

Where the Rubber Meets the Clouds: Anticipated Developments in Conflict and Conflict Resolution Theory

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“I always avoid prophesying beforehand because it is much better to prophesy after the event has already taken place.”

–Winston Churchill

“Even for practical purposes, theory generally turns out the most important thing in the end.”

–Oliver Wendell Holmes

I. INTRODUCTION

The study of conflict transcends disciplinary boundaries and nearly defies categorization. Theories abound to explain the sources or conditions that give rise to conflict, or to understand the interactions between conflicting parties, or to predict the course of a conflict’s trajectory toward conclusion. It is mercifully beyond the scope of this article to organize all existing theories of conflict. It is daunting, however, our role to hazard predictions about the next thirty years of conflict theory.

We offer these predictions with considerable humility and a broad definition of “conflict theory.” Generalized propositions related to the origin or conduct of conflict, the attitudes or behaviors of conflicting parties, or the dynamics between parties or issues in conflict constitute conflict theory for the purposes of this short article. We recognize that in many areas of scholarly inquiry, Theory (note the capital “T”) is reserved for only the most strongly supported and reliably replicated propositions. Within this article, we will cast a broader net, seeking propositions that explain or predict conflict interactions but may not enjoy the standing of a robust Theory.

Every reader has experienced conflict and it is likely that most have theorized about its causes or its conduct. Scholars across many fields have examined conflict through their discipline’s tools, metrics, and terms, providing us a dizzying array of observations and insights. To offer a list which is surely incomplete, our understanding of conflict is broadened by theories from the natural sciences including evolutionary biology, behavioral ecology, and neuroscience, from fields in social sciences such as psychology, economics, anthropology, and political science, and from the humanities as well. And in recent decades, scholars have developed a loosely-defined field dedicated to the cross-disciplinary study of conflict resolution. We term this a “field” rather than a “discipline” to recognize that it draws variously from longer-established disciplines and has emerged more recently. A review of several works and anthologies dedicated to this post-disciplinary theory

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development¹ reveals that several features are shared in common by this collection of theorists.

1. They have sought to develop common theoretical frameworks that apply to conflicts at numerous levels. One feature of conflict theories drawn from the disciplines has been their tendency to focus on a particular level of analysis, either micro or macro. Conflict resolution theorists, of course, recognize that there are many differences between conflicts at the interpersonal, intergroup, inter-organizational, and international levels, but their aim has been to identify the propositions, mechanisms, and outcomes that occur in common across these contexts.
2. They have been especially concerned with unpacking the implications of conflict theories in order to understand the positive potential of conflict, the ways it can be waged nonviolently, and the possibility for its peaceful resolution. Conflict resolution theorists are normatively committed to peace but not at any cost; they affirm the constructive role played by conflict in achieving positive social change and stress the way conflict can be channeled constructively rather than suppressed or eliminated entirely.
3. Relatedly, conflict resolution theory is particularly concerned with the practical efforts—whether it is on the part of conflict parties themselves or third party interveners, to move conflicts towards more constructive processes and outcomes. Conflict resolution theory is tightly linked to conflict resolution practice.

Imprecise language leads to differences in understanding, and we should note that the very terms we use to refer to our field have changed and shifted over time. While we have so far been referring to the field of conflict

¹ MORTON DEUSTCH, PETER T. COLEMAN & ERIC C. MARCUS, *THE HANDBOOK OF CONFLICT RESOLUTION: THEORY AND PRACTICE* (2d ed. 2006); DEAN G. PRUITT & SUNG HEE KIM, *SOCIAL CONFLICT: ESCALATION, STALEMATE, AND SETTLEMENT* (2d ed. 2004); OTOMAR J. BARTOS & PAUL WEHR, *USING CONFLICT THEORY* (2002); JAMES A. SCHELLENBERG, *CONFLICT RESOLUTION: THEORY, RESEARCH, AND PRACTICE* (1996); JOSEPH P. FOLGER, MARSHALL SCOTT POOLE & RANDALL K. STUTMAN, *WORKING THROUGH CONFLICT: STRATEGIES FOR RELATIONSHIPS, GROUPS, AND ORGANIZATIONS* (1st ed. 1992); *CONFLICT* (Sandra Cheldelin, Daniel Druckman & Larissa Fast eds., 2d ed. 2008).

resolution, this term has fallen out of use in some circles, first in favor of “conflict management”² and more recently in favor of “conflict engagement.”³ The use of the term “conflict transformation” in other circles signals another set of concerns, commitments, and goals.⁴ In legal circles, the shifting significance of the ADR acronym from “alternative dispute resolution” to “appropriate dispute resolution” or just simply “dispute resolution” represents a parallel shift.⁵

From our perspective, these changes in nomenclature and the associated debates they provoke, represent a maturation of the field. Although “fitting the forum to the fuss”⁶ has been an insight from the very beginning of the field’s development, early terms now ring as heavy handed in their insistence on particular outcomes and a one size fits all approach. In its development, the field has become more nuanced in its concerns. These shifting labels indicate a recognition that a normed preference is not desirable and a corresponding move away from prescriptive presumptiveness. For this reason, we anticipate that we will continue to see scrutiny of and change to the terms we use and the processes we describe.

II. CRYSTAL BALL GAZING

“Never make predictions, especially about the future.”

