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ACCOUNTING FOR HAPPINESS IN CIVIL SETTLEMENTS

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In *Hedonic Adaptation and the Settlement of Civil Lawsuits*, John Bronsteen, Christopher Buccafusco, and Jonathan Masur offer an interesting application of the nascent research on hedonic psychology to a mature economic model of litigation.¹ Informed by empirical research on individual happiness and hedonic adaptation,² the authors argue that delays in civil trials create greater economic opportunities for settlement of civil lawsuits. In short, they argue that where a plaintiff suffers an adaptable injury—i.e., an injury that does not permanently affect the happiness of an individual—settlement is easier for two reasons: (1) Over time, “the degree to which a plaintiff believes she has been ‘wronged’ will dissipate,” and therefore, (2) the plaintiff will accept a lower settlement offer because she will believe that less money is required to make her whole.³ I offer first a number of positive critiques about the data on hedonic adaptation and on the authors’ arguments about how the litigation process affects individual adaptation. Then I consider the normative question of whether the judicial system ought to foster post-adaptation settlements.

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1. John Bronsteen, Christopher Buccafusco & Jonathan Masur, *Hedonic Adaptation and the Settlement of Civil Lawsuits*, 108 *Colum. L. Rev.* 1516 (2008) [hereinafter Bronsteen, Buccafusco & Masur, *Hedonic Adaptation*].

2. Hedonic adaptation is the idea that although external life events—such as disability, lottery winnings, or marriage—may affect short-term happiness, over the long run, happiness returns to levels similar to those before the event took place. See generally Shane Frederick & George Loewenstein, *Hedonic Adaptation*, in *Well-Being: The Foundations of Hedonic Psychology* 302 (Daniel Kahneman et al. eds., 1999) (summarizing recent research on hedonic adaptation).

3. Bronsteen, Buccafusco & Masur, *Hedonic Adaptation*, supra note 1, at 1538.

I. DOES ADAPTATION IMPACT SETTLEMENT?

The question of whether adaptation impacts settlement necessarily includes the following sub-questions. First, do individuals really adapt to injury, and if so how strong is that adaptation? Second, if individuals adapt, what impact does the litigation process play on adaptation? In answering these questions, I take a fresh look at the old data on adaptation and consider new studies that cast these old data in a different light. Then, I consider additional ways that the litigation process may impact adaptation.

A. *The Data on Happiness and Adaptation*

Although philosophers have long thought about human happiness, the empirical study of happiness is relatively new. Thus, while the study of happiness may be one of the most “important recent development[s] in social science research,”⁴ we should be mindful that the study of happiness is still in its infancy. As can be expected in any new area of research, findings are often contradictory and confusing. For instance, several recent studies call into question older understandings about hedonic adaptation. To the extent that Bronsteen, Buccafusco, and Masur rely on the strength and ubiquity of human adaptation or the accuracy of the data, the argument that civil settlements are greatly impacted by hedonic adaptation may fall short.

Intuitively, it makes sense that immediately after an injury, an individual will be in more pain, will feel more mental distress, and generally will be unhappier than she would be two to three years later. And, it turns out that empirical evidence partially backs up these intuitions. But the research suggests that while individuals adapt to some events, they do not *necessarily* adapt, or adapt fully, to every injury they sustain.

First, as the authors note, there is evidence that following a number of injuries or changes to life circumstances, individual happiness does not return to pre-event levels.⁵ For example, there is evidence that individuals do not adapt to unemployment,⁶ long-term disability,⁷ death of a spouse or child,⁸ or injuries or disorders that cause chronic pain or result in progressive and deteriorating disorders.⁹ Thus, where an individual loses a loved one, has an injury severe enough to cause

4. *Id.* at 1516.

5. See *id.* at 1530–31.

6. See Richard E. Lucas et al., Unemployment Alters the Set Point for Life Satisfaction, 15 *Psychol. Sci.* 8, 11 (2004).

