

THE ROLE OF SUGGESTIBILITY IN MENTAL DAMAGE CLAIMS

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The role of suggestibility in mental damage claims is underestimated and, as research suggests, may be underestimated generally as a factor in the formation of all our perceptions and how we process information (1). In essence, suggestibility allows us to perceive what we already believe or want to believe. While this may have adaptive value, those perceptions are not necessarily true. This article will look at the phenomenon of suggestibility from the standpoint of its essential elements, the purpose it serves, its historical manifestations, and its mechanisms of operation. In particular, the focus will be on the influence of suggestibility in mental damage claims with regard to the issue of causation and extent of damage.

Throughout history, man has tried to persuade and influence his neighbor to think or to act a certain way. The ease with which the neighbor is persuaded or influenced is sometimes thought of as suggestibility. In fact, suggestibility is something more than just being persuaded or influenced. It is the acceptance or change of one's own judgment, opinions, or patterns of behavior without critical response (2). It is acceptance, often with conviction and in the absence of logically adequate grounds for the acceptance. Suggestibility is made possible by a number of factors: the force of the suggestion, its duration, the personal characteristics of the communicator, one's motivation to respond to the suggestion, and the content of the suggestion (1). In literature, the question of mass suggestibility was analyzed eloquently in Dostoyevsky's great novel, *The Brothers Karamazov*, in the chapter entitled "The Grand Inquisitor" (3). From this analysis emerged what is sometimes known as the "Three M's" to explain suggestibility: master, mystery, and miracle. Suggestibility is said to require someone who appears to be a master with special powers, a mystery that is not ordinarily comprehensible by others, and a seeming miracle performed by the master, which shows the capability of solving the mystery.

Suggestibility is seen in its most dramatic form in cult behavior. The Jonestown Massacre in 1978 shocked the world when over 900 people committed mass suicide under the influence of a deviant master (4). Similarly, the termed "Stockholm syndrome" (5) may characterize the individual influenced behavior of Patty Hearst, and more recently Elizabeth Smart, in which they identified and participated with the activities of their captors. Such behavior on first glance may appear to be gullible or naive. Certainly it is not flattering. Most people do not like to think of themselves as suggestible. However, suggestibility is ubiquitous and an ever-present determining factor in all our behavior. There may be nothing that we do, feel, or believe that is not somehow linked to suggestibility.

Suggestibility may be external or internal, direct or indirect (1). Direct suggestibility comes through communication by the influential people in our lives, past and present. It comes indirectly, as well, through social cues, attitudes, and expectations. However, suggestibility can also be internal, springing from ourselves and our own need or desire to perceive life in a particular way. Whether external or internal, suggestibility leads us constantly in ways that may not be readily apparent.

SUGGESTION AND FANTASY

Suggestion and fantasy are closely linked. Ethel Person in *By Force of Fantasy* explains that fantasy is integral to the way the mind works (6). Fantasies, daydreams, and other mental scripts and scenarios, filter our experience of the inner and outer worlds to a surprisingly large extent. In many ways, fantasy's role as a filter for interpretation is analogous to that of

Piaget's schemata (7). In Piaget's view, mental schemata, grown from earlier experiences, are the templates by which we take the physical reality of the outer world, and transfer it to our inner world of knowledge. What schematas are for Piaget in experiencing this physical reality, fantasies are for Person in the motivational world, i.e., that which forms our interpretation of reality, and our choices and behaviors. In effect, fantasies are the currency of our subjective experience.

