly accepted statistic for comparative evaluations of the overall fit of logistic regression models (such as R^2 in ordinary regression). In the tables we present, we use two measures of overall fit. Both of these measures are in the form of a proportional reduction in error (PRE) coefficient. The first of these, which we denote PRE_{LL} (for PRE log likelihood), is computed by comparing the log likelihood of the fitted model (LL_{fitted}) to the log likelihood of a “null model” (LL_{null}) consisting of only a constant or mean term. The standard PRE formula is used to combine LL_{fitted} and LL_{null} to obtain what amounts to the proportional increase in the log likelihood:⁶⁴

$$PRE_{LL} = \frac{LL_{null} - LL_{fitted}}{LL_{null}}. \quad (1)$$

This statistic is directly analogous to the R^2 of ordinary regression because R^2 can be thought of as a PRE based on the sum of squared errors (SSE) of a null and fitted model:

$$R^2 = \frac{SSE_{null} - SSE_{fitted}}{SSE_{null}}. \quad (2)$$

Moreover, the sums of squared errors are in fact proportional to the log likelihoods associated with ordinary regression when the error terms are normally distributed (see King 1989:61–63), so that R^2 is in fact a special case of PRE_{LL} .

The second measure of fit that we use is based on classification errors. When we know nothing about the predictor variables, the best classification strategy (e.g., predicting whether a respondent claimed or did not claim) is to place all observations in the modal (or “majority”) category. The number of errors that we make equals the number of observations in the “minority” (i.e., nonmodal) category. This strategy corresponds to making classifications based on the null model consisting only of a constant term, and the number of classification errors (CE) can be denoted CE_{null} . Given information on the predictor variables, classification decisions can be made by determining a dividing point on the predicted log odds that minimizes the number of classification errors (CE_{fitted}). Using the results for the null and fitted models, PRE_{CL} can be computed:

⁶⁴ While the PRE formula may look as if it measures proportional reduction, in the case of log likelihoods, it in fact measures improvement because the log likelihoods are actually negative.

$$\text{PRE}_{\text{CL}} = \frac{\text{CE}_{\text{null}} - \text{CE}_{\text{fitted}}}{\text{CE}_{\text{null}}}. \quad (3)$$

The second disadvantage of logistic regression has to do with interpreting the meaning of the regression coefficients. These coefficients directly describe the additive influence of the predictor variables on the *log odds*: i.e., a unit change in the predictor variable results in a change in the log odds equal to the regression coefficient for that predictor variable. The difficulty with this interpretation is that the log odds is not a metric that is intuitively interpretable to most readers. To surmount this problem, we present several alternative indices derived from the logistic regression coefficients. The first of these is the exponentiation of the regression coefficient (β), which we label the *odds effect*:

$$\text{odds effect} = e^{\hat{\beta}}. \quad (4)$$

This value, which because of the nature of exponentiation is always positive, represents the multiplicative impact of the predictor variable on the odds (SPSS 1989:B-85). For example, if the *odds effect* of a predictor variable in the claiming equation is 2.5, a unit change in the predictor multiplies the odds claiming (versus not claiming) by 2.5; negative $\hat{\beta}$'s become *odds effects* less than 1, which when multiplied times an odds serve to reduce the odds; $\hat{\beta}$ s equal to 0 convert to *odds effects* of 1.0, which do not change the odds when multiplied in.

The second alternative index is an indicator of the influence of the predictor variable on the rate (which is a type of probability) itself; we label this the *p-change*. This index is equal to the instantaneous effect of a unit change in the predictor variable *at a given base value of the rate*;⁶⁵ this last point is important because for any predictor (for which β is fixed) the value of *p-change* depends on the particular value of the rate where *p-change* is evaluated. Computing *p-change* for any value of the rate (ρ) is easy (King 1989:108–10):

$$p\text{-change} = \hat{\beta} \cdot \rho \cdot (1 - \rho). \quad (5)$$

This value will be a maximum when the rate is .5; in our tables we present *p-change*_{max} (computed with the rate set at .5) and *p-change*_{mean} (computed with the rate set to the overall rate for the particular sample and decision).

⁶⁵ Technically, this index is the derivative of the curve relating the predictor variable to the rate; this curve is nonlinear, and hence the slope depends on where on the curve you look.

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