A Paper Prepared for Law and Society, Amsterdam, June, 1991

Herbert Kritzer
Department of Political Science
University of Wisconsin
North Hall, 1050 Bascom Mall
Madison, Wisconsin 53706
U.S.A.

W. A. Bogart
Faculty of Law
University of Windsor
Windsor, Ontario
N9B 3P4
(519) 253-4232

Neil Vidmar
School of Law
Duke University
Durham, North Carolina 27706
U.S.A.
(919) 684-6835

DRAFT - FOR DISCUSSION - PLEASE DO NOT QUOTE OR CITE WITHOUT EXPRESS PERMISSION

COMMENTS WELCOME

(Amsterdam Draft, 17 June 1991)
I. Introduction

In a series of prior papers (Kritzer, Vidmar, Bogart and Zahorik, 1991; Kritzer, Bogart and Vidmar, 1990; Kritzer, Vidmar and Bogart, 1990; Kritzer, 1989) we have examined claiming behaviour in the context of injury-related grievances (torts), discrimination, and consumer complaints. The key finding in our previous analyses is the central importance of contextual elements. Miller and Sarat's (1980-81) analysis of a number of broadly-defined types of problems identified problem type as the primary explanatory factor of claiming behaviour; our analyses have looked within several of these problem types, and our findings, across a variety of data sets from three different countries show that further specification of context (i.e. breaking down each general type into subtypes) continues to be the strongest explanatory factor.

We will summarize our previous work and then turn to a discussion of why problem context is such a consistent predictor in accounting for claiming behaviour even regardless of national boundaries. In doing so we will assess the explanatory power of several theories regarding legal mobilization in light of our findings concerning the consistent relevance of problem type.

Before doing all of this we need to emphasize a point about "claiming". Claiming is measured differently depending upon the specific type of problem involved. In the context of personal injury and damage to property, a claim is considered to have been made only if the party suffering the injury or damage (or a surrogate for that party) specifically request compensation. For consumer problems, a claim is considered to have been made if a complaint is registered by the provider of the service or product; that is, a request for redress is considered to be implicit in
the complaint. In our discussion of discrimination problems we apply the same definition as we use for consumer problems (a complaint implies a claim). Miller and Sarat's analysis of discrimination problems (1980-81) defined claiming as having occurred only when either a specific demand was made or the complaint was registered with a government agency; as we will note below (and as we have discussed extensively in a previous paper -- Kritzer, Vidmar, and Bogart, 1990) we find a much higher claiming rate using our definition than was reported by Miller and Sarat.

II. Data Sources and Methods

a) Core Data Sources

The core data used in the analysis came 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). Respondents were asked about a variety of problems, generally over $1,000 (U.S.). These data are from 5,147 households in five federal judicial districts around the United States. Interviews were conducted by telephone with household representatives; households were selected through a random digit dialling method that produces a clustered random sample.

The second data set was from a replication and extension of the CLRP survey carried out in Ontario in 1988 (see Bogart and Vidmar, 1990). 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 litigation and how those problems were handled. The survey was conducted by telephone. Random digit dialling techniques were used to sample
3,024 Ontario households; interviews were conducted with the "heads" of each household contacted. Again, respondents were asked about a variety of problems, generally over $1,000 (Can.). One major difference, that will be significant, is the ability in the Ontario survey to distinguish between auto accident cases that involved physical injury and cases that involved only property damage.

b) Supplementary Data Sources

A third data set is Fitzgerald's earlier (1983) replication of Miller and Sarat. That study found a number of marked differences in reporting problems (1983:24) but the patterns for claiming (1983:31) were notable primarily for their similarities. We will refer to this study in our discussion of discrimination problems.

The fourth data set was collected by Jack Ladinsky in Milwaukee County, Wisconsin (see Ladinsky and Susmilch, 1985). This survey was conducted in late 1980 using random digit dialling techniques, and included 1269 interviews. Those interviews revealed a total of 881 consumer problems, with no limitation as to size. It will be used in conjunction with the discussion of consumer problems.

The fifth data set was collected on behalf of the British government's Office of Fair Trading (1986). This survey, which was part of a large commercial omnibus survey, was conducted in person in late 1984 and early 1985. A total of 4,996 interviews were completed yielding information in 2,886 consumer problems, with no limitations as to amount involved. This data set will also be used in conjunction with the discussion of consumer problems.