A suggestion may be thought of as a borrowed fantasy (6). Borrowed fantasies can arise from explicit or subliminal communications, in exchanges with people we know or encounter, from our social milieu generally, or as the product of our own construction. Because no fantasy can entirely encompass the complexities of reality, every fantasy is incomplete and at least partially erroneous. Similarly, every borrowed fantasy must be at least partially erroneous, but may be required for survival in a complex and incomprehensible world. Therefore, fantasy, borrowed fantasy, and suggestibility are not necessarily pathological. They are also not just passive processes. People actively seek out fantasies and suggestions in order to make sense of the incomprehensible. They regularly pick and choose which suggestions they will accept, often based on their own preordained beliefs. While suggestibility and fantasy formation may be understandable, they become problematic when brought into the courtroom as reality. In criminal law, this is seen in the context of false or suggested confessions, in children's erroneous reports of sexual abuse, and in distorted witness accounts of a crime or circumstances surrounding the crime. The focus here will be on civil law and how suggestibility and borrowed fantasies affect mental damage claims.

FUNCTIONS OF SUGGESTIBILITY

Suggestibility serves a number of functions. It is used to provide order and adaptation, to create a locus of control, as a mechanism of wish fulfillment, to establish self-protective vigil, and as a defense mechanism for conflict resolution. Because we live in an ambiguous, changeable, and mysterious world, we desire masters and miracles to solve those mysteries. Through suggestibility, man has participated in rituals, rites, and ceremonies that help bring order and adaptation. Such practices allow us to connect with the spiritual and the mysterious, and serve as a purported means to control our destiny. In more primitive cultures, millions of people still practice voodoo, demon exorcism, connecting with the spirits of ancestors, and a multitude of techniques for faith healing (8). These magical beliefs and traditions, however, are also not just the result of passive suggestibility, but involve active participation of the individual and the community. The prerequisite for the success of the suggestibility in these instances is a relaxation of one's social cognitive framework, and an overvaluation and patterning of the resulting experience by a social agreement (9, 10). It is, therefore, a two-way street. We are provided powerful suggestions and we agree to be suggested. Suggestibility is also present in modern western cultures and in most western religious traditions—sometimes to an overwhelming degree. Faith healing, for example, is a common practice with thousands of individuals attending large stadium gatherings to witness masters performing seeming miracles. In addition, the Internet has over 300,000 sites that deal with fortune telling, tarot cards, astrology, etc., clearly supported by a public willing to be suggested.

Another related function of suggestibility is to serve as a locus of control. Whenever a problem is externalized and given a definition or label, we feel less helpless (11). Our uncertainties over health, emotional stability, and peace of mind are helped by establishment of a locus of control in which we now do not feel at the mercy of these unknowns, since they are at least defined. It is known, for example, that in chronic pain, individuals who have a locus of control so that they do not feel as powerless, will do far better in managing their discomfort (12). Because locus of control can be so important, it drives suggestibility, and pushes people to

seek suggestions. In addition to numerous scientific explanations available to help distress and cure illness, countless numbers of remedies can be found in self-help books and Internet websites providing answers for almost any medical and personal problem. Just a few examples of self-help books include *Sex for Dummies*; *What Should I Do With My Life?*; *Chocolate for a Woman's Courage*; *Liars, Lovers, and Heroes*; *Don't Be Nice, Be Real*; and *Kiss My Tiara*. They in effect suggest a simplistic and reductionistic approach to a problem, but one that provides some relief. These sources are not without their merit, but beyond any substantive message which they carry is the underlying mechanism of suggestibility for the sake of locus of control.

Another function of suggestibility is wish fulfillment. Suggestibility seems to be promoted by the need to see a certain result. The area which most exemplifies this is that of placebo response. Although some recent articles have suggested that placebos have only a minimal and short-lasting effect, there is recognition that the greatest impact is in the area of pain and emotional states (13). Controlled trials of placebo versus antidepressant medication over 20 years found that while the placebo response is highly variable, it is often substantial and has increased significantly in recent years (14). When placebo is combined with suggestions that reinforce what the placebo is to do, the results are robust (15). It has long been held that upwards of one-third of all patients will show clinical improvement in response to placebo, and that the response is not limited to any particular types of individuals (16). Of course, placebo is not exactly nontreatment. Central nervous system processes may be involved as a physiological effect of expectation. Regardless of the physiological component, though, the initial stimulus is through suggestibility. A parallel issue to placebo response is that of compliance. Research studies show that experimental subjects have a desire to cooperate with the experimenter, and are willing to endorse the judgments of others, even to the point of lying, in order to not let the experimenter down. Again, the active role of the individual being suggested is evident (17). Wish fulfillment and suggestibility are exploited by the advertising industry. By suggesting an association to their product, e.g., good health, attractiveness, or power, companies hope they will lead the consumer to purchase the product. Billions of dollars are spent annually and successfully because of our suggestibility (18).