7. See Richard E. Lucas, Long-Term Disability Is Associated with Lasting Changes in Subjective Well-Being: Evidence from Two Nationally Representative Studies, 92 *J. Personality & Soc. Psychol.* 717, 726–27 (2007) [hereinafter Lucas, Disability].

8. See Frederick & Loewenstein, *supra* note 2, at 312.

9. See *id.* at 312 (discussing lack of adaptation with degenerative diseases, though noting difficulties in measurement thereof given worsening conditions over time).

unemployment (even for limited periods of time), or where an individual's injury causes chronic pain, her happiness will likely not return to pre-event levels. Likewise, and perhaps surprisingly, where an individual holds out some hope of recovering from a severe injury, the individual does not adapt to that injury.¹⁰ That is, the prospect of recovery can impede adaptation. The fact that adaptation is not ubiquitous is neither surprising nor contested. The authors themselves recognize that some number of plaintiffs may not adapt to injury and, for those plaintiffs, adaptation may be irrelevant to settlement.¹¹

What is more troublesome for the authors' argument is that even where there is evidence of some adaptation, individuals may not adapt fully or even significantly to injury. Early researchers who reported significant adaptation relied on cross-sectional studies, which do not track survey respondents over time.¹² In a cross-sectional study, researchers instead collect data at a single point in time and compare control and experimental groups. For instance, researchers often compared the happiness levels of those with a specific injury (or those who had been divorced, widowed, won the lottery, etc.) to those who had not had such an event take place.¹³ But these early studies had a significant limitation: Researchers did not know the participants' pre-event level of subjective well-being.¹⁴ As a result, the researchers could not compare pre-event happiness to post-event happiness in the same population.

More recently, researchers have looked at adaptation in longitudinal studies by using large-scale national panel data from Germany and Great Britain. These surveys track large numbers of citizens over multiple years and ask the same set of questions each year. Among other questions, respondents to these national surveys were asked to rank their happiness on a numerical scale (one to ten in Great Britain and one to seven in Germany). In two recent studies, scholars used this data to track adaptation to disability.¹⁵ In the first, Richard

10. See *id.* at 317; Peter A. Ubel & George Loewenstein, Pain and Suffering Awards: It Shouldn't Be (Just) About Pain and Suffering, 37 *J. Legal Stud.* (forthcoming 2008) [hereinafter Ubel & Loewenstein, Pain & Suffering] (manuscript at 6 n.2, on file with the *Columbia Law Review*) (noting that patients with reversible colostomies are less likely to adapt than those with irreversible colostomies).

11. Left unknown is the percentage of lawsuits brought by those with injuries thought to be adaptable, but we can assume with some certainty that all lawsuits do not include adaptable injuries.

12. See Frederick & Loewenstein, *supra* note 2, at 305–06 (providing overview of early studies on hedonic adaptation).

13. See, e.g., Philip Brickman et al., Lottery Winners and Accident Victims: Is Happiness Relative?, 36 *J. Personality & Soc. Psychol.* 917 (1978) (comparing the happiness of lottery winners and accident victims to control groups).

14. Lucas, Disability, *supra* note 7, at 718–19.

15. *Id.* at 717; Andrew J. Oswald & Nattavudh Powdthavee, Does Happiness Adapt? A Longitudinal Study of Disability with Implications for Economists and Judges, 92 *J. Pub.*