With the first three data sets there was coordination of question wording and data
collected. Different control variables are included in each data set, resulting in slightly different model specifications for each analysis. Because of these inconsistencies, major differences in results must be considered with caution.

c) Methods of Analysis

In our prior papers we used as our primary method of analysis a technique specifically intended for dichotomous dependent variables: logistic regression. Because the results from those analyses forms the basis of our discussion here, we will briefly describe the method and the approach that we use for interpreting the results it produces.

The method of logistic regression models the decision to claim as an unmeasured probability for which we have observed the actual realized behaviour. The result is a linear model that resembles ordinary regression: the prediction is based on a linear combination of the independent variables; the major difficulty for interpretation is that the dependent variable is measured not on the constrained 0 to 1 probability scale (P) but on the logistic scale (L) which is a transformation of the probability scale that yields values that range from $-\infty$ to $+\infty$:

$$L = \log \frac{P}{1-P}$$

The metric for L is unfamiliar and the values of the regression coefficients do not have the same kind of intuitive meaning associated with the analysis of a dependent variable on a familiar metric (e.g., predicting income measured in dollars).

To interpret the results of the logistic regression analysis, we take advantage of the fact
that the logistic transformation yields a value that is the equivalent of the log of the odds of claiming versus not claiming. A simple transformation of the logistic coefficients (the B’s), $e^B$ (where e is the natural constant), yields a coefficient that can be interpreted as influencing the odds ($0$), which is a simple function of the probability ($P$):

$$0 = \frac{P}{1-P}$$

The key difference in the model for odds as compared to the log odds is that the former is a multiplicative model while the latter is an additive model.

That is, we multiply the coefficients each one raised to a power equal to the value of the corresponding variable. A change of multiple units in a variable is represented by raising the coefficient to a power equal to the number of units. This is simplest in the case of a dummy variable coded zero and one, because the multiplier reduces to 1 when the dummy variable equals 0 (because any number raised to power of 0 equals 1) and to the value of the coefficient when it equals 1 (because any number raised to the power of 1 equals the original number). As a result of this, the coefficients associated with dummy variables can be viewed as ratios of odds between the base category (which is always coded 0) and the category coded 1; for polytomies, those nominal variables which must be represented by more than a single dummy variable, the ratio of two coefficients provides an odds ratio between the corresponding categories.

**III. Summaries of Findings for the Studies**

**a) Injury - Related Grievances (Torts)**

It was in this study where the greatest cross-cultural differences appeared. We will see the
type of problem was a strong predictor on claiming behaviour in both countries. Yet a number of other factors were significant in Ontario that were not in the United States.

In America only three predictors influence claiming behaviour in a statistically significant way: the type of problem, the total number of different kinds of reported problems encountered during the previous three years, and whether the opposing party was an organization. Of equal interest are the variables that did not relate to claiming behaviour 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. The lack of influence of the type of community on claiming in tort cases is particularly noteworthy in light of Engel's research in "Sanders" County, Illinois (1980, 1984; see also Greenhouse, 1986) which suggested that the culture of close-knit communities, such as that found in rural areas, discourages claiming, particularly in tort cases. This analysis does not provide statistical support for Engel's finding on a more cross-sectional basis. Furthermore, variables that measure tangible and intangible resources (income, education of head of household, prior disputing experience, age, gender, etc.) have no significant influences on claiming in tort problems in the United States, except possibly the "number of problems" variables.

In noticeable contrast in Ontario, several intranational cultural differences were 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 tort 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 communities). Interestingly, this is
exactly opposite what one would expect based upon previous studies of smaller communities in
the United States (e.g., Engel, 1980, 1984); additionally, while the coefficients from the United
States data reported above were not statistically significant, they ran in the opposite direction
(i.e., if anything, claiming was more likely in larger communities). In fairness, Engel did
recognize some heterogeneity in his study and we are, by the nature of our study, measuring
community at a more general level.

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, forthcoming). 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 high collinearity between location and size of
community precluded including both variables in the analysis simultaneously) the results were
consistent: controlling for other variables, the odds of claiming in a tort 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. 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 (i.e. the odds of a Francophone claiming are less than a third of the odds for a non-Francophone).