Suggestibility can also help provide a self-protective vigil for people. For example, the suggestion of possible danger arouses the autonomic nervous system before the danger actually presents itself. This, of course, mobilizes an individual for fight or flight, if and when the danger actually appears. In some instances, however, suggestibility can have an excessive and unwarranted arousal effect. This occurs in pathological anxiety states and in mass hysteria reactions such as fears of anthrax or AIDS. At the same time, when the autonomic nervous system is so aroused, individuals are even more prone to further suggestibility and will respond to a source that seems to offer solutions for safety even if false (1).

Finally, whether to ward off anxiety of an uncertain situation, or to resolve a more covert conflict, suggestibility can be helpful in coping with stress and in maintaining overall psychological and biological homeostasis (19). In that sense, suggestibility serves as a defense mechanism for conflict resolution. For example, sanctioned dissociation can allow individuals to remove themselves from intolerable stress. Trance-like states and illusions of possession, orgiastic ritual practices, and even group revival meetings can have a cathartic purpose. More importantly, however, is the defensive role of accepting an illusion about oneself or one's world that is self-serving. It allows an acceptable or desirable definition where none would otherwise exist. One body of research proposes that mental health is largely a function of self-illusion, and that people tend to be happier, less depressed and more productive if they are skilled at misperceiving themselves and their relationship to the world

around them (20). The illusion can answer either one's immediate needs or provide a face-saving way of maintaining an idealized self-image. In addition, private dissociation is a long-known means of escaping overwhelming trauma.

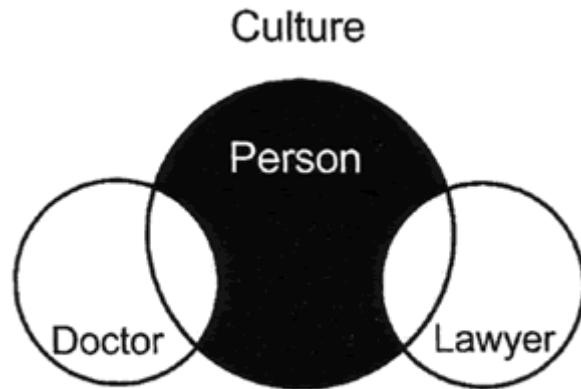
MECHANISMS OF SUGGESTIBILITY

There have been few formal research studies of the mechanisms of suggestibility as a general phenomenon. However, there has been attention to hypnosis both from the standpoint of psychological and neurophysiological mechanisms. It is still debated whether hypnosis is on a continuum with ordinary suggestibility, or whether it is a unique phenomenon. From a psychological standpoint, it does involve similar elements to ordinary suggestibility, i.e., dissociation of higher executive functions and the acceptance of an illusion. A frequent area of research has been to determine the propensity of individuals to be hypnotically suggestible (21). In spite of numerous studies, there has been no general acceptance of any suggestibility tests to predict this (22-24). There may be some inverse relationship with self-esteem, and a possible relationship to neuroticism. Intelligence, though, is not a good indicator, and gender has not been consistently correlated. Sociability may increase suggestibility, but there is no clear distinction between introversion and extraversion as a predictor. Some authors have described fantasy proneness as a predictor (25), but if fantasy is a filter for all of us to interpret our world, then this characteristic may be hard to isolate.