—Variously attributed to Casey Stengel,
Yogi Berra, Mark Twain

While no certain paternity has been established for the preceding admonition, a clearer attribution exists for the observation that conflict resolution practice has outpaced research and theory development. Sanford Jaffe notes that, “Dispute resolution is a field in which research is hurrying to catch up with practice. Developments . . .

² JOHN BURTON & FRANK DUKES, *CONFLICT: PRACTICES IN MANAGEMENT, SETTLEMENT, AND RESOLUTION* (1990).

³ BERNARD MAYER, *THE DYNAMICS OF CONFLICT: A GUIDE TO ENGAGEMENT AND INTERVENTION* (2d ed. 2012).

⁴ JOHN PAUL LEDERACH, *THE LITTLE BOOK OF CONFLICT TRANSFORMATION* (2003).

⁵ Jennifer F. Lynch, *ADR and Beyond: A Systems Approach to Conflict Management*, 17 *NEGOT. J.* 207, 208–10, 213 (2001).

⁶ See, e.g., Frank E. A. Sander & Stephen B. Goldberg, *Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure*, 10 *NEGOT. J.* 49 (1994).

[are] occurring faster than the research can advance to offer guidance and direction.”⁷ Developments in theory—never mind their application by practitioners—have lagged, too.⁸

The lack of a theoretical grounding for practice raises concerns, including Joseph Scimecca’s belief that this gap undermines claims of being a profession: “[T]hose who practice ADR will not become true professionals until ADR incorporates a theoretical base to undergird its practice.”⁹ He further forecasts ominously that the field will serve a constrained and restraining role: “[U]ntil it has such a base, it will remain an instrument of social control.”¹⁰

In light of this, there is much room for the continued growth of conflict resolution theory. In what follows, we highlight the areas where we anticipate notable developments over the next thirty years. While our list is by no means exhaustive of all the advances that are likely to take place, it represents our best guesses at some of the areas to monitor as this field continues to evolve.

A. *Greater Attention to Decision-making Through Neuroscience, Psychology, and Biology*

Advances in neuroscience have shed light on the triggers, impulses, and responses that shape our attitudes and actions in conflict situations. With tools such as functional magnetic resonance imaging (fMRI), researchers have learned that the human brain apparently reacts similarly to unfair offers as to repulsive odors, which may lead to propositions about the visceral responses to either.¹¹ And with tools such as synthetic hormones, scientists have recognized the central roles of testosterone and oxytocin in our

⁷ Sanford Jaffe, *Foreword* to *MEDIATION RESEARCH: THE PROCESS AND EFFECTIVENESS OF THIRD-PARTY INTERVENTION* xiii (Kenneth Kressel & Dean G. Pruitt eds. 1989).

⁸ See *THE CONFLICT RESOLUTION PRACTITIONER: A MONOGRAPH BRIDGING THEORY AND PRACTICE* (2001) or other products of the Hewlett Foundation-sponsored Theory to Practice project, including the special issues of *MARQUETTE LAW REVIEW* Volume 87, Issue 4 (2004), *PENN STATE LAW REVIEW* Volume 108, Issue 1 (2003), *CONFLICT RESOLUTION QUARTERLY* Volume 20, Issue 4 (2003), and *NEGOTIATION JOURNAL* Volume 18, Issue 4 (2002) and Volume 19, Issue 1 (2003).

⁹ Joseph A. Scimecca, *Theory and Alternative Dispute Resolution: A Contradiction in Terms?*, in *CONFLICT RESOLUTION THEORY AND PRACTICE* 211 (Dennis J. D. Sandole & Hugo van der Merwe eds., 1993).

¹⁰ *Id.*

¹¹ See Laura Moretti & Giuseppe di Pellegrino, *Disgust Selectively Modulates Reciprocal Fairness in Economic Interactions*, 10 *EMOTION* 169 (2010).

consideration of others. An elevated level of testosterone, either persistently or acutely, often leads to self-sacrificing aggressive behavior, enabling individuals to mete out punishment for others' transgressions.¹² An elevated level of oxytocin can make one more trusting and generous toward others, leading to greater rapport and cooperation.¹³

Richard Birke was among the first conflict resolution scholars to draw connections between neuroscience and dispute resolution practice, observing that many facets of the mediation process may be supported or undermined by the implications of brain research.¹⁴ Recounting a stressful event often leads to an abundance of activity in the amygdala, the brain's core for self-preservation through "freeze, fight, or flight," which temporarily impairs the effectiveness of the prefrontal lobe's executive thinking.¹⁵ And yet, Birke notes, most mediation processes are designed to transition rather abruptly from disputants' describing their conflict to solving their problem through generating ideas and forecasting their utility.¹⁶ The theory underlying such mediation processes bears revision, given these new understandings.

Even more broadly, conflict resolution theorists will seek to explain cognitive mechanisms operant in creating, recognizing, enacting, and concluding conflict. Pioneering work by Daniel Kahneman and Amos Tversky in the field of decision-making, later termed "behavioral economics," has provided insights such as prospect theory, describing the role of benchmarks in relation to satisfaction, and the consequent motivation based on a party's sense of position relative to that benchmark.¹⁷ The theory builds on loss aversion, the tendency of individuals to feel losses more deeply than gains (even when the loss or gain is of equal amount),¹⁸ to predict that our motivation increases as we approach a goal and then diminishes as we surpass it.¹⁹

¹² Paul J. Zak et al., *Testosterone Administration Decreases Generosity in the Ultimatum Game*, 4 PLOS ONE 1, 4–6 (2009).