Turning to resource and experience variables, two -- income and education -- have statistically significant effects in Ontario. Claiming goes up as education goes up: the odds of claiming increase by about 25% (the odds effect is 1.225) for each jump in level of education. Claiming tends to go up with income as well, though 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 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 three (2.158/0.636). The one experience-related variable available in the Ontario data set is the number of problems reported during the interview; in contrast to the results for the United States, this variable is not related to claiming behaviour. 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.

The final variable in the Ontario data set, gender of respondent, produces an interesting result for which we do not have a ready explanation. Based on our analysis, men are less likely to claim than are women; the odds of a man claiming in the wake of a tort problem are only about two thirds (0.638/1.000) of the odds that a woman will claim. We do not have a ready
Ontario and the United States shared common ground in terms of the type of problem as a predictor of claiming behaviour. In both countries the same types of "torts" had similar predictive value compared with other types of problems though the strength of the predictive value varied between Ontario and the United States.

In America the odds of claiming was almost four times higher (3.766/1.000) in traffic accident problems compared to the baseline of "other injury or damage" problems, and almost three times higher (3.766/1.384) than work injury or illness. In Ontario the odds of claiming in traffic accident injury cases is over 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 tort 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 tort cases (.484/1.000). The influence of type of problem was not diminished by introducing controls for other kinds of variables.

b) Consumer Grievances

The overall complaining rate for consumer problems varied among the four data sets described earlier as follows:

- 87% (Miller and Sarat, 1980-81: 537) (odds = 6.69)
- 71% (Bogart and Vidmar, 1990: --) (odds = 2.45)
- 75% (Ladinsky and Susmilch, 1985: 204
The Milwaukee study (odds = 3.00)
- 76% (Office of Fair Trading, 1986: 21)
The Office of Fair Trading Study (odds = 3.17)

The odds of complaining are significantly higher for service-related problems in three of the four data sets: the odds of complaining are multiplied by 1.677 for the routine problems included in the Milwaukee study, by 2.015 for the problems involving CN $1000 or more in the Ontario study, and 2.943 for problems involving US $1000 or more in the U.S study; only for the Great Britain study does there appear to be no difference in complaining rates for goods-related problems compared to service related problems. Interestingly, of the two studies that include information on the amount involved in the problem, it is only in the study in Great Britain that the odds of claiming increase as the amount goes up: by 1.112 for each £100 (i.e., a little more than 10% per £100).

What happens when we start to refine further our indicator of type of problem by distinguishing between professional and nonprofessional services? An earlier study of routine consumer problems conducted by one of the current authors (see Schuller and Vidmar, 1987), found that complaints were lodged in 84% of problems with services provided by trades versus only 39% of problems involving professional services. Let us first examine a refined analysis for the study from Great Britain. We reran the logistic regression for the English data in two different ways: first repeating the analysis separately for problems greater than and less than or equal to £100, and second distinguishing between professional and nonprofessional services (as well as between services and products). One problem we encountered in this latter analysis was
that "cost" figures were not reported for many of the "professional" services.

Separating out the smaller problems had a clear effect on our analysis of the impact of cost and type of problems on complaining behaviour. For smaller problems (N = 1025), the distinction between goods and services problems still has no explanatory power for complaining behaviour; however, within this range, the influence of cost on complaining is much stronger. Where we previously found a log odds effect of .106 per £100 we now find .663 which translates into an odds effect of 1.94 (compared to 1.11 for all problems); this means that the odds of complaining versus not complaining about a problem involving £100 is almost twice the odds for a problem involving only £1. Note that 73% of respondents having a problem involving £100 or less complained (odds = 2.65), and that the average problem in this group involved £19.

Looking at problems in Great Britain involving more than £100 (N = 406), the initial analysis indicated that both cost and type of problem (goods versus services) are statistically significant predictors of complaining behaviour, albeit just barely achieving significance at the .05 level. In fact, the level of complaining is so high for this group of problems, 91% complaining rate (odds = 10.6), that accounting for differences is likely to be difficult; cost and type of problems (goods versus services) were the only two variables that achieved statistical significance, and none of the others even approached significance.

Note that when we considered together problems regardless of size the goods versus services variable was not only insignificant (in statistical terms) but it also had a sign that was opposite to that for all of the other data sets (i.e., complaining was lower in goods problems than in service problems). While this is still true for problems involving £100 or less, it is not true for problems involving more than £100; the odds effect for goods versus services for problems
involving more than £100 is 1.97 - the odds of claiming in a goods related problem is about twice that of a service related problem.