A number of neurophysiological mechanisms have been identified in association with hypnosis and, therefore, may have a relationship to ordinary suggestibility as well (26). These include right brain activation, decreased alpha and increased beta EEG waves, endorphin release, biofeedback effects, immune changes, and more recently, gene expressions and neurogenesis (27). The latter has focused on exploring how novel interactions between the organism and the environment initiate cascades of gene expression, protein synthesis, and nerve formation. The therapeutic effects of hypnosis may involve these mechanisms. Of course, the counterpart also occurs when suggestibility and the expectancy of sickness can promote invalidism rather than healing. Clearly the area is not well understood yet. With all the advances in neuroscience, there is also still no satisfactory biological understanding of complex mental processes (28), such as might be operative in suggestibility. Regardless of which mechanisms are involved, the process starts with what people believe, what they want to believe, and who and what influences that belief.

SOURCES OF SUGGESTIBILITY

In mental damage claims, there are several potential and overlapping sources of suggestibility (see Figure). First, there is the cultural legitimatization of mental disorders that become the basis of a mental damage claim. Second, the doctor (or treatment provider) who diagnoses, treats, and supports a mental disorder can influence the person making the claim. Third, the lawyer who interacts with the person in the process of seeking a legal remedy can affect what is being claimed. Finally, the person himself or herself can actively seek out suggestions or construct suggestions of symptoms for some personal need, becoming convinced in the process of the legitimacy of a disorder.



Sources of Suggestibility

The Culture

Demonstrating the power of suggestibility on mental disorders by the culture are a host of culture-bound syndromes unique to certain peoples (29). For example, classic syndromes described in the psychiatric literature, such as *amok* (a dissociative episode of violent aggressive behavior found in Malaysia and a few other areas of the world), or *pibloktoq* (spells in which Eskimo women scream and tear off their clothes while crying out like a wild animal) were discovered many years ago. However, even today, newer forms of culture-bound syndromes exist, including conditions such as *brain fog* (seen in West African students who develop head and neck pain, visual problems, and fatigue from "too much thinking"), and *maldejo* (a condition in Mediterranean cultures in which children are thought to have an "evil eye" when they experience fitful sleep, crying, and gastrointestinal symptoms). Locality specific syndromes of this kind may spring out of folk concepts and social traditions to produce the uniquely troubling presentation. There may be counterparts to these same syndromes in western cultures as well, labeled as dissociative disorder, panic disorder, hypochondriasis, anxiety reaction, or paranoid state. The substance of the condition may be the same, but the specific form is culture bound.

In our western culture, we also have unique conditions which appear to be culture bound. These include anorexia nervosa and other eating disorders, dissociative identity disorders, and various somatoform syndromes. Somatoform syndromes are particularly culture bound and legitimized in their unique form (30). Such labels as sick building syndrome, multiple chemical sensitivity syndrome, chronic fatigue syndrome, fibromyalgia and others have become prevalent, and often have similar core symptoms. In addition, these somatoform syndromes have evolved here in the United States and in Europe as others, e.g., hysterical paralysis, spinal irritation, and neurasthenia have presumably disappeared (30, 21). There also has been a dramatic increase in the numbers of diagnosed mental disorders generally. The Epidemiological Catchment Area Study and the National Comorbidity Survey have shown increasing percentages of individuals labeled as mentally ill when using criteria such as those established in the *Diagnostic and Statistical Manual of Mental Disorders IV-TR* (DSM IR-TR) (32,33). This has created concern that normal variants within a population are now receiving a diagnosis of a mental disorder. There also appears to be political and legal sanctioning within our culture of mental illness and disability that affects the prevalence of disorders. This has been shown in a number of studies dealing with chronic pain, whiplash, and repetitive motion injuries where nonmedical or somatoform factors may be operative (34-36). Critical questions present, therefore, with regard to the issue of cultural suggestibility. Does culture

simply serve as a filter which suggests the form or degree of expression of an individual undergoing homeostatic disruption? Does culture cause or contribute to the homeostatic disruption in the first place? Does culture suggest, perhaps erroneously, the cause of homeostatic disruption?

