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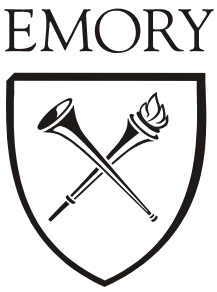

Public Choice and Tort Reform

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PUBLIC CHOICE AND TORT REFORM

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Abstract: It was originally thought that the structure of the common law would not allow rent seeking. More recently, scholars have realized that there is room for rent seeking, and that attorneys are engaged in exactly this process. This rent seeking has led to a great increase in the scope of U.S. tort law, and a corresponding effort to limit the scope of the law. This creates an ideal system for students of public choice. There are organized interest groups on both sides (attorneys, businesses and doctors) which are both coalitions themselves and members of broader coalitions. Each side has numerous tools available for advancing its agenda, such as litigating and lobbying for favorable rules, and attempting to elect preferred representatives and judges. There is ample comparative data available at the state level and also roll call votes at the federal level useful for studying these issues. This is an important and interesting area for future research.

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Introduction

Law and economics scholarship initially argued that the common law was efficient. However, there are two difficulties with this analysis. (For a discussion of the history of efficiency analysis in law and economics, see Rubin, 2004.) First, in spite of the attempts using the evolutionary models, there is no plausible mechanism for generating efficiency. Second, while there is evidence of "macro" efficiency (that the common law is more efficient than various forms of civil law) the arguments for "micro"

efficiency (efficiency of particular doctrines) are more problematic. In particular, it is very difficult to make a case for the efficiency of modern American tort law.[1]

More recent scholarship argues that much of the shape of tort law is due to special interest efforts and rent seeking by the trial lawyers (Epstein, 1988; Rubin and Bailey, 1994). Businesses and others oppose these efforts. Thus, the setting is exactly proper for a public choice analysis of the issues. Moreover, the analysis can be particularly rich because the stakes are high and there are many players with many tools available for the players to use. The players on each side are themselves coalitions of parties with somewhat differing interests, and so can be studied as coalitions. In addition to the normal tools studied by public choice scholars such as lobbying and legislative voting, parties seeking change in tort law can use litigation strategies to change the laws. There are also possibilities of efforts to elect favorable legislators, and also judges. Additionally, issues of federalism are relevant since tort law is a product of both state and federal systems. Tort reform is an important political issue, and if public choice scholars can help understand the source of tort law and of the impetus for reform, we may be able to contribute to the decision making process.

I first provide a brief introduction to tort law. The amount and scope of liability has increased greatly in the last fifty years. The major change was moving from contract to tort in product liability claims; I discuss this move and some of the other changes in the law that occurred as a result. I then discuss the players in the tort reform game. These are essentially organized groups of attorneys on one side (mainly through the American Trial Lawyers Association) and organized groups of businesses and medical

[1] Tort law comprises several parts. Much of it is automobile accident law, which is mostly efficient and of little interest. "Tort reform" as generally used deals with products liability and medical malpractice law, and that is how I use the term in what follows.

doctors on the other. I then discuss the tools available to these interest groups in favoring or opposing tort reform. I conclude with a summary, stressing possibilities for future research.

Tort Law[2]

There are several reasons for public choice scholars to study tort reform. The issue is important. The tort system is estimated to cost $233 billion, 2.2 percent of GDP. Of this, administrative costs are 54 percent, and legal fees are about 33 percent of total costs. (All data for 2002, from Council of Economic Advisers, 2004). Additionally, there are important policy issues. It is agreed by most law and economics scholars who study the tort system that is has serious difficulties. (Landes and Posner, 1987, are exceptions.) Moreover, the actual cost of the system is greater than the money cost. Many other decisions are affected by increased prices caused by tort liability. For example, prices of many products are increased, and this may lead consumers to avoid these products. Some of them are risk reducing (medical care, pharmaceuticals) and so it is not even clear that tort liability leads to overall risk reductions (Calfee and Rubin, 1992). Moreover, by undermining contract, the tort system weakens the rule of law and leads to increased uncertainty and perhaps reduced investment.

