

ADR Empirical Research Studies (Summer 2013-Summer 2017)

James Coben, Professor, Mitchell Hamline School of Law (james.coben@mitchellhamline.edu)

Donna Steinstra, Senior Researcher, Federal Judicial Center (dstienst@fjc.gov)

Beginning in summer 2013, we have co-edited *Research Insights*, a regular column in the American Bar Association's DISPUTE RESOLUTION MAGAZINE (DRM). Twice a year we choose 10-12 empirical research studies relevant to ADR professionals and publish the citation and abstract. To compile the longer list from which we choose our subset for publication in the column, we've cast a fairly wide net looking for published research in a variety of fields, including social psychology, cognitive science, consumer research, law, economics, sociology, and political science. We know we haven't captured every study published in the last five years, but the current list has grown quite large – now just short of 300 entries.

We're hoping you (and/or your students) might find our list helpful for your own research, teaching/training, and writing projects. We've organized them here by topic¹ (and within topic, by year published [most recent first]), providing citation, the published abstract, and the DRM issue in which the abstract was published. We'll be updating the list twice a year (you can always find the most current version on the Mitchell Hamline Dispute Resolution Institute website [http://open.mitchellhamline.edu/dri_empirical/]. In the meantime, if you notice a relevant empirical research study that we've omitted, please let us know and we'll add it to the list. Thanks!

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¹ To keep the list length manageable, we've listed each study only once (notwithstanding we recognize that quite a few might be relevant in multiple categories).

APOLOGY

An Exploration of the Structure of Effective Apologies

Roy Lewicki, Beth Polin & Robert Lount, Jr.

Negotiation and Conflict Management Research, 9(2): 177–196 (May 2016)

Violations of trust are an unfortunate but common occurrence in conflict and negotiation settings: negotiators make promises that they do not keep; parties in conflict behave in unexpected ways, escalating tensions and breaking past trust. What often follows these violations is some form of an account, specifically an apology, in an effort to repair that trust. But are some apologies more effective than others? Two studies reported here examine the structural components of apologies. Six components of an apology were defined from previous research and presented to subjects—singly and in combination—in the form of component definitions and in the context of a trust violation scenario. Results indicate that not all apologies are viewed equally; apologies with more components were more effective than those with fewer components, and certain components were deemed more important than others. Moreover, apologies following competence-based trust violations were seen as more effective than apologies following integrity-based violations. Implications and future directions for research in the structure of effective apologies are presented. [DRM Summer 2016]

Forgiveness is Not Always Divine: When Expressing Forgiveness Makes Others Avoid You

Gabrielle Adams, Xi Zou, M. Ena Inesi & Madan M. Pillutla

Organizational Behavior and Human Decision Processes 126: 130–141 (2015)

Organizational scholars have recently become interested in forgiveness as a way to resolve workplace conflicts and repair relationships. We question the assumption that forgiveness always has these relational benefits. In three studies we investigated participants' responses to people who expressed forgiveness of them versus those who did not. We found that when the ostensible transgressor did not believe he or she had committed a wrongdoing, expressing forgiveness damaged the relationship relative to a control condition. This effect occurred when participants were made to believe that a real person had forgiven them (Studies 1 and 2) and when they imagined a co-worker had forgiven them (Study 3). Furthermore, in the absence of wrongdoing, participants' perceptions of the forgiver as self-righteous mediated the effect of forgiveness on avoidance of forgivers (Studies 2 and 3). We discuss implications for conflict management.

Apologies Demanded Yet Devalued: Normative Dilution in the Age of Apology

Tyler G. Okimoto, Michael Wenzel, Matthew J. Hornsey

Journal of Experimental Social Psychology 60: 133–136 (September 2015)

Dramatic increases in the issuance of political apologies over the last two decades mean that we now live in the “age of apology”. But what does this surge in frequency mean for the effectiveness of intergroup apologies in promoting forgiveness? In the current research we propose a paradoxical “normative dilution” effect whereby behavioral norms increase the perceived appropriateness of an action while at the same time reducing its symbolic value. We experimentally manipulated the salience of the age-of-apology norm prior to assessing participant (N = 128) reactions to past unjust treatment of ingroup POWs by the Japanese during WWII. The apologetic norm increased victim group members' desire for an apology in response to the harm. However, after reading the actual apology, the invocation of the norm decreased

perceived apology sincerity and subsequent willingness to forgive. Thus, although apologetic trends may suggest greater contemporary interest in seeking reconciliation and harmony, their inflationary use risks devaluing apologies and undermining their effectiveness.

Saving Face? When Emotion Displays During Public Apologies Mitigate Damage to Organizational Performance

Organizational Behavior and Human Decision Processes 130: 1-12 (September 2015)

Leanne ten Brinke & Gabrielle S. Adams

In the wake of corporate transgressions and scandals, how do apologizers' expressed emotions affect investors' perceptions of the organization in question? We analyzed the market effects of normative versus deviant facial affect expressed during apologies for corporate wrongdoing. Archival data revealed that the expression of deviant affect was associated with decreased investor confidence in the form of negative stock market returns; adverse financial effects persisted up to three months post-apology. Moreover, this effect was exacerbated when a company representative with greater responsibility within the organization delivered the apology. Experimental data further revealed that third parties interpreted deviant affect (smiling) as a signal of insincerity, which reduced their confidence in these representatives' organizations. Ultimately, we find that subtle emotion expressions are detected by stakeholders, signal insincerity, and have important consequences for organizations. We suggest that organizations must carefully consider the nonverbal behavior of apologetic representatives in the wake of transgressions.

Who Accepts Responsibility for Their Transgressions?

Karina Schumann & Carol S. Dweck

Personal Social Psychology Bulletin 40(12): 1598-1610 (December 2014)

After committing an offense, transgressors can optimize their chances of reconciling with the victim by accepting responsibility. However, transgressors may be motivated to avoid admitting fault because it can feel threatening to accept blame for harmful behavior. Who, then, is likely to accept responsibility for a transgression? We examined how implicit theories of personality—whether people see personality as malleable (incremental theory) or fixed (entity theory)—influence transgressors' likelihood of accepting responsibility. We argue that incremental theorists may feel less threatened by accepting responsibility because they are more likely to view the situation as an opportunity for them to grow as a person and develop their relationship with the victim. We found support for our predictions across four studies using a combination of real-world and hypothetical offenses, and correlational and experimental methods. These studies therefore identify an important individual difference factor that can lead to more effective responses from transgressors.

An Affirmed Self and a Better Apology: The Effect of Self-Affirmation on Transgressors' Responses to Victims

Katrina Schumann

Journal of Experimental Social Psychology 54: 89-96 (September 2014)

Comprehensive apologies are powerful tools that transgressors can use to promote reconciliation with the people they have hurt. However, because many apology elements require transgressors to admit fault, express shameful emotions and promise change, transgressors often avoid these threatening elements and instead choose to use more perfunctory apologies or even

defensive strategies, such as justifications or attempts to blame the person they hurt. In two studies designed to increase apology comprehensiveness and reduce defensiveness using self-affirmation, the author predicted that self-affirmation would help transgressors maintain their self-integrity, consequently allowing them to offer more comprehensive apologies and bypass defensive strategies. Participants received a values affirmation, recalled an unresolved conflict, and indicated what they would say to the person they had hurt. As predicted, affirmed participants offered more comprehensive apologies and used fewer defensive strategies than control participants. These studies thus identify a simple method for promoting responses that facilitate conflict resolution and demonstrate the successful application of self-affirmation to the domain of interpersonal conflict. [DRM Winter 2015]

Bankrupt Apologies

Jennifer K. Robbennolt & Robert M. Lawless

Journal of Empirical Legal Studies 10(4): 771-796 (December 2013)

Apologies result in better outcomes for wrongdoers in a variety of legal contexts. Previous research, however, has primarily addressed settings in which a clear victim receives the apology. This research uses experimental methods to examine the influence of apologies on a different kind of legal decision—the decision of a bankruptcy judge to confirm or not to confirm a proposed repayment plan. This article expands examination of apologies to a legal setting in which there is no clear “victim” and to decisions of a neutral (nonvictim) decisionmaker. We find that judges' assessments of debtors were influenced by apologies. These assessments, in turn, affected judges' confirmation decisions. [DRM Summer 2013]

The Apology Mismatch: Asymmetries Between Victim's Need for Apologies and Perpetrator's Willingness to Apologize

Joost M. Leunissen, David De Cremer, Christopher P. Reinders Folmer & Marius van Dijke

Journal of Experimental Social Psychology 49(3): 315-324 (May 2013)

Are apologies delivered when victims desire them? Little is known about the congruence between a perpetrator's willingness to apologize and a victim's desire to receive an apology. In three experiments, using student and employee samples, we showed that victims mainly desire an apology after intentional transgressions, whereas perpetrators want to offer an apology particularly after accidental transgressions. These results point to an apology mismatch: perpetrators and victims have divergent ideas on when an apology is necessary. The intentionality of the transgression triggered unique emotions in the parties involved, guilt (perpetrators) and anger (victims), which explained these divergent apology needs. This research gives further insights into the difficulties of post-conflict mediation due to these differing emotional reactions towards transgressions, resulting in different standpoints on when an apology should be issued. Moreover, it shows that an apology serves very different goals among perpetrators (restore the relationship) and victims (acknowledgement of injustice). [DRM Summer 2013]

The Impact of a Grievant's Offer of Apology and the Decision-Making Process of Labor Arbitrators: A Case Analysis

Daniel Kaspar & Lamont Stallworth

Harvard Negotiation Law Review 17: 1-59 (Spring 2012)

What impact, if any, does a grievant's offer of apology have on the decision-making process of labor arbitrations in discipline and discharge cases? This study examined a number of arbitration awards

over the decades where a grievant offered an apology, showed remorse, asked for forgiveness, etc. The authors compared and contrasted these awards with those where no such offer was made, but an arbitrator made known that he or she might have ruled differently had the grievant done so. In gauging the impact of an apology, the authors also looked to its timing (prior to/during a hearing, etc.). What the authors found may well inform practitioners, arbitrators, employers, and HR consultants, with respect to pre-decisional dispute resolution strategy. Sometimes an acknowledgment of a wrong, coupled with a display of contrition, will go a long way toward breaking down the barriers that are so often an impediment to resolving a dispute. [DRM Summer 2013]

ARBITRATION: GENERAL

Judicial Decision Making Under Changing Legal Standards: The Case of Dismissal Arbitration

Benoit Pierre Freyens & Xiaodong Gong

Journal of Economic Behavior & Organization 133: 108-126 (January 2017)

The paper analyses how government actions affect judicial decision making in Australian labour courts arbitrating dismissal disputes. We isolate two channels through which these effects materialise: statutory reforms, which change legal standards, and strategic appointments, which change court composition. We analyse the probability of plaintiff success in courts using a panel of 81 judges and 2223 judicial decisions made between 2001 and 2015. We test for and subsequently exploit the randomised matching of labour court judges with unfair dismissal cases. We find significant effects from both channels: judges' work background and changes to legal standards are strong predictors of case outcomes. Furthermore, we find evidence of compensating effects: judges with a progressive background rule more often in favour of dismissed employees if legal reforms adversely affect their chance of success in court.

Affiliation Bias in Arbitration: An Experimental Approach

Sergio Puig & Anton Strezhnev

Arizona Legal Studies Discussion Paper No. 16-31 (2016). Available at SSRN:

<https://ssrn.com/abstract=2830241> or <http://dx.doi.org/10.2139/ssrn.2830241>

A characteristic feature of arbitration, a growing form of dispute settlement, is that each disputing party appoints an arbitrator. Commentators, however, suggest that party appointed arbitrators tend to be 'biased'. Evaluating this claim from data on historical disputes is problematic due to non-random selection of arbitrators. Here, we use a novel experimental approach to estimate the causal effect of party-appointments. Using a new dataset of 266 participants around the world we confirm that professional arbitrators suffer from affiliation effects — a cognitive predisposition to favor the appointing party. At a methodological level, we offer a solution to the problem of measuring affiliation effects in a world confounded by selection effects. [DRM Winter 2017]

Are Arbitrators Human?

Rebecca K. Heim, Andrew J. Wistrich & and Jeffrey J. Rachlinski

Journal of Empirical Legal Studies 13(4): 666–692 (December 2016)

Empirical research has confirmed the correctness of the legal realists' assertion that "judges are human." It demonstrates that judicial decisions are sometimes tainted by bias,

ideology, or error. Presumably, arbitrators are “human” in that sense too, but that conclusion does not necessarily follow. Although arbitrators and judges both umpire disputes, they differ in a variety of ways. Therefore, it is possible that arbitrators’ awards are either better or worse than judges’ decisions. This article reports the results of research conducted on elite arbitrators specializing in resolving commercial disputes. Our goal was to determine whether, like judges, arbitrators are subject to three common cognitive illusions—specifically, the conjunction fallacy, the framing effect, and the confirmation bias. We also wanted to find out whether, like judges, arbitrators exhibit a tendency to rely excessively on intuition that may exacerbate the impact of cognitive illusions on their decision making. Our results reveal that “arbitrators are human,” and indicate that arbitrators perform about the same as judges in experiments designed to detect the presence of common cognitive errors and excessive reliance on intuition. This suggests that arbitrators lack an inherent advantage over judges when it comes to making high-quality decisions. Whether the situation in which arbitrators make their awards is more conducive to sound decision making than the setting in which judges make their rulings, however, remains unclear. [DRM Winter 2017]

Balancing neutrality and partiality in arbitration: discursive tensions in separate opinions

Ruth Breeze

Text & Talk 36(4): 363–389 (June 2016)

Although arbitration is increasingly being used to settle important disputes, particularly on an international level, little attention has focused on the language used by arbitrators. This article contains a qualitative analysis of the discursive moves and resources used in separate (dissenting and concurring) opinions published on the website of the International Center for the Settlement of Investment Disputes from 1987 to 2013. Arbitrators’ discursive practices in this forum are analyzed, with a particular focus on the tensions that arise between the need to sustain the arbitral system and maintain professional relations, on the one hand, and the equally pressing need to display commitment to the losing party’s cause, on the other. These tensions have parallels in other areas of legal practice and professional life, and can be understood as part of the way power systems operate and replicate through discourse.

“Whimsy Little Contracts” With Unexpected Consequences: An Empirical Analysis of Consumer Understanding of Arbitration Agreements

Jeff Sovern, Elayne E. Greenberg, Paul Kirgis & Yuxiang Liu

Maryland Law Review 75: 1-133 (2015)

Arbitration clauses, which are ubiquitous in consumer contracts, require consumers to waive the constitutional right to a civil jury, access to court, and, increasingly, the procedural remedy of class representation. Because those rights cannot be divested without consent, the validity of pre-dispute arbitration agreements rests on the premise of consent, which is undermined if consumers do not understand the effect on their procedural rights of clicking a box or accepting a product. Using an online survey, the authors showed 668 consumers, approximately representing the U.S. adult population, a typical credit card contract with an arbitration clause that included a class action waiver. The survey results suggest a profound lack of understanding about the existence and effect of arbitration agreements among consumers. While 43% of respondents recognized that the sample contract included an arbitration clause, 61% of those believed consumers would, nevertheless, have a right to a court decision. Less than 9% realized both that the contract had an arbitration clause and that it would prevent consumers

from proceeding in court. With respect to the class waiver, four times as many respondents thought the contract did not block them from participating in a class action as realized that it did, even though the class action waiver was printed twice in bold in the sample contract, including one time in italics and ALLCAPS. Of the 303 respondents who claimed never to have entered into contracts with arbitration clauses, 87% did indeed have at least one account subject to an arbitration clause. The results suggest that many citizens assume that they have a right to judicial process and that this right will outweigh what one respondent referred to as a “whimsy little contract.” The results suggest further that citizens are giving up these rights unknowingly, either because they do not realize they have entered into an arbitration agreement or because they do not understand the legal consequences of doing so. Given the degree of misunderstanding the results demonstrate, the authors question whether meaningful consent is possible in the pre-dispute consumer arbitration context. Their survey results should cause concern among judges and policy makers considering mandatory pre-dispute arbitration agreements. [DRM Winter 2015]

Commercial Arbitration and Settlement: Empirical Insights Into the Roles Arbitrators Play

Penn State Yearbook on Arbitration and Mediation 6: 1-31 (2014)

Thomas J. Stipanowich & Zachary P. Ulrich

It is generally understood that arbitrators adjudicate disputes and mediators help settle them through negotiated agreement. But what role, if any, is there for arbitrators in promoting settlement? This aspect of arbitration is overlooked in some quarters, while occasionally provoking controversy. A thoroughgoing consideration of the subject is long overdue.... One relevant new source of information about arbitrators’ current practices and perspectives, including (among many other topics) their roles in “setting the stage” for settlement, is an extensive recent survey of experienced arbitrators co-sponsored by the College of Commercial Arbitrators (“CCA”), an organization comprised of more than two hundred of the U.S.’ most experienced and distinguished arbitrators, and the Straus Institute for Dispute Resolution (“the Survey”).

The Conventional Wisdom of Discharge Arbitration Outcomes and Remedies: Fact or Fiction

Mario F. Bognanno, Jonathan E. Booth, Thomas J. Norman, Laura J. Cooper & Stephen F. Befort

Cardozo Journal of Conflict Resolution 16: 153-185 (Fall 2014)

This study examines some commonly held beliefs about arbitration outcomes and remedies in employee discharge cases. Its findings reveal that some of these beliefs are probably fact while others are probably fiction. With data from 1,432 Minnesota discharge awards and data about the 74 arbitrators who decided them, eight truisms are examined. Specifically, the paper analyzes the frequency with which arbitrators use the Daugherty Seven Tests rubric to analyze record evidence and whether its use affects award outcomes; the distribution of varying quanta of proof that arbitrators require and how different quanta affects award outcomes; the effect of employee job tenure on award outcomes; and the effect of “last chance agreements” on award outcomes. Using a sub-sample of “reinstatement with back pay” awards, the study also examines the frequency with which arbitrators order the method by which back pay should be computed and the frequency with which they “retain jurisdiction” over their back pay awards.

This paper's findings can assist the attorney-advocate in estimating the probability of prevailing in a discharge case. Further, it can assist in judging how a case can be presented most persuasively. More generally, the data used in this discharge-based study are combined with discipline data to form the largest collection of published and unpublished discipline and discharge arbitration awards ever analyzed. The findings and implications from an analysis of these combined data are reported in the recently published book, "More Than We Ever Knew About Discipline And Discharge In Labor Arbitration: An Empirical Study" (Vandeplas Publishing, LLC). [DRM Summer 2015]

The Influence of Arbitrator Background and Representation on Arbitration Outcomes

9 Va. L. & Bus. Review 9(1): 43-90 (Fall 2014)

Stephen J. Choi, Jill E. Fisch & A.C. Pritchard

We study the role of arbitrator background in securities arbitration. We find that several aspects of arbitrator background are correlated with arbitration outcomes. Specifically, industry experience, prior experience as a regulator, and status as a professional or retired arbitrator are correlated with statistically significant differences in arbitration awards. The impact of these characteristics is affected by whether the arbitrator in question serves as the panel chair and by whether the parties to the arbitration are represented by counsel.

Our findings offer some preliminary insights into the debate over possible arbitrator bias. On the one hand, they suggest that the party selection process is relatively effective in screening for bias. The Financial Industry Regulatory Association has imposed increasingly more rigorous qualification requirements, specifically with respect to the independence of public arbitrators, but our study suggests that these requirements are unlikely to affect outcomes in most cases. On the other hand, party selection appears to be most effective when the parties are represented by counsel. Our findings highlight the importance of legal representation in the arbitration process.

Fundamentally Unfair: An Empirical Analysis of Social Media Arbitration Clauses

Thomas H. Koenig & Michael L. Rustad

Case Western Reserve Law Review 65: 341-411 (Winter 2014)

Our systematic examination of 329 of the world's largest social media providers reveals that 29 percent of these providers require users to submit to predispute mandatory arbitration as a condition of using their services. Forced consumer arbitration clauses are principally a U.S. phenomenon. Forty-two percent of the 188 U.S.-based social media providers contain forced arbitration clauses--in sharp contrast to only 13 percent of the 141 providers headquartered in foreign nations. Forty of the social networking websites (SNS) specify the American Arbitration Association (AAA) as the provider and nineteen specify JAMS, the two largest arbitration companies. We compare the fifty-nine social media terms of use (TOU) against the due process fairness tests that have been adopted by these two providers to mitigate the inevitable power imbalance in consumer arbitration proceedings. Our central finding is that the arbitration clauses of providers that specify the AAA and JAMS clearly fail the majority of the provisions of these two arbitral providers' consumer due process fairness tests. Arbitration clauses employed by social media have numerous "gotcha" provisions such as hard damage caps that place an absolute dollar limit on recovery that is significantly below the cost of filing an arbitral claim with either the AAA or JAMS. Our secondary analysis of AAA and JAMS arbitration reports establishes that consumer arbitration agreements have a deterrent effect, blocking all but a handful of social media users from filing claims. In effect, social media providers, encouraged by

the U.S. Supreme Court's endorsement of mandatory consumer arbitration, have constructed a liability-free zone where social media users have rights without remedies if social media providers breach their TOU, invade their privacy, or infringe their intellectual property rights. These aggressive arbitration clauses are unlikely to be enforced in the European Union, or even accepted by the most commonly specified arbitral providers, so social networking sites need to draft more balanced TOU that pass due process fundamental fairness rules.