¹³ Paul J. Zak et al., *Oxytocin Increases Generosity in Humans*, 2 PLOS ONE 1, 3–4 (2007); Michael Kosfeld et al., *Oxytocin Increases Trust in Humans*, 435 NATURE 673, 673–75 (2005).

¹⁴ Richard Birke, *Neuroscience and Settlement: An Examination of Scientific Innovations and Practical Applications*, 25 OHIO ST. J. ON DISP. RESOL. 477 (2010).

¹⁵ *Id.* at 510–11, 515.

¹⁶ *Id.* at 510–12.

¹⁷ Daniel Kahneman & Amos Tversky, *Prospect Theory: An Analysis of Decision Under Risk*, 47 ECONOMETRICA 263 (1979).

¹⁸ Consider the difference between losing a five-dollar bill and finding one laying on the sidewalk.

¹⁹ Kahneman & Tversky, *supra* note 17, at 263–64.

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At a Penn State Symposium in 2002, David Sally illustrated the theory by inviting us to think about push-ups:

[S]uppose two people, A and B . . . have each done twenty-five push-ups. A has a stretch goal of thirty, and B has a more modest goal of twenty. In this scenario, A is more dissatisfied than B and is much more likely to attempt and to pull off a twenty-sixth and twenty-seventh push-up.²⁰

That our decisions often rely on benchmarks may feel intuitive, but to consider how often we set aside those benchmarks—or even fail to consider them—is surprisingly humbling. People so frequently engage in poor decisions, and do so in such notably similar ways, that one behavioral economist has published a book titled *Predictably Irrational*.²¹ Benchmarks may play a role in conflict in many ways, as illustrated in behavioral biology research with animals other than humans. For example, studies of capuchin monkeys have demonstrated that they—like humans—perceive injustice when equal work does not lead to equal pay.²² This phenomenon, widely on display in workplaces and homes, has been titled *inequity aversion* and gives rise to disgruntlement and conflict.²³

Readers should note that dispute resolvers and attorneys have found considerable application of theories like these and can consult a growing literature to improve their insights about cognitive biases that often undermine disputants' decision-making.²⁴ We anticipate that conflict resolution scholars will continue to develop theories arising from findings in neuroscience and cognitive psychology to understand and predict conflict behaviors.

²⁰ David Sally, *Yearn for Paradise, Live in Limbo: Optimal Frustration for ADR*, 108 PENN ST. L. REV. 89, 92 (2003).

²¹ DAN ARIELY, *PREDICTABLY IRRATIONAL: THE HIDDEN FORCES THAT SHAPE OUR DECISIONS* (2008).

²² Sarah F. Brosnan & Frans B. M. de Waal, *Monkeys Reject Unequal Pay*, 425 NATURE 297 (2003). Similar aversion has been observed in other species, including dogs. See Friederike Range et al., *The Absence of Reward Induces Inequity Aversion in Dogs*, 106 PROC. NAT'L ACAD. SCI. 340 (2009).

²³ Brosnan & de Waal, *supra* note 22, at 297.

²⁴ Two particularly accessible works come to mind. BARRY GOLDMAN, *THE SCIENCE OF SETTLEMENT: IDEAS FOR NEGOTIATORS* (2008); JENNIFER K. ROBBENOLT & JEAN R. STERNLIGHT, *PSYCHOLOGY FOR LAWYERS: UNDERSTANDING THE HUMAN FACTORS IN NEGOTIATION, LITIGATION, AND DECISION MAKING* (2012).

B. *Further Refinement of Transitional Justice Concepts in Light of Non-Conforming Cases*

Transitional justice is generally regarded as a relatively recent approach to achieving justice through redress of past injustices, such as state-sanctioned oppression or other human rights abuses, although some scholars recognize transitional justice practices in the distant past, too.²⁵ Whether in the context of the collapse of a military regime or the end of inter-ethnic hostilities, transitional justice processes including amnesties, truth commissions, reparations, and prosecutions have been widely employed in hopes of moving societies through understanding and condemning past brutalities toward democratic systems respectful of human rights.²⁶ The work of the South African Truth and Reconciliation Committee stands as perhaps the most widely recognized transitional justice process and has brought considerable attention to a field previously little-known.

The “transition” in transitional justice may be a misnomer, as the set of practices outlined above has been employed to address human rights violations across cases in which governance systems were not in flux.²⁷ Efforts to end sectarian violence such as that in Northern Ireland represent such a context.²⁸ To presume that transitional justice efforts always meet with such success would also be a mistake. Observers of programs in Indonesia, Iraq, Sierra Leone, and elsewhere have argued that processes may

²⁵ Some scholars would contextualize contemporary transitional justice as the continuation of efforts dating to “the restorations of Athenian democracy” in the fifth century B.C. and “the measures of retribution and reparation . . . in France after the two restorations of the Bourbon monarchy” in the early nineteenth century. JON ELSTER, *CLOSING THE BOOKS: TRANSITIONAL JUSTICE IN HISTORICAL PERSPECTIVE I* (2004).

²⁶ Lauren Marie Balasco, *The Transitions of Transitional Justice: Mapping the Waves from Promise to Practice*, 12 J. HUM. RTS. 198 (2013).