Traditionally, tort law governed accidents between "strangers" – parties with no prior relationship. In the past, tort law was generally a legal backwater, both in terms of practice and in terms of scholarship. Until relatively recently, automobile accidents dominated tort practice, and practitioners were given the derogatory name "ambulance chasers." Tort law in general did not govern accidents between parties with prior relationships. For workers, accidents were covered by workers' compensation, a

[2] This section is based in part on Rubin, 1995.

statutory no fault system with scheduled payments (Fishback and Kantor, 1998). That is, for an on-the-job injury injured workers could automatically collect a fixed amount (depending on the injury) with no need to prove fault or negligence. For what is now covered by product liability and approximately for medical malpractice, contractual terms would govern. In practice this meant that for product injuries there was generally no possibility of recovery for injured persons;[3] there was liability for malpractice, but it was limited.

The biggest change leading to increases in costs of product liability and malpractice was simply replacing contractual liability with tort liability. Since about 1960, following a case involving Chrysler,[4] courts have been generally unwilling to enforce contracts between buyers and sellers involving compensation for harms caused by accidents. No matter what terms the parties may want to govern the results of an accident, the court will decide and impose their own terms. For example, the parties may want to agree that if there is an accident, the producer of the product will pay only for lost earnings and medical costs, and will not pay anything for "pain and suffering." But if there is an injury, this voluntary agreement will have no effect. The courts will decide what level and type of damage payments from the manufacturer to the consumer is appropriate. The courts use several related legal concepts to justify the elimination of voluntary contracts. They may say that the parties have "unequal bargaining power" so the contract is a "contract of adhesion" and therefore "unconscionable" or "against the public interest." All of these arguments ignore the role of markets and competition in

[3] The legal doctrine governing was "privity" which insulated manufacturers from liability because there was no direct relationship between manufacturers and injured customers. Of course, manufacturers could have assumed liability if they had chosen, so the limit was essentially contractual.
[4] *Henningsen v. Bloomfield Motors*, 32 New Jersey 358, 161 a. 2d 69 (1960).

establishing terms. This may be because in their professional lives lawyers look at contracts as protecting parties, and do not see market forces.

Following this major change of failure to enforce contractual specification of terms, there were numerous subsidiary changes that led to increased liability. These changes involved both standards for liability and also damage payments in the event of an accident. Although most lawyers believe that the change from contract to tort was desirable, economists who study the issue are coming to believe that greater reliance on contract would be efficient (Rubin, 1993; Congressional Budget Office, 2003; Council of Economic Advisers, 2004).

I now discuss some of the areas in which tort law has expanded since the move from contract to tort.

Liability Standards

One basic distinction in liability standards is between *strict liability* and *negligence*. Under strict liability, the injurer is liable for any harm, no matter what efforts he has made to prevent the harm. Under negligence, the injurer is liable only if he did not take the proper amount of care to prevent the accident, where "proper" is defined by the legal standard of care. Negligence regimes also differ with respect to the obligation of the victim. In a regime of *contributory negligence*, any contribution made by the victim to causing the accident (for example, by product misuse) will release the injurer from any liability, even if the injurer was also negligent. In a regime of *comparative negligence* (which is universal in the United States today) if both parties are at fault, the victim is compensated in proportion to the fraction of the accident caused by the injurer's negligence. It is an accepted result in the economic analysis of law that if the standard

for determining negligence is based on efficient (cost justified) levels of care, then any of the negligence rules lead to optimal precautions by both victims and injurers (see, for example, Posner, 2003, or Shavell, 2004.) The rules differ only in determining compensation in the event that both parties are negligent.

Tort analysts find it useful to distinguish between *manufacturing defects* and *design defects.* A manufacturing defect occurs when a particular product does not meet its own specifications. If, for example, the steering wheel in a new car should break during normal driving, this is a manufacturing defect. Most analysts agree that strict liability for manufacturing defects may be appropriate. Under a strict liability standard, the manufacturer is liable for harm associated with the defect. Such defects are relatively rare and therefore do not lead to great costs. There is nothing a consumer can do to avoid these defects (since they occur in the manufacturing process). Manufacturers decide how much to spend on inspection and quality control. Costs of determining that a fault has occurred are relatively small. Thus a strict liability standard for this class of error would likely evolve in a free market. Indeed, there is evidence that the original proponents of strict liability for product caused injuries had exactly this class of defects in mind.