The Doctor

The medical profession promotes health as its aim, but may inadvertently also promote illness. Iatrogenic sources of illness and even harmful exploitation of patients by the medical profession are not infrequently a subject of attack in the literature (37, 38). Theoretical biases enter the practice of the doctor (or treatment provider) and can direct the patient's illness through suggestibility. Specialists, in particular, are paradoxically more likely to over diagnose that with which they have the greatest familiarity. For example, rheumatologists will diagnose more fibromyalgia, neuropsychiatrists more brain injury, and trauma specialists more posttraumatic stress disorder. Obviously, the expertise of the specialist allows for more sophisticated analysis and possible identification of missed diagnoses. But, in cases where symptoms are more subjective, there can be a higher percentage of false positives by specialists. For example, specialists may not have the full scope of a patient's history, and may view symptoms from a more narrow perspective. Nonetheless, the specialist becomes for the patient a master whose diagnosis can be relieving even if erroneous, just because the problem is now identified. Suggestibility also takes place in more subtle ways with the doctor's evaluation itself. Leading questions about a particular set of symptoms or more formalized questionnaires about a specific disorder have the potential to transmit what symptoms should be endorsed. This is known as interrogative suggestibility (39). With a patient's desire to be compliant, further endorsement of the symptoms of a suggested disorder can easily occur. Finally, the treatment of a disorder reinforces the suggestion, especially when that treatment is extensive and coupled with a treatment team or specialized center dealing in the claimed disorder.

The Lawyer

The lawyer, like the doctor, can have a theoretical bias which comes from specializing in a particular type of law, e.g., personal injury, neurolaw, or toxic exposure. The lawyer has even less information available about alternative explanations than the doctor who specializes in a particular disorder. The lawyer also has more reason to find damage from a disorder because the greater the damage, the greater the recovery, and the greater the profit and monetary gain for both the client and the lawyer. Interrogative suggestibility is potentially even greater with the lawyer because every question posed by the lawyer to his or her client is potentially leading to what is recoverable and what is not recoverable in the lawsuit. Clients can quickly realize which symptoms or what type of impairment they must endorse in order to establish a potential damage award. The history of symptoms of the disorder is then shaped through intense interactions with the lawyer in preparation for deposition and court testimony. This creates a significant opportunity for restructuring of that history and eliminating or embellishing symptoms supportive of the claim. Though there has been recent attention to lawyers coaching their clients deliberately to create the presentation of a particular disorder or degree of damage (40), much of the presentation can just as easily occur through inadvertent or more unconscious processes where a desired result is sought. Both lawyer and client then become subject to suggestibility that is mutually reinforcing.

The Person

As described in more detail earlier, the person claiming mental damage is not necessarily a passive recipient of suggestions from the culture, the doctor, and the lawyer. There is an

active social dynamic which takes place, in which the person's role is not just one of automatic reaction but, instead, is deliberate, strategic, and meaningful. Again, this can occur on a conscious or unconscious level. Where conflict resolution, satisfying personal needs, or impairment in the service of the ego is found, the role of the person is particularly active. That role has often been underestimated in modern concepts of disorders in which reactions that are beyond an initial injury are attributed to diathesis stress (41) or a mere process of pathological conditioning (42). While those are valid concepts, they may not take into account suggestibility and, especially, autosuggestibility. For example, it is not uncommon for autosuggestions on the part of the person to create or expand symptoms of a disorder. Literally, people can talk themselves into being sick, and at times talk themselves out of it, based on what their needs are. Autosuggestion may also play a part in memory distortion, and reconstruction of one's own history as part of a claim (1, 43). This can result in the creation and expansion of symptoms, false perception of a disability, and misattribution of the cause of a condition.