Lucas found that disability was associated with moderate to large drops in life satisfaction and increases in psychological distress.¹⁶ Further, he found that although participants reported less psychological distress over time, life satisfaction scores showed no evidence of adaptation for up to five to seven years after onset.¹⁷ The study by Andrew Oswald and Nattavudh Powdthavee—which Bronsteen, Buccafusco, and Masur claim produced “compelling” and “noteworthy” evidence of adaptation¹⁸—produced results only modestly more positive for adaptation. Oswald and Powdthavee found that reported happiness for those with severe disability rebounded less than thirty percent from the happiness nadir. The findings for moderate disability are only slightly more impressive—a self-report of fifty percent adaptation.¹⁹ These findings reframe the standard interpretation of the earlier cross-sectional studies, but do not necessarily contradict them.²⁰ The early data showed that “individuals with disabilities are moderately happy and do not have high rates of psychological disorders.”²¹ From this, researchers drew broad conclusions about adaptation. In light of the new studies, one could conclude instead that even if people with disabilities are relatively happy and free of psychological distress, they are not necessarily *as satisfied with their lives* as they were before their injury.²²

Further, even where individuals report a return toward pre-injury levels of happiness and life satisfaction, they may still be willing to make significant sacrifices to regain their lost function. Therefore, they may not be amenable to settling for less money. For instance, in one study, researchers asked colostomy patients to imagine that they had ten years to live and then asked the patients how much of that time they would give up to live without a colostomy. On average, the respondents reported that they would give up eighteen months of life to return to their pre-colostomy existence.²³ In another study, dialysis patients reported a willingness to give up over half of their remaining years to have normal kidney function.²⁴ These studies suggest that people care

Econ. 1061, 1061–62 (2008).

16. Lucas, Disability, supra note 7, at 726.

17. Id. at 727.

18. Bronsteen, Buccafusco & Masur, Hedonic Adaptation, supra note 1, at 1529.

19. Oswald & Powdthavee, supra note 15, at 1070.

20. Lucas, supra note 7, at 726.

21. Id.

22. Bronsteen, Buccafusco, and Masur recognize the problem with the early cross-sectional studies. See Bronsteen, Buccafusco & Masur, Hedonic Adaptation, supra note 1, at 1529. But they do not see the later longitudinal studies as undercutting the force of the early cross-sectional studies. To the contrary, they see the later studies as providing some of the “strongest evidence for adaptation to disability” to date. Id. at 1530.

23. George Loewenstein & Peter A. Ubel, Hedonic Adaptation and the Role of Decision and Experience Utility in Public Policy, 92 J. Pub. Econ. 1795, 1799 (2008) [hereinafter Loewenstein & Ubel, Hedonic Adaptation]; see also Dylan M. Smith et al., Misremembering Colostomies? Former Patients Give Lower Utility Ratings Than Do Current Patients, 25 Health Psychol. 688, 691 (2006) (discussing results of similar study and disparity between responses of former and current patients).

24. Loewenstein & Ubel, Hedonic Adaptation, supra note 23, at 1799.

about things other than happiness. A rebound in happiness or a decrease in psychological distress does not mean that people have overcome their injuries, learned to ignore their pain, or feel as healthy and complete as they did pre-injury. Consequently, one's level of perceived happiness may not be that important in monetizing injury. Thus, hedonic adaptation—to the extent it exists—may not be that important in settlement negotiations.

All of this is interesting, but there may be a more fundamental problem: The data itself may not be that reliable. Most of the data on happiness is dependent on self-reported measures of subjective well-being. But happiness has multiple meanings.²⁵ At a minimum it can reflect momentary affect (short-term positive or negative emotions), moods which could last for days or weeks, or long-term life satisfaction. Philosophers and social scientists discuss happiness in hedonic and eudaimonic terms. The former reflects a pleasure-seeking or preference satisfaction view of happiness. The latter reflects a version of happiness that looks at whether the person is flourishing personally and professionally. In this latter version of happiness, an individual might forego short-term pleasure for longer-term success (such as exercising regularly to achieve physical health). Thus, one could be happy because he is successful in his personal and professional life, but not be in a pleasurable state on a daily basis. In light of the pluralistic nature of happiness, there is some ambiguity about what survey respondents mean when they report that they are happy.