Does Information about Arbitrators' Win/Loss Ratios Improve Their Accuracy?

Alon Klement & Zvika Neeman

Journal of Legal Studies 42(2): 369-397 (June 2013)

This paper examines how providing litigants with information about arbitrators' win/loss ratios affects arbitrators' incentives in deciding the cases before them in an impartial and unbiased manner. We show that if litigants are informed about arbitrators' past decisions, then arbitrators might want to make an incorrect decision when a correct decision would raise the suspicion that they are biased. Therefore, providing information about arbitrators' past decisions might create adverse incentive effects and reduce the accuracy of arbitration. We compare the accuracy of arbitrators' decisions under different arbitrator selection procedures and discuss the implications for the design of arbitration rules by arbitration and dispute resolution providers and by court-administered arbitration programs.

ARBITRATION: INTERNATIONAL/INVESTMENT TREATY

Inside the Arbitrator's Mind

Susan D. Franck, Anne Van Aaken, James Freda, Chris Guthrie & Jeffrey J. Rachlinski
Emory Law Journal 66(5): 1115-1174 (2017)

Arbitrators are lead actors in global dispute resolution. They are to global dispute resolution what judges are to domestic dispute resolution. Despite its global significance, arbitral decision making is a black box. This Article is the first to use original experimental research to explore how international arbitrators decide cases. We find that arbitrators often make intuitive and impressionistic decisions, rather than fully deliberative decisions. We also find evidence that casts doubt on the conventional wisdom that arbitrators render "split the baby" decisions. Although direct comparisons are difficult, we find that arbitrators generally perform at least as well as, but never demonstrably worse than, national judges analyzed in earlier research. There may be reasons to prefer judges to international arbitrators, but the quality of judgment and decision making, at least as measured in these experimental studies, is not one of them. Thus, normative debates about global dispute resolution should focus on using structural safeguards and legal protections to enhance quality decision-making, regardless of decision maker identity or title. [DRM Summer 2017]

Investor-State Disputes at the SCC

Celeste E. Salinas Quero

Published by the Arbitration Institute of the Stockholm Chamber of Commerce (2017). Available at <http://www.sccinstitute.com/about-the-scc/news/2017/new-report-on-investment-arbitration-at-the-scc/>

The new report prepared by legal counsel Celeste E. Salinas Quero describes, among others, the economic sectors involved, the states' measures most frequently challenged by investors, the outcomes and costs of investment disputes under the SCC Rules. SCC is a preferred venue for investment arbitrations. Over the past 20 years, the SCC has administered and acted as appointing authority in more than 90 investment arbitrations, both in small-sized and in large-scale disputes. The report shows that most awards have been rendered in favor of respondent states, with 21% of tribunals declining jurisdiction, 37% denying all of the investor's claims and 42% of tribunals upholding the investor's claims in part or in full. As regards costs, the report reveals that while "splitting the baby" is a common approach taken by tribunals, most tribunals allocate and apportion the costs between the parties in a proportion that reflects each party's relative success and conduct throughout the proceedings.

The David Effect: Underdogs and Investment Arbitrators

Sergio Puig & Anton Stenzhnev

European Journal of International Law (2017 Forthcoming); Arizona Legal Studies Discussion Paper No. 16-28. Available at SSRN: <https://ssrn.com/abstract=2829006> or <http://dx.doi.org/10.2139/ssrn.2829006>

The legitimacy of investor-state dispute settlement or 'ISDS' is fiercely contested. Chiefly, scholars argue this arbitration mechanism empowers investors from developed states over governments of developing host states. In response, investors (mostly) from developed states argue that without adequate protections, including investor-state arbitration, they would be unable to prevent and resist opportunistic actions like expropriations by developing host states with weak rule of law and institutions. In the resulting setting, developing states facing claims by investors seem to have limited ability to improve their standing in litigation. Based on an experiment conducted on 266 arbitrators, we argue that one potential avenue is for developing host states to exploit their 'underdog' status. Our results show that arbitrators may be prone to the 'David Effect' — a bias to favor the perceived weaker party in the arbitration. Surveyed arbitrators were more likely to award low income respondent states reimbursement of their legal costs compared to middle income states. Likewise, investors from less developed economies were also more likely to have their costs reimbursed when they win compared to investors from wealthy economies. Our study suggests that the legitimacy of legal regimes depends, in the minds of decision-makers, on a minimum expectation of fairness. This hints at the importance of arbitrators' beliefs about the distribution of power among litigants in explaining the functioning of the investor-state arbitration system.

Arbitral Lawmaking and State Power: An Empirical Analysis of Investment Arbitration

Alec Stone Sweet

Available on SSRN at: <https://ssrn.com/abstract=2919723> (February 2017)

The paper focuses on arbitral lawmaking (the development of precedent-based frameworks of argumentation and justification), and state responses to that lawmaking (as registered in subsequent treaty-making). The paper reports analysis of: (i) all publicly-available awards (n=159) in which tribunals resolved disputes under the headings of expropriation and fair and equitable treatment, and under an umbrella clause; and (ii) investment treaties signed between 2002 and 2015 (n=398), when available in English. Three findings deserve emphasis. First, in most disputes, investors do not challenge general state measures; when they do, they are far less to prevail than when they contest acts specifically targeting their investments. Second,

the evidence does not support the view that arbitral doctrine produces outcomes that are biased against states. In the vast majority of awards, tribunals take seriously the respondent state's 'right to regulate' in the public interest. Third, the regime has not generated strong 'backlash' in any systemic sense. States continue to sign investment treaties; the mix of treaty protections on offer has remained remarkably stable; and new treaties have largely consolidated the case law that the most influential tribunals had already developed.

Political Risk and Investment Arbitration: An Empirical Study

Cedric G. Dupont, Thomas Schultz & Merih Angin

Journal of International Dispute Settlement 7(1): 136-160 (2016)

Investment arbitrations should not happen too often, because they are costly processes for both parties. Yet they regularly happen. Why? We investigate the hypothesis that investment arbitrations are used as a means of last resort, after dissuasion has failed, and that dissuasion is most likely to fail in situations where significant political risk materializes. Investment arbitration should thus tend to target countries in which certain types of political risk has materialized. In order to test this hypothesis, we focus in this paper on two drivers of political risk: bad governance, and economic crises. We test various links between those two drivers of risk and arbitration claims. We use an original dataset that includes investment claims filed under the rules of all arbitration institutions as well as ad hoc arbitrations. We find that bad governance, understood as corruption and lack of rule of law (using the WGI Corruption and WGI Rule of Law indexes), has a statistically significant relation with investment arbitration claims, but economic crises do not.

Behavioral Insights into International Arbitration: An Analysis of How to De-Bias Arbitrators

Jan-Philip Elm

The American Review of International Arbitration 27(1): 75-143 (2016)

Empirical evidence indicates that national court judges fall prey to cognitive biases and heuristics. The same may be assumed for international arbitrators. Improving third-party adjudication through behaviorally informed rules on procedure thus seems to be an avenue of research worth being pursued. In applying behavioral law and economics to international commercial arbitration, the present analysis shows (1) that behavioral economics can help to understand arbitrators' behavior and (2) suggests how the law may mitigate their cognitive biases and heuristics in order to design more effective, efficient, and fair arbitral proceedings under the UNCITRAL Arbitration Rules. The analysis focuses on (i) the representativeness heuristic, (ii) anchoring, (iii) the hindsight bias, (iv) framing effects, and (v) the egocentric bias. Building on their underlying dynamics and recent research on context-dependent decision-making, corresponding debiasing mechanisms may be implemented into arbitral proceedings through either behaviorally informed (model) arbitration clauses or by complementing existing frameworks such as the UNCITRAL Notes on Organizing Arbitral Proceedings in a behaviorally informed manner. Hence, in applying insights from economics and psychology to international arbitration, the present analysis adopts a prescriptive approach, examining how to actively mitigate arbitrators' cognitive shortcomings as much as possible. Accuracy in fact determination – or the search for the truth – is perceived as the central motivation of this approach. As prescriptive insights from behavioral economics are able to allow for more accurate judgment, behaviorally informed rules on procedure not only benefit disputing parties by enhancing the

idea of due process, but in doing so, they also empower international arbitration as a legal institution when confronted with national legal systems.

Investment Treaty Arbitration and Institutional Backgrounds: An Empirical Study

Wisconsin International Law Journal 34: 31-90 (Summer 2016)

Suha Jubran Ballan

Investment treaty arbitration provides a unique vantage point to examine how tribunals' behavior changes according to the institutional context within which they act: similar legal norms, standards, and rules may be interpreted and applied by the same community of international arbitrators while acting on different institutional backgrounds. Yet, such a perspective has been overlooked in the literature, largely because the institutional context of the different dispute settlement mechanisms has been captured only through its formal arrangements or through focusing on individual arbitrators or tribunals. This paper argues that the neo-institutionalist tradition in the social sciences has much to contribute to our understanding of investment treaty arbitration, and demonstrates the potential of such an approach through an empirical study. The paper reveals that formal and informal institutional arrangements in investment treaty arbitration are linked to different tribunals' behavior in at least four variables: duration of proceedings, number of sessions held, number of references to investment treaty arbitration awards and even outcome of claims. Hence the study indicates the high potential for institutional arrangements to explain the behavior of arbitration tribunals in particular and of international judicial institutions in general and calls for devoting more attention to this type of inquiry.

Predicting Outcomes in Investment Treaty Arbitration

Susan D. Franck & Lindsey E. Wylie

Duke Law Journal 65: 459-526 (2015)

Crafting appropriate dispute settlement processes is challenging for any conflict management system, particularly for politically sensitive international economic law disputes. As the United States negotiates investment treaties with Asian and European countries, the terms of dispute settlement have become contentious. There is a vigorous debate about whether investment treaty arbitration (ITA) is an appropriate dispute settlement mechanism. While some sing the praises of ITA, others offer a spirited critique. Some critics claim ITA is biased against states, while others suggest ITA is predictable but unfair due to factors like arbitrator identity or venue. Using data from 159 final cases derived from 272 publicly available ITA awards, this Article examines outcomes of ITA cases to explore those concerns. Key descriptive findings demonstrate states reliably won a greater proportion of cases than investors; and for the sub-set of cases investors won, the mean award was US \$45.6 million with mean investor success rate of 35%. State success rates were roughly similar to respondent-favorable or state-favorable results in whistleblowing, qui tam, and medical malpractice litigation in U.S. courts. The Article then explores whether ITA outcomes varied depending upon investor identity, state identity, the presence of repeat-player counsel, arbitrator-related, or venue variables. Models using case-based variables always predicted outcomes whereas arbitrator-venue models did not. The results provide initial evidence that the most critical variables for predicting outcomes involved some form of investor identity and the experience of parties' lawyers. For investor identity, the most robust predictor was whether investors were human beings, with cases brought by people exhibiting greater success than corporations; and when at least one named investor or corporate

parent was ranked in the Financial Times 500, investors sometimes secured more favorable outcomes. Following Mark Galanter's scholarship demonstrating repeat player lawyers are critical to litigation outcomes, attorney experience was also critical to ITA outcomes. For investors, investors with experienced counsel were more likely to obtain a damage award against a state, whereas, states retaining experienced counsel were only reliably associated with decreased levels of relative investor success. Although there was variation in outcomes, ultimately, the data did not support a conclusion that ITA was completely unpredictable; rather, the results called into question critiques of ITA and did not prove ITA is a wholly unacceptable form of dispute settlement.

Legitimacy, Evolution, and Growth in Investment Treaty Arbitration: Empirically Evaluating the State-of-The-Art

Daniel Behn

Georgetown Journal of International Law 46(2): 363-415 (2015)

The legitimacy debates surrounding investment treaty arbitration are intensifying. At the same time, the number of claims filed continues on a growth trajectory. Some commentators believe that the practice of investment treaty arbitration will evolve over time; and as the regime evolves, many - if not all - of its claimed legitimacy deficits will be resolved. This Article will test this evolutionary thesis by empirically evaluating investment treaty arbitration cases that have been fully or partially resolved in the last three years (September 2011 through September 2014) in order to assess the extent to which the regime is - in fact - evolving and whether the empirical evidence supports or contradicts many of the legitimacy critiques currently lodged against the regime. Special attention will be placed on assessing issues of diversity and the fair distribution of claims.

The Arbitrator Survey: Practices, Preferences and Changes on the Horizon

The American Review of International Arbitration 26(4): 517-538 (2015)

Edna Sussman

Arbitration counsel want to win. Understanding how arbitrators think, what they favor, how they make decisions, and how they work together can guide counsel in devising their strategy and developing their presentations. For their part, arbitrators want to provide a fair hearing that meets the parties' needs. Knowing how other arbitrators handle various procedural aspects, what influences their thinking, and what they prefer can inform arbitrators in conducting their own arbitrations most effectively. Several excellent works have been published in recent years which approach the subject of arbitrator decision-making from the perspective and mindset of many notable arbitration practitioners. However, empirical data based on a pool of arbitrator responses is scarce. In order to inform the arbitration community and advance the knowledge base on arbitrator preferences and decision-making, I conducted a survey. The survey was distributed through various listservs both in the U.S. and to colleagues around the world and drew 401 responses. This article reports and comments on the survey responses, grouped into six sections: the constitution of the tribunal, fundamentals, narrowing the issues and preliminary views, deliberations, the award, and mediation. It is hoped that the discussion will aid counsel and arbitrators in the conduct of arbitrations and provoke consideration of ways to improve the process in the never-ending search for excellence in arbitration.

Arbitration in Southern Europe: Insights from a Large-Scale Empirical Study

Tony Cole, Pietro Ortolani & Barbara Alicja Warwas

The American Review of International Arbitration 26: 187-268 (2015)

This empirical research took the form of a Survey of arbitration practitioners across the European Union and Switzerland, consisting of 95 questions, and addressing such diverse topics as the backgrounds of arbitration practitioners, the procedures used in the arbitrations in which respondents had been involved, the considerations important for recommending arbitration and for selecting an arbitrator, and environmental questions such as the attitude of judges towards arbitration and the desirability of action by the European Union to harmonize arbitration law across the European Union. The present article reports on and discusses the results of this Survey with respect to six States collectively described here as constituting “Southern Europe”: Cyprus, Greece, Italy, Malta, Portugal and Spain. While these States share an obvious geographic proximity, it is important to emphasize that the decision to collect them into a single article was made not just on this geographic basis, but also due to certain cultural and legal elements shared by these States that might be thought to impact on local arbitral practice. The goal of this article is not merely to report the results of the Survey, but is instead to use the results of the Survey, interpreted in the light of the additional information developed in the course of the Study, to generate a picture of arbitration in each of these States. In this way the article seeks to deviate from the norm of concentration upon elite international arbitration practice, in order to provide important new information on the realities of and variations that exist in the practice of arbitration across Southern Europe. Recognizing and appreciating this reality of diversity provides an important foundation for enriching the academic study of arbitration beyond this single article and these six States, moving such study away from an exclusive focus on elite arbitral practice, towards an appreciation of the significant variations that do indeed often characterize the reality of arbitration around the world.

The Diversity Challenge: Exploring the “Invisible College” of International Arbitration

Susan D. Franck, James Freda, Kellen Lavin, Tobias A. Lehmann & Anne Van Aaken

Columbia Journal of Transnational Law 53: 429-506 (2015)

With a lack of accurate, complete, and publicly available data about international arbitrators and practitioners, speculation about membership in the “invisible college” of international arbitration abounds. Using data from a survey of attendees at the prestigious and elite biennial Congress of the International Council for Commercial Arbitration (413 subjects who served as counsel and 262 who acted as arbitrators, including 67 investment treaty arbitrators), permitted one glimpse into the membership of the international arbitration community. The median international arbitrator was a fifty-three year old man who was a national of a developed state reporting ten arbitral appointments; and the median counsel was a forty-six year old man who was a national of a developed state and had served as counsel in fifteen arbitrations. In addition: 1) 17.6% of the arbitrators were women, and there was a significant age difference such that male arbitrators were approximately ten years older than women; 2) for those acting as international arbitrators, the authors could not identify a significant difference in the number of appointments women and men obtained; 3) depending upon how development status was defined, developing world arbitrators accounted for fifteen to twenty percent of arbitrators; and 4) for all measures used to analyze development status, arbitrators from the developing world received a statistically lower number of appointments than their developed world counterparts. Recognizing the data revealed diversity in international arbitration

is a complex phenomenon, the data nevertheless supported, rather than disproved, claims that international arbitration is a relatively homogenous group. Acknowledging that international arbitration may improve over time and diversity issues challenge other forms of dispute resolution, diversity levels in international arbitration were somewhat lower than in several national court systems but were generally reflective of diversity levels in other international courts and tribunals. [DRM Summer 2015]

Consent Awards In International Arbitration: From Settlement To Enforcement

Yaraslau Kryvoi & Dmitry Davydenko

Brooklyn Journal of International Law 40(3): 827-868 (2015)

Although over a third of all arbitration proceedings result in settlement agreements very little has been written on the legal status of consent awards in international arbitration. Drawing on comparative analysis of procedural rules and practice of major arbitration tribunals, domestic law of common and civil law jurisdictions, this Article presents the first major study of consent awards in international arbitration. Consent awards, being effectively settlement agreements recorded by arbitration tribunals as awards, raise a number of difficult legal questions, ranging from the right of arbitrators to refuse recoding the settlement as a consent award to the possible use of consent awards to cover illegal activities. Understanding what makes consent awards different from “normal” arbitration awards will help successfully navigate from settlement to enforcement.

Diversity in Arbitration in Europe: Insights from a Large Scale Empirical Study

Tony Cole & Pietro Ortolani

Transnational Dispute Management Online Journal 12(4) (July 2015). See also University of Leicester School of Law Research Paper No. 16-2. Available at SSRN: <http://ssrn.com/abstract=2626347>

While issues of gender and ethnic diversity have become prominent in all areas of law, there is reason to believe that the insular nature of the arbitration community, combined with the importance of personal connections to receiving career opportunities in arbitration will make diversity a particularly complex matter in arbitration as a field of professional practice. That is, while there is no evidence that arbitration practitioners are as a group any more likely to discriminate on the basis of ethnicity or gender than other legal professionals, fields in which career progression is tightly linked to receiving the support of “gatekeepers” can present particular obstacles for non-Male and minority practitioners, who may be less likely to make strong social connections with those gatekeepers, and so be less likely to receive opportunities for career progression. In 2014 a team at Brunel University, as part of a study being conducted for the European Parliament, undertook a large-scale survey of arbitration practitioners across the European Union and Switzerland. While this Survey was not primarily focused on questions of diversity, all respondents were asked to self-identify both their gender and their ethnicity, with selection of multiple ethnicities being permitted. Consequently, although the Survey aimed at offering a comprehensive picture of arbitration in all EU Member States and Switzerland, rather than focusing on the specific question of diversity, it generated information on both the levels of non-Male and ethnic minority involvement in arbitration, and, through cross-analysis of data, on career progression within arbitration of non-Male and ethnic minority arbitration practitioners. This article will provide a brief overview of these results, which do indeed indicate ongoing diversity-related problems within arbitration.

