

REFERENCE

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Vaccine Court: The Law and Politics of Injury. By Anna Kirkland. New York City: NYU Press, 2016. 288 pp. \$40.00 hardcover

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This book looks at an unusual institution in our system, the special court created to handle harms from vaccines, and draws on a detailed case study of the court to provide insights about law and social movements, and to apply insights from the law and society literature to this area. Specifically, it tells the story of the creation and functioning of the court, providing extensive background, and then looks more closely at its functioning in two ways—addressing “middle ground cases” and looking at the autism omnibus proceedings.

Vaccines are a social good. To really control disease in an area, a high portion of people in that area need to be vaccinated. This raises the question of how to achieve high vaccine rates. One aspect of that question is the way society handles claims of serious harms from vaccines, the way it addresses the personal cost of the social good. As Kirkland demonstrates, the question is highly political and very socially embedded.

Vaccine Court was created in the 1980s, and Kirkland describes it as “born out of legal mobilization and social movement pressure” (65) related to (later shown not scientifically founded) concerns about the DTP vaccine. Kirkland draws the complex picture of the court’s origins, the political battles surrounding it, and the political compromise that resulted. She then described the development of the court from a relatively simple administrative process to a more adversarial structure, after changes to its structure in the 1990s.

Kirkland then sets out to evaluate the Court’s functioning and contribution to the immunization social order in the United States—a “set of institutions, laws, pharmaceutical biotechnologies, and social practices that work together to produce high levels of vaccine coverage to prevent a wide range of disease.” (2) She sees vaccines policies, rightly, as inherently social and political, and the court as part of that apparatus. Kirkland delves deeper into these social and political aspects by zeroing in on two very different case studies.

On one hand, the book sets out the court’s handling of mass, routine cases of a specific kind. It focuses what Prof. Kirkland calls the middle ground cases (133–134), where there is not clear evidence that the vaccine caused the harm in question, but there also is not clear evidence that the vaccine cannot cause it. Kirkland analyzes the interaction of a large number of actors around these complex cases, and how the court functions in relation to them. As a contrast, Kirkland also looks in detail at the story of a set of cases that stood out and were treated differently. The book sets out the largescale Omnibus Autism Proceeding, where Vaccine Court had to handle over 5000 cases of parents claiming vaccines caused their child’s autism. The book carefully details the story of the rise of those cases, the litigation, and then their resolution by the Court, which ended up rejecting the petitioners’ claims. She points out that even in the face of overwhelming evidence, vaccine critics continue to cite claims that are not “epistemically responsible” (212) because extensive evidence shows them as untrue. In contrast, the Court’s special masters are required to reexamine conflicting evidence repeatedly and explained decisions, which imposes a measure of epistemic responsibility that she sees as a positive.

The book expressly addresses and responds to three strands of literature that touch on, or are part of, the law and society body of work. These are the literature on handling disputes and compensating injuries, the literature on social movements, and the literature on power dynamics. The case study examines the role of the court in handling disputes, the vigorous social movement of vaccine critics that had substantial success in achieving legislation and using the channels it created and improved our system of vaccine safety and the combination of science and democratic governance in this area. She points out that these critics come from privileged classes, with little representation of groups of poor, people of color, or non-English speakers. They draw on terms created by groups facing oppression based on identity, but repurpose those ideas in service of their goal.

Prof. Kirkland's final judgment of the court is critically positive. While she points to things that need change, to problems and limits, she sees the court as contributing in important ways to both our general welfare, by maintaining the social immunization order and preserving vaccines, and to individual justice toward people injured by vaccines. However, it also, she points out, a solution representing a society "steeped in individual rights and adversarial legalism and opposed to simply attending to the health needs of all its citizens who are ill or disabled for any reason." (214) It fits the society we created—with its problems.

The book tells a fascinating and complex story in extensive detail. It also situates it in a broader context—both a broader political context and a scholarly context. It draws on extensive documentary materials and tells a story both from the top-down and the bottom-up perspective.

My criticisms of the book are mostly asking the author to take the analysis to additional places. The book draws on previous literature, like Barnes and Burke (2015), which offer a comparison of the court to other compensation systems, so that is not a direction where it needs to go. However, the court is only one part of the legal activity of the social movement of vaccine critics. Among others, vaccine critics have supported or led litigation in courts to challenge vaccine legislation (of the kind Kirkland herself looked at elsewhere—Lillis et al., 2014). Vaccine critics have sued critics in the courts to silence them (Kata, 2012). More recently, vaccine critics have been bringing FOIA requests and litigating them against (e.g., ICAN, 2020). A further examination would put the movement's efforts around the court in the context of its broader legal efforts.

Another interesting question would be the view of the original movement's leader of the court at present. Recently, anti-vaccine activists have expressed dissatisfaction with vaccine court. Kirkland covers some of it in discussing the reaction of vaccine critics to the loss on the Autism Omnibus Proceedings, but there have been more developments since that could justify a follow-up. One challenge of books about an issue of contemporary relevance is that the book has to end at some point, but events continue. There is more than room for a follow-up.

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