Let us turn now to the Ontario data, which dealt with problems involving CN $1,000 or more. As we noted above, the odds of claiming in service-related problems is about twice the odds of complaining regarding a product-related problem; translated into rates, if the complaining rate for a typical goods problem is presumed to be 71%, then the rate for a service problem, all other factors remaining unchanged, will be 83%. We also noted the unpublished findings from a Canadian study of smaller consumer problems (Schuller and Vidmar, 1987) that found complaining rates of 67%, 84%, and 39% for problems arising from product purchases, trades services, and professional services respectively. Distinguishing among these three kinds of problems, produces roughly parallel results for the larger problems in our data set. Using product problems as the baseline, odds effects for trades and professional services are .712 and 4.473, that is:

- the odds of complaining with regards to trades problem is about 4½ times the odds of complaining about a product problem;

- the odds of complaining with regards to a problem with professional services is less than three quarters of the odds of complaining about a product problem; and

- the odds of complaining with regards to a trades problem is more than 6 times the odds of complaining about a problem with professional services.

To compare complaining rates, assume that the typical complaining rate for a product problem is
73% (the overall complaining rate in the Ontario data); all else remaining the same, the complaining rate for a professional service-related problem will be 66%, and 92.4% for a problem with trades.

What about the effect of the amount at issue? Interestingly, we were unable to detect any stakes effect at all in this data set. The logistic regression coefficient for stakes does not begin to approach significance, regardless of whether we enter it into the equation in its natural form (in units of CN $100) or in a logged form. It appears that once you exceed the CN $1,000 threshold, the likelihood of complaining is not influenced by further increases in the amount at issue.

For the United States data (problems involving US $1,000 or more), we can look only at the type of problem; data on the amount at stake are not available. It was not possible to refine the analysis of the Milwaukee data because, with the exception of real estate brokerage services, professional services were not clearly delineated from nonprofessional services. For the C.L.R.P study refined results again show that complaining is greatest for problems arising with trades services. The odds coefficient for trades services is 5.24, (i.e., the odds of complaining with regards to a problem with a trade is more than five times the odds of complaining about a product-related problem).

This is roughly similar to the effect found in the Ontario data. The odds of complaining in trades services problems is about 4 times the odds of complaining about professional service problems (somewhat less of an effect compared to what we found for Ontario). In contrast to Ontario, the odds of complaining about professional service problems was greater (though not in a statistically significant way) than the odds of complaining about a product problem; the odds effect was 1.343 (the log odds effect was .295, compared to -.339 for Ontario). To compare
complaining rates, assume a baseline rate of 89.5% for product problems; all else remaining the same, the complaining rate for professional service problems and trades service problems would be 92.0% and 97.8% respectively.

c) Discrimination Grievances

The overarching observation to make is that complaining in discrimination cases is substantially lower than for other kinds of problems, and is much lower in Ontario than the United States. As noted above, (see also, Kritzer, Vidmar, Bogart, 1991) we maintain that previously reported claiming rates for discrimination problems (Miller and Sarat, 1980-81) were too low and that the correct figure for the American data should be 57% and for the Ontario study 39%. Nevertheless, even with our upward revisions, the figures are the lowest for all types of problems in both data sets.

The overall pattern of results for claiming in the United States suggests that it is clearly the context of discrimination problems that differentiates among behavioral patterns; the strongest odds effects are for the type of problem (employment 2.77, education 5.34, housing 1.00, or other 3.05). Additionally, the magnitudes of the coefficients for the existence of a prior relationship with the source of the problem are consistent, though statistical significance is achieved in only two of the analyses; interestingly, in contrast to some of the conventional thought on the effect of relationships (see Macaulay, 1963), the existence of a prior relationship increases the likelihood of generalized claiming. One last contextual variable -- whether the source of the discrimination is an organization or an individual -- does not account for complaining or claiming actions.
Other kinds of situational variables -- region of the country (compare to Epp, 1990:156) and type of community -- do not relate systematically to the response to a discrimination grievance. A few individual characteristics such as age, race, and gender have modest relationships; the pattern of relationships involving these variables is not clear (Kritzer, Vidmar, Bogart, 1991):

Men are less likely to claim and to complain in nonemployment cases, but no different in the employment context.