Design defects are quite different. Design defects are said to occur when the courts rule that it would have been possible for the manufacturer to design the product differently and so make it safer. For example, a court may decide that an automobile manufacturer should have put the gas tank in a different location. Such defects apply to all units of some product, not merely to faulty units, so that possibilities for litigation are great. One great expansion in product liability occurred when the courts extended strict liability from manufacturing defects to design defects. This extension requires courts and

juries to second guess product designers and determine if there was a safer alternative available when the product was manufactured. Such second guessing is difficult or impossible, so litigation of such issues is very expensive. Some of the major problems identified with the current tort system are due to the extension of something like strict liability to design defects.[5]

Another major class of modern liability cases involves a "failure to warn." Originally the law was written so that product warnings would insulate manufacturers from liability. However, the doctrine has been turned around, and manufacturers are often found liable for failure to warn, sometimes in circumstances where consumers have misused the product in dangerous and unpredictable ways. Viscusi (1991) has shown that the major expansion in product liability occurred as a result of extension of strict liability to manufacturing defects and the expansion of liability for failure to warn.

Damage Payments 0

The level of damage payments paid to injured parties has also expanded. It is useful to divide damage payments into three classes. *Pecuniary damages* compensate consumers for actual out of pocket expenses. This class of damages comprises about 22% of total tort damages (Council of Economic Advisers, 2004, p. 209.) The major categories are medical expenses and lost wages. *Nonpecuniary damages* compensate consumers for other, non-money losses. The most important class of nonpecuniary payments is for pain and suffering. This class comprises 24% of total damages. Payments for *hedonic* losses, or lost pleasure of life, a relatively new and controversial

[5] Although products liability is said to be a regime of "strict liability," the term as used in product liability is not the same as the use by economists. For example, a plaintiff must show that some alternative product design was feasible; in pure strict liability, this would not be necessary.

class of payments in the tort system, are also nonpecuniary payments.[6] *Punitive damages* should be for situations in which an injurer tried to conceal his identity or behavior.

In analyzing damage payments for product liability accidents, we must keep in mind that consumers are themselves paying for whatever damage payments they ultimately receive through higher prices for goods and services. Damage payments are like insurance: consumers pay premiums as higher prices for products, and receive a payment if injured. Since consumers do find it worthwhile to purchase insurance against medical costs and lost wages, it is appropriate that injurers should also compensate for this class of losses, although some coordination between payments form injurers and payments from direct insurers in the form of "subrogation" would be useful. (Under subrogation, a person's first party insurer pays the injured party, but then collects from the injurer.)

If given a choice, consumers never buy insurance against pain and suffering. There are sound theoretical explanations for this fact. Essentially, this class of harms does not increase the marginal utility of wealth, and so is not a good target for insurance (Calfee and Rubin, 1992). Therefore, the value of such insurance is below its actuarial cost and, since the administrative cost of operating the tort system is higher than the cost of operating any other insurance system, consumers would be even more unwilling to pay for compensation for pain and suffering through the tort system than through direct first party insurance.

Punitive damages are a more difficult issue. There are some behaviors of firms that normal tort damages will not adequately deter. Firms will sometimes make efforts to

[6] This class of damages, based on econometric studies of "willingness to pay," was actually invented by an economist. The courts have not been friendly to this theory of damages.

hide their behavior. If they succeed, then there is insufficient deterrence. Therefore, multiplied damages can be useful to deter such efforts at concealment. The multiplier should be the inverse of the probability of detection (Rubin, Calfee and Grady, 1997; Polinsky and Shavell, 1998).

Jurisdiction

The U.S. is a federal system, and most tort law is state law. This creates several issues of interest. First is the issue of whether a particular matter will be in state or federal court. In general, plaintiffs prefer state court and defendants prefer federal court. For class actions, this issue is the subject of a major lobbying campaign by proponents of tort reform.[7] A second issue is the particular state in which a case will be tried. Some states and some counties are friendlier to plaintiffs than are others. This depends on matters such as the income and race of residents (who are potential jurors) and whether judges are elected or appointed (Tabarrok and Helland, 1999; Helland and Tabarrok, 2003). Tort law can serve to transfer money from stockholders (who live in all states) and firms (usually out of state) to citizens of particular states. This gives state judges (and particularly elected judges) strong incentives to rule in favor of plaintiffs. Thus, although matters of private law have traditionally been state law, there are arguments for treating tort law at the federal level (Rubin, Calfee and Grady, 1997).

A related issue is the way in which "choice of law" issues are handled. This deals with situations in which more than one body of law might govern; for example, a citizen of Colorado harms a citizen of Arizona in Michigan. One area of expansion of tort law has been the increasing willingness of state courts to hear cases involving their citizens in

[7] S. 2062, the Class Action Fairness Act, discussed at http://www.legalreformnow.com/newsroom/display_release.cfm?ID=98.

matters where there might be some ambiguity (O'Hara and Ribstein, 2000). This increase in "long arm" jurisdiction has also led to an increase in liability.