Is the End Nigh Again? An Empirical Assessment of the 'Judicialization' of International Arbitration

Remy Gerbay

American Journal of International Arbitration 25(2): 223-247 (2014)

The central questions that this article addresses are: Has there been a significant judicialization of international arbitration in recent years? And is this judicialization really a sign of a loss of attraction for international arbitration? For these purposes, conventional assumptions about the extent and meaning of the phenomenon of judicialization in international arbitration are assessed in the light of empirical data made available by the leading institutions in the field of international arbitration, including the International Court of Arbitration of the International Chamber of Commerce (“ICC”), the London Court of International Arbitration (“LCIA”), the International Center for Dispute Resolution (“ICDR”), and the Arbitration Institute at the Stockholm Chamber of Commerce (“SCC”). his article answers its two research questions negatively, for two main reasons. First, empirical evidence does not support the assumption that international arbitration has recently become more judicialized. The evidence suggests that, if there has been judicialization, the bulk of it must have happened over two decades ago, before the recent period of exponential growth in the use of international arbitration. Second, the increased formality and sophistication of international arbitration procedure is partly due to the evolution of the dispute types referred to international arbitration. In particular, there has been an increase in the value and complexity of disputes. In short, judicialization is more a sign of international arbitration’s mutation than evidence of its impending extinction. [DRM Winter 2016]

Conflating Politics and Development? Examining Investment Treaty Arbitration Outcomes

Susan D. Franck

Virginia Journal of International Law 55: 13-71 (2014)

International dispute settlement is an area of ongoing evaluation and tension within the international political economy. As states continue their negotiations for the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP), the efficacy of international arbitration as a method of dispute settlement remains controversial. Whereas some sing its praises as a method of protecting private property interests against improper government interference, others decry investment treaty arbitration (ITA) as biased against states. The literature has thus far not disentangled how politics and development contribute to investment dispute outcomes. In an effort to control for the effect of internal state politics, this Article offers the first analysis of ITA outcomes, focusing on respondent states’ development status while simultaneously controlling for states’ democracy levels. Using a dataset of 159 final ITA awards from prior to January 2012, the Article conducts quantitative analyses of outcomes as a function of raw wins and losses, amounts awarded, and relative investor success. Initially, when evaluating outcomes based on a respondent state’s membership in the Organisation for Economic Cooperation and Development (OECD) or a state’s score on the UN Development Programme (UNDP) Human Development Index, it was not possible to identify a reliable link to outcomes. Only defining a respondent’s development status using a World Bank classification generated reliable differences for Upper-Middle income states, and only for two measures of outcome — namely raw wins and amounts awarded. Using the World Bank measure, there was no statistically significant relationship with relative investor success. None of these analyses, however, controlled for the level of internal state democracy to identify how democracy levels,

which can reflect good governance infrastructure, might contribute to outcomes. After controlling for the effect of a state's internal democracy levels, twelve analyses were unable to identify a reliable link with ITA outcomes and development status irrespective of how development status was defined. While the Article cannot conclusively exclude the possibility of systemic bias in ITA against the developing world, it provides additional evidence suggesting the potential absence of such bias or the importance of alternative explanatory variables. The results also suggest that focusing on development status alone may be unwarranted, and future research should explore internal levels of democracy or other indicators of good governance, which could be associated with the decreased risk of a state loss. The Article concludes that normative choices focused solely on respondent state development status miss an opportunity to craft normative solutions tailored to redress tangible problems. By focusing on variables that demonstrably contribute to variance in ITA outcomes, stakeholders could construct more appropriate international dispute settlement processes in a time of international economic transition.

An Empirical Study Of Arbitrators Acting As Mediators In China

Fan Kun

Cardozo J. Of Conflict Resolution 15(3): 777-811 (2014)

While there are ongoing the debates on the appropriateness of arbitrators acting as mediators in a pending arbitration (this process is often described as 'arb-med'), such practice seems to work well in China. In this respect, the Chinese model may be useful in contributing to the practice in other jurisdictions. How is the role of arbitrators perceived in China? How do Chinese arbitrators usually promote settlement? Could we generalize some good practice of arb-med based on the Chinese experience? Our perceptions about the conduct of arbitrators are often driven by anecdotes. This is partly because of the confidential nature of arbitration proceedings. The problem with anecdotes is that it is difficult to evaluate whether the event or practice described is 'typical or atypical, frequent or infrequent, ordinary or extreme, as common as a rabbit or as rare as a rhinoceros' (DRAHOZAL, 2003). More systematic research is needed by supplementing anecdotes with empirical studies. Based on the findings in a series of interviews with experienced Chinese arbitrators conducted during a research trip with Professor Kaufmann-Kohler in March and April 2007, the author conducted a further survey between November 2011 and April 2012, in order to examine the Chinese arbitrators' general attitudes on arb-med, how the process is typically conducted, and the common techniques adopted in facilitating settlement. At a time when arbitration has become too costly and too slow, these research findings may generalize some good practice on the effective use of arb-med based on the Chinese experience, and this may improve the administration of justice. Section I of the article reviews relevant literature on the general attitudes of arbitrators in settlement facilitation. Section II defines the scope of the current study and describes the empirical methodology. Section III analyses the results of empirical research and gives a detailed description of the attitudes and practice of arb-med in China. Section VI discusses further implications of the Chinese experience on the practice in other jurisdictions. Part V concludes.

Investment Arbitration: Promoting the Rule of Law or Over-Empowering Investors? A Quantitative Empirical Study

Thomas Schultz & Cédric Dupont

European Journal of International Law 25(4): 1147-1168 (November 2014)

Investor-state arbitration, also called investment arbitration, is often accused of harming developing states facing economic hardship for the benefit of a wealthy few from the global north. Its proponents respond that investment arbitration is the only means available to resolve disputes impartially and that its use clarifies international law. In this article, the authors investigate the empirical manifestations of the uses and functions of investment arbitration with an original dataset that compiles more than 500 arbitration claims from 1972 to 2010. The study reveals that until the mid- to late 1990s, investment arbitration was mainly used in two ways. It was a neocolonial instrument to strengthen the economic interests of developed states, or it was a means to impose the rule of law in nondemocratic states with a weak law-and-order tradition. But since the mid- to late 1990s, the main function of investment arbitration has been to provide guideposts and determine rights for investors and host states – and thus increase the predictability of the international investment regime. In doing so, however, it seems to favor the “haves” over the “have nots,” making the international investment regime harder on poorer countries than on richer ones. [DRM Summer 2014]

Lessons for the US System of Financial Arbitration: A Responsive Empirical Exploration of Arbitration and Ombudsman Services

Frontiers of Law in China 8(4): 651-688 (December 2013)

Shahla F. Ali

The United States largely relies on a system of arbitration to handle retail consumer financial disputes. This approach has undergone significant challenges in recent years particularly in light of recent abuses of consumer credit arbitration mechanisms. This paper reports on the result of a non-randomized small-n survey which we label the “Financial Dispute Study” aiming at evaluating the relative effectiveness of two major approaches to financial dispute resolution — arbitration and ombudsman services. Nearly a hundred survey questionnaires were distributed to financial dispute resolution practitioners throughout the world. A total of forty-eight arbitrators and ombudsmen from East Asia, North America, Europe, the Middle East and Africa responded. In the Study the participants were asked how practitioners viewed the level of satisfaction, settlement rate and perceived increase or decrease in the use of the given method of financial dispute resolution — whether arbitration or ombudsman service. This paper analyzes the method-effect, meaning we focus on the effect of the selected method of financial dispute resolution (whether ombudsman or arbitration) on settlement, satisfaction and increase or decrease in use. In doing so, the study evaluates the relative effectiveness of two major approaches that a financial dispute resolution mechanism might adopt. We find no statistically significant evidence that a given method, arbitration or the use of ombudsman process has a large (or any) effect on the settlement rate, level of satisfaction or usage. To the contrary, arbitration and ombudsman group point estimates are generally close to one another. Nevertheless, the data indicate slightly higher levels of settlement and overall increase in use in ombudsman processes worldwide. These findings, combined with feedback from open ended interviews along with structural safeguards against repeat-player advantage integrated into the ombudsman process ensuring that awards are rendered without prejudice to the claimant, suggest that merit may be found in exploring the potential applications and use of ombudsman processes for the resolution of consumer financial disputes. The paper concludes with some limited interpretation of the results.

ARBITRATION: EMPLOYMENT

Comparing the Effects of Judge's Gender and Arbitrators' Gender in Sex Discrimination Cases and Why it Matters

Pat K. Chew

Ohio St. J. on Disp. Resolution 32: 195-217 (2017)

Empirical research substantiates that the judges' gender makes a difference in sex discrimination and sexual harassment cases. Namely, female judges are more likely than male judges to render a decision in the employee plaintiffs' favor, presumably because male and female judges have different perspectives on what constitutes sex discrimination and sexual harassment. The author's empirical study of arbitration of sex discrimination cases administered by the American Arbitration Association between 2010 and 2014, however, finds that this judges' "gender effect" does not occur. Namely, there is no significant difference in the decision-making patterns of female and male arbitrators as indicated by case outcomes.

Judicial Review of Teacher-School Board Grievance Arbitration: An Empirical Analysis

Perry A. Zirkel

Journal of Law and Education 45: 181-208 (Spring 2016)

This article provides an empirical analysis of published and unpublished court decisions that reviewed grievance arbitration in the context of teacher-board collective bargaining agreements (CBAs). The case coverage for the analysis is for the ten-year period from August 1, 2005 to July 31, 2015. The two overlapping issues are (1) arbitrability, which usually arises but not uniformly during the pre-arbitration phase *182 (i.e., prior to the hearing), and (2) vacatur, which arises during the postarbitration phase (i.e., after the award). The article follows a traditional organization for empirical legal scholarship. The first part provides the reader with a brief overview of the evolving legal framework. The second part reviews the applicable research literature to date. The third part summarizes the method and results of the empirical analysis. Finally, the fourth part discusses the results with particular attention to their practical significance and recommendations for follow-up research.

Individual Employment Rights Arbitration in the U.S.: Actors and Outcomes

Alexander J.S. Colvin & Mark Gough

Industrial and Labor Relations Review 68(5): 1019-1042 (2015)

This study examines disposition statistics from 2,211 employment arbitration cases administered over a nine year period by the American Arbitration Association (AAA) to investigate the process of dispute resolution in this new institution of employment relations. We find that the institutional structure of arbitration affects employee outcomes, in particular win rates and award amount, raising concerns about systemic employer advantage. This study provides evidence of a significant repeat employer-arbitrator pair effect; employers that use the same arbitrator on multiple occasions win more often relative to employers appearing before an arbitrator for the first time. Employee win rates are higher in California and lower in Texas compared to those filed in all other states. Female arbitrators and members of the National Academy of Arbitrators (NAA) render awards in favor of employees less often than do male arbitrators and non-NAA members. And former judges award higher damages, on average, than arbitrators without judicial experience.

The High Costs of an Inexpensive Forum: An Empirical Analysis of Employment Discrimination Claims Heard in Arbitration and Civil Litigation

Mark D. Gough

Berkeley Journal of Employment and Labor Law 35: 91-112 (2014)

In the wake of the Supreme Court's *Gilmer* decision in 1991, mandatory arbitration clauses, also known as pre-dispute arbitration clauses, have become an increasingly common fixture in employment agreements and handbooks in non-union organizations. The creation of a private, alternative forum for the resolution of individual employment rights is understandably provocative, but given arbitration's private nature, it has been difficult for scholars to collect and analyze robust statistical evidence about this new institution. Using data on recent employment discrimination verdicts from a 2013-2014 survey of approximately 700 practicing employment attorneys, this article investigates employment arbitration's effect on employee access to justice and the quality of justice received. Consistent with previous research, the author finds employee win rates and award amounts are lower in arbitration compared to those found in civil litigation. Improving on existing literature, however, the author finds no evidence that inferior outcomes can be explained by differences in case characteristics between the forums: while the use of summary judgment is more frequent in litigation, employee plaintiffs in arbitration, on average, have higher salaries, are employed by organizations of comparable size, allege similar discriminatory acts, and present cases of equal merit relative to plaintiffs pursuing claims through civil litigation. [DRM Winter 2015]

Employment Arbitration In The Securities Industry: Lessons Drawn From Recent Empirical Research

Ryan Lamare & David B. Lipsky

Berkeley Journal of Employment and Labor Law 35(1): 113-133 (2014)

in this article, we use evidence gathered from employment arbitration cases arising in the securities industry to address several research questions that emanate from the debate over the arbitration of employment disputes. we empirically answer the following questions: (1) are critics correct in asserting that employment arbitration favors repeat players? (2) do employees fare better under voluntary arbitration than they do under mandatory arbitration? (3) are employees who allege violations of their civil rights, through the filing of discrimination charges, treated differently from those filing other types of claims? (4) does the gender of the parties involved in the arbitration process affect outcomes in any way? (5) is there evidence that companies learn from, or are affected by, the results of prior arbitration awards when dealing with a current claim? although the literature has offered some answers to these questions, this article provides a holistic review and overview of the arbitration experience within the securities industry and a summation of quantitative evidence on the subject.

Saturns and Rickshaws Revisited: What Kind of Employment Arbitration System has Developed?

Alexander J.S. Colvin & Kelly Pike

Ohio State J. on Dispute Resolution 29: 59-83 (2014)

The authors examined all employment arbitration cases administered by the AAA and terminated in 2008. The study's purpose was to investigate the degree to which employment arbitration accords with the vision of a simplified, but accessible and effective alternative to standard litigation for resolving workplace disputes. Nearly three-quarters of the cases arose

from employer requirements that disputes be resolved through arbitration. The typical case in these employer-required arbitration proceedings, as in litigation, is a statutory claim with a damage claim of well over \$100,000. Smaller claims, often seen as unable to access the litigation system, have not turned to arbitration—even though, under AAA’s rules, employers pay the arbitration fees, which at almost \$10,000 per case could otherwise be a barrier to access. Employees win just under one-quarter of the arbitration cases and some recover substantial damages. However, employee win rates and damage amounts in arbitration are lower than those found in litigated cases that get to the trial stage. Self-represented employees, who make up a third of those bringing claims (as compared to about one-quarter in litigated cases) have lower success rates and receive much smaller damages than represented employees. As with litigation, settlement is the resolution mechanism for most cases in arbitration. Summary judgment motions have become a feature of employment arbitration as well; such motions are brought in a quarter of the cases and most are successful. The time to get an arbitration hearing, while arguably still too long at around a year, is shorter than is typical in litigation. The authors conclude that employment arbitration is, in a number of respects, replicating the limitations of the litigation system rather than providing a more accessible and effective system of workplace justice. [DRM Winter 2014]

The Effect of Gender on Awards in Employment Arbitration Cases: The Experience in the Financial Securities Industry

David Lipsky, Ryan Lamare & Abhishek Gupta
Industrial Relations 52(1): 314-342 (January 2013)

In this article, the authors analyze the outcomes of nearly 3,200 awards issued in employment disputes settled by arbitration in the securities industry over the period 1986–2008. The large amount of litigation in the securities industry alleging discrimination by securities firms against the women they employ led the authors to hypothesize that women would do less well than men in these arbitration cases. The study revealed that the gender of the complainant and the complainant’s attorney (but not the gender of the respondent’s attorney or the arbitrator) had significant effects on the size of the awards. Across the range of analyses conducted by the authors, female complainants did less well than male complainants in these employment arbitration cases. The gender of the attorney representing the complainant also affected the size of the award: male attorneys obtained larger awards than female attorneys. After examining the features of the arbitration process for which they had data (admittedly limited) and finding that gender differences in arbitration awards were robust across all analyses, the authors hypothesize that these differences are more likely due to persistent differential treatment of women in the securities industry than to the arbitration process (e.g., large differentials in salary likely result in large differentials in arbitration awards). [DRM Winter 2014]

ARBITRATION: CONSUMER

After the Revolution: An Empirical Study of Consumer Arbitration

David Horton & Andrea Cann Cahndrasekher
Georgetown Law Journal 104: 57-124 (2015)

For decades, mandatory consumer arbitration has been ground zero in the war between the business community and the plaintiffs’ bar. Some courts, scholars, and interest groups argue that the speed, informality, and accessibility of private dispute resolution create a conduit for

everyday people to pursue claims. However, others object that arbitration's loose procedural and evidentiary rules dilute substantive rights, and that arbitrators favor the repeat playing corporations that can influence their livelihood by selecting them in future matters. Since 2010, the stakes in this debate have soared, as the U.S. Supreme Court has expanded arbitral power and mandated that consumers resolve cases that once would have been class actions in two-party arbitration. But although the Court's jurisprudence has received sustained scholarly attention, both its defenders and critics do not know how it has played out behind the black curtain of the extrajudicial tribunal. This Article offers fresh perspective on this debate by analyzing nearly 5,000 complaints filed by consumers with the American Arbitration Association between 2009 and 2013. It provides sorely-needed information about filing rates, outcomes, damages, costs, and case length. It also discovers that the abolition of the consumer class action has changed the dynamic inside the arbitral forum. Some plaintiffs' lawyers have tried to fill this void by filing numerous freestanding claims against the same company. Yet these "arbitration entrepreneurs" are a pale substitute for the traditional class mechanism. Moreover, by pursuing scores of individual disputes, they have inadvertently transformed some large corporations into "extreme" repeat players. The Article demonstrates that these frequently-arbitrating entities win more and pay less in damages than one-shot entities. Thus, the Court's consumer arbitration revolution not only shields big businesses from class action liability, but gives them a boost in the handful of matters that trickle into the arbitral forum. [DRM Winter 2016]

Arbitration Study: Report to Congress, Pursuant to Dodd Frank Wall Street Reform and Consumer Protection Act § 1028(a)

Available at http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf (2015)

In Section 1028(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Congress instructs the Consumer Financial Protection Bureau (the "Bureau") to study "the use of agreements providing for arbitration of any future dispute . . . in connection with the offering or providing of consumer financial products or services," and to provide a report to Congress on the same topic. This document presents the results of that study.

Skeletons in the Database: An Early Analysis of the CFPB's Consumer Complaints

Ian Ayres, Jeff Lingwall & Sonia Steinway

Yale Law & Economics Research Paper No. 475 (July 2013). Available at SSRN:

<https://ssrn.com/abstract=2295157> or <http://dx.doi.org/10.2139/ssrn.2295157>

Analyzing a new dataset of 110,000 consumer complaints lodged with the Consumer Financial Protection Bureau, we find that (i) Bank of America, Citibank, and PNC Bank were significantly less timely in responding to consumer complaints than the average financial institution; (ii) consumers of some of the largest financial services providers, including Wells Fargo, Amex, and Bank of America, were significantly more likely than average to dispute the company's response to their initial complaints; and (iii) among companies that provide mortgages, OneWest Bank, HSBC, Nationstar Mortgage, and Bank of America all received more mortgage complaints relative to mortgages sold than other banks. In addition, regression analysis suggests that consumer financial companies respond differently to complaints about different products and based on different issues, generating significant differences in timeliness of response, as well as significant differences in whether consumers dispute that response. Moreover, demographics matter: there were significant increases in mortgage complaints per

mortgage in ZIP codes with larger proportions of certain populations, including Blacks and Hispanics, as well as an increase in untimeliness and company responses disputed for groups on which the CFPB is mandated to focus, including senior citizens and college students.

CONFLICT THEORY/SYSTEMS DESIGN

Breaking Silos: A Field Experiment on Relational Conflict Management in Cross-Functional Teams

Smaranda Boroş, Lore van Gorp, Brecht Cardoen & Robert Boute
Group Decision and Negotiation 26(2): 327-377 (2017)

In this paper we investigate how effective conflict management in conflict asymmetry situations impacts the quality of cross-functional management teams' performance. During a 5-day business simulation, we explore the consequences of the relational conflicts and conflict asymmetry experienced by team members. We use two different measures of conflict asymmetry: the traditional group conflict asymmetry measurement of Jehn (Adm Sci Q 40:256–282, 1995) and a social networks method. We find that when some team members evoke more conflict than others, this affects the evolution of team dynamics (and ultimately the performance of the team) even more than high levels of conflict altogether; however, group emotional awareness can mitigate this negative effect and improve the team performance through the appropriate use of conflict management strategies. Since group emotional awareness can be fostered and trained within teams, this is of practical value to improve the performance of cross-functional management teams.

Why and How Businesses Use Planned Early Dispute Resolution

John Lande & Peter W. Benner
University of St. Thomas Law Journal 13: 248-296 (2017)

This article reports the results of an empirical inquiry analyzing why some businesses adopt “planned early dispute resolution” (PEDR) systems when most other businesses probably do not do so. PEDR systems enable parties and their lawyers to resolve disputes favorably and efficiently as early as reasonably possible. They involve strategic planning for preventing conflict and handling disputes promptly as they arise rather than dealing with them ad hoc. One might assume that using a PEDR system should be a “no-brainer” for businesses that regularly litigate because litigation-as-usual undermines many business interests such as efficiency, protection of reputations and relationships, control of disputing and business operations generally, and risk management, among others. Although this seems like a plausible assumption, this study indicates that it is problematic for multiple reasons. Yet some inside counsel, who are key players in developing PEDR systems, have been able to overcome common barriers to adoption of these systems.

Whoever is Not With Me is Against Me: The Costs of Neutrality Among Friends

Alex Shawa, Peter DeScioli, Anam Barakzaia, Robert Kurzban
Journal of Experimental Social Psychology 71: 96-104 (July 2017)

Although friends provide valuable help and support, they can also entangle us in costly conflicts. In three studies, we investigate how people react when they are in a dispute with another person and their friend opposes them, supports them, or remains neutral. As expected, participants felt negative toward a friend who sided against them and positive toward a friend

who sided with them. However, we were most interested in how people react to a friend's neutrality. People might view neutrality as a fair and positive way to avoid escalating conflict, but they could also see it as shirking one's duties to support a friend. In line with a recent alliance model of friendship, we predicted and found support for the latter: participants reacted negatively toward a friend who remained neutral, in fact just as negatively as toward a friend who actively opposed them. That is, participants' felt similar to the Biblical aphorism, "whoever is not with me is against me." We further found that participants' negative response to neutrality was particularly strong when a close friend remained neutral during a dispute with a distant friend, compared to a dispute with an equally close friend. We discuss the implications of these findings for understanding multilateral conflicts among multiple friends.