Hispanics are less likely to claim in nonemployment cases but do not differ in claiming behaviour in the employment context, and do not differ in complaining behaviour regardless of the context.

Nonwhites are more likely to complain and to claim than whites in both kinds of situations, but the effect achieves significant only for complaining in employment cases.

Even with these specific relations, most individual resource and experience variables (e.g., income, prior experience, age) have no systematic influence on actions in response to perceived discrimination.

The most interesting aspect of the results for Ontario is in the importance of the key contextual variable: employment, education, housing and other; the respective odds effects are 2.37, 10.31, 1.00 and 1.50. As in the U.S., complaining is most likely in school-related discrimination problems, least likely in housing problems, and in between in employment and "other" problems. Not only is the ordering similar, but the overall magnitudes of the coefficients are similar, with the exception of the effect on the odds of the school context (which in Ontario has about twice the effect that it has in the U.S.). While the kind of situation in which the
problem occurred has a significant effect on claiming, the alleged basis of the discrimination (age, gender, race, other) does not appear to have any significant effect on it.

Interestingly, the one other variable that seems to stand out in the Ontario analysis is the indicator of language heritage: those whose first language is French are much less likely to complain. Variables like race and gender, which had some effect in the U.S. analysis, are unimportant in Ontario. The analysis for Ontario suggests that there may be some effect of age, with older persons more likely to complain; the effect is neither strong, nor does it hold up specifically for employment cases. Income does not have a significant effect in the Ontario analysis, though the pattern of coefficients for income is consistent with the pattern in the U.S.: the odds of complaining is highest for middle level incomes and lowest for the highest incomes, suggesting that it may take some resources to be ready to confront, but when resources are not an issue at all, people may simply choose to walk away from discrimination problems.

While we did not conduct a full logistic regression analysis using FitzGerald's data from Victoria State, Australia, we found similarities in the ordering of claiming rates for different types of discrimination problems (though the numbers of cases in the Australian data set were very small). Table 1 shows claiming rates for the United States, Ontario, and Victoria State (without control variables). Omitting the "other" category, all three data sets show the highest claiming rate for education problems and the lowest claiming rate for housing!
TABLE 1

COMPLAINING/CLAIMING REGARDING DISCRIMINATION

BY CONTEXT OF PROBLEM

<table>
<thead>
<tr>
<th></th>
<th>UNITED STATES</th>
<th>ONTARIO CANADA</th>
<th>VICTORIA AUSTRALIA</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>rate</td>
<td>odds</td>
<td>rate</td>
</tr>
<tr>
<td>Job</td>
<td>63%</td>
<td>1.70</td>
<td>37%</td>
</tr>
<tr>
<td></td>
<td>(310)</td>
<td></td>
<td>(121)</td>
</tr>
<tr>
<td>Education</td>
<td>72%</td>
<td>2.57</td>
<td>64%</td>
</tr>
<tr>
<td></td>
<td>(65)</td>
<td></td>
<td>(22)</td>
</tr>
<tr>
<td>Housing</td>
<td>31%</td>
<td>0.45</td>
<td>10%</td>
</tr>
<tr>
<td></td>
<td>(102)</td>
<td></td>
<td>(31)</td>
</tr>
<tr>
<td>Other</td>
<td>56%</td>
<td>1.27</td>
<td>39%</td>
</tr>
<tr>
<td></td>
<td>(55)</td>
<td></td>
<td>(18)</td>
</tr>
</tbody>
</table>

IV. Discussion

A number of theories, overlapping in some ways, have been offered to explain why individuals engage (or fail to engage) in complaining behaviour:

- contextual theories: individual response is primarily a function of the social and structural context in which the grievance arises (see Merry, 1990); we include under this heading the degree of loss: likelihood of seeking redress may be related to the magnitude of the perceived loss.
- resource theories: individual response is primarily a function of the economic and experiential resources that individuals bring to the problem (Bumiller, 1988; Crowe, 1978).

- individual difference theories: individual response is primarily a function of individual attitudes, predispositions, and social situations (see Vidmar and Schuller, 1987; Vidmar, 1981).

- cultural theories: individual response reflects culturally defined norms and behavioural patterns (Sarat, 1990; Engel, 1984; Leung and Lind, 1986).