Plaintiffs generally decide where to file cases, and so choose the jurisdiction. The locus of a trial is important for two reasons. First, damage awards are more likely and larger in some jurisdictions, so plaintiffs naturally want cases heard in those places, and defendants do not. Second, the process of jurisdictional choice by plaintiffs can itself have important implications for the shape of the law as plaintiffs chose friendly jurisdictions and then win favorable precedents for other areas (Fon and Parisi, 2003). For students of tort reform, the fact that tort law is formulated at the state level provides rich data sets for testing hypotheses; see, for example, Landes and Posner, 1987; Curran, 1992; Rubin and Bailey, 1994; and Rubin, Curran and Curran, 2001; Helland and Tabarrok, 2003.

Other Issues

There are other important tort issues. One is the role of class actions. A class action is a method of aggregating many small claims. Since litigation is expensive, the litigation system will provide no recourse to those suffering small losses. A class action lawsuit can solve this problem by aggregating these small claims and so creating economies of scale in litigation. If the underlying law is efficient, then class actions can be an efficient adjunct to the litigation system. However, if the underlying law is itself inefficient, then this form of lawsuit will serve to exacerbate the problems in the system. Since there is no real "client" in many class action lawsuits, there is little check on the fees charged by attorneys, and so these lawsuits can be very profitable for lawyers. There is also a hybrid called "joined claims" in which part of the litigation is for many claims

simultaneously and part is for individual claims; this has been used in asbestos litigation (White, 2004).

There are other factors generating incomes for lawyers. These include particular classes of litigation. Asbestos has been a big money maker for attorneys; lawyers have made (as of 2004) $41 billion ($21 billion defendants lawyers, $20 billion for plaintiffs lawyers) and are projected to ultimately earn altogether $118 billion (White, 2004).[8] Tobacco litigation (done by private attorneys in conjunction with states) has generated $13 billion to be paid out over 25 years (White, 2004). As shown below, this money has significant implications for the political behavior of the parties in tort reform.

The Players

The major players in the tort reform game are the lawyers (opposed to tort reform) and businesses and sometimes doctors (in favor.) Both sets are organized interest groups. Epstein (1988) and Rubin and Bailey (1994) discuss the strengths of these groups.[9] The lawyers are in the best position because they merely must oppose any and all forms of tort reform. Moreover, both plaintiff and defendant lawyers favor expansive tort systems; for example, as mentioned above, defense lawyers have earned more from asbestos litigation than have plaintiff lawyers.[10] Olson (2003) discusses interests of defense and plaintiff lawyers in expansive tort law. (Of course, defense lawyers must be more circumspect in their advocacy since their clients generally favor tort reform.)

[8] Many plaintiffs in asbestos cases are workers who installed asbestos. However, these workers are suing the manufacturers of asbestos, not their own employers, and so the limits in workman's compensation do not bind. This type of lawsuit is an important part of product liability litigation.
[9] Insurance companies have more mixed motives. In the short run, they lose from increased liability but in the long run increased liability leads to greater sales of insurance.
[10] For completeness, it must be mentioned that some economists (including the author) have also made money as experts in such litigation.

A major player on the side of the lawyers is the American Trial Lawyers Association, ATLA (http://www.atla.org/). In many respects this is a standard interest group. It is associated with the Democratic Party, and a member, John Edwards is currently (August 2004) the Democratic nominee for Vice-President. Members contribute money and sometimes time and other resources to elect favored candidates. The Association is allied with other members of the Democratic coalition. However, as discussed below, ATLA has an additional tool to use in influencing policy besides those available to all interest groups. It is able to litigate for favorable precedents. In the litigation process, ATLA provides various private goods to particular lawyers (e.g., documents received from defendants, information about techniques, data and methods of litigation) which would induce individual attorneys to join the organization (Rubin and Bailey, 1994). A particularly important but insufficiently studied set of allies are members of the "consumer movement," including various "public interest research groups" (PIRGs) and other associations associated with Ralph Nader.

Various business groups are involved on the side of tort reform. For example, the U.S. Chamber of Commerce and its Institute of Legal Reform (http://www.legalreformnow.com/) are very active. There is also the American Tort Reform Association (http://www.atra.org/).