LEGAL ISSUES

In mental damage claims, the role of suggestion must be analyzed both from the standpoint of causation and extent of damage. Was the claimed injury or accident the cause in fact of the disorder, if it was suggested? What if only the degree of the disorder was suggested, was the injury or accident still a substantial factor? What was the proximate cause? Was the harm suffered foreseeable and within the scope of the defendant's risk? What if only the form and degree were suggested? In the absence of a preexisting disorder of the same or similar kind, the exact harm or manner need not be foreseeable by the defendant, but is the mental disorder that is suggested still part of the general kind of harm that can occur in such injuries or accidents? Much depends on how the sources of suggestibility are viewed. Certainly, suggestibility can play a role in any mental disorder, e.g., depressive disorders, anxiety disorders, posttraumatic stress disorder, and others. However, a few cases in the last several years involving causation and damages issues in somatoform disorders help bring some of these issues to light.

In *Bahura et al. v. SEW Investors et al.* (44), a number of employees brought action against owners and managers of buildings in which they worked, claiming to have suffered neurological injuries as a result of allegedly contaminated indoor air during a renovation. Although the employees claimed that their injuries were physical, their attorney argued to the jury that even if their symptoms were due to somatization, as defense experts testified, they should still be entitled to recover damages. The jury found that one of the plaintiffs was physically injured but four only believed that they were, i.e., they suffered from somatization. The trial judge concluded that the somatization plaintiffs' injuries were not "serious or verifiable" and that "somatization is not a compensable injury in these circumstances." The appeals court reversed in part, ruling that a jury could reasonably find that the psychogenic injuries suffered by the somatization plaintiffs were serious and verifiable and that a somatoform disorder is compensable. The court relied on defense experts who had testified that the symptoms were real and not due to malingering, but were caused by the "belief" that chemicals used in the renovation were responsible. Furthermore, defense experts acknowledged a causal link between the plaintiffs' somatization and the conditions at the workplace, saying that the symptoms were "the product of odorant conditioning, a process by which an unpleasant reaction to noxious chemicals or odors causes a person to associate similar odors with that adverse physical reaction." In *Bahura*, defense experts clearly made the case for the plaintiffs and the defendant did create unsafe conditions during the renovations by using a noxious chemical. The causation question might be different though, if there was merely an unpleasant smell from a chemical that was completely safe. Should the defendant have known that unpleasant smells might frighten some people into somatization?

It does not appear that alternative explanations for the plaintiffs' symptoms were identified in this case, or perhaps not explored. For example, did any of the plaintiffs have personal motivation to report such symptoms either for secondary gain purposes in their litigation or as a resolution to some personal conflict? What if some of the plaintiffs had a personality predisposition either to somatization or to hysterical reactions? Should the defendant be liable in such an instance regardless of whether or not the chemicals were noxious? How much of the plaintiff's symptomatology needs to be suggested before there is no liability?

An earlier Nebraska decision also addressed the issue of somatization, and by inference suggestibility. In *Wasiak v. Omaha Public Power District* (45), the plaintiff was involved in a minor motor vehicle accident, which initially resulted in the plaintiff being diagnosed with cervical and lumbar strain and concussion. At trial, the plaintiff's expert testified, among other things, that the plaintiff suffered with a persistent traumatic brain injury. Defense experts, on the other hand, testified that there was no brain injury and that the plaintiff's symptoms were the result mainly of a somatoform disorder. The defense experts indicated that the plaintiff was "unconsciously making up his brain injury symptoms to benefit from the secondary gains of not working and the gratification one might sense when being cared for by one's family." The defense experts did not testify that the patient was malingering. The trial court held that while the accident did not cause traumatic brain injury, the plaintiff's somatization was caused by the accident. Again, defense experts did not say that the accident was not the cause, only that it was not a brain injury but the result of somatization. The appeals court affirmed. Here, there was no evidence that the plaintiff had a somatoform disorder that predated or was unrelated to the accident. So, in essence, the trial court ruled that the patient's injuries from a causation standpoint were uncontested. The facts of this case may have prevented defense experts from concluding that the accident did not cause the somatoform disorder, perhaps because there was an actual initial physical injury. However, what if there was no physical injury? Should the defendant be liable if the somatoform disorder is entirely the product of mental mechanisms such as suggestibility? Should this be automatically considered an emotional reaction to the accident? What if the accident was not one which would have created any significant emotional distress at the time? Is a plaintiff's belief of injury enough, even if the accident could be objectively viewed as not traumatic in any way? The answers to these questions are dependent in part on the etiology and mechanisms in somatoform disorders. Do they represent an objective condition with clear parameters, or are they merely subjective states that are not accurately measurable and have kinship with factitious disorders and malingering?