Our analysis suggest another, again overlapping, explanation that focuses more on the nature of the problem. As with the other theories, it might be summarized about like this:

- problem theories: individual response is heavily influenced by the nature of the problem the individual has experienced.

"Overlapping" is an important word to us because we see the "problem theories" as not so much antagonistic to the others but as an important check on explanatory overreaching by these other ideas. Perhaps we can best illustrate what we mean by turning this analytical corrective on ourselves. In our earlier paper on tort grievances (Kritzer, Bogart and Vidmar) we isolated differences between Americans and Canadians (at least in Ontario) in terms of the significance of intranational cultural variations: in contrast to the United States, a number of culture-related
variables, such as religion, type of community, and possibly language, influenced the decision to claim in Ontario.

These results seemed to be evidence to support "cultural theories" and lead us to comment (Kritzer, Bogart and Vidmar: 39):

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, for example, 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). Our analysis reveals the role of cultural variation within Canada (or at least within Ontario) in the realm of legal mobilization.

Yet, in light of the results of the other two studies of discrimination and consumer grievances where such intranational cultural variations did not appear prominently in either country, such a statement now must be regarded much more cautiously.

This caution is not to be taken as contradicting possible, significant differences between the two countries. Nor are we denying that there may be important differences between how Canada and the United States use litigation to respond to important social and political issues. What we are saying is that cross-cultural explanations for complaining behaviour may be quite bounded by the types of problems being analyzed.

This curtailment by the "problems theories" of overreaching by other explanations can be further illustrated by discussing the "resource theory" and the work of one of its main proponents, Kristin Bumiller. She has argued (1988) that in the discrimination context, the
requirement that the victim of discrimination came forward leads to what amounts to a second round of victimization. This leads to a high degree of unwillingness by discrimination victims to seek redress for what they see as unfair treatment based on their membership in a protected category.

As an explanation of low complaining rate, Bumiller's theory may be quite powerful. People, regardless of differing socio-economic and cultural characteristics, are, generally, loathe to complain about such perceived wrongs. But this theory has real limits in terms of why those, within the smaller percentage who do come forward, in fact do so. In this regard the metaphor of "rounds of victimization" dissipates because those who are likely to have had prior experiences with multiple rounds of victimization (poor, women, of colour), at least in terms of general disadvantage, are not significantly more- or less-likely to come forward. Instead subdivisions of types of discrimination unrelated to these other characteristics take on much more predictive significance.

Though the "problem theory" may have a utility in sharpening the focus of these other theories, we are still left with the question: why is problem-type such a strong explanatory factor regarding compensation seeking behaviour? At least a partial explanation we believe lies in the formal and informal means available to engage in complaining behaviour and the relative accessibility of these means to the individual and to the individual or organization that would be the target of the complaint. This is an obvious intuition. But what needs to be underscored is how large it looms in comparison with other explanations that might, at least to some, be equally intuitive.

We can illustrate what we mean by harkening back to the analysis two of us provided for
high rates of complaining for "tort" injuries particularly those arising out of motor vehicle accidents (Bogart and Vidmar: 28):

Perhaps the comparatively high levels of satisfaction have something to do with the sense of control individuals with these kinds of complaint have. An injury from an accident with an automobile is a relatively straightforward event both legally and factually. Those injured are much more likely to sense that they have a redressable claim and to know the way to assert such a claim. They may even be contacted initially by an insurance adjuster or someone in the workplace who will educate them in terms of claiming relief. This sense of control may carry over even into the formal legal process and, of course, may be fed in greatest part by the fact that, in the end, individuals in the automobile category get all or most of what they claim in far greater proportions than in other categories.

Within the sub-type of discrimination problems we looked to a not dissimilar set of explanations (Kritzer, Vidmar & Bogart: 19):

The substantial influence of this context probably reflects two distinct factors. First, some contexts, such as school, may have strong institutional arrangements for handling grievances (and may in some ways encourage grievants to come forward) while other contexts (such as housing) may have less accessible grievance mechanisms. Second, in some context the exit or avoidance option may be easier to take than in others. Very often, school contexts offer relatively little in the way of alternatives (i.e., the costs or difficulties of changing schools may be prohibitive); this may lead persons who believe that they have been treated in a discriminatory fashion in the school setting to seek redress in the school itself. On the other hand, someone who believes that he or she has been discriminated against by a potential housing provider may simply prefer to look elsewhere rather than to establish a long term relationship with someone believed to engage in discriminatory actions.