Business groups are less monolithic and have more difficulty in organizing than the trial attorneys. This is for several reasons. Issues in particular cases are somewhat idiosyncratic: Was the gas tank in a particular model in the right place? There are also standard free rider problems in organization. On many issues different businesses have varying interests. For example, Epstein points out that machine tool companies will have

an interest in coordination of workers compensation with tort law; pharmaceutical companies will not care about this issue but will care about whether FDA approval is a defense against tort liability, an issue of no interest to chemical companies. However, Epstein's point was overdrawn. There are some issues of interest to all businesses. These include the locus of lawsuits (with businesses favoring federal rather than state jurisdiction), procedural rules such as limits on class actions, and the amount and form of damage payments. These are among the issues that have been at the forefront of battles between the plaintiff bar and manufacturers.

For research purposes it is useful to note that these business related organizations provide substantial amounts of information valuable for students of tort reform and public choice. For example, the Institute of Legal Reform has a study based on a survey of company general counsels rating states in terms of their tort systems (http://www.legalreformnow.com/study030804.cfm). The ATRA provides lists of "judicial hellholes," (http://www.atra.org/reports/hellholes/), counties in which tort litigation is particularly harmful to companies, and also state by state lists of successful tort reforms. It might appear that this information is biased since it is generated by an interest group playing an active role in the tort reform process. However, if one is studying the effect of tort liability on business decisions, or the role of business political contributions to judicial candidates, then the perception of business organizations is a relevant piece of data, and these reports do useful information on business perceptions. The ATLA website also provides information from the perspective of the plaintiffs attorneys.

Tools

The study of tort reform should be especially interesting to students of public choice because the players have many tools available for use, and the interplay of these tools is an interesting subject of study. This is best seen by reviewing the history of tort law and tort reform. As discussed above, since the 1950s, there has been a major expansion of this body of law, caused by numerous changes in the law and in legal standards. Rubin, Curran and Curran (2001) argue that in general lawyers have a comparative advantage in using litigation as a method of expanding liability. They examined the source of some of the changes leading to expansion of liability (rejection of privity, adoption of strict liability) and found that these changes did indeed come about through a litigation process. That is, in all cases, increases in liability occurred because of judicial decisions in states.[11]

Moreover, there is evidence that changes (specifically, the elimination of privity) occurred faster in states with more attorneys per capita (Rubin and Bailey, 1994). Rubin and Bailey also describe in detail the process used by ATLA in litigating for the purpose of generating favorable precedents which themselves expanded the scope of tort law. Essentially, lawyers pooled their information through the auspices of the ATLA. This pooling both increased the chance of each lawyer winning the particular case and also helped create precedents favorable to other lawyers working in the same area. Lawyers also have the ability to select cases that will be more likely to generate favorable precedents.

Those in favor of tort reform generally responded through more normal tools of political advocacy. They used contributions and lobbying to attempt to induce state legislators and the U.S. Congress to pass tort reform measures. (For example, Rubin,

[11] Comparative negligence was a more complicated case, but still consistent with the arguments here.

Curran and Curran (2001) find that adoption of workers' compensation and limitation on strict liability occurred as a result of statutory changes.) Attorneys then appealed some reforms to courts (often state supreme courts) in an attempt, often successful, to have the reforms declared unconstitutional. (This discussed in Schwartz, Behrens and Lorber, 2000. This article is a nice discussion of various tactics in the legislation-litigation campaign from the side of tort reform advocates.). More recently, as tort lawyers have become richer, they have also begun to use the lobbying process; this has been less well studied. They have so far used this process mainly defensively, primarily to stop legislative tort reform. (For an interesting anecdotal discussion, see Olson, 2003, Chapter 9.) For example, there has been a bill in the US Congress to reform class action litigation in various ways (S. 2062, the Class Action Fairness Act) that has not passed the Senate. Anecdotal evidence indicates that the failure of this bill was due to lobbying efforts of lawyers, but the issue has not been carefully studied.

On the other hand, proponents of tort reform have been able to use the litigation process to reform some aspects of the issue. Specifically, several Supreme Court decisions have had the effect of limiting punitive damage payments. The most recent case is State Farm v. Campbell[12] in which the Supreme Court indicated that in most circumstances punitive damages cannot be more than nine times as large as actual damages (a "single digit" multiplier). Those in favor of tort reform have also succeeded in requiring higher scientific standards for experts in lawsuits.[13] Additionally, parties make efforts to influence the choice of judges at the state level and also at the federal level. For states with appointed judges, and at the federal level, the process is indirect, in

[12] State Farm Mutual Automobile Insurance Company, V. Inez Preece Campbell, 123 Supreme Court 1513 (2003).
[13] Daubert v. Merrell Dow Pharmaceuticals, Inc., 113 Supreme Court 2786 (1993).

that interest groups may contribute to campaigns of politicians who will appoint judges with certain preferences.