²⁷ See Thomas Obel Hansen, *Transitional Justice: Toward a Differentiated Theory*, 13 OR. REV. INT’L L. 1, 2 (2011) (identifying “societies as diverse as Haiti, Canada, Uganda, Colombia, Nicaragua, Kenya, Iraq, Rwanda, [and] Australia” as countries in which transitional justice practices have been documented). Hansen notes that Naomi Roht-Arriaza has defined transitional justice as practices employed “following a period of conflict, civil strife or repression, and that are aimed directly at confronting and dealing with past violations of human rights and humanitarian law” without regard to political transition. *Id.* (citing Naomi Roht-Arriaza, *The New Landscape of Transitional Justice*, in *TRANSITIONAL JUSTICE IN THE TWENTY-FIRST CENTURY: BEYOND TRUTH VERSUS JUSTICE 2* (Naomi Roht-Arriaza & Javier Mariezcurrena eds., 2006).

²⁸ See Colm Campbell & Fionnuala Ní Aoláin, *Local Meets Global: Transitional Justice in Northern Ireland*, 26 FORDHAM INT’L L. REV. 871 (2002).

not fulfill the goals or hopes of all involved parties.²⁹ With each experience of limited success comes the opportunity for conflict resolution scholars and practitioners to formulate new theoretical prescriptions for more promising systems in the future.

C. Continued Theory Development of Intractability Toward Ripeness

Persistent conflicts have long drawn the attention, not to mention the consternation and frustration, of theorists and practitioners alike. Conflict resolution theorists seek to comprehend the dynamics of intractable conflict—the nature, number, and characteristics of the parties, as well as their relationship to each other; the number, intensity, and complexity of the issues; the role of context, identities, audiences, intermediaries, and time, among other dimensions—in efforts to explain their origins and offer hopeful prescriptions for their transformation toward tractability.

Peter Coleman has long explored intractable conflict, most recently publishing *The Five Percent*, titled for the observation that many conflicts—one in twenty—“resist mediation, defy conventional wisdom, and drag on and on, worsening over time.”³⁰ Reviewing the literature on such conflict, he identified no fewer than fifty-seven distinct explanations of intractable conflicts.³¹ While “intractable” may be equated with “unresolvable,” it likely bears a meaning closer to “stubborn.”³² Conflicts among any type of parties—individuals, groups, countries—may become intractable, and have attracted scholars’ and practitioners’ attention especially in the international and environmental conflict realms.

Disputing parties often move toward settlement only after they find themselves in a mutually-hurting stalemate—a condition in which neither can prevail unilaterally and the conflict is harmful or costly to both.³³ This stalemate may represent a conflict’s readiness or “ripeness” for intervention,

²⁹ See, *inter alia*, Rosemary Nagy, *Transitional Justice as Global Project: Critical Reflections*, 29 *THIRD WORLD Q.* 275 (2008).

³⁰ PETER T. COLEMAN, *THE FIVE PERCENT: FINDING SOLUTIONS TO SEEMINGLY IMPOSSIBLE CONFLICTS* 2 (2011) (citing the one-in-twenty estimate set forth in PAUL F. DIEHL & GARY GOERTZ, *WAR AND PEACE IN INTERNATIONAL RIVALRY* (2001)).

³¹ *Id.* at 32 (listing, *inter alia*, domination, inequity, ambiguity of power, dialogic poles, polarized identities, escalatory spirals, betrayal of trust as essences of intractability).

³² Stuart J. Thorson, *Introduction to INTRACTABLE CONFLICTS AND THEIR TRANSFORMATION* 3 (Louis Kriesberg et al. eds., 1989).

³³ I. William Zartman, *The Timing of Peace Initiatives: Hurting Stalemates and Ripe Moments*, 1 *GLOBAL REV. ETHNOPOLITICS* 8 (2001).

by one or another conflicting party or a third party outside the conflict.³⁴ To recognize or declare a conflict to be ripe, or to be intractable, an observer must consider many factors related to the parties and the issues in dispute; these may include the costs and duration of the conflict, perceptions of stalemate, and the parties' pronouncements. To third parties seeking to intervene, further study of indicators of ripeness would be invaluable, and we foresee continued theory development in this direction.

D. *New Frontiers in Gender Theory Applied to Conflict Dynamics and Process*

Conflict resolution theory has long attended to gender and its role in shaping conflict dynamics. One common site of conflict interaction between women and men that has garnered considerable study and interest is the heterosexual marriage. Studies of marriage dissolution and stability³⁵ and the effects of changing gender norms on conflict between married couples³⁶ have shed light on patterns of communication and behavior that often distinguish men from women³⁷ and the conflicts that they generate. Empirical study and theorizing that draws attention to differences between men's and women's perceptions and behavior have aimed at countering sexist and patriarchal notions that privilege male experience in ways that erase or undervalue female experience.³⁸ Beyond the realm of intimate and family relationships, the study of men's and women's distinct conflict behavior in the workplace has also helped to shed light on how gendered norms of behavior and

³⁴ *See id.*

³⁵ John Mordechai Gottman, *A Theory of Marital Dissolution and Stability*, 7 J. FAMILY PSYCHOL. 57 (1993).

³⁶ Janice M. Steil & Liora Hoffman, *Gender Conflict and the Family*, in THE HANDBOOK OF CONFLICT RESOLUTION, *supra* note 1, AT 223. It should, of course, be noted that gender and sexuality norms vary tremendously across cultures and the uptake of these changes is happening at different paces in different cultural contexts. While the reality on the ground looks very different according to cultural context, it seems safe to say that the ground is shifting everywhere. *See, e.g.*, E. Jeffrey Hill et al., *A Cross Cultural Test of Work-Family Interface in 48 Countries*, 66 J. MARRIAGE AND FAMILY 1300 (2004).