Further, self-reported subjective well-being and other hedonic measures can be contaminated by a number of biases. For instance, (1) people can exaggerate their self-reported subjective well-being;²⁶ (2) global and overall assessments of happiness are unduly influenced by momentary fluctuations in mood that could result from such minor and seemingly exogenous events as the weather or finding a dime on a photocopier before responding to questionnaires;²⁷ (3) the order of questions in a multi-question survey can affect the answers provided;²⁸ and (4) people have an automatic tendency to normalize their answers

25. See Rick Swedloff & Peter H. Huang, *Happiness and Tort Damages* 22–26 (Oct. 23, 2008) (unpublished manuscript, on file with the *Columbia Law Review*) (describing plurality of happiness).

26. See Norbert Schwarz & Fritz Strack, *Evaluating One's Life: A Judgment Model of Subjective Well-Being*, in *Subjective Well-Being* 27, 42–43 (Fritz Strack et al. eds., 1991) (noting that, particularly in face-to-face interviews, respondents may report higher well-being given “self-preservation and social desirability considerations”).

27. See *id.* at 36–37.

28. See Justin Wolfers & Betsey Stevenson, *Happiness Inequality in the United States*, 37 *J. Legal Studies* (forthcoming 2008) (manuscript at 5, on file with the *Columbia Law Review*), available at <http://bpp.wharton.upenn.edu/jwolfers/Papers/HappinessInequality.pdf>.

to questions based upon implicit norms of comparison.²⁹

In sum, measuring happiness is quite difficult. Even if one accepts the vagaries of data collection, there is only mixed evidence about the actual strength and ubiquity of adaptation. Given these uncertainties, along with evidence that even individuals that show adaptation still desire to be injury free, it is unclear whether adaptation necessarily impacts settlement decisions in civil lawsuits.

B. *Litigation and Adaptation*

Even assuming that adaptation is a significant force, and moving beyond any concerns with the data, the Essay further suffers by underselling the impact of the litigation process on the plaintiff's happiness. As the authors note, there is some debate about the mechanisms by which adaptation operates.³⁰ But the leading theory is that happiness returns as an individual stops thinking about her injuries on a regular basis.³¹ This is problematic for the authors' theory since it is possible that the litigation process will actually hinder the ability of the plaintiff to move past her injuries. A plaintiff may be reminded of her injury at a number of points during the litigation process, such as while drafting the complaint, while attending motions to dismiss or for summary judgment, and during discovery. During each of these phases, the plaintiff may have to think about the nature of her injury and about the amount of pain and suffering she experienced and is continuing to experience. The authors discount the impact of litigation on adaptation beyond the initial drafting of the complaint and the trial, claiming that plaintiffs are merely passive participants in the litigation process.³² While it is possible that this passive role will help plaintiffs forget about their injury, it is also possible that plaintiffs will feel helpless, agitated, and frustrated every day that the litigation goes on without their input. This anxiety may cause a plaintiff to focus on her injury, and delays in achieving a judgment will hinder her ability to adapt.

Delays in litigation could hinder adaptation in other ways. Another mechanism that might aid adaptation is "sense-making,"³³ the ability to better understand and rationalize one's circumstances. For some plaintiffs, adaptation may depend on getting answers about injuries (e.g., did the doctor err, whose fault was the auto accident, why did my house burn down). These answers may only appear through the litigation process, and delays inherent in that process may hinder adaptation.

29. See Daniel Kahneman & Dale T. Miller, Norm Theory: Comparing Reality to Its Alternatives, 93 *Psychol. Rev.* 136, 150 (1986).

30. Bronsteen, Buccafusco & Masur, Hedonic Adaptation, *supra* note 1, at 1544–45.

31. *Id.*

32. *Id.* at 1545–46.

33. See Timothy D. Wilson & Daniel T. Gilbert, Affective Forecasting, 35 *Advances in Experimental Soc. Psychol.* 345, 372 (2003) ("If people feel that they cannot control, predict, or understand their environments, they are at risk for severe motivational cognitive deficits, such as depression.").

