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The social amplification of risk and landowner liability fear in the U.S. Northern Forest

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ABSTRACT

Research has documented a gap between fears of landowner liability in recreation-related injuries and the legal protection provided by state limited liability laws. This research calls for landowner education to close this "perception-reality" gap and encourage more recreation on private lands. Education by itself, however, may be insufficient because of social discourse about a liability crisis. This study tested the social amplification of risk framework to predict landowner fear of injury lawsuits, and recreational access decisions. The study sampled landowners across the four Northern Forest states in the Northeast United States, and found partial support for the social amplification process. Landowner lawsuit fear and access decisions were the product of belief in a liability crisis, perceived adequacy of the laws, parcel size, and familiarity with the laws. The results indicate that outreach efforts should focus on developing a toolkit of management practices tailored to individual landowners that reduce the uncertainty of liability risk.

Management implications:

1. The data provided partial evidence for a social amplification process. Residents in New York, where high-profile recreation-related injury lawsuits are far more frequent than other Northern Forest states, were significantly more fearful of lawsuits and more likely to restrict recreational access to their land.
2. The perception of a liability crisis was widely acknowledged among Northern Forest landowners in spite of liability laws that protect landowners. Those who believed more strongly in a liability crisis were more fearful of lawsuits.
3. Those who were more fearful of lawsuits were more likely to impose partial restrictions on recreational access to their land or to completely eliminate all recreational access to their land. The amplification of risk in public discourse about landowner liability has real consequences for recreational access restrictions on private lands.
4. Knowledge of limited liability statutes, however, had no effect on liability fear. Moreover, greater knowledge of liability protections produced more partial access restrictions to recreational access. This suggests that managing recreational risk on private lands requires more than legal solutions and public education efforts about limited liability statutes.
5. Those who believed that limited liability statutes offered adequate landowner protection were less fearful of lawsuits and less likely to restrict all access to their land. This finding suggests that public education efforts should focus more on the performance of the laws, rather than simply on the description and purposes of the law.

1. Introduction

Why do landowner liability fears about recreation-related accidents persist even though state recreation-use statutes protect landowners from recreationists' injury claims? In the United States, limited liability statutes for recreational use of private lands grant landowners immunity from most accident injury claims, and place the primary burden-of-care on the recreational visitor. These laws have been in place for nearly 50 years (Brown & Daigle, 2009; Wright, Kaiser, & Nichols, 2002), and subsequent state amendments have clarified and strengthened landowner protection over time. Past research has documented the effectiveness of state limited liability statutes. Wright et al. (2002) analyzed injury claims cases heard by the appellate court system in the United States. They found that two-thirds of the cases ruled in

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favor of the landowner, and argued that the perception of landowner liability was considerably greater than actual liability established by the courts – what they called "the myth of the liability crisis" (p.189). Similarly, Bennett and Crowe's (2008) analysis of liability in the United Kingdom noted that "landowner perception of the level of liability risk appears, for some reason, to be over-stated" (p. 1). Yet, narrowing the "perception-reality gap" between liability protection and fear has been elusive in efforts to educate the landowning public.

Landowner liability fear also affects landowner access decisions. In spite of limited liability statutes, landowners cite fear of lawsuits as one of the primary reasons for denying recreational access to their land (Copeland, 1998; Jagnow et al., 2006; Wright & Fesenmaier, 1990). Siemer and Brown (1993) found that liability-related concerns were a more important reason landowners denied recreational access (posted signs restricting access to their land) in New York as compared to property damage, exclusive use of the land, and control of access. An Illinois study found that liability was the main reason landowners did not allow hunters on their land (Miller, Anderson, Campbell, & Yeagle, 2002). In a survey distributed to state wildlife administrators, Wright, Kaiser, and Emerald (2001) found that liability was the second most significant reason landowners restrict access behind controlling trespass. Despite the fact that each state has created liability statutes to protect landowners, the statutes have been found largely ineffective in curbing land closures (Kaiser & Wright, 1985; Wright & Fesenmaier, 1988).

Consequently, is the landowner liability crisis really a myth? Landowners may know that the chances of recreational injury are low, and the probability of liability for that injury are lower. Nevertheless, this type of probabilistic risk assessment may be too narrowly focused and miss the psychological, social, and cultural factors (Freudenburg, 1988) that contribute to a person's risk perception. There may be social factors that amplify individual and societal fears beyond statistical probabilities of occurrence (Kasperson et al., 1988). In an outdoor recreation setting, accidental drownings, snowmobile deaths, or hunting accidents are profoundly tragic and disturbing events to be avoided by the landowner at all costs. If the landowner is taken to court for an injury, establishing immunity from liability may be inconsequential next to the burdens of the lawsuit, including lawyer fees, time away from work, and anxiety caused by an accident and a trial (Wright, Cordell & Brown, 1990). Galanter (1986) notes that "For plaintiffs and litigants alike, litigation proves a miserable, disruptive, painful experience" (p. 9). Landowner liability fear may also be amplified by a perceived increase in injury claim lawsuits, some of which are thought to be frivolous, and the product of an "ambulance chasing" legal system (Hand, 2010). It is not enough, therefore, for landowners to know that the probability of being held liable in a recreation related injury claim is low. Liability fear may be real because of a variety of social interactions and social contexts that can amplify probabilistic assessments of risk (Kasperson & Kasperson, 1996).

