



Tort Reform

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Tort Reform

Note:

Most of the text of the following slides comes verbatim or nearly verbatim from CBO reports or letters.

Tort Reform

Tort reform:

- driven by presumption that
 - too many tort claims are filed and
 - court awards, such as those for punitive damages and pain and suffering tend to be excessive

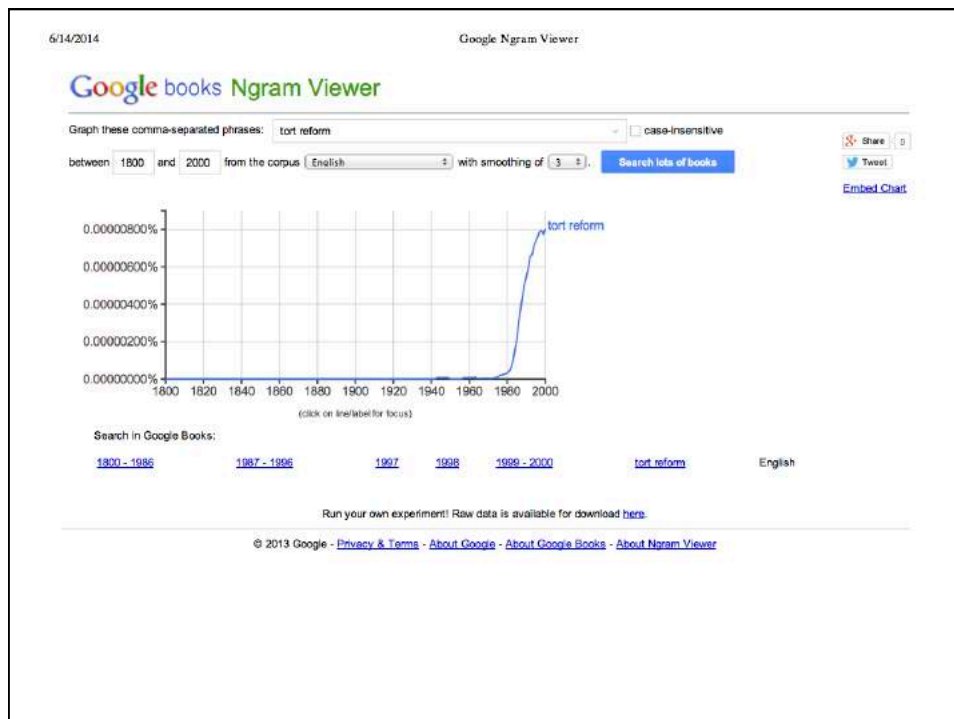
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Tort reforms include:

- caps on noneconomic compensatory damages (e.g., pain and suffering)
- limits on punitive damages, redirecting fraction of punitive damages to state treasury
- modifications to joint-and-several liability
- changes to collateral-source rule, reducing award by amounts received from third parties
- procedural hurdles to filing suit

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- Tort reform gained prominence in the mid-1980s, when many states enacted reforms in response to a perceived problem in insurance costs.
- Those reforms sought to limit exposure to liability, thereby reducing general insurance premiums.
- CBO reports premiums fell by 40 percent for some commercial policies in 1987, after tripling in the 1984-1986 period.
- Since 1986, states have put in place various other tort reforms.



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- Most consistent finding in the studies that CBO reviewed:
 - Caps on damage awards reduced the number of lawsuits filed, the value of awards, and insurance costs.

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- Most consistent finding in the studies that CBO reviewed:
 - Caps on damage awards reduced the number of lawsuits filed, the value of awards, and insurance costs.
- Also:
 - One study of automobile-related torts found that caps on noneconomic damages decreased not only the value of noneconomic claims made to insurance companies but also the number of lawsuits filed.
 - Other studies suggested that those caps led to increases in insurers' profitability for both medical malpractice and general liability insurance. Evidence on whether premiums were affected was mixed.

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- CBO says those findings must be viewed in context.
- As a whole, the studies provided little systematic evidence that any one type of reform had a significant impact on any of the various outcome measures studied.
- Few of the findings - except for a reduction in the losses experienced by insurers - were independently corroborated by other studies.

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Arguments for tort reform:

- Tort liability greatly expanded from 1950s to 1980s driven by notion that more extensive tort liability would serve to compensate injured parties and reduce the level of accidents.
- Proponents of reform say this has gone too far, businesses are saddled with excessive costs that lead to higher prices for consumers, litigation is too costly, the system is being abused, increased med mal premiums are lowering physician availability by forcing physicians to restrict their practice or retire.

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Arguments against tort reform:

- Lack of evidence that tort reform achieves its aims.
- Limited data on the deterrent effect of the tort system is counters the charges of excessive costs.
- Costs of system are justified by compensating victims, ensuring that injurers face the total costs of their actions, and improving safety.
- Needed reforms are better done by courts, not by legislatures.

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CBO concluded in 2009 that federal tort reform would lower costs for health care

- directly by reducing medical malpractice costs - which consist of malpractice insurance premiums and settlements, awards, and legal and administrative costs not covered by insurance
- indirectly, by reducing the use of health care services through changes in the practice patterns of providers.

Arguments against:

- people won't be fully compensated
- physicians will exercise less caution causing more injuries and deaths

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CBO says the evidence is mixed about whether tort limits have an adverse effect on health outcomes.

- Some researchers found that when the risk of litigation declined, the use of health care services decreased and mortality rates increased.
- Another study found that changes to joint-and-several liability had positive effects on health but that caps on noneconomic damages had negative effects.
- Other studies concluded that tort limits had no impact on mortality or other measures of health.

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Public debate / rhetoric

Debates over tort reform:

- Often lack facts
- Largely political
- Driven by organized interests on two sides, each with concerted lobbying and public-relations efforts, e.g.:
 - ATRA (American Tort Reform Association)
 - American Association for Justice (formerly the American Trial Lawyers Association)

Sources for slides other than "Public debate / rhetoric" slide:

- A CBO Paper: The Effects of Tort Reform: Evidence from the States (June 2004)
- CBO's Analysis of the Effects of Proposals to Limit Costs Related to Medical Malpractice ("Tort Reform"), October 9, 2009, <https://www.cbo.gov/publication/24975>
- Letter from CBO Director Douglas W. Elmendorf to Senator Orrin G. Hatch, October 29, 2009
- Letter from CBO Director Douglas W. Elmendorf to Representative Bruce L. Braley, December 29, 2009

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