Because parties have so many tools available, the nature of equilibrium is not clear. When one party loses in a particular forum, it can change the locus of combat to another venue. Thus, as described above, parties have gone from litigation to lobbying to political action aimed at judicial appointments in order to influence the process. Moreover, parties on both sides of the issue have used all sets of tools, although it would seem that lawyers have a comparative advantage at litigation and businesses at lobbying. Both sides have used the electoral process to try to elect representatives who will pass laws or appoint judges favorable to their side; it is not clear where the advantage lies for this method of legal change. Both sides have also tried to have judges favorable to their side elected. The lawyers have been dong this for a long time, but recently business has attempted to use this tool as well.

Summary and Possibilities for Future Research

Although the issue is important, the literature relating tort reform and public choice is small; relatively little has been written. This means that research in this area can have a big payoff; it is possible to make a large contribution to understanding and perhaps to policy as well. Moreover, because tort law is mostly state law, there is a good deal of variation available for empirical examination of issues.

There are many interesting questions to be examined. I have mentioned some in the chapter, but I will provide a more complete list here.

1. Both those in favor of tort reform and those opposed are coalitions. These coalitions could themselves be examined using the tools of public choice. How do they

overcome free rider problems? Are there private (Olson) goods provided to members? Do the particular areas chosen for reform have to do with the coalitional nature of the parties? For example, much litigation on the side of reformers has dealt with damage payments; is this because it is an important issue or because it is a common issue for all potential defendants, and so an issue on which it is easier to reach agreement?

2. The role of each of these coalitions in the political process could be studied. The trial lawyers seem to be part of the Democratic coalition, and those in favor of tort reform are more likely to be Republicans. The relation between the trial lawyers and members of the "consumer movement," including various "public interest research groups" (PIRGs) and other associations associated with Ralph Nader is particularly interesting, and has not been carefully examined.

3. Although there has been some analysis of the ATLA and of business groups, I am not aware of any public choice analysis of doctors as agents in the tort reform debate. This could be rectified. Doctors may be between coalitions and parties, favoring Democrats on some issues such as increased health spending and Republicans on others, including tort reform. This may be why they appear to be less effective in seeking tort reform, but this is subject to study.

4. Since many state court judges are elected, it would be possible to study directly contributions and campaign spending by interested parties in judicial elections. Since state courts can affect corporations in any state, we would expect many out of state contributions to judicial elections, particularly in states that are viewed as "tort hells." This issue has not been examined in the literature.[14]

[14] Soyong Chong and I are in the process of such an examination.

5. Some states have passed tort reform. The determinants of whether or not a state passes such legislation and the form of the legislation could be more carefully studied. Variables include the number of attorneys in a state and measure of business presence as well as other standard public choice and economic variables. There have been analyses of the determinants of elimination of privity by state (Landes and Posner, 1987; Bailey and Rubin, 1994) and of the adoption of comparative negligence (Curran, 1992) but other changes have not been carefully studied.

6. Both sides have many potential tools (litigation, lobbying, contributions to judicial campaigns, and contributions to politicians who will vote for favorable legislation or appoint judges favorable to one side or another.) How do agents decide which tool to use in particular circumstances? For example, are attorneys more likely to contribute to political campaigns in states where judges are appointed?

7. It is possible to study votes in both the House of Representatives and the Senate on tort reform bills. Additionally, in the U.S. Senate, there are confirmation hearings on judges, and roll call votes on issues related to confirmation could be studied. Campaign contributions from advocacy groups and interested parties (such as plaintiffs law firms) could also be examined.

8. Many legislators at both the federal and the state level are attorneys. Attorneys as legislators dealing with tort reform issues are an interesting area in which to study agency problems of elected representatives since it is possible to identify conflicts of interest. To what extent do these attorneys represent themselves and to what extent do they represent constituents? That is, do attorneys who are representatives vote differently

than non-attorneys from similar districts? Putting in a dummy variable for whether a legislator is an attorney in a voting equation would be a way to examine this issue.

In sum: There are important and interesting issues relating to tort reform for public choice scholars to examine. There are theoretical tools available for analyzing these issues. There is data available for testing hypotheses. This is a fruitful area for research.

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