Finally, in this vein, we repeat the reasons we offered of why problems with professionals yielded such a low rate of complaining behaviour and such a comparatively high level of
dissatisfaction (satisfaction levels were tested in that study) with methods used to resolve them

(Bogart and Vidmar: 26):

The findings [regarding level of dissatisfaction from problems involving professional services] are consistent with those obtained in an earlier, more limited, study of minor disputes in Middlesex County. A number of these problems involve lawyers and doctors. Regarding lawyers, evidence from other studies suggests satisfaction with their services, and we will see that in the focus group sessions discussed below, the opinions about lawyers that emerged were in many cases very positive. However, when a problem arose with a professional, people became very dissatisfied. It could be that people have unreasonable expectations concerning the services of professionals and, therefore, perceive matters of grievance too readily. Conversely, however, it may be that people feel the odds are against them when fighting with professionals, whom they perceive as better organized, with access to more sophisticated means to engage in dispute. In any event, as indicated earlier, the area of professional services seems to be a strong candidate for more intensive and detailed study.

Obviously, this turning to institutional arrangements and orderings may itself be highly contextual and be anchored to the attributes of the various problems. For example, legal architects, when designing a dispute resolution system, often look to such basic components as whether compensation should the premised on proving fault on the part of the perpetrator or whether the dispute resolution mechanism should be judicial or part of an administrative scheme. Yet these sorts of institutional arrangements do not seem influential on complaining behaviour (or satisfaction levels as measured in the Ontario study) that could ultimately lead to a fully developed claim engaging these various mechanisms. Two of us made this point in one of the earlier papers (Bogart and Vidmar: 27-28):

[T]he high satisfaction rates regarding torts generally, and auto accidents in particular, may at first be surprising in light of the amount of public criticism levelled at modes of resolving claims for personal injuries, whether sustained on the highway, at work or elsewhere. We
are not unmindful of the possibility that there may be any number of people who have suffered redressable harm who never claim because they are simply ignorant of their rights. The failure to claim by a high proportion of those suffering a loss as a result of mishap has been documented elsewhere. Nevertheless, the present results are consistent with similar results obtained in the study of minor disputes conducted in Middlesex County.

The adequacy of the fault system for torts court-based is, at present, much debated. However, levels of satisfaction do not seem to depend on whether a fault system is used or not. People whose automobile injury claims were processed through the court-based system fared as well as those suffering from injury at work, the majority of whose disputes it can be assumed would be amenable to resolution by the workers' compensation scheme.

However, the limits of what we are reporting here need to be emphasized. These figures indicate that individuals who engage in claiming behaviour for automobile accidents (and torts generally) are comparatively well satisfied with the process, with lawyers fees, and with the results. They say nothing about a number of policy issues. For example, the question of whether the incidence of claiming is too low given the number of problems and whether this incidence is because of barriers that can and should be removed is not canvassed. Nor do they speak to specific problems and cases that may affect a small number of people such as, for example, those with occupational disease, or to those cases in which the loss to the individual is devastating, regardless of where liability is placed.

There are other limits to problem type explanations even combined with analysis around institutional arrangements. For example, in the consumer problems we found that it was much more likely that individuals would complain about a service problem (and within this much more likely to complain about tradespeople than professionals) than a problem with goods. We have no ready analysis for this result since there do not appear to be institutional differences that would facilitate complaining about services and, indeed, one senses that with goods, at least from large retailers, there are likely to be complaints departments or similar arrangements in place.
True, with tradespeople, one may have a known individual about whom a complaint may be lodged but is it so clear this would facilitate, as opposed to inhibit, articulating a grievance?

In the end, all theories about complaining behaviour have some utility but their potential interaction has to be carefully regarded. This is so especially in analyzing disparate problems. Data about and explanations of complaining and not complaining in the context of discrimination grievances should be generalized to other problems very cautiously and so on. This has not a dissimilar ring to the analysis two of us offered earlier (Bogart and Vidmar) in terms of the advisability of thinking about civil justice systems rather than one system as an undivided whole that admits of one set of experiences, results and explanations.

References