³⁷ DEBORAH TANNEN, *YOU JUST DON'T UNDERSTAND: WOMEN AND MEN IN CONVERSATION* (2007).

³⁸ *See* CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (1982).

socialization processes work to reinforce wage inequities and present barriers to women's career advancement.³⁹

The use of the term gender, instead of sex, in much of this work signals a theoretical commitment to conceptualizing these as socially constructed, rather than biologically determined, differences. Theories of gender and conflict seeking to acknowledge gender differences and their implications for gender equality nevertheless run the risk of essentializing gender identities and reinforcing dominant gender norms in ways that are confining for both women and men. While this past work has contributed measurably to our understanding of conflict, it has tended to rely on a binary heteronormative conception of gender and sexuality. Developments in our understanding of sex, gender, and sexuality point to a wide range of identities and experiences that are not accounted for within such a framework and fundamentally challenge the binary edifice upon which it is built.

Perhaps most obviously, as lesbian, gay, and bisexual intimate relationships are increasingly acknowledged and celebrated, there is a clear need to revise and expand theories of conflict in intimate relationships. While these relationships are obviously not new, the movement to combat and overcome their stigmatization has achieved much and will, no doubt, continue to expand the recognition of LGBT people and their equality. Relatedly, as the legal landscape surrounding marriage has changed or changes in many places, marital conflict no longer occurs exclusively between men and women. While some work has already focused on conflict dynamics and interventions in non-heteronormative relationships,⁴⁰ we can expect conflict resolution theory to develop in future years to be far more representative than it is currently of the true range of intimate relationships that exist and that are increasingly being formalized through legal arrangements. These developments will be long overdue.

But beyond the question of marriage and intimate relationships, the implications of developments in our understanding of sex, gender, and sexuality will have further consequences for how we understand conflict. While conflict theory will, no doubt, continue to be a site of critical reflection about traditional gender and sexuality norms, it will also need to reflect a growing effort to decouple sex, gender identity, and sexuality from each other altogether. Acceptance of this decoupling is rising in prominence

³⁹ LINDA BABCOCK & SARA LASCHEVER, *WOMEN DON'T ASK: NEGOTIATION AND THE GENDER DIVIDE* (2007). This discussion has been recently revived in popular media thanks to SHERYL SANDBERG, *LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD* (2013).

⁴⁰ Jeffrey A. Dodge, *Same-Sex Marriage and Divorce: A Proposal for Child Custody Mediation*, 44 *FAMILY CT. REV.* 87 (2006).

due to the rapid growth of the transgender rights movement⁴¹ and the accompanying development of the field of transgender studies.⁴² It is further reinforced by work in the biological and medical fields that is reexamining treatment protocols for intersex infants (those with physical markers—genitals, gonads, or chromosomes—that are neither clearly female nor male)⁴³ and exploring the implications of their experience for the way we conceptualize gender identity.⁴⁴ In short, as the movement to normalize, rather than mark as deviant, a range of sex, gender, and sexual identities gains momentum, we expect to see theories of gender and conflict that leave behind the gender binary in favor of more fluid approaches.

E. Emergence of Theories to Keep Up with Technological Innovation

Conflict has moved online, along with a considerable portion of contemporary communication and information. So, too, have approaches to conflict resolution. Online dispute resolution (ODR) emerged as a response to disputes arising from online commerce,⁴⁵ yet its use has broadened to conflicts with little or no previous online component: from resolving protests about real estate assessments to managing complications arising from post-divorce visitation schedules.⁴⁶ An online mediation service between consumers and direct sellers, the Online Schlichter,⁴⁷ has been operated by the German-French European Consumer Center since 2009, while an online tribunal for small claims court actions in British Columbia is slated to begin service in 2015.⁴⁸

Leah Wing and Daniel Rainey hunch that the dearth of ODR theory may be explained in part by the heavy reliance on conflict resolution theories grounded in face-to-face interaction (“F2F”) in processes like mediation and

⁴¹ TRANSGENDER RIGHTS (Paisley Currah et al. eds., 2006).

⁴² THE TRANSGENDER STUDIES READER (Susan Stryker & Stephen Whittle eds., 2006).

⁴³ Anne Fausto-Sterling, *The Five Sexes Revisited*, SCIENCES 18, 19–20 (2000).

⁴⁴ SUZANNE J. KESSLER, *LESSONS FROM THE INTERSEXED* (1998).

⁴⁵ It’s not surprising that online commerce pioneers, eBay and PayPal, developed robust ODR systems.

⁴⁶ See MODRIA, <http://modria.com> (last visited Mar. 19, 2016) (offering a range of applications of ODR, including contested assessments). See also Sherrill Hayes et al., *E-mails, Statutes, and Personality Disorders: A Contextual Examination of the Processes, Interventions, and Perspectives of Parenting Coordinators*, 50 FAMILY CT. REV. 429 (2012) (discussing family law applications of ODR).

⁴⁷ ONLINE SCHLICHTER, <http://www.online-schlichter.de> (last visited Mar. 19, 2016).