Alternatively, some plaintiffs may want to have their day in court, bring defendants before a jury, or have other nonmonetary goals in the litigation process.³⁴ These goals are not served by delay and we do not have data about adaptation to these desires.

In addition, the authors discount the role that attorneys play in the lives of plaintiffs. It is unlikely that injured parties enter the litigation process with a fully developed belief about the value of their nonpecuniary losses. Rather, attorneys can shape expectations about fair settlements by telling clients what amounts they are “entitled” to recover and how much they could potentially receive through the litigation process. This could create an endowment effect for plaintiffs that time will not abate through adaptation. Further, injured plaintiffs pay attorneys to advocate on their behalf. Part of the attorneys’ role is to help remind a plaintiff about the severity of an injury and her attendant pain, suffering, and loss of enjoyment of life. It may be true, as the authors note, that contingency fee attorneys would prefer to settle than try cases, but the lawyer’s role is to get the most for her client and to keep her client focused on the injury she is trying to redress. Thus, attorneys can play a significant role in both settlement and adaptation.

Lastly, in light of legislative caps on nonpecuniary damages, it is unclear whether plaintiffs are even in a position to receive more than their (or their attorneys’) subjective valuation of their nonpecuniary damages. If they are not, adaptation is irrelevant to settlement. Consider a plaintiff who becomes paralyzed after an accident. Immediately after the accident she may value her nonpecuniary damages at \$5,000,000. If there were a statutory cap on nonpecuniary damages of \$1,000,000, the plaintiff would have to adapt to her injury significantly to value her nonpecuniary losses at a number below the cap. Assuming that she would monetize her injuries in proportion to her happiness, her valuation of happiness would have to return over eighty percent. This is a significant amount of adaptation, and more than predicted by the longitudinal studies discussed above.³⁵ Thus, it is possible that even after adaptation the value to the plaintiff of her nonpecuniary injuries still will exceed the amount that she could receive through litigation. As such, adaptation would not change a plaintiff’s expected value from a lawsuit, and adaptation and delays in trial would have no impact on settlement.

Each of these concerns raises empirical questions to which we do not yet know the answers. Thus, as a descriptive matter, these concerns may undercut some of the force of the authors’ model, but they do not eliminate the possibility that in some circumstances—where an

34. See Frank B. Cross, In Praise of Irrational Plaintiffs, 86 *Cornell L. Rev.* 1, 19–23 (2000) (discussing variety of noneconomic motivations, including vindictiveness, an altruistic goal of creating beneficial precedent for later litigants, and a need for vindication).

35. See *supra* notes 15–19 and accompanying text.

individual suffers an injury to which she adapts even partially and where litigation and attorneys have little impact on her desire to settle—adaptation may impact a plaintiff's willingness to settle. Therefore, we may want to consider normatively whether it is desirable to have a greater number of lawsuits settle for less money.

II. SHOULD ADAPTATION IMPACT SETTLEMENT?

Even if one believes that the survey data are correct and that adaptation is strong enough to affect some civil settlements, it is not clear that this is a good thing. In this Part I consider briefly whether the system benefits from plaintiffs settling for less than they might have without adaptation from their injury.

First, where survey respondents report that their subjective well-being has rebounded to pre-injury levels, that number may only reflect a thin measure of happiness. That is, the measurement may reflect hedonic gains (i.e., gains in positive affect), but may not reflect other valuable parts of a good and happy life, such as meaning, capabilities, and emotional or experiential variety. As discussed above, the notion of happiness is pluralistic, and it may be unclear what survey respondents mean when they say that they are at a happiness level of “4” or “5” out of “7.” Consider these examples: First, a respondent may report that she is happy because she is in a pleasurable state, but may nevertheless not be satisfied with her life (think of a heroin addict who has just had her fix).³⁶ Second, she may report that on a moment-to-moment basis her happiness has returned post injury, but that number may not include a genuinely felt loss of capabilities or include previously or currently felt pain and suffering. Third, she could be subjectively satisfied with her life post injury, but objectively have failed to flourish in her private or professional life.³⁷ Think of an author or scholar who lost her mental capacity as a result of a brain injury. The injured author may report happiness, but can no longer read, write, or think to the same degree as before the injury. Is she as satisfied with her life? Is her happiness reflective of the value she lost? In the context of an injury, we want to encourage compensation for all losses, not just a loss of positive affect. Thus, to the extent that people are willing to accept lower amounts in settlement as a result of perceived happiness, they may be settling for too little because they are ignoring other important values.