A recent decision of the Social Security Administration examines the nature of somatoform disorders from the question of disability. In *Carradine v. Barnhart, Commissioner of Social Security* (46), an administrative law judge was found to have committed reversible error when he held that evidence of somatization implied that the claimant exaggerates the severity of symptoms she reports. The judge had remarked that "medical examiners and treating physicians have not been able to find objective evidence to support (the claimant's) extreme account of pain and limitation." The appeals court, in disagreeing, indicated that, "pain is always subjective in the sense of being experienced in the brain. The question of whether the experience is more acute because of a psychiatric condition is different from the question of whether the applicant is pretending to experience pain or more pain than she actually feels. The pain is genuine in the first, the psychiatric case, though fabricated in the second. The cases involving somatization require this distinction." While somatoform disorders are genuine conditions and, by definition, are not intentional (29), the distinction is not a bright line. Similarly, while somatoform disorders can result in disability, the role of exaggeration and/or suggestibility are not irrelevant issues. The dissent in *Carradine*, disagreeing with the majority opinion, supported the administrative law judge by recognizing that the absence of objective medical evidence required a credibility determination that would address the question of

exaggeration. The mere presence of a somatoform disorder does not mean that all of the patient's symptoms should be accepted at face value without scrutiny as to their consistency or inconsistency. A credibility determination could be warranted.

Analyzing the role of suggestibility in mental damage claims requires a review of the law on causation. Negligence claims at the threshold require proof that the defendant's conduct was a cause in fact of the plaintiff's damages (47). In mental disorders, a scientific connection needs to be established, not only as a possibility but that such a connection exists in the plaintiff's case. A cause in fact in many cases is established by the simple but-for determination, i.e., but for the defendant's conduct, the plaintiff would not have been harmed. An alternative analysis is whether the defendant's conduct was a substantial factor in causing the harm, i.e., a necessary element. A simple but-for connection is fairly easy to show, while a substantial factor analysis may be somewhat more difficult. In the case of noxious chemicals as described above in *Bahura*, either method of analysis would probably show that they were a cause in fact. Also, even if the chemicals were not noxious and the plaintiff only believed they were, they might still be seen as a cause in fact.

The second analysis in causation for most negligence claims is that of proximate cause (47). Proximate cause may appear to be a refinement on the question of causation itself, but in actuality it is merely a means of limiting the scope of a defendant's liability. In other words, while there may be some causal connection, the harm is too insignificant, remote, logically unrelated, or just beyond what a defendant should be held liable for. Proximate cause analysis typically centers on the question of whether or not the harm was foreseeable. The exact harm to a plaintiff need not be foreseeable as long as the general kind of harm that can occur by such behavior is foreseeable. Taking again the example of the noxious chemicals in *Bahura*, if the defendant could have known that such chemicals could cause fear or some other emotional reaction then, barring another cause, a hysterical suggested reaction or somatoform disorder would still be foreseeable. Sometimes, this connection is described as one where the plaintiff must have been in the scope of the risk or in the zone of danger. In the event, therefore, that the defendant did not introduce a noxious chemical or one that was dangerous, and the plaintiff's reaction was solely based on a false belief or misperception, the proximate cause argument of foreseeability may not be as solid.