"Switching On" Creativity: Task Switching Can Increase Creativity By Reducing Cognitive Fixation

Jackson G. Lu, Modupe Akinola & Malia F. Mason

Organizational Behavior and Human Decision Processes 139: 63-75 (March 2017)

Whereas past research has focused on the downsides of task switching, the present research uncovers a potential upside: increased creativity. In two experiments, we show that task switching can enhance two principal forms of creativity—divergent thinking (Study 1) and convergent thinking (Study 2)—in part because temporarily setting a task aside reduces cognitive fixation. Participants who continually alternated back and forth between two creativity tasks outperformed both participants who switched between the tasks at their discretion and participants who attempted one task for the first half of the allotted time before switching to the other task for the second half. Importantly, Studies 3a–3d reveal that people overwhelmingly fail to adopt a continual-switch approach when incentivized to choose a task switching strategy that would maximize their creative performance. These findings provide insights into how individuals can "switch on" creativity when navigating multiple creative tasks. [DRM Summer 2017]

The Effect of Perspective-Giving on Postconflict Reconciliation. An Experimental Approach

Juan E. Ugarriza & Enzo Nussio

Political Psychology 38(1): 3-19 (February 2017)

Discussion groups are a promising tool for bridging the divide between former conflict antagonists. However, such groups do not always produce the desired outcome of improved attitudes, even when they meet the conditions generally seen as favoring positive interaction. In this article, we examine specific discussion protocols that mitigate polarization risks while fostering reconciliation. Using a randomized, controlled design, we formed a pool of 429 ex-combatants and members of conflict-affected communities in Colombia. Participants were asked to join heterogeneous groups and discuss their proposals for the future of Colombia. Overall, community members improved their attitudes towards ex-combatants significantly, while ex-combatants' attitudes toward community members do not tend to polarize. Those participants who were randomly assigned to a perspective-giving treatment protocol (where they were asked to refer to their personal experience and perspective) consistently improved their intergroup attitudes towards ex-combatants, and by a proportionally higher percentage than those taking part under argumentation and no-treatment control conditions. [DRM Summer 2017]

Does Strategic Kindness Crowd Out Prosocial Behavior?

Åshild A. Johnsen, Ola Kvaløy

Journal of Economic Behavior & Organization 132(A): 1-11 (December 2016)

In repeated games, it is hard to distinguish true prosocial behavior from strategic behavior. In particular, a player does not know whether a reciprocal action is intrinsically or strategically motivated. In this paper, we experimentally investigate the relationship between intrinsic and strategic reciprocity by running a two-period repeated trust game. In the “strategic treatment” the subjects know that they will meet twice, while in the “non-strategic treatment” they do not know and hence the second period comes as a surprise. We find that subjects anticipate strategic reciprocity, and that intrinsic reciprocity is rewarded. In fact, the total level of cooperation, in which trust is reciprocated, is higher in the non-strategic treatment. This indicates that strategic reciprocity crowds out intrinsic reciprocity: If one takes the repeated game incentives out of the repeated game, one sees more cooperation and higher social surplus.

Conflict at Work, Negative Emotions, and Performance: A Diary Study

Sonja Rispens & Evangelia Demerouti

Negotiation and Conflict Management Research 9(2): 103–119 (May 2016)

This study examines how daily conflict events at work affect people's active (anger, contempt) and passive (sadness, guilt) negative emotions and in- and extra-role performance. We introduce the concept of conflict detachment and examined whether this coping strategy alleviates the degree of negative emotions a person feels due to a conflict experience. Sixty-two individuals from various professions in the Netherlands provided questionnaire and daily survey measures during five consecutive workdays. Multilevel analyses showed that daily relationship and process conflict experiences at work were positively related to daily negative emotions. In addition, the results demonstrated a lagged effect of passive negative emotions: feelings of guilt and sadness predicted lower in-role and extra-role performance the following day. We also found that conflict detachment moderated the relationship between daily conflict and negative emotions. We discuss the implications of our findings for organizational practice and suggest possible ways for future research.

Commitment Problems in Conflict Resolution

Erik O. Kimbrough, Jared Rubin, Roman M. Sheremeta & Timothy W. Shields

Journal of Economic Behavior and Organization 112: 33-45 (April 2015)

Commitment problems are inherent to non-binding conflict resolution mechanisms, since an unsatisfied party can ignore the resolution and initiate conflict. We provide experimental evidence suggesting that even in the absence of binding contractual agreements individuals often avoid conflict by committing to the outcome of a conflict resolution mechanism. Commitment problems are mitigated to a greater extent for groups that opt-in to the conflict resolution mechanism, but only when opting-in is costly. Although conflict rates are higher when opting-in is costly than when it is free or exogenously imposed, commitment problems are greatly reduced among those groups who choose to opt-in.

Are Federal Labor-Management Partnerships Decreasing Conflict? Evidence from the Last Eight Years of Reported Data

Ashley M. Alteri

Conflict Resolution Quarterly 33(1): S67-S93 (Winter 2015)

In December 2009, President Obama signed Executive Order 13522, initiating a formal period during which the federal government has been acting under a declared labor-management partnership. Researchers and practitioners believe these partnerships can result in substantial benefits to the organization. However, this article's analysis of an original data set containing agency data on labor-management collaboration and conflict over time indicates that partnerships are not associated with changes in conflict. Instead, participation in labor-management pilot projects weakly predicts a decrease in conflict. Qualitative data from union officials suggest that this finding could be because the partnerships do not represent true labor-management collaboration. [DRM Summer 2016]

Two-Group Dynamic Conflict Scenarios: “Toy Model” with a Severity Index

Sanda Kaufman & Miron Kaufman

Negotiation and Conflict Management Research, 8: 41–55 (January 2015)

This article draws on several research domains and disciplines—social psychology, models of complex systems, and planning scenario analysis—to propose a “toy” model of the dynamics of intergroup conflicts. The ingroup–outgroup conflict literature supports the notion that inside groups in conflict there are subgroups of intransigents seeking to “fight it out,” and flexibles seeking avenues for settlements. There is also support for the intransigents and flexibles in the two groups being susceptible to each other's goading to escalate conflicts or entreaties to reach agreement. However, since two-group conflicts are embedded in complex systems with which they interact, it is difficult to predict outcomes and to assess the chances that intervention strategies might succeed or fail. We propose to use the model of two-group conflicts based on the mutual susceptibilities of flexibles and intransigents (Kaufman & Kaufman, 2013) to construct toy model scenarios of possible conflict trajectories. For each scenario, we compute a Severity Index for Conflicts (SIC) that captures the likelihood that it will end in confrontation (rather than agreement). We offer some examples of intranational and international conflicts and show how the scenarios can be analyzed qualitatively to explore the range of possible outcomes. Further developments will include sensitivity analyses for various assumptions and asking “what if” questions that can inform strategies of response and intervention.

Creative Synthesis: Exploring the Process of Extraordinary Group Creativity

Sarah Harvey

Academy of Management Review 39(3): 324-343 (2014)

This article provides insight into how some groups achieve extraordinary levels of creativity by reconsidering the collective process through which new ideas develop. Previous research has been premised on a model in which idea generation stimulated by divergent input increases the variance in ideas a group generates and therefore increases the chance that one of the group's ideas will be a radical, breakthrough creative product. In contrast, I present a dialectical model in which the integration of group members' perspectives (which I label creative synthesis) is the foundation for new ideas. I propose that the process of creative synthesis improves the chance that each of a group's ideas is a breakthrough. I elaborate the process facilitators of creative synthesis and the implications of the dialectical model for understanding extraordinary group creativity. Creative synthesis provides an alternative way for groups to combine their cognitive, social, and environmental resources into extraordinary output.

Institutionalizing Sustainable Conflict Management in Organizations: Leaders, Networks, and Sensemaking

Leigh Anne Liu, Lin Inlow & Jing Betty Feng

Conflict Resolution Quarterly, 32: 155–176 (2014)

We investigated the process and outcomes of a systematic approach to institutionalize conflict management in a large public nonprofit organization. Using longitudinal and multilevel field data, we were able to identify the effects of the institutionalization process from multiple perspectives. We hypothesized and found the combination of three critical social factors—leadership, construction and maintenance of social networks, and the sensemaking processes—in the diffusion of both codified and tacit knowledge about conflict management. Also, social construction supplements structural factors in the institutionalization process of conflict management practices.

Corporate Communication and Worker Perceptions of Conflict Management and Justice

Katharina G. Kugler & Felix C. Brodbeck

Negotiation and Conflict Management Research 7(4): 265–281 (November 2014)

Organizations are well advised to develop a conflict culture promoting constructive conflict management and cooperation. But what does such a culture look like? Research from international and political relations has demonstrated that the level of integrative complexity (IC) as disseminated in political messages is an important factor in the context of conflict management. In our research, we hypothesize that, similar to political messages, corporate communication, which emphasizes a complex (i.e., differentiated and integrated) way of understanding multidimensional issues, is connected to cooperative conflict management and related variables like perceptions of organizational justice. Results of a multilevel field study support this proposition. Whereas the level of organizational IC was assessed by rating organizations' communication (specifically their vision or mission statements published on the Internet), perceptions of conflict management and justice were assessed by asking employees. The study emphasizes the utility of addressing organizational level variables in relation to organizational members' perceptions.

Conflict Settlement, and the Shadow of the Future

Michael McBride & Stergios Skaperdas

Journal of Economic Behavior and Organization 105: 75-89 (September 2014)

We examine a conflictual setting in which adversaries cannot contract on an enforcement variable (arms) and where the future strategic positions of adversaries are very different when there is open conflict than when there is settlement. We show that, as the future becomes more important in this setting, open conflict becomes more likely than settlement. We demonstrate the theoretical robustness of this finding and test it in a laboratory experiment. As predicted, we find that subjects are more likely to engage in destructive conflict as the future becomes more important.

The Serial Reproduction of Conflict: Third Parties Escalate Conflict Through Communication Biases

Tiane L. Lee, Michele J. Gelfand & Yoshihisa Kashima

Journal of Experimental Social Psychology 54: 68-72 (September 2014)

The authors apply a communication perspective to study third party conflict contagion, a phenomenon in which partisan spectators to others' disputes not only become involved in, but escalate, the dispute to a multitude of others. Using a research method called serial reproduction, the authors demonstrate the role of third parties' communication biases in conflict escalation, revealing that successive generations of partisan observers share and reproduce conflict narratives that become increasingly biased in their moral framing, attributions for the conflict, evaluations of the disputing parties, and quest for revenge. Despite equal fault between the disputing parties at the beginning, these communication biases increased, rather than subsided, with each iteration throughout communication chains, cumulating in distortions and group biases far above and beyond initial ingroup favoritism. In the paper the authors discuss the implications for strategies to de-bias transmission of conflict information. [DRM Winter 2015]

Argumentativeness, Avoidance, Verbal Aggressiveness, and Verbal Benevolence as Predictors of Partner Perceptions of an Individual's Conflict Style

Laura K. Guerrero & Michael A. Gross

Negotiation and Conflict Management Research 7(2): 99-120 (May 2014)

This study addressed two main questions. First, are the traits of argumentativeness, verbal aggressiveness, avoidance, and verbal benevolence reflected in conflict styles such that they are perceived by others? Second, how do these traits predict the five conflict styles in the dual concern model? These questions were tested using dyadic data from a simulated downsizing activity. Results showed that participants perceived their partners differently depending on the traits their partners endorsed. For example, people who reported being avoidant or verbally aggressive were less likely to be perceived as using the compromising style. Overall, the results suggested that the four traits investigated in this study are likely to be associated with observable behavior. Findings also demonstrated that these traits help differentiate the five conflict styles in more nuanced ways than predicted by the dual concern model. Finally, the results supported the idea that conflict styles are not only shaped by one's own traits but also by the traits of others and the interaction between two people's traits.

Individual Perceptions Of Task Conflict And Relationship Conflict

Stephanie T. Solansky, Barjinder Singh & Shengsheng Huang

Negotiation and Conflict Management Research 7(2): 83-98 (May 2014)

We rely on the existing conflict literature and self-verification theory to examine perceived task and relationship conflict. We set out to contribute to the discussion of whether relationship conflict is dysfunctional and task conflict is functional in terms of the individual evaluations of group efficacy and group mind. Our sample is a field setting of 127 individuals within a Fortune 500 company. Individual perceptions of group efficacy and group mind scores were significantly higher when neither type of conflict was perceived to occur often as compared with when both types of conflict were perceived to occur often. After decoupling types of conflict, we found when only task conflict occurred often, the perceived efficacy and mind scores were significantly higher than when both types of conflict occurred often. This is a contradictory finding based on the existing literature that suggests task conflict negatively impacts emergent states.

Understanding Conflict Management Systems and Strategies in the Workplace: A Pilot Study

Neil H. Katz & Linda T. Flynn

Conflict Resolution Quarterly 30(4): 393-410 (Summer 2013)

In today's business environment, workplace conflict is a significant issue. Research in the conflict management discipline says that conflict in the workplace is on the rise and will continue to go up; however, many leaders and managers are not fully aware of structures and processes available to manage it. This article presents the results of a pilot study conducted in Broward County, Florida, of workplace leaders' and managers' awareness, perception, and use of conflict management systems and strategies. The findings reflect the lack of a clear definition of the issue, the absence of integrated conflict management systems within most organizations, and dissatisfaction with antiquated grievance systems. There is substantial opportunity for additional research.

Ideology and Prejudice: The Role of Value Conflicts

John R. Chambers, Barry R. Schlenker & Brian Collisson

Psychological Science 24(2): 140–149 (2012)

In three studies, we tested whether prejudice derives from perceived similarities and dissimilarities in political ideologies (the value-conflict hypothesis). Across three diverse samples in Study 1, conservatives had less favorable impressions than liberals of groups that were identified as liberal (e.g., African Americans, homosexuals), but more favorable impressions than liberals of groups identified as conservative (e.g., Christian fundamentalists, businesspeople). In Studies 2 and 3, we independently manipulated a target's race (European American or African American) and political attitudes (liberal or conservative). Both studies found symmetrical preferences, with liberals and conservatives each liking attitudinally similar targets more than dissimilar targets. The amount of prejudice was comparable for liberals and conservatives, and the race of the target had no effect. In all three studies, the same patterns were obtained even after controlling for individual differences on prejudice-related dimensions (e.g., system justification, social-dominance orientation, modern racism). The patterns strongly support the value-conflict hypothesis and indicate that prejudice exists on both sides of the political spectrum.

Conflict Cultures in Organizations: How Leaders Shape Conflict Cultures and Their Organizational-Level Consequences

Michele Gelfand, Lisa M. Leslie, Kirsten Keller & Carsten de Dreu

Journal of Applied Psychology 97(6): 1131-1147 (2012)

Anecdotal evidence abounds that organizations have distinct conflict cultures, or socially shared norms for how conflict should be managed. However, research to date has largely focused on conflict management styles at the individual and small group level, and has yet to examine whether organizations create socially shared and normative ways to manage conflict. In a sample of leaders and members from 92 branches of a large bank, factor analysis and aggregation analyses show that 3 conflict cultures—collaborative, dominating, and avoidant—operate at the unit level of analysis. Building on Lewin, Lippitt, and White's (1939) classic work, we find that leaders' own conflict management behaviors are associated with distinct unit conflict cultures. The results also demonstrate that conflict cultures have implications for macro branch-level outcomes, including branch viability (i.e., cohesion, potency, and burnout) and branch

performance (i.e., creativity and customer service). A conflict culture perspective moves beyond the individual level and provides new insight into the dynamics of conflict management in organizational contexts. (PsycINFO Database Record (c) 2012 APA, all rights reserved)

Aging and Wisdom: Culture Matters

Igor Grossmann, Mayumi Karasawa, Satoko Izumi, Jinkyung Na, Michael E. W. Varnum, Shinobu Kitayama & Richard E. Nisbett

Psychological Science 23(10): 1059–1066 (2012)

People from different cultures vary in the ways they approach social conflicts, with Japanese being more motivated to maintain interpersonal harmony and avoid conflicts than Americans are. Such cultural differences have developmental consequences for reasoning about social conflict. In the study reported here, we interviewed random samples of Americans from the Midwest United States and Japanese from the larger Tokyo area about their reactions to stories of intergroup and interpersonal conflicts. Responses showed that wisdom (e.g., recognition of multiple perspectives, the limits of personal knowledge, and the importance of compromise) increased with increasing age among Americans, but older age was not associated with wiser responses among Japanese. Younger and middle-aged Japanese showed greater use of wise-reasoning strategies than younger and middle-aged Americans did. This cultural difference was weaker for older participants' reactions to interpersonal conflicts and was actually reversed for intergroup conflicts. This research has important implications for the study of aging, cultural psychology, and wisdom.

A Helping Hand? The Moderating Role of Leaders' Conflict Management Behavior on the Conflict–Stress Relationship of Employees

Moritz Römer, Sonja Rispens, Ellen Giebels & Martin C. Euwema

Negotiation Journal 28(3): 253–277 (July 2012)

Interpersonal conflict between colleagues within organizations negatively affects employee well-being (e.g., stress). It is unclear how leaders' third-party conflict management behaviors influence the relationship between employee conflict and well-being. In this study, we examine the effects of leaders' perceived conflict management behaviors on the relationship between relationship, task, and process conflicts and the conflict-related stress (as a measure of well-being) that employees experience. We tested our expectations using a survey of 145 employees of an insurance company in the Netherlands. The results confirmed our expectations that the perception that leaders engaged in third-party forcing behavior and avoiding behavior amplified the effects of conflict on conflict-related stress. Furthermore, we found that leaders' third-party problem-solving behavior had a buffering effect on the association between relationship conflict and conflict-related stress. Theoretical and practical implications are discussed.

COURTS & LITIGANT PREFERENCES

When Ignorance is Not Bliss: An Empirical Study of Litigants' Awareness Of Court-Sponsored Alternative Dispute Resolution Programs

Donna Shestowsky

Harvard Negotiation Law Review 22: __-__ (2017)

State courts have been overburdened with litigants seeking civil justice in a system still recovering from the economic downturn of 2008. In many cases, alternative dispute resolution procedures can provide litigants with relief from the expense and waiting time associated with trial. However, such procedures provide little opportunity for justice to litigants who are unaware of their existence. The present study examines litigants' ability to identify their court's mediation and arbitration programs. Following the disposition of their cases, litigants from three state courts were asked whether their court offered mediation or arbitration. Although all litigants had cases that were eligible for both procedures through their court, less than one-third of litigants correctly reported that their court offered either procedure. Represented litigants were not significantly more likely to know about their court's programs than their unrepresented counterparts. Litigants had more favorable views of their court when they knew it offered mediation (as opposed to being unsure whether the court offered it), but a similar result did not emerge for arbitration. The implications of these novel findings for litigants, lawyers, and courts are discussed. [DRM Summer 2017]

Unintended Consequences: The Regressive Effects of Increased Access to Courts

Journal of Empirical Legal Studies 14(1): 5-30 (March 2017)

Anthony Niblett and Albert H. Yoon

Small claims courts enable parties to resolve their disputes relatively quickly and cheaply. The court's limiting feature, by design, is that alleged damages must be small, in accordance with the jurisdictional limit at that time. Accordingly, one might expect that a large increase in the upper limit of claim size would increase the court's accessibility to a larger and potentially more diverse pool of litigants. We examine this proposition by studying the effect of an increase in the jurisdictional limit of the Ontario Small Claims Court. Prior to January 2010, claims up to \$10,000 could be litigated in the small claims court. After January 2010, this jurisdictional limit increased to include all claims up to \$25,000. We study patterns in nearly 625,000 disputes over the period 2006–2013. In this article, we investigate plaintiff behavior. Interestingly, the total number of claims filed by plaintiffs does not increase significantly with the increased jurisdictional limit. We do find, however, changes to the composition of plaintiffs. Following the jurisdictional change, we find that plaintiffs using the small claims court are, on average, from richer neighborhoods. We also find that the proportion of plaintiffs from poorer neighborhoods drops. The drop-off is most pronounced in plaintiffs from the poorest 10 percent of neighborhoods. We explore potential explanations for this regressive effect, including crowding out, congestion, increased legal representation, and behavioral influences. Our findings suggest that legislative attempts to make the courts more accessible may have unintended regressive consequences.

Managerial Judging and Judicial Plea Negotiations: Further Evidence

Nancy J. King & Ronald F. Wright

Available at SSRN: <https://ssrn.com/abstract=2972294> or <http://dx.doi.org/10.2139/ssrn.2972294> (May 2017)

This is a companion report to our article, "The Invisible Revolution in Plea Bargaining: Managerial Judging and Judicial Participation in Negotiations," 95 Texas Law Review 325 (2016), available at <http://ssrn.com/abstract=2796296>. Based on field interviews with judges and attorneys in ten different states, we documented new procedures in state courts that involve judges routinely in the settlement of criminal cases. We learned of grant-funded problem-solving

sessions, multi-case conferences where other lawyers chime in, settlement dockets with retired judges, full-blown felony mediation with defendant and victims, and more. In this companion report, we make publicly available some additional quotations from our field interviews, adding depth to our description and evaluation of judicial negotiation practices. The additional evidence from our interviews includes further examples and exceptions that we did not publish in the original article. This report ends with an appendix describing our methodology in assembling this interview data.