Plaintiffs who settle for less than they would have immediately after the injury may be accepting too little for another reason. One could

36. See Heidi Li Feldman, *Harm and Money: Against the Insurance Theory of Tort Compensation*, 75 *Tex. L. Rev.* 1567, 1582 (1997).

37. As Shelly Kagan asked, “Would you rather be a contented pig wallowing in the mud or a human who experiences a range of emotions?” Shelly Kagan, *Normative Ethics* 32 (1998) (illustrating that both quantity and *type* of “pleasure” should factor into true conception of “happiness”); see also J.S. Mill, *Utilitarianism* 54–72 (Roger Crisp ed., Oxford University Press 1998) (1863) (emphasizing that “some *kinds* of pleasure are more desirable and more valuable than others”).

think of nonpecuniary harms (like pain and suffering, loss of enjoyment of life, etc.) in a time sequence. If one adapts to the injury, the damage starts off as significant, but after a period of adaptation, the injury diminishes and happiness returns. It is unclear why it is appropriate to compensate the injured party only for the nonpecuniary losses she feels at the end of this time period, post adaptation. The goal of the system should be to compensate the plaintiff for the pain and suffering felt throughout the adaptation process. One could imagine that immediately after an injury, a plaintiff's level of nonpecuniary loss is valued at \$5 million. After two years, assume she has completely adapted. Her pain has subsided, her mental suffering has disappeared, and she no longer thinks about her inability to play tennis or read a book (these losses are often captured in awards for loss of enjoyment of life). She might be willing to give up her claim for nonpecuniary damages. Should she, in fact, receive nothing? Or should she be compensated for the pain and suffering felt up to the point of complete adaptation? Even apart from the lost capabilities (covered in the paragraph above), it seems clear that the tortfeasor should compensate the plaintiff for the nonpecuniary losses felt immediately after the injury and during the process of adaptation.

I do not believe that Bronsteen, Buccafusco, and Masur go this far. They argue only that immediately after the injury, the plaintiff incorrectly predicts the duration of her pain and suffering and therefore demands too high a settlement amount.³⁸ But the reverse could also be true. Post adaptation, the plaintiff might misremember the duration of the pain and suffering, and thus accept too little.³⁹

This systematic undercompensation undermines the corrective justice and deterrence functions of tort law.⁴⁰ From the corrective justice standpoint, the system has an interest in compensating those who have been injured commensurate with their injuries. Depending on the version of corrective justice, it is likewise important that the injurer pay the compensation. If adaptation is real *and* individuals are settling for too little, plaintiffs will not receive redress for some portion of the damages they suffer, and tortfeasors will not pay for the harms they cause. Likewise, from a deterrence standpoint, the system has an interest in making sure that defendants pay fully for injuries caused. Optimal deterrence occurs when firms are made to internalize all of the negative externalities that their harmful conduct creates. When

38. See Bronsteen, Buccafusco & Masur, Hedonic Adaptation, *supra* note 1, at 1538.

39. See Daniel Kahneman, Objective Happiness, *in* Well-Being: The Foundations of Hedonic Psychology, *supra* note 2, at 3, 19–20 (noting that individuals often fail to conceptualize entire duration of emotional experience and only remember the peak and the end).

