

this, as such, does not indicate a new phenomenon, he makes two moves to sharpen the focus. The first is to see instrumentalism as newly significant as a *displacement* of noninstrumental views. But he recognizes that special interests were often served by the nineteenth-century decisions of courts proclaiming the language of noninstrumentalism, and that now, as then, arguments that the pursuit of private claims is the essence of law can easily be made or assumed. The issue seems to come down to how far invocations of noninstrumental ideas actually determine outcomes, but that remains unclear.

A second move is to claim that the sense of common good has declined, perhaps to the vanishing point, so it *must* have ceased to inform law. This deserves much discussion but seems ultimately beyond the scope of the book. Sociologists have told us much about social capital, “habits of the heart,” and the nature of contemporary values and beliefs. Without a careful study of such matters, as reflected in legal ideas and practices and in citizen demands on law, the book remains a broad, many-sided general polemic about important areas of legal disorder and dissatisfaction—fascinating, empirically rich and strikingly presented, but unified perhaps only by the author’s conviction that selfishness has at last overtaken law.

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Injury: The Politics of Product Design and Safety Law in the United States. By Sarah S. Lochlann Jain. Princeton, NJ: Princeton Univ. Press, 2006. Pp. xii+214. \$55.00 cloth; \$19.95 paper.

Reviewed by Stephen Daniels, American Bar Foundation

Injury offers a challenging and provocative discussion of issues that are the subject of intense debate: tort law and product-caused injuries. Jain, a cultural anthropologist, challenges the reader to look at these familiar issues in a different way, “to step outside of the questions of frivolous cases and junk science” (p. 4). Instead, she encourages us to think more deeply about: the centrality and necessity of injury in the American economy; how injury and inequality are intertwined; and the promise, limits, and failures of law in dealing with injury in a way adequately recognizing the goal of human well-being. This goal, she says, “must have some rhetorical, if not material, purchase in any social economy that wants to pass as democratic” (p. 33).

Jain’s introduction (“Injury in U.S. Risk Culture”), first chapter (“American Injury Culture”), and conclusion lay out the challenge in presenting her theoretical argument. At its heart is the idea of

“injury” in America: what counts as injury, what is recognized as a cause, and how responsibility is distributed. Hers is a broader view that starts by looking at injury as the wounding of the body in the vernacular rather than the legal sense. More, product-caused injury is an inevitable, central feature of American consumer-capitalism. It is so inevitable that its cost, discounted by its likelihood, is built into the design of products. To drive home the point of centrality, Jain even argues that whole areas of business and profit depend on there being a substantial amount of injury. In her view, these are crucial facts left out of most debates over injury law—facts that point to more fundamental issues that must be addressed. Focusing on injury offers a way to critique not only tort law, but also the system of American consumer-capitalism of which it is a part.

Important for Jain, injury law offers one powerful discourse on what counts as an injury, what causes injury, and how the responsibility for injury is distributed. However, law fails in her estimation, because it does not fully comprehend the actuality of injury as it is suffered and its unequal distribution. Rather than seeing injury as a central, inevitable feature of the American economic system, the law—with its case-by-case approach—sees injury as an aberrant event. Consequently, “the law is ill-equipped to handle its [injury’s] crucial socioeconomic challenges . . . [injury laws] narrow our modes of apprehension of what counts as injury, they divert attention away from other ways of understanding injury, and they miss the cultural implications of objects and the ways that objects are situated in networks of power” (p. 151). Jain wants to redirect our attention to more fundamental issues such as human well-being and equality.

Among other matters, Jain wants to focus our attention on product design in the American economy. Design incorporates key assumptions about users and their bodies. Often invisible to injury law, those assumptions may reflect the inequalities and biases endemic to the American system. Sometimes, as with the susceptibility of women to injury from airbags in cars, this may not be a conscious part of a design. Other times, as with mentholated cigarettes and the targeting of African Americans by tobacco companies, it may be all too intentional. Regardless, these designed-in assumptions have a great deal to do with who may suffer an injury and who may escape injury. As a result, the occurrence of injury may also reflect those inequalities and biases—and remain invisible to injury law.

While some scholars and reformers see injury law as a way of attacking inequality and fostering social justice (key goals for Jain), in Jain’s view any victories—to the extent they occur—are Pyrrhic victories. The middle three chapters of *Injury* are there to demonstrate that injury law is inadequate to this larger task. Each presents a story, “a genealogy of how particular injuries and objects have come to be understood at particular moments” (p. 8). The stories tell of the

short-handled hoe and the plight of Mexican American farm workers in California; the QWERTY keyboard, repetitive strain injury, and the position of female office workers; and mentholated cigarettes and the targeting of African Americans by tobacco companies.

Each of these three chapters details not only the litigation surrounding these objects, but also the subordinate positions of the main victims of the injuries involved. Each also emphasizes the limitations and outright failures of injury law in the face of the victims' positions. At best, Jain says in her conclusion, these three stories argue that "[t]ort law offers a tinkering mechanism" (p. 149). Her concluding remarks about the litigation that successfully led to the short-handled hoe being declared unsafe for farm workers in California are illustrative. Despite the immediate victory, it "necessarily circumscribed workers' ills within a narrow set of legal issues and away from the conditions of agricultural labor more generally" (p. 85).

Jain offers no immediate solutions—this is not her purpose. With the provocative use of real-world examples, *Injury* is a first-rate work of critique. It should be on the reading list of anyone interested in the civil justice system and the political debates surrounding it—regardless of their position on the issues.

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Bodies in Revolt: Gender, Disability, and a Workplace Ethic of Care. By Ruth O'Brien. New York: Routledge, 2005. Pp. 198. \$135.00 cloth; \$36.95 paper.

Reviewed by Daniel Santore, University at Albany, SUNY

What are the conditions under which workers' rights legislation can produce revolutionary change in the workplace? O'Brien proposes an answer to this question by marshaling an array of Western theories of bodies and human action, and considering the "radical potential" of the Americans with Disabilities Act (ADA). According to O'Brien, the ADA's open-ended definition of worker need and its (as yet unrealized) affinity with humanist values make it a potential agent of change in the logic of the capitalist workplace. The ADA can benefit all workers, not simply discrete factions of workers or those workers fitting a narrow definition of disability, by making employers and courts accommodate individuals' varied modes of activity at work.

O'Brien asserts that the ADA offers workplace accommodations on the basis of individual, and thus endlessly varying, *needs*. This