The Invisible Revolution in Plea Bargaining: Managerial Judging and Judicial Participation in Negotiations

Nancy J. King & Ronald F. Wright

Texas Law Review 95: 325-397 (2016)

This article, the most comprehensive study of judicial participation in plea negotiations since the 1970s, reveals a stunning array of new procedures that involve judges routinely in the settlement of criminal cases. Interviewing nearly 100 judges and attorneys in ten states, we found that what once were informal, disfavored interactions have quietly, without notice, transformed into highly structured, best practices for docket management. We learned of grant-funded, problem-solving sessions complete with risk assessments and real-time information on treatment options; multi-case conferences where other lawyers chime in; settlement courts located at the jail; settlement dockets with retired judges; full-blown felony mediation with defendant and victims; felony court judges serving as lower court judges, and more. We detail the reasons these innovations in managerial judging have developed so recently on the criminal side, why they thrive, and why some judges have not joined in. Contrary to common assumptions, the potential benefits of regulated involvement of the judge include more informed sentencing by judges, as well as less coercion and uncertainty for defendants facing early plea offers. Our qualitative evidence also raises intriguing hypotheses for future research.

How Litigants Evaluate the Characteristics of Legal Procedures: A Multi-Court Empirical Study

Donna Shestowsky

UC Davis Law Review 49(3): 793-841 (2016)

This Article presents findings from the first multi-court field study examining how civil litigants evaluate the characteristics of legal procedures shortly after their cases are filed in state court. Analyses revealed that litigants evaluated the characteristics in terms of control — i.e., whether the characteristics granted relative control to the litigants themselves or to third parties (e.g., mediators, judges). Although the litigants indicated a desire to be present for the resolution process, they preferred third-party control to litigant control. They also wanted third parties to control the process more than the outcome. Gender, age group, and case-type significantly predicted attraction to third-party control, whereas attraction to litigant control was predicted by whether litigants had a pre-existing relationship with each other, how much they valued a future relationship with the opposing party, party type, the type of opposing party, and court location. Implications for legal policy and lawyering are discussed. [DRM Summer 2016]

What We Know (and Need to Know) About Court-Annexed Dispute Resolution

Deborah Thompon Eisenberg

South Carolina Law Review 67: 245-265 (2016)

Mediation and other alternative dispute resolution (ADR) processes are now well integrated into the United States judicial system, in both civil and criminal cases. This white paper, drafted for the American Bar Association Commission on the Future of Legal Services, summarizes empirical evidence about the costs and benefits of court-annexed ADR. The first-generation of ADR research found that mediation and other ADR processes resulted in high party satisfaction rates, high settlement rates, cost savings and efficiency, increased long-term cooperation among the parties, and higher compliance rates with the outcome. The paper then examines a ground-breaking study conducted by the Maryland Judiciary about the costs and benefits of court-annexed ADR. The Maryland ADR study provides an example of rigorous second-generation ADR research that isolates the impact of participating in an ADR process rather than a trial, regardless of whether a settlement is reached. The research also examines the impact of specific mediator interventions (such as reflecting, caucusing, and eliciting options for resolution) on party attitudes and outcomes. The paper ends with a call for additional second-generation research about what works in court-connected mediation and other ADR processes, and identifies some of the gaps in the existing body of ADR empirical research. [DRM Winter 2016]

Anchoring Effect in Real Litigation: An Empirical Study

Yun-Chien Chang, Kong-Pin Chen & Chang-Ching Lin

University of Chicago Coase-Sandor Institute for Law & Economics Research Paper No. 744 (2016). Available at SSRN: <http://ssrn.com/abstract=2726903>

Given the wide acceptance of how anchoring affects human decision-making in almost all disciplines of social science, one is surprised to find that the empirical, rather than experimental, evidence is rare and inconclusive. This article offers the first large-scale court evidence for the anchoring effect in judicial decision-making. To examine whether the anchoring effect exists in real-world litigation, the authors use Taiwan's district court cases on trespassing, matched with transaction data to estimate the hedonic values on the value of lands in dispute and with another dataset on judge experience. In the court of first instance in Taiwan, usually one career judge decides cases under an adversarial system without the presence of a jury. When a judge with less than two years of experience is (randomly) assigned a case, two senior colleagues will join to decide the case in a panel. The study provides evidence that the plaintiff's claim has a strong anchoring effect on the court's judgment when the defendant is silent. Defendant's counter-claim, however, can (partially) neutralize the anchoring effect created by the plaintiff's claim. More importantly, the anchoring effect emerges only when judges are inexperienced. When three relatively inexperienced judges sit in a panel, the anchoring effect is magnified. Therefore, the study not only provides evidence for anchoring in real-world litigations but also identifies experience as its crucial determinant. The lesson for litigants is: counter the claim that your clients disagree. A prevailing myth that admonishes defense attorneys not to concede liability under any circumstance fosters the anchoring effect in favor of the plaintiffs. For judicial policy-makers, it is important not to group inexperienced judges into a panel. Otherwise, the deliberation-induced polarization would strengthen the bias in human decision-making. Given that jurors are usually inexperienced legal decision-makers and it is unlikely to change, the civil procedure shall be structured so that defendants can effectively counter arguments made by plaintiffs. [DRM Summer 2016]

Litigation Settlements, Litigation Stakes, and Financial Distress Costs

Ganapathi S. Narayanamoorthy & Zhou Hui

Australian Journal of Management 41(3): 459-483 (August 2016)

Several theoretical studies provide predictions on the relation between settlement likelihood and litigation stakes. Although models with generalizable settings argue in favor of a negative relation, certain specialized settings predict the opposite. In contrast to the theoretical literature, there is limited empirical analysis of the relation with only one study reporting evidence of a positive association. In this study, we infer how the stock market forms expectations regarding the relation between settlement likelihood and litigation stakes by analyzing stock returns around settlement announcement dates. We find that the market was more surprised when higher stakes lawsuits were settled, suggesting that higher stakes lawsuits were not expected to settle. We thus provide empirical support in favor of general theoretical models on conflict resolution that predict a positive relation between litigation stakes and settlement likelihood. Our results also have implications for studies of financial distress costs. Although we find evidence of the existence of financial distress costs, our results contradict a conclusion drawn in prior research — that the primary benefit of litigation settlements is the unexpected relief from financial distress costs.

Impact of Alternative Dispute Resolution on Responsibility, Empowerment, Resolution, and Satisfaction with the Judiciary: Comparison of Short- and Long-Term Outcomes in District Court Civil Cases

Lorig Charkoudian (with significant contributions from Haleigh LaChance). Maryland Administrative Office of the Courts, Court Operations, Funding from the State Justice Institute, Grant Number SJI-13-N-028 (February 2016). Available at <http://mdcourts.gov/courtoperations/pdfs/districtcourtcomparisonfullreport.pdf>

This research is part of a larger research effort to measure the impact of Alternative Dispute Resolution (ADR) on the experience of litigants in the District Court of Maryland in the short and long term. The research includes a comparison between individuals who used ADR (the “treatment” cases) and those who went through the standard court process without ADR (the “control” cases). The analysis in this document is focused on comparing the self-reported experience of ADR participants to those who did not use ADR, from surveys before and after the process, as well as 3-6 months later. The short-term analysis considers: 1) attitude toward the other participant, 2) a sense of empowerment and having a voice in the process, 3) a sense of responsibility for the situation, 4) a belief that the conflict has been resolved, and 5) satisfaction with the judicial system. This study also tests whether participants’ experiences with ADR are different for different demographic groups. The long-term analysis considers: 1) attitude toward the other participant, 2) effectiveness of the outcome, and 3) satisfaction with the judiciary. Finally, this research tests the effect of ADR on the predicted probability of returning to court for enforcement action in the 12 months following the court date.

What Works in District Court Day of Trial Mediation: Effectiveness of Various Mediation Strategies on Short- and Long-Term Outcomes

Lorig Charkoudian (with significant contributions from Haleigh LaChance and Jamie Walter). Maryland Administrative Office of the Courts, Court Operations. Funding from the State Justice Institute, Grant Number SJI-13-N-028 (January 2016). Available at: <http://mdcourts.gov/courtoperations/pdfs/districtcourtstrategiesfullreport.pdf>

This research measures the effectiveness and efficiency of various approaches of ADR in the District Court Day of Trial ADR Program. ADR is available in 18 District Court locations throughout Maryland. ADR is provided in a facilitative, inclusive, or transformative framework, in either solo or co-ADR models. The ADR program includes both mediation and settlement conferences. Day of Trial ADR is standardized across the state in terms of ADR practitioner qualifications, quality assurance program and procedures, ADR forms, Court Rules (MD Rule 17-301 et. seq.), confidentiality (MD Rule 17-105), and data collection. However, jurisdictions differ by the local ADR program procedures, ADR process available to litigants (based on the ADR practitioner who is scheduled and what his or her qualifications are to conduct either a mediation or settlement conference), range of ADR practitioner skills and experience, availability of ADR framework (again, depending on the ADR practitioner scheduled to provide the process), the process used to refer a case to ADR (varies by judge and by courtroom), and the date and time that ADR is available (based upon docket scheduling). Furthermore, ADR practitioners use a range of skills in the process.

“Sense of Access to Justice as a Framework for Civil Procedure Justice Reform: An Empirical Assessment of Judicial Settlement Conferences in Quebec (Canada)”

Jean-François Roberge

Cardozo Journal Of Conflict Resolution 17: 323-361 (Winter 2016)

An emerging worldwide civil procedure justice reform trend takes the user’s point of view into account in order to promote access-to-justice and support for the rule of law. In the Canadian context, the Quebec civil law province has taken the lead to renew its legal culture towards a participatory justice, rooted in fair-minded processes that encourage the persons involved to play an active role. In an effort to monitor such ambitions, carried by the civil procedure code reforms of 2003 and 2014, this paper offers an empirical evaluation through the lens of litigant’s “Sense of Access to Justice” (“SAJ”). The study empirically tested this innovative framework in settlement conferences, conducted by Quebec trial court judges practicing under a facilitative integrative problem-solving approach. The results show that settlement conferences are evaluated by litigants and lawyers as fair-minded processes, providing them with a sense of access to justice (over 80% satisfaction level on quality, value, and settlement rates). The SAJ Index methodology provides a benchmark to measure progress regarding access-to-justice from the litigant’s perspective. It aims to ascertain litigants’ views, determining whether they are in support of public policies, court initiatives, or private actions taken in response to the access-to-justice challenge. Adaptations to different judicial and private dispute resolution mechanisms taking place in various jurisdictions seem promising. [DRM Summer 2016]

Litigation and the Timing of Settlement: Evidence from Commercial Disputes

Peter Grajzl & Katarina Zajc

Available at SSRN: <https://ssrn.com/abstract=2655389> or <http://dx.doi.org/10.2139/ssrn.2655389> (2015)

Although an overwhelming proportion of all legal disputes end in settlement, the determinants of the timing of settlement remain empirically underexplored. We draw on a novel dataset on the duration of commercial disputes in Slovenia to study how the timing of settlement is shaped by the stages and features of the litigation process. Using competing risk regression analysis, we find that events such as court-annexed mediation and the first court session, which enable the disputing parties to refine their respective expectations about the case outcome, in

general reduce case duration to settlement. The magnitude of the respective effects, however, varies with time. Completion of subsequent court sessions, in contrast, does not affect the time to settlement. Judicial workload affects the timing of settlement indirectly, via the effect on the timing of the first court session. We also examine the effect of other case and party characteristics.

Let's Stop Spreading Rumors About Settlement and Litigation: A Comparative Study of Settlement and Litigation in Hawaii Courts

John Barkai & Elizabeth Kent

Ohio St. J. on Disp. Resol. 29: 85-158 (2014)

This article compares two studies (using 4,000 cases and 500 lawyer surveys) of civil litigation and settlement in Hawaii's state and federal courts over the past 50 years. The authors conclude you should never again say that "90% of all cases settle" because the statement is not correct. The settlement rate for "all" civil cases was about 50% (although almost 90% for tort cases). However, trials were rare (< 2%); jury trials were very rare (<0.5%). Telephone negotiations, not face-to-face ones, were the most common form of negotiation. Multiple settlement events (telephone, email, settlement conference, etc.) took place in the majority of cases where there was settlement activity. More than 40% of cases used some form of ADR; 75% of cases settled without judicial assistance. About 50% of the cases did not even have an appearance before a judge. Almost 50% of cases showed no pretrial discovery. The article contains data that lawyers could use with the opposing counsel, their client, the opposing client, or even a mediator. The information could also be useful for a mediator when playing the "agent of reality" role. [DRM Summer 2014]

Living with ADR: Evolving Perceptions and Use of Mediation, Arbitration and Conflict Management in Fortune 1,000 Corporations

Tom Stipanowich & Ryan Lamare

Harvard Negotiation Law Review 19:1-68 (2014)

As attorneys for the world's most visible clients, corporate counsel played a key role in the transformation of American conflict resolution in the late Twentieth Century. In 1997, a survey of Fortune 1,000 corporate counsel provided the first broad-based picture of conflict resolution processes within large companies. In 2011, a second landmark survey of corporate counsel in Fortune 1,000 companies captured a variety of critical changes in the way large companies handle conflict. Comparing their responses to those of the mid-1990s, the authors found clear and significant evolutionary trends, including a further shift in corporate orientation away from litigation and toward "alternative dispute resolution (ADR)"; moderated expectations of ADR; increasing use of mediation, contrasted with a dramatic fall-off in arbitration (except, importantly, consumer and products liability cases); greater control over the selection of third-party neutrals; and growing emphasis on proactive approaches, such as early neutral evaluation, early case assessment, and integrated systems for managing employment disputes. The article summarizes and analyzes the results of the 2011 Fortune 1,000 survey, compares current data to the 1997 results, and sets both studies against the background of a half-century of evolution. The article concludes with reflections on the future of corporate dispute resolution and conflict management, as well as related research questions. [DRM Winter 2014]

Imbalances of Power in ADR: The Impact of Representation and Dispute Resolution Method on Case Outcomes

Oren Gazal-Ayal & Ronen Perry

Law & Social Inquiry 39: 791-823 (Fall 2014)

In recent decades, ADR processes have gained worldwide recognition, a growing role in legal practice, and academic attention. Despite their professed advantages, they have also faced fierce opposition. In a seminal article, Owen Fiss made a strong case against the emerging pro-ADR movement, arguing that ADR exacerbates the imbalance of power between indigent and well-off parties and affects case outcomes. While the theoretical argument has been widely developed, empirical evidence has remained scant. This article empirically examines the impact of two seemingly relevant factors in inherently imbalanced legal disputes: the representation pattern and the dispute resolution method. The study focuses on small claims settlement conferences, using the Israeli labor courts as a test case. In this system, small claims are automatically referred to settlement conferences. The findings are based on more than three hundred small claims filed by employees against their employers. The data collected for each case consist of information about the representation of each party (self, lawyer specializing in employment law, lawyer not specializing in employment law); the outcome of the case (successful settlement conference, court-facilitated settlement, judicial decision after trial); the amount claimed by the plaintiff; and the amount obtained in the end of the process. The most salient finding is that representation increases the probability of a successful settlement conference. Settlement probability is highest (88.5%) when both parties are represented and lowest (62.3%) when neither is represented. Also, representation reduces the ratio between the amount obtained by the plaintiff and the sum claimed (the “settlement ratio”); it is lowest (38.8%) when both parties are represented and highest (56%) when neither is represented. Perhaps even more importantly, the more formal the process and the less it is based on settlement, the greater the ratio between the sum obtained and the sum claimed; it is lowest when a settlement conference succeeds (45%) and highest following full-trial (84%). [DRM Summer 2015]

Impact of Alternative Dispute Resolution on Responsibility, Empowerment, Resolution, and Satisfaction with the Judiciary: Comparison of Self-Reported Outcomes in District Court Civil Cases (April 2014)

Lorig Charkoudian. Maryland Administrative Office of the Courts, Court Operations Funding from the State Justice Institute, Grant Number SJI-12-N-003. Available at:

<http://www.courts.state.md.us/macro/pdfs/reports/impactadrondistrictctcivilcases2014report.pdf>

Participants who went through ADR are more likely than those who went through the court process to indicate that: 1) They could express themselves, their thoughts, and their concerns. 2) All of the underlying issues came out. 3) The issues are resolved. 4) The issues were completely resolved rather than partially resolved. 5) They acknowledged responsibility for the situation. In addition, participants who went through ADR are more likely than those who went through the standard court process: 1) To have an increase in their rating of their level of responsibility for the situation from before the intervention to after the intervention. 2) To shift toward disagreement with the statement “the other people need to learn they are wrong” from before the process to after the process. Participants who went through ADR are less likely to report that no one took responsibility or apologized than are people who went through the standard court process. All of these findings are uniformly applicable to ADR, whether or not an

agreement was reached. Finally, participants who developed a negotiated agreement in ADR were more likely to be satisfied with the judicial system than others, while participants who reached negotiated agreement on their own (without ADR) were not more likely to be satisfied with the judicial system than those without negotiated agreements. This seems to imply that the process of reaching agreement in ADR is the factor that led to higher satisfaction, rather than just the outcome of reaching a negotiated settlement.

The Psychology of Procedural Preference: How Litigants Evaluate Legal Procedures Ex Ante

Donna Shestowsky

Iowa Law Review 99: 637-710 (January 2014)

This article reports the findings of the first multi-jurisdictional field study of litigants' evaluations of legal procedures shortly after their cases are filed in court. Litigants from three state courts responded to written surveys designed to 1) assess how attracted they were to various legal procedures (e.g., negotiation, mediation, non-binding arbitration, binding arbitration, jury trials, judge trials) for their particular case, and 2) determine whether demographic, case-type, relationship, and attitudinal factors predicted their attraction to each procedure. Analyses revealed that litigants preferred mediation, the judge trial, and attorneys negotiate with clients present to all other examined procedures. Within this group of preferred procedures, they did not have a clear (i.e., statistically significant) preference. This pattern has significant implications for courts choosing between mediation and non-binding arbitration for their ADR programs—litigants clearly preferred mediation. Litigants also preferred the judge trial to the jury trial, and liked the idea of negotiations that included them along with their attorneys to ones that involved the attorneys but not the parties. Regression analyses used to predict the relation between the attractiveness of each procedure and demographic, case-type, relationship, and attitudinal factors revealed many interesting findings, including the fact that women liked the jury trial and binding arbitration less than men did. The results are discussed in the context of dispute resolution systems design in courts, client counseling protocols, and the psychology of litigants more broadly. [DRM Winter 2014]

Situated Justice: A Contextual Analysis of Fairness and Inequality in Employment Discrimination Litigation

Ellen Berrey, Steve Hoffman & Laura Beth Nielsen

46 Law & Society Rev. 46: 1-36 (March 2012)

A substantial body of research suggests that the legitimacy of the law crucially depends on the public's perception that legal processes are fair. This study reveals that plaintiffs' limited resources and tumultuous experiences in litigation lead them to see employment discrimination lawsuits as profoundly unfair. Employer-defendants, too, see discrimination litigation as unfair but tend to have resources to manage litigation challenges. Plaintiffs and defendants, however, see unfairness only in those aspects of the process that work to their disadvantage and do not share a common complaint. The study underscores the need for parties and professionals working with them to try to understand their disputes from each other's perspective. It also highlights employers' chief complaint, that employees can easily initiate litigation, and plaintiffs' misunderstandings of litigation, including unrealistic expectations of getting their jobs back and getting a court ruling on the merits of their case. The study calls for a rethinking of empirical research on fairness, using techniques other than the now-standard social psychological

experiment, to account for the real-life contexts in which people experience litigation. [DRM Summer 2013]

ETHICS/DECEPTION

Hierarchical Rank and Principled Dissent: How Holding Higher Rank Suppresses Objection to Unethical Practices

Jessica A. Kennedy & Cameron Anderson

Organizational Behavior and Human Decision Processes 139: 30-49 (March 2017)

When unethical practices occur in an organization, high-ranking individuals at the top of the hierarchy are expected to stop wrongdoing and redirect the organization to a more honorable path—this is, to engage in PRINCIPLED DISSENT. However, in three studies, we find that holding high-ranking positions makes people LESS likely to engage in principled dissent. Specifically, we find that high-ranking individuals identify more strongly with their organization or group, and therefore see its unethical practices as more ethical than do low-ranking individuals. High-ranking individuals thus engage less in principled dissent because they fail to see unethical practices as being wrong in the first place. Study 1 observed the relation between high-rank and principled dissent in an archival data set involving more than 11,000 employees. Studies 2 and 3 used experimental designs to establish the causal effect of rank and to show that identification is one key mechanism underlying it.