⁴⁸ CIVIL RESOLUTION TRIBUNAL, <http://www.civilresolutionbc.ca/> (last visited Mar. 19, 2016).

facilitation.⁴⁹ They note that Gordon Allport's contact theory has informed much of conflict resolution practice but may have limited relevance in ODR, where parties will not often, if ever, have direct contact.⁵⁰ They forecast ODR theory development related to deception and agenda setting, as both of these relate to dynamics heightened in the virtual realm.⁵¹ Interpersonal deception theory concerns communication between those who would deceive and those seeking to recognize deception; given that online relations remove important contextual clues as to users' intentions or veracity, how might trust be established and ensured?⁵² Agenda setting theory flows from studies of how mass media shapes public perceptions and concerns; the online environment, replete with innumerable and evolving media sources, brings new possibilities for communicating or creating issue importance.⁵³

Alongside ODR are innumerable other avenues by which technology affects or effects conflict resolution. Innovations in social media have played considerable roles in nonviolent movements, such as the organization among activists in Middle Eastern and North African countries during the Arab Spring⁵⁴ and the use of mapping websites to record conflict or cooperation events in real time in sites including the Democratic Republic of the Congo.⁵⁵ Conflict resolution theory will necessarily develop to understand these technological innovations and their contribution to dispute resolution.

⁴⁹ Leah Wing & Daniel Rainey, *Online Dispute Resolution and the Development of Theory*, in *ONLINE DISPUTE RESOLUTION: THEORY AND PRACTICE* 23, 23 (Mohamed S. Abdel Wahab et al. eds., 2012).

⁵⁰ *Id.* at 37.

⁵¹ *Id.* at 42.

⁵² David B. Buller & Judee K. Burgoon, *Interpersonal Deception Theory*, 6 *COMM. THEORY* 203 (1996).

⁵³ Wing & Rainey, *supra* note 49, at 45.

⁵⁴ See, *inter alia*, Habibul Haque Khondker, *Role of the New Media in the Arab Spring*, 8 *GLOBALIZATIONS* 675 (2011); Nahed Eltantawy & Julie B. West, *Social Media in the Egyptian Revolution: Reconsidering Resource Mobilization Theory*, 5 *INT'L J. COMM.* 1207 (2011).

⁵⁵ Erik Hersman, *Ushahidi Deploys to the Congo (DRC)*, *USHAHIDI* (Nov. 7, 2008), <http://www.ushahidi.com/2008/11/07/ushahidi-deploys-to-the-congo-drc/> (providing an overview of how any individual can send information via a cell phone's texting service, which is routed through a local "tech hub" to a server to place the event on a website map accessible to anyone. Each event is coded by type; in the case of the DRC, the dozen categories included riots, deaths, sexual assault, looting, peace efforts, and humanitarian actions).

F. *New Insights About Antecedents, Dynamics, and Responses to Bullying*

Another area of anticipated growth and attention for conflict resolution theory surrounds the set of conflict behaviors and dynamics collectively referred to as bullying. Bullying was first examined in the school setting as a dynamic occurring between youth and continues to garner considerable attention in that context, particularly within the subfield of conflict resolution education.⁵⁶ Bullying and related terms like harassment, mobbing, horizontal violence, and incivility, have also increasingly been examined among adults in the workplace. While considerable debate still exists in the literature concerning the precise definition of workplace bullying, scholars generally agree that it involves intentional and prolonged negative behavior directed at a lower power target who has a limited ability to defend themselves.⁵⁷

Despite ongoing definitional debates, conceptual clarity has begun to form around two key characteristics that distinguish bullying from other forms of interpersonal and organizational conflict. First, bullying is generally understood to be non-reciprocal in nature with a clearly delineated perpetrator and target of negative behaviors. Scholars have noted that this distinction is easiest to identify in forms of unprovoked bullying.⁵⁸ In other cases, however, researchers have observed that bullying can be a “spillover” result of reciprocal disputes where dynamics escalate to a state of non-reciprocal negative behavior on the part of a perpetrator and helplessness on the part of a target.⁵⁹ While identifying the practical threshold between reciprocal disputes and non-reciprocal bullying continues to challenge researchers, the distinction offers crucial analytical clarity for the concept of bullying. A second widely accepted defining characteristic of bullying is the presence of power imbalance. Much study of bullying has focused on its occurrence in the context of supervisor/supervisee relationships where

⁵⁶ See, e.g., Wendy M. Garrard & Mark W. Lipsey, *Conflict Resolution Education and Antisocial Behavior in U.S. Schools: A Meta-Analysis*, 25 CONFLICT RESOL. Q. 9 (2007); Roberta A. Heydenberk et al., *Conflict Resolution and Bully Prevention: Skills for School Success*, 24 CONFLICT RESOL. Q. 55 (2006).

⁵⁷ Loreleigh Keashly & Branda L. Nowell, *Conflict, Conflict Resolution, and Bullying*, in BULLYING AND HARASSMENT IN THE WORKPLACE: DEVELOPMENTS IN THEORY, RESEARCH, AND PRACTICE (Ståle Einarsen et al. eds., 2d ed. 2010); Moira Jenkins, *Practice Note: Is Mediation Suitable for Complaints of Workplace Bullying?*, 29 CONFLICT RESOL. Q. 25 (2011); Sara Branch et al., *Workplace Bullying, Mobbing and General Harassment: A Review*, 15 INT’L J. MGMT. REVIEWS 280 (2013).

⁵⁸ Keashly & Nowell, *supra* note 57.

⁵⁹ *Id.*

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formalized power inequalities obtain.⁶⁰ However, attention to horizontal or lateral bullying between co-workers, as well as upward bullying occurring against managers, has clarified that informal sources of power can outweigh formal organizational hierarchies in ways that enable and reinforce bullying dynamics.⁶¹ In other words, while power imbalance is central to most conceptualizations of bullying, the conception of power is nuanced and accounts for the considerable and, in some cases, greater importance of informal sources of power.

