

Big ideas: Risk

17 September 2005

From *New Scientist* Print Edition.

John Adams

Low rollers

Accidents were once thought of as acts of God, or, in a secular age, bad luck.

Now, with a good lawyer, almost anything can be turned into culpable

Risk is all in the mind. It is a word that refers to a future that exists only in the imagination. Contrary to the insistence, routinely found in discussions of the subject, on a distinction between "objective" risk and "perceived" risk, all risk is subjective. To take a risk is to do something that has a possibility of an adverse outcome. Why should anyone want to do such a thing? Because, as well as possible adverse effects, risks also bring rewards.

Of course, everything we do carries some unknown probability of an accident - an unintended, undesired outcome. In the past such outcomes were commonly characterised as acts of God, who moves in mysterious ways, or, in a secular age, as bad luck. With the help of a good lawyer, however, it is increasingly possible to transform almost any stroke of bad luck into culpable negligence. We now live in a risk-blame-litigation-compensation culture, where the level of mitigation against the downsides of risky behaviour means the possible rewards now need to be much bigger.

That is because the fear of being held liable for some unintended adverse outcome is almost always linked to litigation, or the threat of it. This threat has been amplified by the advent of the no-win, no-fee lawyer. Insurers are also implicated: they routinely insist on settlement out of court of claims their customers want to defend.

The increased frequency and size of compensation awards are important drivers of the cultural shift. The sums paid out for everything from tripping over paving stones to clinical negligence have rocketed; the clearest sign of this is in the parallel rocketing of insurance premiums.

Underpinning the increases in litigation and compensation is the growth of the blame culture. Why are we collectively so much more inclined to blame than we used to be? If my good friend and neighbour inadvertently harms me, my first instinct is not to sue him - even if the television at the foot of my hospital bed is blaring out incitements to do so. But if I have been harmed by a complete stranger, especially one with deep pockets, might I be tempted?

We imagine the future, arriving at the subjective probabilities of both positive and negative outcomes, by using instinct, intuition and our experience of circumstances that appear similar to those that we have encountered before. But we are now imagining the future differently. God and bad luck have been banished. Large armies are employed in the production of risk assessments, whose purpose is the identification and avoidance of all conceivable sources of misfortune.

But whatever the risk assessors might want from the world, the future remains uncertain. To the extent that these assessments influence behaviour, they discourage the pursuit of the rewards of risk - whether from school trips or trips to the moon.

John Adams is a professor of geography at University College London and author of *Risk* (Routledge, 1995)

Hiding from litigation

08 October 2005

From New Scientist Print Edition.

Josh Mitteldorf Philadelphia, Pennsylvania, US

John Adams's column on risk reads like a PR campaign by commercial interests to convince us that litigious crybabies are responsible for higher medical costs (17 September, p 36).

A few spectacular jury awards have given rise to the myth that the legal system is slanted in favour of the plaintiff. In fact, the vast majority of victims of medical malpractice go uncompensated. Products that are predictably dangerous continue to be distributed, and the people who are hurt or killed by them rarely seek justice.

Adams's most egregious claim is that "the clearest sign" of the increased frequency and size of compensation awards "is in the parallel rocketing of insurance premiums". Insurance premiums rise even as their payouts fall, because administrative costs and profits constitute a larger and larger share of the money they demand from us.

A paper by Carl Deal and Joanne Doroshov released by the Center for Justice and Democracy makes a powerful case that much of the money behind the tort (liability) "reform" movement can be traced to the tobacco industry, which is most in need of shelter from litigation and least deserving of protection - see www.centerjd.org/lib/cala.htm.

From issue 2520 of New Scientist magazine, 08 October 2005, page 26

Reply to Mitteldorf

By John Adams 10 October 2005

Some readers might infer from Joshua Mitteldorf's letter (8 October) that I am in the pay of the tobacco industry.

Smokers are a boon to the economy. Through their smoking lives they pay large sums to the treasury in taxes, and their lives are shorter. The CDC estimates, for the US, the *potential years of life lost* each year attributable to smoking; over 80 percent (5,048,740) occur post retirement. Because fewer smokers live to an age when they need new hips, cataract operations and carers to push their wheel chairs, their lifetime medical expenditure is likely to be less than that of non-smokers. They also make a contribution to the solution of the looming pensions crisis. I cannot imagine why I have not been offered vast sums of money for my PR activities on behalf of the industry.

Mitteldorf argues that one of the reasons that insurance premiums are rising is because insurers are spending more on administration. One area where "administration" costs have increased significantly since the advent of no-win-no-fee is the amount of money spent on legal costs. The Association of British Insurers estimates that in non-motor injury claims 40% of payouts now go to meet claimants' legal costs and those of claims management companies. Between 1999 and 2003 in Britain, premiums for general

liability insurance, the area where the litigators are most active, increased by 143 percent to £4.3 billion. In the United States “transaction costs”, which include legal fees and court costs are estimated to take 50 percent of every dollar that passes through the tort system. In Britain in 2004-2005 the National Health Service paid out £502.9 million (a figure that includes legal costs) for clinical negligence - a 19 percent increase on the year before.

Large those these costs are, far more burdensome are the plague of risk assessments that they have engendered, the resources devoted to making tiny risks tinier, and the stifling of enterprise in a culture that tolerates zero risk.

John Adams