Introduction

Setting aside the one case in 3,000 that makes headlines, are juries generally capricious and liberal? Are verdicts frequently unreasonable? In order to effectively assess the quality of the civil jury system, there is a compelling need for research on the quality of jury decision-making, rather than anecdotal, if spectacular, cases. Whatever the solution, contemplating altering the rules of the civil jury system ought to be based on a careful examination of the outcomes generated by the jury decision-making process, rather than on anecdotal, emotionally manipulative stories of supposed jury incompetence.

My own research, in fact, provides strong evidence that juries are rational, restrained, and thoughtful, and that their verdicts are quite predictable. The awards they determine can, however, be reasonably anticipated and are based on factors that juries should be considering to determine awards. If anything, juries err on the side of the defendant, not the plaintiff. Last year, I completed a doctorate in economics at the University of Chicago, for which I wrote a thesis based on an empirical examination of the civil jury system. I was fortunate to have my research supervised by several of the world’s premier economists, including the 1996 Nobel Laureate in Economics.

In my dissertation, I analyzed compensatory and punitive damages awarded by juries for claims arising from injuries sustained in automobile accident cases involving allegations of driving under the influence of alcohol. My objective was to determine if juries were making rational, well-thought-out decisions in awarding compensatory damages. In this article, I give a synopsis of the results of my research and the relevance of these findings to tort reform efforts.

Previous Research on Jury Decision-making

Ideally, to assess how juries make decisions, we would like to observe their actual behavior in the jury room. Unfortunately, the jury deliberation process is hidden from view. As a matter of fact, for a short time in the mid-1950s, researchers at the University of Chicago were permitted to listen in on the deliberations of several federal juries, but a subsequent Congressional inquiry soon led to legislation prohibiting this. Thus, exactly how juries reach decisions inside the jury room cannot be observed or determined directly, which presents a thorny research problem. We can observe what is presented to a jury, and we can observe the results of the decisions that juries make, but actual deliberations are hidden to researchers. We can only infer what factors they base their decisions upon. But, by using econometric analysis, powerful conclusions can be reached based on standard statistical research methodologies. Among the prior research papers published in this area, there are two notable studies that were highly informative and report findings consistent with that of other jury verdict research.

An economist at Harvard University, Kip Viscusi, examined over 11,000 insurance claims and evaluated all claims that paid for pain and suffering. The results of his research led him to the rejection of the idea that payments for pain and suffering awards are arbitrary and capricious. In fact, the average payment was rather modest, amounting to approximately $18,000 in 1986 dollars. Viscusi argues that proposed limits or caps on awards for pain and suffering would negatively impact the few victims of catastrophic injuries, such as brain injury and quadriplegia, while leaving the great majority of awards for lesser injuries unaffected. He found that larger claims for pain and suffering do not receive proportionally larger awards.

A researcher at the RAND Corporation, Robert MacCoun, reviewed a large body of jury verdicts and observed, among other things, that fewer than 9 percent of cases involve punitive awards, and the median in 15 of 20 jurisdictions was below $40,000. He also found that over 50 percent of punitive awards were reduced or eliminated in post-trial proceedings, that wealthy defendants do not have a different outcome than other non-institutional defendants, and that while juries tend to award more money than judges, judges tend to find for the plaintiffs more often. MacCoun concluded that there was no evidence to suggest that juries are less competent than judges as factfinders and cites evidence for advantages in the performance of heterogeneous groups over that of individuals.

What do juries count as important? How much of their decisions can be explained by observable factors? These are important questions to be addressed in assessing the quality of the civil jury system. They are questions I sought to answer in my own research.

A Model of the Jury Decision

In a typical (non-fatal) personal injury case, plaintiffs make claims in several categories for compensation resulting from losses: first, past and future lost earnings; second, household services lost; third, medical and property losses; fourth, pain and suffering, including loss of enjoyment of life.

These four categories and the factors that affect them are generally observable in every trial and are available, to varying degrees, in the Jury Verdict Research (JVR) data. Claims for compensation can include any one or more of these categories. The job of the jury is to determine the extent of losses in each category, based on the evidence provided by the plaintiff and the defense.

In my statistical analysis, I take into consideration these factors through the use of multiple regression, a statistical method which allows me to measure the separate effect of many possible factors that impact the jury's decision. In the process of determining these effects, I can also estimate what portion of the award that cannot be explained by the factors—a way of measuring how "rational" juries are. The greater the unexplained.
They do, however, increase the compensatory component when punitive damages are awarded. The result is predictable. Moreover, it also shows that when juries are allocating damages, they are not overlooking the area of the award (punitive damages) in order to avoid a cap or other limitation damages in another area (compensation).

Finally, juries award more compensatory damages as a result of individual defendants, based on individual perceived ability to pay. Since assessing compensation involves estimation, errors on the side are apparently made regarding awards against individuals.

Conclusion

The overall pattern of results fits that of a system where, in general, rationality and thoughtful processes are the standards in many key aspects of decision making. There is nothing in the results that constitutes an urgent call for meddling in the legal system. To the contrary, there is much evidence that the system is fair and even restrained. Most of the verdict is predictable based on the extent of injury, medical costs and lost income, indicating rational decision making. There are several conservatively minded, and the result is that the defendant is even more impressed by the amount of the award, even if the defendant is later convicted of driving under the influence. These results suggest that perhaps the ability to mentally separate liability issues from damages may be crucial.

Juries do appear to reduce compensation for plaintiffs who cannot be found liable at the time of the incident. Apparently, the behavior of the defendant affects the award. This result lends further support for the conclusion that juries are conservative in making awards. Juries task is to determine the economic costs on a one-on-one basis, suggesting a fairly rational, cost-accounting, approach to the verdict.

However, reform should neither precede thoughtful analysis of the problem nor ignore evidence of the system working. Sound evidence and thoughtful analysis are required to ensure that appropriate actions are taken.

The jury system is grounded in a profound trust in the common sense of our fellow citizens. My research shows that juries and fellow citizens may make much more sense than trusting professional politicians to select good juries. The system is not only not broken, it is revealed to be working remarkably well.

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1. Professor Gary Becker was awarded the Nobel Prize in Economics in 1992. My fourth dissertation committee members at the University of Chicago were responsible for convincing me that I should follow sound research practices. The opinions expressed in this paper are my own.