Insult and Injury in Refugee Status Decision-Making: The Limits and Promise of Justification

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An adjudicator risks causing two kinds of harm in rejecting a refugee claimant’s testimony. They will cause insult if they conclude for indefensible reasons that the claimant is lying, and injury if they deny protection to a person who needs it. In this paper, Dr. Evans Cameron argues, based on her research into the legal environment in which refugee status decisions are made, that how the courts evaluate such credibility findings reveals an important limitation of judicial review. When courts review these kinds of findings, the judges’ express aim is to prevent insult. When the courts’ judgments do prevent injury, it is largely by happenstance. Evans Cameron suggests that another kind of process is better suited to trying to prevent injury, one that shares with judicial review its central concern with questions of justification: the process of shoring up with stronger normative foundations the legal structures that guard against false rejections. She arrives at this conclusion by drawing together findings from her recent study of the Canadian Refugee Board’s decisions; her earlier investigations into its adjudicators’ credibility inferences; and the central argument of her recent book (Refugee Law’s Fact-finding Crisis: Truth, Risk, and the Wrong Mistake 2018) – and by considering along the way whether there is a downside to helping adjudicators to write reasonable decisions; the relationship between trustworthiness and probability; and the value of kindness in legal decision-writing.

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