The growth of organizational policies and legislation referring to workplace bullying (now well established in Scandinavia, Australia and New Zealand, and growing in prominence in the United States),⁶² increase the practical need for concrete and widely accepted definitions, and we expect theory to continue clarifying the conceptual boundaries between bullying and related concepts like harassment, discrimination, and microaggressions.⁶³ This will be increasingly important as formal policies and laws provide incentives to employees' "naming and claiming" of their experiences as bullying in an effort to access supportive responses from those positioned to intervene.

Beyond definitional considerations, research on workplace bullying has demonstrated its prominence. A recent review of bullying studies finds that 10–15% of the workforce in both Europe and North America are exposed to bullying.⁶⁴ We also know that it has negative psychological and physical effects on targets, bystanders, and perpetrators, and scholars have gained some understanding of the factors that increase likelihood of being a perpetrator or target of bullying in the workplace. A more recent focus has been on the broader institutional and cultural factors that contribute to occurrences of bullying in an organization and the examination of bullying as a group rather than simply individual phenomenon.⁶⁵

⁶⁰ Vincent J. Roscigno, Steven H. Lopez & Randy Hodson, *Supervisory Bullying, Status Inequalities and Organizational Context*, 87 SOCIAL FORCES 1561 (2009).

⁶¹ Sara Branch, Sheryl Ramsay & Michelle Barker, *Managers in the Firing Line: Contributing Factors to Workplace Bullying by Staff: An Interview Study*, 13 J. MGMT. & ORG. 264 (2007); Aaron C. H. Schat, Michael R. Frone & E. Kevin Kelloway, *Prevalence of Workplace Aggression in the U.S. Workforce: Findings from a National Study*, in HANDBOOK OF WORKPLACE VIOLENCE 47 (E. Kevin Kelloway et al. eds., 2006).

⁶² BULLYING AND HARASSMENT IN THE WORKPLACE: DEVELOPMENTS IN THEORY, RESEARCH, AND PRACTICE 6–7 (Ståle Einarsen et al. eds., 2d ed. 2010).

⁶³ MICROAGGRESSIONS AND MARGINALITY: MANIFESTATIONS, DYNAMICS, AND IMPACT (Derald Wing Sue ed., 2010).

⁶⁴ Branch et al., *supra* note 57, at 281.

⁶⁵ Jenkins, *supra* note 57; Branch et al., *supra* note 57.

Building off these important contributions, we expect to see further development around responses to, intervention in, and prevention of workplace bullying. Some useful frameworks have been developed for categorizing different individual and organizational responses. Dieter Zapf and Claudia Gross have found that coping strategies of bullying targets often take the form of avoidance and exit from the organization.⁶⁶ Denise Salin places responses to bullying in four categories that include transfer, avoidance, reconciliatory, and punitive measures and finds that personnel managers in Finnish municipalities favor reconciliatory measures over punitive ones.⁶⁷ Nicole Saam finds in a survey of conflict consultants that they most often employ mediation, coaching, and organizational development as responses to bullying.⁶⁸ A more prescriptive framework has been offered by Loreleigh Keashly and Branda Nowell. Drawing on a contingency model developed initially for protracted social conflicts, they suggest that bullying intervention strategies are best selected according to the stage of escalation.⁶⁹ While mediation may be appropriate at lower levels, escalation, policy enforcement, and separation may be more fitting when violence or “intent to destroy” are present.⁷⁰ Moira Jenkins has reached similar conclusions when outlining the limits and potential of mediation in bullying cases,⁷¹ and all have emphasized the need for broader organizational responses to bullying behavior.⁷² Further theory development in this area awaits empirical study of the efficacy of these various intervention strategies and approaches.

One theoretical and practical approach that appears particularly ripe for application to workplace bullying is restorative justice. Just as the criminal justice system has seen more uptake of restorative justice practices in juvenile settings, restorative responses to school bullying appear to be more widespread than in the workplace context.⁷³ We expect to see further

⁶⁶ Dieter Zapf & Claudia Gross, *Conflict Escalation and Coping with Workplace Bullying: A Replication and Extension*, 10 EUR. J. WORK AND ORGANIZATIONAL PSYCHOL. 497 (2010).

⁶⁷ Denise Salin, *Organisational Responses to Workplace Harassment: An Exploratory Study*, 38 PERSONNEL REV. 26 (2009).

⁶⁸ Nicole J. Saam, *Interventions in Workplace Bullying: A Multilevel Approach*, 19 EUR. J. WORK AND ORGANIZATIONAL PSYCHOL. 51 (2010).

⁶⁹ Keashly & Nowell, *supra* note 57.

⁷⁰ *Id.* at 436.

⁷¹ Jenkins, *supra* note 57.

⁷² Keashly & Nowell, *supra* note 57; Jenkins, *supra* note 57.