This study analyzes the social amplification of landowner liability fears, and its consequences for landowner decisions about recreational access among residents in the Northern Forest states (New York, Vermont, New Hampshire, and Maine). In the sections that follow, we first review Kasperson et al. (1988) and their social amplification of risk framework, and then show how it can be applied to recreation related injury and liability fears among landowners in the Northern Forest. We then describe how we measured different components of the model using data collected from a larger survey on recreation access and rural social change in the region. Finally, we analyze how these measures of the social amplification process are related to variation in liability fear and the types of recreational access restrictions that landowners impose on their property.

2. The social amplification of risk

The social amplification of risk framework provides one explanation for the mismatch between landowner protection from recreational injury and liability fear. Kasperson et al. (1988) would argue that claims of a "liability crisis myth" are based on technical risk assessments of the probability of injury events (e.g., 1 in 100,000 events) times the magnitude of injury outcomes (e.g., broken bones, disability, death and the accompanying lawsuit). Many outdoor recreation injuries are low probability with potentially high consequence. The societal response has been state limited liability laws that mostly shield landowners from the high consequences. Kasperson et al. (1988) however, would argue that this technical approach to risk assessment and policy is too narrowly focused. Instead, people use a more comprehensive set of formal and informal messages from friends, media, interest groups, politicians, personal experience and so forth. Kasperson et al. (1988) use theories from communications sciences to describe an amplification process that occurs when messages are intensified (or attenuated) in the transmission and interpretation process between the information source and the recipient. The recipient employs cognitive mechanisms such as attention filters, decoding, and heuristics, as well as social mechanisms such as public discourses, in-group/out-group filters, and interest group persuasive appeals. The behavioral and social outcome of amplified liability fear is real and consequential, and driven by a more complex constellation of communicative interpretation, debate, and perceptual commitments.

2.1. Amplifying liability fear

When academics, extension agents, or other advocates of open recreation access attempt to inform landowners of the protections provided by limited liability statutes, landowner response at the end of these meetings is often some variation of: "But, I can still be sued." There is no shortage of messages that reinforce this type of public fear. Hand (2010) documented exponentially increasing media coverage of injury claims cases in the British press between 1995 and 2010, even while the number of injury claims in the British courts declined by one-third. Insurance companies, seeking to contain injury claim settlements, produced a report (Lowe, 2002) showing that the cost of tort claims in the United States is roughly 1.9% of its annual GDP. Their message was that injury compensation has become "big business." American politicians have also reinforced public perceptions with Senator McConnell's Litigation Abuse Reform Act of 1986 and Vice President Quayle's Council on Competitiveness (Galanter, 1986; Miller, 2003). The legal profession's use of conditional fee agreements, or the "no-win, no-pay" arrangements have perpetuated the "ambulance chaser" image of some lawyers, and encouraged people to "have a go" at what are thought to be more generous courts (Hand, 2010; Williams, 2005). In sum, there is no lack of messages in civil society that reinforce the perception that landowners can indeed be sued.

This fear of lawsuits derives from societal discourses about an increasingly "litigious society" (Friedman, 1989; Galanter, 1983, 1986; Miller, 2003) and accompanying notions of a "compensation culture" (Hand, 2010; Williams, 2005). These twin concepts "reflect public anxieties about the decline of social and moral values, such as self-reliance and personal responsibility; anxieties that are represented…by tales of greedy lawyers egging on grasping claimants chasing compensation for trivial harms which in an earlier era would have been stoically shouldered without public complaint" (Williams, 2005; p. 505). Even though there is little evidence that injury claims are on the rise (Bailis & MacCoun, 1996; Friedman, 1989; Galanter, 1983; Hand, 2010; Miller, 2003; Williams, 2005), and there is little evidence in most sectors of tort law where injury settlements are on the rise (Galanter, 1988), the public's fear of litigation persists. Public opinion polls indicate that the majority of Americans believe the country has become an overly litigious society. A 1987 Harris polled showed that 70% believed that there has been an increase in frivolous lawsuits (Harris & Associates, 1987), while a 1991 poll of Louisiana residents showed that two-thirds of the sample agreed that "Some people these days are too quick to hire a lawyer and go to court…" (Neubauer & Meinhold, 1994; p. 3). In sum, while the probability of injury lawsuits and landowner liability may be low, liability fear may have been amplified by the high volume of injury claim