40. See generally Gary T. Schwartz, Mixed Theories of Tort Law: Affirming Both Deterrence and Corrective Justice, 75 Tex. L. Rev. 1801, 1827–28 (1997) (attempting to reconcile the corrective justice and deterrence theories of tort law).

threatened with liability for all of the harms caused, firms will invest efficiently to prevent these harms.⁴¹ If defendants are not forced to pay for all of the harms caused, defendants will not internalize the full extent of the injuries and will not invest in the optimal amount of precaution. Thus, from both a corrective justice and a deterrence standpoint, the judicial system has a significant interest in making sure that litigants receive the appropriate amount of compensation via judgment or settlement.

Moreover, to the extent that the authors predict that adaptation will lead to additional settlements, we should consider whether the civil system would benefit from this effect. Settlements may be necessary to keep the wheels of the judicial system moving, but in many cases they may not be the optimal litigation outcome. For instance, injured parties may be driven to settle not only by adaptation, but by financial need or a lack of resources to maintain the litigation.⁴² In these situations, adaptation further allows plaintiffs to be exploited, because plaintiffs may be willing to settle valuable claims for less than they should. There also may be institutional reasons to avoid settlement. More settlements may mean that less wrongdoing will come to light in open court, fewer judicial opinions will be written to help clarify the law, and fewer people will have the opportunity to participate in the public process of law through jury duty.⁴³

CONCLUSION

Bronsteen, Buccafusco, and Masur, like a number of other recent scholars, apply findings about hedonic adaptation in the legal domain.⁴⁴ Given the early results from the empirical research, it is easy to see why. The data suggested a powerful new way to think about public policy issues. With new studies that seem to undercut some of the descriptive force of the early empirical findings, however, the data on adaptation may not be ready for “prime time.”

Here, the authors note that in some circumstances, adaptation may impact the settlement of civil lawsuits. But it is still unclear the extent to

41. See generally David Rosenberg, *Mandatory-Litigation Class Action: The Only Option for Mass Tort Cases*, 115 Harv. L. Rev. 831, 843–44 (2002) (noting that each firm will invest “up to the point at which the expense of taking an additional unit of precaution exceeds the benefit of the additional risk avoided”).

42. See Owen M. Fiss, *Against Settlement*, 93 Yale L.J. 1073, 1075–76 (1984).

43. Cross, *supra* note 34, at 25–27.

44. Bronsteen, Buccafusco & Masur, *Hedonic Adaptation*, *supra* note 1; see also Samuel R. Bagenstos & Margo Schlanger, *Hedonic Damages, Hedonic Adaptation, and Disability*, 60 Vand. L. Rev. 745 (2007); Ubel & Loewenstein, *Pain & Suffering*, *supra* note 10; John Bronsteen, Christopher Buccafusco & Jonathan Masur, *Happiness and Punishment* (Univ. of Chicago Law & Econ., Olin Working Paper No. 424, 2008), available at <http://ssrn.com/abstract=1241008> (on file with the *Columbia Law Review*); Cass R. Sunstein, *Illusory Losses* (Univ. of Chicago Law & Econ., Olin Working Paper No. 340, 2007), available at <http://ssrn.com/abstract=983810> (on file with the *Columbia Law Review*).

which adaptation actually occurs or the extent to which delays in litigation actually encourage or discourage adaptation. This could be fruitful ground for further empirical research. At this point, however, it may be too early to declare that adaptation is real and strong enough to impact settlement. Moreover, even if adaptation is strong enough and ubiquitous enough to affect settlements, it is not clear that a greater number of settlements for less money is a desirable outcome.

In the long run, empirical research on happiness may yield useful guidance to individuals and institutions about making better choices, helping others to make better choices, and generally becoming happier. The data may one day even provide a useful guide in formulating public policy or understanding complex human interactions. Nevertheless, because the data is still nascent, we should be cautious in applying it broadly.

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