Whatever It Takes to Win: Rivalry Increases Unethical Behavior

Gavin J. Kilduff, Adam D. Galinsky, Edoardo Gallo & J. James Reade

Academy of Management Journal 59(5): 1508-1534 (October 2016)

This research investigates the link between rivalry and unethical behavior. We propose that people will be more likely to engage in unethical behavior when competing against their rivals than when competing against non-rival competitors. Across an archival study and a series of experiments, we found that rivalry was associated with increased unsporting behavior, use of deception, and willingness to employ unethical negotiation tactics. We also explore the psychological underpinnings of rivalry in order to illuminate how it differs from general competition and why it increases unethical behavior. The data reveal a serial mediation pathway whereby rivalry heightens the psychological stakes of competition (by increasing actors' contingency of self-worth and status concerns), which leads to the adoption of a stronger performance-approach orientation, which then increases unethical behavior. These findings highlight the importance of rivalry as a widespread, powerful, yet largely unstudied phenomenon with significant organizational implications. They also help to inform when and why unethical behavior occurs within organizations, and demonstrate that the effects of competition are dependent upon relationships and prior interactions between actors.

The Unconscious Conscience: Implicit Processes and Deception in Negotiation

Joseph Gaspar & Chao Chen

Negotiation Journal 32(3): 213–229 (July 2016)

Deception is pervasive in negotiations, and proponents of bounded ethicality propose that the decision to use deception reflects the influence of (unconscious) implicit processes. In this article, we empirically explore the bounded ethicality perspective. In the first experiment, we found that an implicit association between business and morality interacted with the competitive

and cooperative characteristics of a negotiation to influence both negotiators' attitudes toward deception and their intentions to use deception. But in a second and third experiment, we found that these did not interact to influence negotiators' actual deception decisions. The results of our studies provide important insights into the deception decision process and complicate our understanding of bounded ethicality.

What's in a Name? The Toll E-Signatures Take on Individual Honesty

Eileen Y. Chou

Journal of Experimental Social Psychology 61: 84-95 (November 2015)

People cherish and embrace the symbolic value that their unique handwritten signature holds. Technological advances, however, have led organizations to reject traditional handwritten signatures in favor of the efficiency and convenience of e-signatures. This research directly investigates the possibility that while many common e-signatures may objectively perform the same function as signing by hand, they do not exert the same symbolic weight in subsequent decision making. Seven studies consistently demonstrate these e-signatures' ineffectiveness for curbing individual dishonesty—one of the essential purposes of a signature. Furthermore, the effects are caused by their inadequate ability to evoke the signer's self-presence. Results also identify one form of e-signature that can preserve this crucial psychological connection. Meta-analyses across studies conducted for this research establish the reliability and robustness of the associations between common forms of e-signatures, self-presence, and dishonesty. By systematically examining whether, why, and which e-signatures abet cheating, findings illuminate an unexplored—but critical—consequence of a practice that is prevalent worldwide.

Lying for Who We Are: An Identity-Based Model of Workplace Dishonesty

Keith Leavitt & David M. Sluss

Academy Management Review 40(4): 587-610 (October 2015)

While the study of lying within organizations typically has focused on lies told for rational-instrumental purposes (such as lying for economic gain within negotiations), we argue that lying is a relatively common social-functional behavior embedded within ongoing workplace relationships. Drawing from social identity theory, we develop a theory of lying as a socially motivated behavioral response to identity threats at the personal, relational, or collective levels of identity in organizational life. Specifically, we propose that perceived identity threats undermine the unique fundamental identity motives at each level of self, and that as threat sensitivity and threat intractability increase, individuals become more likely to use lying as a threat management response in their interactions with other organizational members. Further, we propose that identity-based characteristics of organizational members with whom threatened individuals interact (i.e., the audience) determine the likelihood that lying will occur by assuaging or amplifying threats during identity enactment. Thus, by applying an identity lens to examine normatively unethical behavior, we develop a comprehensive model of everyday lying as socially motivated and identity-based behavior with implications for ongoing workplace relationships.

Disclosures About Disclosures: Can Conflict of Interest Warnings be Made More Effective?

Ahmed E. Taha & John V. Petrocelli

Journal of Empirical Legal Studies 12(2): 236–251 (June 2015)

People regularly rely on advisors who have conflicts of interest. The law often requires advisors to disclose these conflicts. Despite these disclosures, people generally insufficiently discount conflicted advice. This might be partly due to people interpreting the very fact that the advisor is disclosing a conflict of interest as a sign that the advisor is trustworthy, undermining the purpose and effectiveness of the disclosure. This article presents the results of an experiment indicating that requiring advisors to also disclose that they are legally required to disclose their conflict of interest makes people discount their advice more. This occurs, at least in part, because such advisors are viewed as less trustworthy than advisors who merely disclose their conflict of interest without also stating that the disclosure is legally required. [DRM Winter 2016]

Underestimating Our Influence Over Others' Unethical Behavior and Decisions

Personality and Social Psychology Bulletin 40(3): 348–362 (2014)

Vanessa K. Bohns, M. Mahdi Roghanizad & Amy Z. Xu

We examined the psychology of “instigators,” people who surround an unethical act and influence the wrongdoer (the “actor”) without directly committing the act themselves. In four studies, we found that instigators of unethical acts underestimated their influence over actors. In Studies 1 and 2, university students enlisted other students to commit a “white lie” (Study 1) or commit a small act of vandalism (Study 2) after making predictions about how easy it would be to get their fellow students to do so. In Studies 3 and 4, online samples of participants responded to hypothetical vignettes, for example, about buying children alcohol and taking office supplies home for personal use. In all four studies, instigators failed to recognize the social pressure they levied on actors through simple unethical suggestions, that is, the discomfort actors would experience by making a decision that was inconsistent with the instigator’s suggestion.

“I Can't Lie To Your Face”: Minimal Face-To-Face Interaction Promotes Honesty

Alex B. Van Zant & Laura J. Kray

Journal of Experimental Social Psychology 55: 234–238 (2014)

Scholars have noted that face-to-face (FTF) interaction promotes honesty because it provides opportunities for conversation in which parties exchange information and build rapport. However, it is unclear whether FTF interaction promotes honesty even in the absence of opportunities for back-and-forth conversation. We hypothesized a minimal interaction effect whereby FTF interaction promotes honesty by increasing potential deceivers' consideration of their own moral-interest. To test this account of how FTF interaction may promote honesty, we used a modified version of the deception game (Gneezy, 2005). We found that people were more honest when communicating FTF as opposed to through an intermediary. While FTF interaction tended to promote honesty irrespective of whether it occurred prior to or during the game, the effect was more pronounced when it occurred during the game. The effect of in-game communication medium was mediated by the activation of potential deceivers' moral-interest. We also ruled out alternate accounts involving interpersonal liking, expected counterpart trust, and retaliation fear as honesty-promoting mechanisms. Furthermore, because these effects were not moderated by whether participants had been visually identified during a pre-game interaction, we suggest that our effects are distinct from theoretical accounts involving anonymity.

Ethno-Cultural Considerations in Negotiation: Pretense, Deception and Lies in the Greek Workplace

Abraham Stefanidis and Moshe Banai

Business Ethics: A European Review 23(2): 197-217 (2014)

A retrospect into ethos, this study examines the impact of individualism, collectivism, ethical idealism and interpersonal trust on negotiators' attitudes toward questionable negotiation tactics in Greece. A thousand survey questionnaires were administered to Greek employees, of which 327 usable responses were collected. Our findings empirically corroborated a classification of three groups of negotiation tactics, namely, pretense, deception and lies. Individualism–collectivism and ethical idealism were found to be related, and interpersonal trust was found to be unrelated, to attitudes toward questionable negotiation tactics. Emphasizing the non-US and non-Western European nature of the empirical data collected, the originality of this research further stems from the development of a comprehensive research framework about questionable negotiation tactics in Greece.

Some Evidence For Unconscious Lie Detection

Leanne ten Brinke, Dayna Stimson & Dana R. Carney

Psychological Science 25(5): 1098-1105 (May 2014)

To maximize survival and reproductive success, primates evolved the tendency to tell lies and the ability to accurately detect them. Despite the obvious advantage of detecting lies accurately, conscious judgments of veracity are only slightly more accurate than chance. However, findings in forensic psychology, neuroscience, and primatology suggest that lies can be accurately detected when less-conscious mental processes (as opposed to more-conscious mental processes) are used. We predicted that observing someone tell a lie would automatically activate cognitive concepts associated with deception, and observing someone tell the truth would activate concepts associated with truth. In two experiments, we demonstrated that indirect measures of deception detection are significantly more accurate than direct measures. These findings provide a new lens through which to reconsider old questions and approach new investigations of human lie detection.

Evil Genius? How Dishonesty Can Lead to Greater Creativity

Psychological Science 25(4): 973-981 (April 2014)

Francesca Gino & Scott S. Wiltermuth

We propose that dishonest and creative behavior have something in common: They both involve breaking rules. Because of this shared feature, creativity may lead to dishonesty (as shown in prior work), and dishonesty may lead to creativity (the hypothesis we tested in this research). In five experiments, participants had the opportunity to behave dishonestly by overreporting their performance on various tasks. They then completed one or more tasks designed to measure creativity. Those who cheated were subsequently more creative than noncheaters, even when we accounted for individual differences in their creative ability (Experiment 1). Using random assignment, we confirmed that acting dishonestly leads to greater creativity in subsequent tasks (Experiments 2 and 3). The link between dishonesty and creativity is explained by a heightened feeling of being unconstrained by rules, as indicated by both mediation (Experiment 4) and moderation (Experiment 5).

Nothing to Declare: Mandatory and Voluntary Disclosure Leads Advisors to Avoid Conflicts of Interest

Sunita Sah & George Loewenstein

Psychological Science 25(2): 575-584 (February 2014)

Professionals face conflicts of interest when they have a personal interest in giving biased advice. Mandatory disclosure—informing consumers of the conflict—is a widely adopted strategy in numerous professions, such as medicine, finance, and accounting. Prior research has shown, however, that such disclosures have little impact on consumer behavior, and can backfire by leading advisors to give even more biased advice. We present results from three experiments with real monetary stakes. These results show that, although disclosure has generally been found to be ineffective for dealing with unavoidable conflicts of interest, it can be beneficial when providers have the ability to avoid conflicts. Mandatory and voluntary disclosure can deter advisors from accepting conflicts of interest so that they have nothing to disclose except the *absence* of conflicts. We propose that people are averse to being viewed as biased, and that policies designed to activate reputational and ethical concerns will motivate advisors to avoid conflicts of interest.

The Morning Morality Effect: The Influence of Time of Day on Unethical Behavior

Psychological Science 25(1): 95-102 (January 2014)

Maryam Kouchaki & Isacc Smith

Are people more moral in the morning than in the afternoon? We propose that the normal, unremarkable experiences associated with everyday living can deplete one's capacity to resist moral temptations. In a series of four experiments, both undergraduate students and a sample of U.S. adults engaged in less unethical behavior (e.g., less lying and cheating) on tasks performed in the morning than on the same tasks performed in the afternoon. This morning morality effect was mediated by decreases in moral awareness and self-control in the afternoon. Furthermore, the effect of time of day on unethical behavior was found to be stronger for people with a lower propensity to morally disengage. These findings highlight a simple yet pervasive factor (i.e., the time of day) that has important implications for moral behavior.

Neutralizing Unethical Negotiating Tactics: An Empirical Investigation of Approach Selection and Effectiveness

Denise Fleck, Roger Volkema, Sergio Pereira, Barbara Levy & Lara Vaccari

Negotiation Journal 30(1): 23-48 (January 2014)

Negotiation is integral to business success, and information is the lifeblood of the negotiation process. When invalid information is disseminated via manipulation or deceit, one or more parties can suffer. Nonetheless, many studies have shown that the use of questionable or unethical tactics is commonplace. This article reports on a study of 12 behaviors that can neutralize a counterpart's tendencies to employ questionable or unethical tactics, improving the chances for an integrative (win-win) outcome. The results suggest that while nearly two-thirds of participants employed neutralizing behaviors, they used many of these behaviors later in the negotiation process than anticipated and simultaneously alongside questionable or unethical tactics. While the authors found some evidence that participants viewed the 12 neutralizing behaviors differently from questionable or unethical tactics, the authors did not find the expected attenuating effects. They discuss the implications of these findings, including opportunities for future research. [DRM Summer 2014]

From Glue to Gasoline: How Competition Turns Perspective Takers Unethical

Jason R. Pierce, Gavin J. Kilduff, Adam D. Galinsky & Niro Sivanathan

24 Psychological Science 24(10): 1986-94 (October 2013)

Perspective taking (the ability to adopt the perspective of others) is often the glue that binds people together. However, the authors propose that in competitive contexts, perspective taking is akin to adding gasoline to a fire: It inflames already-aroused competitive impulses and leads people to protect themselves from the potentially insidious actions of their competitors. Overall, the authors suggest that perspective taking functions as a relational amplifier. In cooperative contexts, it creates the foundation for pro-social impulses, but in competitive contexts it triggers hyper-competition, leading people to prophylactically engage in unethical behavior to prevent themselves from being exploited. The experiments reported in this article establish that perspective taking interacts with the relational context -- cooperative or competitive -- to predict unethical behavior, from using insidious negotiation tactics to materially deceiving one's partner to dishonesty in reporting performance on unrelated cognitive tasks. In the context of competition, perspective taking can pervert the age-old axiom "do unto others as you would have them do unto you" into "do unto others as you think they will try to do unto you." [DRM Winter 2014]

Seeing Green: Mere Exposure to Money Triggers a Business Decision Frame and Unethical Outcomes

Maryam Kouchaki, Kristin Smith-Crowe, Arthur P. Brief & Carlos Sousa

Organizational Behavior and Human Decision Processes 121(1): 53-61 (May 2013)

Can mere exposure to money corrupt? Considering the significant role of money in business organizations and everyday life, the idea that subtle reminders of money elicit changes in morality has important implications. The findings from four studies demonstrate that the mere presence of money, an often taken-for-granted and easily overlooked feature of our daily lives, can serve as a prompt for immoral behavior operating through a business decision frame (which entails objectification of social relationships in a cost-benefit calculus where self-interest is pursued over others' interests). The results of Study 1 demonstrated that individuals "primed" to think about money through use of word cues involving money-related phrases were more likely to demonstrate unethical intentions than those in the control group exposed to non-monetary word cues. In Study 2, the authors showed that participants primed with money were more likely to adopt a business decision frame. In Studies 3 and 4, the authors found that money cues triggered a business decision frame, which led to a greater likelihood of unethical intentions and behavior. The authors suggest that money is a more insidious corrupting factor than previously appreciated, as mere, subtle exposure to money can be a corrupting influence. [DRM Winter 2014]

Gender and Attorney Negotiation Ethics

Art Hinshaw & Jess K. Alberts

Washington University Journal of Urban Law & Policy 39: 145-188 (2012)

Few studies of gender differences and legal ethics exist, and of these only a handful focus on gender and negotiation ethics. In light of the paucity of evidence on this topic, we decided to include gender as a component of a broader study of attorney negotiation ethics. This Article sets forth and discusses our findings and hypotheses regarding gender and negotiation ethics....We

surveyed more than 700 practicing lawyers and asked whether they would agree with a client request to engage in a fraudulent negotiation scheme to settle a case, a clear violation of Rule 4.1 of the Model Rules of Professional Conduct governing the truthfulness of statements to others.[W]hile there was no difference in responses of men and women when asked to engage in a fraudulent negotiation strategy, there was a difference in response to a follow-up request to employ a pure omission strategy in the negotiation, a more subtle form of the fraudulent negotiation strategy. Unexpectedly, the men performed better than women. Additionally, the men performed better than women when asked whether the client's initial request constituted a misrepresentation and whether a key fact was protected from disclosure by the Rules of Professional Conduct. Some of this difference correlated with the amount of respondent professional experience, but that does not explain the entire difference in the results. However, the survey instrument was not designed to investigate and uncover those additional reasons. Thus, we cannot definitively explain the gender differences; rather, we must hypothesize what these other factors may be, such as differences in the manner in which women and men organize information when making decisions, differences in how men and women respond in ambiguous ethical situations, and differences in how men and women advocate for others.

MEDIATION: GENERAL

Mediator Thinking in Civil Cases

James A. Wall and Kenneth Kressel

Conflict Resolution Quarterly 34(3): 331-367 (2017)

In this study we investigated mediators' thinking in twenty real-life civil case mediations. We found evidence that their thinking unfolds along two planes: one intuitive (system 1) and the other rational (system 2). On the former, mediators frame the mediation as a distributive process, instinctively evaluate the situation as well as the parties, and engage in habitual interventions. On the rational plane, the mediators develop goals, rationally evaluate the situation, mentally map what is going on, and choose among a variety of rational steps, such as pressing, delaying the mediation, and extracting offers, in order to accomplish their goals. [DRM Summer 2017]

Illinois Foreclosure Mediation Program: Statistical Report December 2015

Jennifer Shack, Resolution System Institute (2016)

Available at: <http://www.aboutrsi.org/pfimages/FM%20Statistical%20Report%20123115.pdf>

This report provides statistics for six foreclosure mediation programs, including case outcomes from each program's launch and a comparison of each program's participation rate, outcomes and time in program for the first two years of the program.

When Clients Throw Punches and Chairs: How Mediators Respond to Violence

Susan S. Raines and Yeji Choi

Negotiation Journal, 32(4): 267-296 (October 2016)

Much is known about screening family law mediation cases for potential violence, but little is known about violence that occurs within or immediately after mediation. In this article, we present the findings of a survey of U.S. mediators who reported their experiences of violence across a variety of mediation case types. These mediators described how and when violence arose and also reported the techniques and interventions that they used to de-escalate tensions

and to respond to violence. Our goal is to better equip mediators to prevent violence when possible, and to respond effectively if violence does arise in mediation. [DRM Winter 2017]

The Surprising Effectiveness of Hostile Mediators

Ting Zhang, Francesca Gino and Michael Norton

Management Science 63(6): 1972-1992 (May 2016)

Contrary to the tendency of mediators to defuse negative emotions between adversaries by treating them kindly, we demonstrate the surprising effectiveness of hostile mediators in resolving conflict. Hostile mediators generate greater willingness to reach agreements between adversaries (Experiment 1). Consequently, negotiators interacting with hostile mediators are better able to reach agreements in incentive-compatible negotiations than those interacting with nice mediators (Experiments 2). By serving as common enemies, hostile mediators cause adversaries in conflict to feel more connected and become more willing to reach agreement (Experiments 3 and 4). Finally, we manipulate the target of mediators' hostility to document the moderating role of common enemies: mediators who directed their hostility toward both negotiators (bilateral hostility) – becoming a common enemy – increased willingness to reach agreement; those who directed hostility at just one negotiator (unilateral hostility) did not serve as common enemies, eliminating the hostile mediator effect (Experiment 5). We discuss theoretical and practical implications, and suggest future directions. [DRM Winter 2017]

Dealing with Resistance in Initial Intake and Inquiry Calls to Mediation: The Power of “Willing”

Rein Sikveland & Elizabeth Stokoe

Conflict Resolution Quarterly 33(3): 235–254 (Spring 2016)

This article explores how to best deal with resistance during and beyond initial encounters with mediation clients. The study is based on a large data-set of intake calls to community and family mediation services in the United Kingdom. Using conversation analytic techniques, the authors studied instances where call takers, after having explained mediation, invited prospective clients to make a first appointment. The authors found that questions or proposals containing the word “willing” were significantly more effective than other phrasing such as “does this sound helpful to you?”, in securing a “yes” response. This difference manifested itself in the way clients respond. For example, when asked if “willing”, clients generally accept in a strong way (“oh of course”; “definitely”), as opposed to hedged and mitigated responses in response to other formats (“I’m not sure at this stage...”). Also, “willing” was the only word that achieved a total turnaround from an initial “no” from a client, to a “yes”. The authors argue “willing” works because if the other party is the kind of person who won’t mediate, then the caller must be the kind of person who will. This study demonstrates that the outcome of initial contact with services is directly affected by the words and formulations that mediators use. The authors also found that, in terms of explaining the process and establishing willingness, initial phone calls and the first face-to-face meeting with mediators both cover similar territory. They therefore suggest that intake calls should be considered the first stage of mediation. The findings also suggest that understanding effective processes in explaining mediation and establishing willingness is crucial for developing and delivering training—for example, by incorporating the findings into training for court intake staff and for mediators. [DRM Summer 2016]

Direct Instruction and Guided Practice Matter in Conflict Resolution and Social-Emotional Learning

Karen DeVoogd, Pamela Lane-Garon & Charles A. Kralowec

Conflict Resolution Quarterly 33(3): 279–296 (Spring 2016)

Seven schools in an economically challenged area of an urban school district in central California implemented mentored peer mediation programs under the guidance of a university–K-12 partnership project, Mediator Mentors. The study examined individual student outcomes for social-cognitive dispositions, perceptions of school climate, conflict strategy choices, and standardized testing results in language arts, using assessments administered after one year of program implementation and comparing them to pretest values generated by student mediators and non-mediators. The study also examined attendance rates and student perceptions of school safety after a year of peer mediation at the schools. And the study analyzed school climate by looking at bullying incidence and suspension and expulsion rates before and after one year of program implementation. The most salient findings of this study include effects on students as well as on the school setting--specifically, increased attendance and reported sense of belonging, mitigation of bullying incidents, and gains in English language learners' academic scores. Students who become mediators also develop superior capacity to empathize and perspective-take, as well as to select productive problem-solving strategies. Most of these findings are based on group differences between students who become and serve as mediators when compared to non-mediator students. Becoming a school mediator may be valued on many levels, by the mediators themselves and certainly by those they serve. [DRM Summer 2016]