The chain of causation in negligence claims can be broken by an intervening cause (47). This is considered a new force which can intervene to trigger the injury after the defendant's actions and their consequences have come to conclusion. In such a case, responsibility now falls on the new intervening cause. However, there is a limitation by which the intervening cause must be unforeseeable and superseding. For example, if the plaintiff who was exposed to noxious chemicals was unsuccessfully treated by the doctor, the original defendant might still be liable because treatment for such conditions is not guaranteed. On the other hand, if the plaintiff is not suffering from a physical injury, but a condition is suggested erroneously by the doctor, that could arguably break the chain of causation. Similarly, the role of other sources of suggestibility might need to be assessed. Did the defendant's conduct only create a passive condition or opportunity for suggestibility to intervene and supersede as the cause of the mental disorder? Also, did the plaintiff's own actions or needs create avoidable consequences which should have been mitigated? Is the harm now an entirely different harm than would have been foreseen?

In foreseeability requirements, courts make a distinction between the nature of the harm and its extent (47). Generally speaking, a defendant is liable if he or she could reasonably foresee the nature of the harm done, even if the total amount of harm turns out to be quite unforeseeably large. Closely tied to this principle is the concept of the thin skull or eggshell skull rule. Here, the defendant may have no reason to know of a particular susceptibility of

the plaintiff, but must take that plaintiff as he finds him or her (47). This is true even for aggravations of preexisting injuries or conditions. Typically, in mental damage claims, the thin skull rule is applied by the plaintiff's attorney, where even dramatic and/or unusually persistent symptoms follow a relatively minor trauma. Applied without further scrutiny, it would make no difference whether the chemicals were noxious or harmless as long as the patient believed they were harmful. Even extreme claims of distress or disability would be attributed to the defendant.

Courts have grappled with the potential for mental disorders, because of their subjectivity, to allow unlimited possibilities of recovery when principles of cause in fact and proximate cause are applied liberally. Initially, courts conceived of mental damage cases largely in terms of an exposure to physical risk or physical danger. Many courts required that there be a physical impact or physical manifestation of injury. For the most part, these requirements have either been discarded or do not create any practical limitations. Some courts, therefore, have looked to limiting liability when the plaintiff's emotional distress is not the result of fear or shock from a near impact, a sudden event, or threat of immediate physical injury (48-50). Other courts have required plaintiffs to demonstrate not only emotional distress at the time of injury but severe or serious emotional distress. To this, they have sometimes added that the defendant's conduct must have been such that it would have severely distressed a reasonable person who is normally constituted (51). This does not mean the plaintiff's special vulnerabilities are not taken into account, especially when the defendant knows that he or she is dealing with a very sensitive plaintiff. Similarly, if the defendant's conduct would subject him or her to liability for severe distress in a normal person, there is liability for damages in a very sensitive person as well, even if those damages are much greater because of that sensitivity (52). On the other hand, the normal person rule excludes compensation for emotional harm when a normal person would suffer no serious emotional distress at the time at all. If only transient distress is foreseeable to a normal person, and the defendant neither knows nor should know of the patient's special sensitivity, serious distress is by definition not foreseeable in such an analysis (53). Considering the potential role of suggestibility in mental disorders, such as the somatoform disorders in the chemical exposure case above, an analysis requiring the plaintiff to have been in the zone of physical danger, or subject to severe distress that a normal person might feel, might help balance the potential and significant role of suggestibility in such claims.

CONCLUSIONS

In summary, the role of suggestibility in mental damage claims needs greater attention. Suggestibility is a regular phenomenon in all of our thinking and is necessary for survival. However, it has the potential to create distortion and erroneous perceptions in the context of mental damage claims on issues of causation and extent of damage. The overlapping sources of suggestibility include the culture, the doctor (or treatment provider), the lawyer, and the person who is making the claim. Legal analysis must take into account that suggestibility is not merely a passive process of a vulnerable individual where the thin skull rule might apply, but can involve an active social dynamic for a particular end. The scope of the defendant's liability may be limited where suggestibility has resulted in a superceding intervening cause, where the type of harm suffered is not the type foreseeable, or when extreme emotional harm follows an incident where a normal person would suffer no serious emotional distress at all.

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