⁷³ See, e.g., BRENDA MORRISON, *RESTORING SAFE SCHOOL COMMUNITIES: A WHOLE SCHOOL RESPONSE TO BULLYING, VIOLENCE AND ALIENATION* (2011). *But see*, Valerie Braithwaite et al., *Workplace Bullying and Victimization: The Influence*

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development of theoretical and practical application of restorative justice to explanatory and intervention frameworks for workplace bullying. Restorative justice approaches focus on incidents of non-reciprocal harm and emphasize the incorporation of broader communities affected by these harms. This aligns well with the group level dynamics of bullying, including the role of bystanders in escalation and prevention.⁷⁴ While some attention has already been given to the possible role of bystander training,⁷⁵ we also expect future work to draw from established bystander training practices in the areas of anti-racism and sexual assault prevention. Beyond restorative approaches and training, further developments applying dispute system design frameworks to the problem of bullying will likely be needed to draw out the practical implications of organizational level factors and characteristics that generate or limit the occurrence of workplace bullying.

G. Refined Explorations and Explanations of Dispute Systems

Organizations and groups develop methods of handling disputes among their members, consumers, or counterparts. A field of study has followed the emergence of practices related to assessing, designing, and refining these methods: dispute system design. Initiatives in online dispute resolution often represent such systems, whether as elements of a larger whole or as the entire conflict management enterprise.

Beginning with research in the 1980s on workplace disputes in coal mines and conflict flowing from school redistricting efforts, the principles of dispute system design were soon applied in government agencies and broader workplace settings, creating systems responsive to the context and the stakeholders therein.⁷⁶ A recent text illustrates the contemporary state of

of Organizational Context, Shame and Pride, 13 INT'L J. ORGANISATIONAL BEHAV. 71 (2008) (discussing application of restorative justice concepts of pride and shame management to explanatory frameworks for the occurrence of workplace bullying).

⁷⁴ Megan Paull et. al, *When is a Bystander Not a Bystander?: A Typology of the Roles of Bystanders in Workplace Bullying*, 50 ASIA PAC. J. HUM. RESOURCES 351 (2012).

⁷⁵ Maureen Scully & Mary Rowe, *Bystander Training Within Organizations*, 2 J. INT'L OMBUDSMAN ASS'N 89 (2009); Kate van Heugten, *Theorizing Active Bystanders as Change Agents in Workplace Bullying of Social Workers*, 92 FAMILIES IN SOC'Y: J. CONTEMP. SOC. SERVICES 219 (2011).

⁷⁶ See WILLIAM L. URY ET AL., *GETTING DISPUTES RESOLVED: DESIGNING SYSTEMS TO CUT THE COSTS OF CONFLICT* (1st ed. 1988) (examining coal mines' experiences of employment disputes); John S. Murray, *Designing a Disputing System for Central City and its Schools*, 5 NEGOT. J. 365 (1989) (examining a school system's plan to address desegregation). Dispute system design has also been applied to government agencies and

the field through six systems from a range of distinct contexts—from the prominent online auction site eBay (a site of ODR, noted previously) to the truth and reconciliation process in South Africa (also noted previously), alongside mediation programs rooted in the civil justice system, a governmental health agency, a gang-violence intervention initiative, and a response to the residential schools for Aboriginal peoples of Canada.⁷⁷

Stephanie Smith and Janet Martinez have developed a five-part framework to understand these programs, which they apply to contexts similar to those listed in the preceding paragraph.⁷⁸ The “analytic framework” assesses “Goals,” “Processes and Structure,” “Stakeholders,” “Resources,” and “Success and Accountability.”⁷⁹ The authors note that system designers may prioritize some goals at the expense of realizing others: “The trade-offs required among competing goals may affect the quality of the resulting system. A significant tension can be one between the goals of efficiency and fairness or justice.”⁸⁰

As such, as dispute systems are implemented more widely, across a range of contexts, and for a variety of purposes, conflict resolution theory will follow. This spread may take time, as predicted in the workplace realm: “Employers will gradually embrace workplace [dispute] systems.”⁸¹ Refined explorations and explanations of systems’ appropriateness and operations should inform further development.

other contexts. See CATHY A. COSTANTINO & CHRISTINA SICKLES MERCHANT, *DESIGNING CONFLICT MANAGEMENT SYSTEMS: A GUIDE TO CREATING PRODUCTIVE AND HEALTHY ORGANIZATIONS* (1996); *WORKPLACE DISPUTE RESOLUTION: DIRECTIONS FOR THE TWENTY-FIRST CENTURY* (Sandra E. Gleason ed., 1997).

⁷⁷ NANCY ROGERS ET AL., *DESIGNING SYSTEMS AND PROCESSES FOR MANAGING DISPUTES* (2013).

⁷⁸ Stephanie Smith & Janet Martinez, *An Analytic Framework for Dispute Systems Design*, 14 HARV. NEGOT. L. REV. 123 (2009).

⁷⁹ *Id.* at 129–33.

⁸⁰ *Id.* at 130.

⁸¹ David Brubaker et al., *Conflict Resolution in the Workplace: What Will the Future Bring?*, 31 CONFLICT RESOL. Q. 357, 369 (2014).

III. CONCLUSION

“I figure lots of predictions is best.
People will forget the ones I get wrong
and marvel over the rest.”

—Alan Cox

Community dispute resolution in the United States, arising in the 1970s and 1980s, represents one of the early forays into non-professional conflict engagement. Thomas Fee observed that, “Nothing in dispute resolution has been more daring—and audacious—” than to launch programs that were unfamiliar to most every citizen and were perceived to challenge the courthouse “monopoly on dispute resolution.”⁸² We anticipate that the contemporary and future work in conflict resolution theory will continue to enhance our field’s and our world’s understanding of the constructive opportunities provided by conflict.

⁸² Thomas Fee, *Introduction to NIDR FORUM, THE STATUS OF COMMUNITY JUSTICE* 2 (1988).