Six Programs, Six Models: An Evaluation of the Foreclosure Mediation Programs Funded by the Office of the Illinois Attorney General

Jennifer Shack, Resolution System Institute (2015)

Available at: www.aboutrsi.org/pfimages/SixProgramsSixModels.pdf

This evaluation of six foreclosure mediation programs with very different service delivery models provides unique insight into how program design can impact program effectiveness. Each of the programs had a different model. They could be grouped, however, into one-step entry programs and multi-step entry programs. The differences were most significant between these groupings. In one-step entry programs, homeowners were simply told to appear at a scheduled pre-mediation session, and if they did so they participated. The multi-step entry programs required two or more steps, some of them more difficult than others. Program functioning was also affected by how services were provided to the homeowners and how often cases were referred into the program at the default hearing. The study found participation rates of between 11% and 68%. The higher rates of participation were in the one-step entry programs. The program with the 68% participation rate – the only one-step entry program started early enough to evaluate outcomes - was able to have a more significant impact on foreclosures in the county overall. In that program, 14% of all homeowners in the county facing foreclosure were able to keep their homes. This compares to 2% to 6% of homeowners in other counties. The study also found that homeowners benefitted from a second opportunity to participate: homeowners in one program with a high rate of judicial referral were at least as likely to retain their homes as those who entered when their case was first filed. Additionally, providing housing counseling improved homeowner understanding of their options. These findings are of use to anyone involved in designing or improving ADR programs to address complex cases involving consumer debt, such as foreclosure or student loan debt. They point to the need for programs to

have an easy entry process, to provide services beyond mediation, and to give homeowners a second opportunity to participate if they miss the first one. [DRM Summer 2016]

Inside the Caucus: An Empirical Analysis of Mediation from Within

Daniel Klerman & Lisa Klerman

Journal of Empirical Legal Studies 12(4): 686–715 (December 2015)

This article provides a glimpse into the worlds of mediation and settlement negotiation. Because they are almost always private, there has been relatively little empirical analysis of the dynamics of settlement or mediation. This article analyzes a unique data set derived from a mediator's contemporaneous notes of mediations involving employment disputes, such as claims of discrimination or wrongful termination. Although the data set includes more than 400 cases, since they were all mediated by a single mediator, this article can be viewed as a case study. Among the most interesting facts uncovered by this analysis are the following. Mediation can be extremely effective in facilitating settlement. The mediator studied here achieved a settlement rate of over 94 percent. There are very few gender differences, whether one looks at the gender of the plaintiff or the gender of the lawyers. For example, settlement rates are the same for male and female plaintiffs and lawyers. On average, cases settle much closer to the defendant's first offer than the plaintiff's, irrespective of case type, size of law firm, or other factors. A mediator's proposal appears to be the most effective mediation technique. A mediator's proposal was used in almost 90 percent of cases and, when it was used, the settlement rate was over 99 percent.

Managerial Mediation Competency: A Mixed-Method Study

Jean Poitras, Kevin Hill, Virginie Hamel & Francis-Benoît Pelletier

Negotiation Journal 31(2): 105–129 (April 2015)

Managerial conflict resolution skills such as mediation have often been poorly defined and measured. We used a mixed-method design to develop a managerial mediation competency scale. In our first study, we used semistructured interviews to identify managerial mediation skills and attitudes, from which we derived a framework for measuring managerial mediation competency. In our second study, we developed scale items and used a quantitative survey to test the scale's psychometric qualities and to gain insight into the theoretical structure of managerial mediation competency. Our managerial mediation competency scale can be used in research questionnaires or organizational surveys as a training, research, and theory development tool.

Creativity In Court-Connected Mediation: Myth Or Reality?

Lin Adrian & Solfrid Mykland

Negotiation Journal 30(4): 421-439 (October 2014)

Mediation is often promoted for fostering creative solutions but is that really the case? Yes, it seems so. This study found that approximately two thirds of the cases in court-connected mediation contained creative elements. The authors analyzed mediated agreements from civil court cases in Norway and Denmark and compared the outcomes with the parties' original claims. If an agreement contained other elements than the parties' claims, it was considered to be "creative." Many agreements contained only a few other elements, but about one quarter contained more than five. The study suggests that time matters: lengthier mediations featured more creativity. So did cases that involved two private individuals rather than businesses and cases whose issues involved inheritance as well as the division of property

following divorce. The authors suggest that creativity depends not only on the characteristics of the case but also on the mediators' framing of the issues. [DRM Winter 2015]

Friendly Persuasion In Civil Case Mediations

James A. Wall Jr. & Suzanne Chan-Serafin

Conflict Resolution Quarterly 31(3): 285-303 (Spring 2014)

This study investigates why mediators' assertive strategies—evaluative and directive—did not generate high disputant dissatisfaction when they produced agreements. We thoroughly investigated the transcripts from fifty cases in which the mediators had used assertive strategies and attained agreement. We found that mediators did not irk disputants because the mediators complemented their strategies with four tactical approaches. First, they established their legitimacy, and when mediating they shifted their strategies (from assertive to neutral or vice versa) round by round. They also used a ratchet approach to nudge disputants toward agreement, and they took steps to reduce the disputants' aspirations.

Mediators' Cognitive Role Schema

Adi Zarankin, James A. Wall, Jr. & Tal G. Zarankin

Negotiation and Conflict Management Research 7(2): 140-154 (May 2014)

This study identifies the cognitive role schema of 189 practicing mediators. An initial analysis of the mediators' questionnaire responses revealed 13 facets in the mediators' schema, and a second analysis condensed this to four goals: agreement, improvement of the parties' relationship, benefit the parties as well as society, and improve the mediation process. Not only do these facets indicate how the mediators think, but they also provide predictions about the mediators' behavior (e.g., they will strive primarily for agreement).

How Do Mediators Decide What to Do? Implicit Schemas of Practice and Mediator Decisionmaking

Kenneth Kressel

Ohio State Journal on Dispute Resolution 28: 709-735 (2013)

In this paper I address a vexing, but curiously understudied subject: How do mediators decide what to do under the volatile, unpredictable, and fast moving circumstances under which they work? There are two familiar responses to this question. One is that mediator decisionmaking is “intuitive,” especially for highly experienced professionals. Another is couched in terms of mediator identification with some formal model of practice such as facilitative or transformative mediation. There are good reasons to believe that neither intuition nor reliance on a formal model provide a satisfying answer to questions about mediator decisionmaking. I summarize the findings from three in-depth studies using reflective case study methods that suggest a more complete answer to the question. These studies include an investigation of divorce mediation, a study of the work of ombuds-mediators working at the National Institutes of Health, and a study of mediators brought into the psychology laboratory to mediate a simulated conflict between two college roommates. We have learned from these investigations that tacit knowledge—which we have variously described under headings like mediator “styles”, “mental model”, or “schemas of practice”—plays a powerful role in such decisionmaking, is often at striking variance with what practitioners consciously believe they are doing, and can be gotten at by methods that help practitioners access their tacit decisionmaking

knowledge. The methodological and practical implications of these findings for future research on mediator decisionmaking are considered.

Changing Minds: The Work of Mediators and Empirical Studies of Persuasion

James Stark & Douglas Frenkel

Ohio State Journal on Dispute Resolution 28: 263-352 (2013)

In this article, we present and analyze the existing research on a variety of persuasive interventions, in roughly the order at least some mediators might attempt them in a hotly contested mediation like the Halverson matter. In Parts II and III, we discuss orchestrating role reversals and apologies, two interventions that utilize an indirect or behavioral approach to persuasion. In Parts IV-VI, we turn to direct persuasion and to message variables that may affect the persuasive effect of such interventions, including the choice of rhetorical questions or statements (Part IV), the relative effectiveness of one-sided versus two-sided statements and the persuasive effects of message explicitness (Part V), and the use of “negative” emotions such as fear and guilt in efforts to persuade (Part VI). In Parts VII and VIII, we turn to indirect and direct modes of persuasion that might be used in the later stages of the mediation process, once the actual bargaining begins. In Part VII, we consider group brainstorming as an indirect method of persuasion aimed at generating more ideas for resolution and/or inducing greater cooperation between the disputants. In Part VIII, we examine the use of a sequence of requests-as opposed to a single, straightforward one-to try to obtain bargaining concessions.

Exploring the Significance of Emotion for Mediation Practice

Cheryl Picard & Janet Siltanen

Conflict Resolution Quarterly 31(1): 31-55 (Fall 2013)

The authors report on their exploratory study examining the learning process embedded in mediation. Their research procedures involved directed reflexive journaling followed by group discussions to generate insights into how mediation practitioners experience learning in mediation. The significance and role of emotion emerged as central to the dynamic of this learning process. The research indicates that the experience of positive and negative emotions attached to learning needs to be allowed and attended to within the mediation dynamic. This suggests that mediation practitioners need the competence to follow and understand their own learning-attached emotions as well as those of the parties.

Increasing Referrals to Small Claims Mediation Programs: Models to Improve Access to Justice

Heather Scheiwe Kulp

Cardozo Journal of Conflict Resolution 14: 361-393 (Winter 2013)

This study is designed to assist managers of court, not-for-profit, and other small claims mediation programs to improve the rate and appropriateness of cases referred to mediation. After examining dispute system design characteristics of over 50 small claims mediation programs, the constructed models offer dispute system designers common characteristics of programs with higher rates of referrals and settlements-per-referral. More importantly, the models articulate characteristics that work in particular settings or to achieve certain goals. From this study, designers can customize a small claims mediation program based on available resources and intended goals. More effective referrals increase the likelihood that parties--especially self-represented litigants--will garner mediation's benefits. Hopefully, this study will prompt others to

study how courts can design more effective mediation programs for small claims litigants, many of whom come to court seeking access to effective, problem-solving systems. [DRM Summer 2013]

Multidimensional Analysis of Conflict Mediator Style

Kenneth Kressel, Tiffany Henderson, Warren Reich & Claudia Cohen
Conflict Resolution Quarterly 30: 135-171 (2012)

This study explores mediator stylistic variations in a sample of 17 professional and 5 novice mediators. Participants mediated the same simulated conflict between two college roommates and reported on their in-session thinking using a stimulated recall procedure. Mediators described themselves as stylistically eclectic and flexible, but this was not borne out by observational data. Whatever approach mediators began with tended to dominate their performance throughout. Multidimensional scaling identified two dimensions underlying mediator performance: stylistic orientation (relational versus settlement oriented) and level of empathic attunement. Qualitative analysis identified facilitative and evaluative variants of the settlement orientation and transformative and diagnostic variants of the relational orientation. The facilitative and diagnostic mediators performed more skillfully than their evaluative and transformative counterparts but there was suggestive evidence that mediator identification with a particular formal model may be a less important determinant of outcomes than mediator energy, warmth, and optimism; a nonjudgmental stance; and a willingness to adapt to the inclinations and needs of the parties. Practically speaking, the results suggest that consumers of mediation services should regard mediator self-descriptions skeptically and that mediators should cultivate methods of reflective learning and self-observation in order to increase professional self-awareness. [DRM Summer 2013]

Just My Style: The Practical, Ethical, and Empirical Dangers of the Lack of Consensus about Definitions of Mediation Styles

Lorig Charkoudian

Negotiation and Conflict Management Research 5(4): 367-383 (October 2012)

This article reviews the importance of research and understanding of mediation styles on quality assurance, ethical practice, and accuracy of research. Three studies are reviewed. One finds that while there are patterns of stylistic practice in mediation, there is no agreement on the definitions for different styles. The second finds that mediators tend to practice in either a directive or a reflective style within a given mediation, rather than using a mix of strategies. The final study highlights how different mediator strategies affect participant satisfaction with the process. Implications for practice and future research are discussed.

MEDIATION: GLOBAL

Realizing Rationality: An Empirical Assessment of International Commercial Mediation

Stacie Strong

Washington and Lee Law Review 73: 1973-2084 (Fall 2016)

[V]ery little is actually known about how the international community uses and perceives mediation in the cross-border business context. This type of informational deficiency hinders individual and institutional actors' ability to operate in a rational manner. This Article therefore analyzes findings from the first-ever large-scale empirical study on international commercial

mediation, providing hard data about current behaviors, beliefs and practices and testing fundamental theories about the use, nature and future of this particular process.

Understanding Pathways to Family Dispute Resolution and Justice Reforms: Ontario Court File Analysis and Survey of Professionals

Michael Saini, Rachel Birnbaum, Nicholas Bala & Brenden McLarty

Family Court Review 54(3): 382 – 395 (July 2016)

This article reports on two related studies about varying pathways to the resolution of family disputes and the effects of family justice reforms in Ontario: a survey of family court professionals ($n = 118$) and an analysis of 1,000 closed court files of family cases involving children. Both studies reveal that the vast majority of cases are resolved without a trial, often by negotiation. While professionals generally support family justice reform initiatives, there remain significant gaps in the implementation of these strategies. For example, many litigants do not attend information programs despite the requirement for mandatory attendance; there is limited use of mediation; the views of children are being sought in only a small number of cases; and there is a large proportion of self-represented family litigants. Despite the increase in shared care and joint decision-making arrangements, a majority of cases in the court file study were sole custody arrangements to the mother, whether the case was settled or resolved by trial. Mediation was associated with greater time of contact with the non-primary residential parent (usually the father). [DRM Winter 2017]

From Anecdote to Evidence: The New Zealand Commercial Mediation Market

Grant Morris

New Zealand Business Law Quarterly 22: 10-30 (March 2016)

Mediation is regularly used to resolve commercial disputes in New Zealand. There has been no empirical data revealing the nature of our commercial mediation market, unlike other areas of mediation. This article is based on a research project which surveyed and interviewed commercial mediators. The findings reveal the nature of the market for the first time and move scholarship in this area from anecdote to evidence. Despite the important role that commercial mediation plays in New Zealand's legal system, the market is relatively small and dominated by a tiny group of practitioners. The mediation profession's key focus should be on growing the market rather than on trying to carve the existing market up into small slices.

To Conciliate or Not to Conciliate: Empirical Evidence from Labour Disputes in India

Rahul Suresh Sapkal

Conference Proceedings, 1st International Law and Economics Conference, organized by Gujarat National Law University; Indian Institute of Technology, Kanpur; and Indian Institute of Management, Ahmadabad (2015). Available at SSRN: <http://ssrn.com/abstract=2580803>

The paper uses a newly obtained dataset on labour disputes from two Central Government Cum Industrial Tribunals (CGIT's) in India, namely the Mumbai CGIT and the New Delhi CGIT, for the period 2008-2011. The empirical strategy allows the study to untangle the impact of a mandatory conciliation process on negotiated settlements and disposition time as compared to a non-mandatory conciliation process, using three main variables: 1) total case disposition time, 2) differences in outcomes achieved by workers, and 3) the final payments received by workers. Results indicate that, at an aggregate level, labour disputes settled in the conciliation process take less time than labour disputes appealed in the labour courts. Moreover,

the study observes that labour disputes resolved in the mandatory conciliation process settled more quickly compared to disputes that participated in a non-mandatory conciliation process. Finally, the study argues that a mandatory conciliation process provides an efficient way to reduce differences in the final payments received by workers, as it provides a time-bound negotiation space to disputing parties relative to other methods of ADR. In the context of developing countries like India, the analysis provides strong empirical evidence to support policy measures on use of conciliation mechanisms to resolve labour conflicts. The paper also discusses conciliation's social welfare benefits. [DRM Summer 2015]

Accessing Justice Through Settlement? Repeat Players in Court-Connected Mediation and Conciliation Programs in Brazil

Maria Cecília De Araujo Asperti

FGV Direito SP Research Paper Series n. 133 (October 2015). Available at SSRN:

<https://ssrn.com/abstract=2676293> or <http://dx.doi.org/10.2139/ssrn.2676293>

Do repeat players come out ahead in court mediation and conciliation in Brazil? In order to address this issue, the research investigates how consensual mechanisms are used by courts to deal with repeated litigation and which are the practices and techniques specifically aimed at repeated disputes. The characteristic elements of these repeated disputes are the similarity of the factual and/or legal arguments, the representativeness of the volume of claims and the fact that one of the parties litigates in similar disputes more often, while the other is involved in such type of cases only occasionally. These “repeat players” are known as the great litigants of the Judiciary, and enjoy certain advantages in terms of bargaining power, resources and information in view of their size and the frequency with which they are involved with similar cases. An empirical research was carried out in court programs to study the perceptions of the players involved in the design and routines of these programs on the issues raised. It was found that repeated litigation is a crucial part of court conciliation and mediation programs, influencing the role of the main stakeholders (parties, lawyers and conciliators/mediators), screening and case management practices, access conditions, specific techniques and the role played by the Judiciary, who shall also act as manager, designer and institutional mediator. It is concluded that the structure and design of these programs and the role of those involved can be key factors for an adequate treatment of repeated disputes in the judicial context.

Internal Contradictions of Judicial Mediation in China

Kwai Hang Ng & Xin He

Law & Social Inquiry 39: 285–312 (2014)

Judicial mediation in China represents an extreme case of integration between adjudication and mediation. Based on ethnographic work and extensive interviews, this article studies how judicial mediation actually works in China. It finds that the incorporation of mediation as part of the official trial process creates a set of internal contradictions. In addition to the role conflict inherent in a judge's acting also as a mediator, adjudication and mediation stages are organized by different principles. When the rather rigid format of adjudication is carried over to in-trial mediation, it curtails the flexible, non-legalistic approach that mediation is meant to promote. Challenged authority, an uncontrolled process, narrowed issues, and weakened norms all make a settled outcome difficult to achieve. On the other hand, the proactive role that judges assume in mediation also undermines their impartiality, a quality that is required for adjudication. In comparison with judicial mediation in other jurisdictions (the US, Quebec,

Japan), this case study from China reveals the problems of completely merging mediation with adjudication. The study suggests that a certain procedural distance is required to preserve the integrity of both processes. [DRM Winter 2014]

“Rebooting” the Mediation Directive: Assessing the Limited Impact of its Implementation and Proposing Measures to Increase the Number of Mediations in the EU (January 2014)

Giuseppe De Palo, Leonardo D’Urso, Mary Trevor, Bryan Branon, Romina Canessa, Beverly Cawyer & L. Reagan Florence

A Report Requested by the European Parliament [Terms of Reference IP/C/JURI/IC/2013-062]. Available at: [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493042/IPOL-JURI_ET\(2014\)493042_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493042/IPOL-JURI_ET(2014)493042_EN.pdf)

Five and a half years after its adoption, the European Union Mediation Directive (2008/52/EC) has not yet solved the “EU Mediation Paradox.” Despite its proven and multiple benefits, mediation in civil and commercial matters is still used in less than 1% of the cases in the EU. This study, which solicited the views of up to 816 experts from all over Europe, shows that this disappointing performance results from weak pro-mediation policies, whether legislative or promotional, in almost all of the twenty-eight member states. The experts strongly supported a number of proposed non-legislative measures that could promote mediation development. More fundamentally, the majority view of these experts suggests that introducing a “mitigated” form of mandatory mediation may be the only way to promote the use of mediation in the EU. The study therefore proposes two ways to “reboot” the Mediation Directive: change it, or, based on the current wording of its Article 1, request that each member state commit to, and reach, a simple “balanced relationship target number” between civil litigation and mediation.

Court–Annexed Mediation in Indonesia: Does Culture Matter?

Fatahillah Abdul Syukur & Dale Margaret Bagshaw

Conflict Resolution Quarterly 30(3): 369-390 (Spring 2013)

A Western model of court-annexed mediation was introduced into the Indonesian courts in 2003, but has been relatively unsuccessful. The authors argue that one factor contributing to this is the failure of mediators to use culturally appropriate approaches and emphasize the need for mediators to be trained to be culturally fluent and self-reflexive. They analyze cultural factors relevant to mediation with participants from diverse cultural backgrounds and implications for training. *Musyawah mufakat*, the indigenous way of resolving disputes, is compared to a Western interest-based model of mediation and a case study illustrates how the process can incorporate an indigenous approach.

East Asians’ Social Heterogeneity: Differences in Norms Among Chinese, Japanese, and Korean Negotiators

Sujin Lee, Jeanne Brett & Ji Hyeon Park

Negotiation Journal 28(4): 429-452 (October 2012)

Contrary to the widely-held assumption that East Asian cultures are homogeneous in their value for harmonious social relationships, we proposed that Chinese, Japanese, and Korean managers would endorse different norms for negotiation tactics because of differences in the focus (dyadic in China versus group in Japan) and the nature (emotional in Korea versus instrumental in China) of social relations in these cultures. The data from a web survey of Chinese, Japanese, and Korean managers showed that managers from these three countries

endorsed various distributive or integrative negotiation tactics, consistent with their cultures' different cultural emphases in business and other social relationships. When negotiating with managers from China, Japan, or Korea, it is worthwhile to try to understand the subtle differences among the countries' social concepts—the Chinese *guanxi*, the Japanese *wa*, and the Korean *inhwa*—which can subsequently help construct the most effective and tailored negotiation approach. [DRM Summer 2013]

Three Years of Court-Connected Small Claims Mediations: The Importance of System, Program, Case, and Mediator Characteristics to the Court Mediation Program's Outcomes (August 2012)

Sarah Vander Veen & Angela Mallard, Mediate BC Society's Court Mediation Program.
Available at: http://www.mediatebc.com/PDFs/1-52-Reports-and-Publications/Lessons-Learned-FINAL-VERSION_07-Aug-2012.aspx

In this report, we present an analysis of all 4,327 of the CMP's cases that were mediated between April 1, 2008 and August 15, 2010. The purpose of this analysis was to determine which characteristics of the Small Claims System ("System Characteristics"), the Court Mediation Program itself ("Program Characteristics"), the case ("Case Characteristics"), and/or the mediators ("Mediator Characteristics") were related to settlement at mediation. In this analysis, we used the CMP's narrow definition of "settlement". Specifically, a mediation was only considered "settled" if a Form 25 Mediation Agreement was completed at the end of the mediation session. However, many cases do settle within a few weeks of mediation, and these settlements are likely due, at least in part, to the mediation. However, because of the narrow way in which settlement was defined, we were not able to assess the contribution that mediation made toward settling these cases. Thus, this study underestimates the full impact of mediation on small claims cases.... Taken together, the results of this study indicate that most cases seem to settle under the CMP mediation model when they are within the range of claim amounts that the program was designed to mediate, i.e., under \$10,000. Cases with higher claim amounts that are mediated in the Vancouver Registry settle far less often especially claims of exactly \$25,000. This does not mean that mediation is not effective with higher claim amounts. It simply means that the current CMP model must be modified to be more effective with these types of cases.

MEDIATION: FAMILY

Safety, Satisfaction, and Settlement in Domestic Relations Mediations: New Findings

Susan Raines, Yeju Choi, Joshua Johnson & Katrina Coker
Family Court Review 54: 603-619 (October 2016)

This article reports on two related studies about varying pathways to the resolution of family disputes and the effects of family justice reforms in Ontario: a survey of family court professionals (N = 118) and an analysis of 1,000 closed court files of family cases involving children. Both studies reveal that the vast majority of cases are resolved without a trial, often by negotiation. While professionals generally support family justice reform initiatives, there remain significant gaps in the implementation of these strategies. For example, many litigants do not attend information programs despite the requirement for mandatory attendance; there is limited use of mediation; the views of children are being sought in only a small number of cases; and there is a large proportion of self-represented family litigants. Despite the increase in shared care

and joint decision-making arrangements, a majority of cases in the court file study were sole custody arrangements to the mother, whether the case was settled or resolved by trial. Mediation was associated with greater time of contact with the non-primary residential parent (usually the father).

Exploring Helpful Tensions between Divorce Mediators and Clients: A Relational Dialectical Analysis

Rachid Baitar, Jan De Mol & Peter Rober

Conflict Resolution Quarterly, 34: 7-29 (Fall 2016)

Addressing calls for more mediation process research, this qualitative study explored which contradictory tensions are in play in a helpful working relationship between mediators and their clients. Data were collected in semistructured interviews with divorce mediators (n = 12). Relational dialectical analysis detailed how divorce mediators varied practice styles along the central opposing pulls of client self-determination and professional control, neutrality and engagement, and efficiency and exploration. The findings counterbalance traditional hallmarks of mediation and highlight a range of dynamic truths in which mediators operate. Methodological limitations and implications for research and practice are discussed.

Mandatory Mediation Outside the Court: A Process and Effect Study

Odd Tjersland, Wenke Gulbrandsen & Hanne Haavind

Conflict Resolution Quarterly 33: 19-34 (Fall 2015)

In a study of 154 couples in precourt mandatory mediation in Norway, a majority of the thirty-eight high-conflict (HC) cases left the mediation after two sessions and without any agreements. Eighteen months later, five of ten HC couples were still without an agreement. With seven sessions available free of charge, the mediation system seems to fail at helping the HC cases. The authors discuss some of the challenges that are attached to a mandatory mediation system. One explanation seems to be the attempt to fulfill several ambitions with the same intervention. Some ideas for improvement of the system are introduced. [DRM Winter 2016]

A Mentalizing-Based Approach to Family Mediation: Harnessing Our Fundamental Capacity to Resolve Conflict and Building an Evidence-Based Practice For the Field

Family Court Review 53: 79-95 (January 2015)

Jill Howieson & Lynn Priddis

This article presents the results of a research study into mentalizing in family mediation. The study employed a mixed-method approach, which included quantitative and qualitative empirical analysis of mediation transcripts and postmediation surveys. The research identified that, when the mediators adopted a mentalizing stance to facilitate the parties to engage their mentalizing capacities and, in particular, to mentalize for the child, the mediation process became more constructive and meaningful. The article makes recommendations for incorporating a mentalizing-based approach into the research and education of mediation and building an evidence-based practice for the field.

Does Level of Intimate Partner Violence and Abuse Predict the Content of Family Mediation Agreements?

Fernanda S. Rossi, Amy Holtzworth-Munroe & Amy G. Applegate

Family Court Review 53(1): 134-161 (January 2015)

This study investigated whether reported levels of intimate partner violence (IPV) and/or abuse (IPV/A) victimization are related to reaching agreement and to the content of mediation agreements of parties seeking to resolve family- and child-related issues. The authors analyzed whether or not parties reached agreement in 105 cases at a law school mediation clinic and coded agreement content for the 71 cases that reached agreement. Levels of IPV and IPV/A were determined separately for males and females, using a standardized measure. Results indicated that mediation may help families with a reported history of IPV and IPV/A address a variety of concerns: levels of partner violence/abuse predicted numerous issues in mediation agreements, including arrangements regarding legal custody, parenting time, holidays, child exchanges, inter-parental communication, safety restrictions, counseling referrals, child support, financial arrangements, and other miscellaneous topics (e.g., relocation). However, some findings were consistent with concerns raised about the use of mediation with parties reporting IPV and IPV/A: for example, increasing levels of male-perpetrated IPV/A predicted increased likelihood of making an agreement to share legal custody. The authors conclude that further research is needed to resolve the longstanding debate of whether divorce mediation is an effective and safe process for parties demonstrating IPV/A. [DRM Summer 2015]

What Works in Child Access Mediation: Effectiveness of Various Mediation Strategies on Custody Cases and Parents' Ability to Work Together

Lorig Charkoudian, Maryland Administrative Office of the Courts, Court Operations, Funding from the State Justice Institute, Grant Number SJI-12-N-003 (September 2014). Available at www.courts.state.md.us/macro/pdfs/reports/whatworksinchildaccessmediation201409report.pdf

This research measures the effectiveness and efficiency of various approaches to mediation in custody, visitation, and child access cases in Maryland court rules (Maryland Title 9-205) require that all contested child access cases be ordered to mediation, except in cases of abuse.... The goal of this research is to understand what components of the mediation process affect a variety of outcomes for participants. As would be expected, this research examines which mediation strategies and program components affect the probability of reaching agreements and consent orders. This research goes further to consider which mediation strategies and program components affect the types of agreements reached as well as the attitudinal shifts of the parents toward each other and their belief in their ability to work together.

Mediator and Survivor Perspectives On Screening For Intimate Partner Abuse

Shereen G. Bingham, Kerry L. Beldin & Laura Dendinger

Conflict Resolution Quarterly 31(3): 305-330 (Spring 2014)

This qualitative study illuminates how family mediators and domestic violence survivors in Nebraska perceive the process used to screen parents for intimate partner abuse (IPA) prior to participation in parenting plan mediation. In-depth interviews and a focus group discussion were analyzed to compare the mediators' and survivors' perspectives. Similarities and differences in perspective emerged, with mediators less attentive to several concerns that were central to screening from the survivors' standpoint. Survivors said victims may fear losing their children or being harmed by the abuser as a result of participation in screening; that victims differ in their readiness to answer questions and so screening should be adapted accordingly; and that

immediate counseling and safety after screening should be available. Mediators are challenged to remain neutral in screening while protecting the rights and safety of parties when IPA is present. They must negotiate the tension between obtaining information from survivors while being sensitive to the emotional and physical risks of discussing the abuse. Agencies can support mediators who screen with appropriate training about the circumstances of abuse and the inherent risks survivors face with disclosure. Implications for screening practices of family mediators are discussed. [DRM Winter 2015]

NEGOTIATION: GENERAL

Formation of Procedural Justice Judgments in Legal Negotiation

Rebecca Hollander-Blumoff

Group Decision and Negotiation 26(1): 19-43 (2017)

Research has indicated that procedural justice—fairness of decisionmaking processes—plays an important role in bilateral legal negotiation, encouraging the acceptance of negotiated agreements. Additionally, research has suggested that procedural justice leads to opportunities for increased integrative bargaining. However, procedural justice judgments are typically measured as subjective assessments by disputants. If procedural justice plays an important role in legal dispute negotiation, it is critical to understand how individuals form judgments about fairness of process. The study presented explores antecedents of procedural justice judgments in legal negotiation. Results suggest that although all potential identified antecedent variables—voice, courtesy/respect, trust, and neutrality—play a role in judgments about procedural justice, the primary component is courtesy/respect behavior by the speaker and her partner. Parties share some agreement about the presence of courtesy/respect behavior and trust behavior, and third-party coders can identify behavior that reliably relates to the parties' procedural justice antecedent assessments. Additionally, results indicate that appeals to potential "neutral" benchmarks such as legal authority lead to lower assessments of procedural justice. These findings suggest that courtesy and respect are the primary drivers of negotiators' procedural justice assessments, and that such courtesy/respect behavior is not merely a subjective artifact of the participant but can be observed by a third-party coder. [DRM Summer 2017]

When Do People Initiate a Negotiation? The Role of Discrepancy, Satisfaction, and Ability Beliefs

Lulia A. M. Reif & Felix C. Brodbeck

Negotiation and Conflict Management Research 10(1): 46-66 (February 2017)

Negotiation research increasingly pays attention to the beginning of negotiations. Building on a theory of the initiation of negotiation we investigated when and why people consider initiating negotiations. Results from one field study and two scenario experiments show that a negative discrepancy between an actual state and a desired state increased the intention to initiate a negotiation and promoted real initiation behavior. This effect was mediated by the subjective perception of this discrepancy and feelings of dissatisfaction. Expectancy considerations in the form of ability to initiate negotiations and implicit beliefs about negotiation ability moderated this serial mediation effect: high initiation ability and incremental negotiation beliefs facilitated the decision to negotiate whereas low initiation ability and entity negotiation beliefs inhibited negotiation initiations. In the present work, we offer a first empirical test of the theory of initiation of negotiation.

The Dynamics of Coalition Formation – A Multilateral Bargaining Experiment With Free Timing of Moves

Journal of Economic Behavior & Organization 130: 33-46 (October 2016)

James Tremewan & Christoph Vanberg

We experimentally investigate behavior in a finitely repeated coalition formation game played in continuous time. Subjects interact in groups of three, bargaining over the distribution of payments which occur at regular time intervals. During a given interval, payments occur if and only if a majority is in agreement about their allocation. Aside from these rules, we purposefully impose little structure on the bargaining process. We investigate the frequency and stability of different types of agreements, as well as transitions between them. Two-thirds of payments involve divisions where one player receives nothing, almost half of which are equal splits of the entire surplus between two players. The most stable division is the three-way equal split. Transitions between agreements are frequent and are generally consistent with myopic payoff maximization, in the sense that subjects do not accept short-term losses. We also find that transitions between coalitions are not Markovian. In particular, players more often forgo short-term gains in order to remain in a coalition if it has proven stable in the past.

The Hidden Persuader: The Role of the Advisor in Negotiations and Group Decision Making—Perspectives from the European Union

Jeswald W. Salacuse

Group Decision and Negotiation 25(3): 459-480 (May 2016)

Theoretical models of negotiation and group decision making often overlook or at least do not fully account for the important role played by persons who advise negotiators and participants in group decision making. Sight unseen, advisors are often “hidden persuaders,” important but unrecognized sources of influence on the negotiation dynamic. This article explores the roles and methods of advisors in the negotiation process, drawing on survey research conducted in 2013 among approximately seventy advisors at the European Union Council of Ministers. Defining advice as “. . . a communication from one person (the advisor) to another (the client) for the purpose of helping that second person determine a course of action for solving a particular problem. . .”, the author considers the nature of advice and the range of relationships that may exist between advisors and their clients. He argues that advising is much more than the mere transmittal of information from advisor to negotiator and that for advice to be effective a relationship must exist between the two parties. The author identifies three models of the advisor–negotiator relationship. Model I is THE ADVISOR AS DIRECTOR, wherein the advisor tends to take control of the negotiating process, directing the negotiator in actions that the negotiator should take to achieve success at the negotiation. Model II is THE ADVISOR AS SERVANT in which the advisor merely responds to the demands of the client for help and guidance in the negotiation. Model III is THE ADVISOR AS PARTNER, wherein advisor and negotiator jointly manage the advising process and together take co-ownership of the problem to be solved. The author then explores the factors that lead advisors and negotiators to adopt each of these three models, the various advising styles that advisors adopt, and the differing effects on the negotiation process that these elements may have, drawing on historical examples as well as survey data from the EU Council of Ministers. He concludes by offering advice about advising to three important professional groups—scholars, negotiators, and advisors—on ways to carry out their respective functions more effectively.

The Effect of Advice on Negotiations: How Advisors Influence What Negotiators Do

Jeswald W. Salacuse

Negotiation Journal 32(2): 103–125 (April 2016)

Studies of negotiations often overlook, or at least do not fully account for, the important role played by people who advise negotiators. Often deliberately hidden from view, advisors have important but unrecognized influence on the negotiation dynamic. In this article, I explore the roles and methods of advisors in the negotiation process, drawing on role theory and survey research conducted in 2013 among approximately seventy advisors at the European Union Council of Ministers. I define advice as “a communication from one person (the advisor) to another (the client) for the purpose of helping that second person determine a course of action for solving a particular problem” and consider the nature of this advice and the range of relationships that may exist between advisors and their clients. Advising is much more than the mere transmittal of information from advisor to negotiator and that for advice to be effective a relationship must exist between the two parties. I then identify three models of the advisor–negotiator relationship. The first is the advisor as director, wherein the advisor tends to take control of the negotiating process, directing the negotiator toward actions that she or he should take to achieve success at the negotiation. The second is the advisor as servant, in which the advisor merely responds to the demands of the client for help and guidance in the negotiation. And the third is the advisor as partner, wherein advisor and negotiator jointly manage the process and solve the problem together. Finally, I explore the factors that lead advisors and negotiators to adopt each of these three models, the various advising styles that advisors use, and the differing effects on the negotiation process that these elements may have, drawing on historical examples as well as survey data from the EU Council of Ministers. [DRM Winter 2017]

An Empirical Analysis of the Use of Enforceable Undertakings by the Australian Securities and Investments Commission between 1 July 1998 and 31 December 2015

Helen Louise Bird, George Gilligan, Andrew Godwin, Jasper Hedges & Ian Ramsey

CIFR Paper No. 106/2016 (April 2016). Available at SSRN: <https://ssrn.com/abstract=2766134>

This paper analyses enforceable undertakings or formally negotiated settlement agreements between the Australian Securities and Investments Commission (ASIC) and regulated firms and individuals. It reports the findings of an empirical study of 414 enforceable undertakings accepted by ASIC from 1 July 1998 (when ASIC was given the power to accept enforceable undertakings) to 31 December 2015. The first of its kind in size and scope, the study provides detailed insights into ASIC’s deployment of enforceable undertakings to address misconduct issues occurring within its regulatory remit. The study profiles the characteristics of parties giving enforceable undertakings, their misconduct and the undertakings given to address that misconduct. Proprietary companies and directors are shown to be the most common groups of companies and individuals giving enforceable undertakings. Activities involving financial services are the most common subject of enforceable undertakings and non-compliance with financial services laws, the most common form of misconduct addressed by enforceable undertakings. The study finds evidence of the regulator’s strategic use of enforceable undertakings to bring about systemic changes in the financial services industry, especially in relation to the quality of advice provided by the financial planning sector. This is achieved by regulating compliance from within financial planning and wealth management firms and accepting voluntary financial service activity bans from individual advisors and planners

engaging in misconduct. This strategy explains the concentration of legal compliance review undertakings and cease and desist undertakings in ASIC accepted enforceable undertakings.

Competition, Transparency, and Reciprocity: A Comparative Study of Auctions and Negotiations

Gregory E. Kersten, Tomasz Wachowicz & Margaret Kersten
Group Decision and Negotiation 25(4): 693-722 (March 2016)

The paper discusses experiments aimed at comparing multi-attribute reverse auctions and multi-bilateral negotiations for procuring goods with multiple attributes. Both exchange mechanisms involve a buyer purchasing from one of several sellers. Two types of negotiations are considered: verifiable and non-verifiable. They differ in the sellers' knowledge of the current best offer on the table; in verifiable negotiations the best offer is automatically shown to every participant, which makes it similar to auctions. Online auctions and negotiation systems were used to study auction and negotiation processes, and the mechanisms' efficiency. The results show that buyers did best using auctions, followed by non-verifiable and verifiable negotiations. We also looked into the differences between auctions and negotiations in terms of their duration, sellers' and buyers' involvement, and efficiency and conclude that the behavior of buyers and sellers cannot be explained solely on the grounds of traditional economics. It can, however, be explained on the grounds of social exchange theory and behavioral economics. In multi-bilateral negotiations competition and social behavior coexist. When transparency is introduced the social effect becomes stronger, weakening the impact of competition.

To Commit or Not to Commit? An Experimental Investigation of Pre-Commitments in Bargaining Situations With Asymmetric Information

Sonke Hoffmann, Benedikt Mihn & Joachim Weimann
Journal of Public Economics 121: 95–105 (2015)

In a recent paper Konrad and Thum (2014) present a model that shows that unilateral pre-commitment reduces the likelihood of agreement in bilateral negotiations over the provision of a public good when parties have private information over their contribution costs. We test the model in a laboratory experiment paying particular attention to how behavioral motivations other than payoff-maximization affect the strength of the model's result. We find that the result is no longer statistically significant when we allow for non-payoff-maximizing behavior at each stage of the game. Introducing communication has an interesting effect as it influences different forms of non-payoff-maximizing behavior asymmetrically and leads to the model's result again becoming significant. All in all, we find strong experimental support for Konrad and Thum's model even though we observe considerable amounts of non-payoff-maximizing behavior that is not accounted for in the original model.

Bounded Benefits of Representative Cooperativeness in Intergroup Negotiations

Özüm Saygı, Lindred L. Greer, Gerben A. Van Kleef & Carsten K. W. De Dreu
Group Decision and Negotiation 24(6): 993-1014 (November 2015)

Although cooperation among representatives in intergroup negotiation can improve intergroup relations, when cooperation in such competitive settings is attributed to strategic goals of the outgroup, it may actually harm intergroup relations. Here we investigate the possibility that representative's characteristics (prototypicality and competence) determine whether an outgroup representative's cooperation (as opposed to competition) improves or harms intergroup

relations. Study 1 showed that a cooperative outgroup representative (compared to a competitive representative) produced more favorable perceptions of the entire outgroup, and triggered constructive behavioral tendencies towards the outgroup when the outgroup representative was seen as prototypical, yet DECREASED such constructive tendencies when the representative was seen as peripheral. Study 2 showed that the outgroup representative's cooperation triggered constructive behavioral tendencies only when the representative appeared as low in competence; when high in competence, the positive effect of representative cooperativeness on trust and constructive behavioral tendencies was mitigated. Implications for representative negotiation and intergroup relations are discussed.

The Benefits of Dominance Complementarity in Negotiations

Scott Wiltermuth, Larissa Z. Tiedens & Margaret Neale

Negotiation and Conflict Management Research 8(3): 194–209 (August 2015)

We investigated whether dominance complementarity can lead people to reach mutually beneficial outcomes in negotiations by increasing the likelihood that they will successfully coordinate the exchange of information. We suggest that negotiators who differ in how dominantly they behave in the negotiation exchange information effectively because they fulfill different roles in the negotiation process. Study 1 demonstrated that dominant negotiators generally assert their desires, while relatively submissive negotiators generally ask questions to find ways to satisfy their own desires without escalating conflict with the dominant negotiators. Studies 2 and 3 demonstrated that participants were best able to discover integrative agreements when one negotiator was instructed to behave dominantly and the other negotiator, submissively. Improved information exchange mediated the relationship between dominance complementarity and improved joint outcomes in Study 3.

Effects of Attachment Anxiety and Avoidance on Negotiation Propensity and Performance

Julia B. Bear & Dikla Segel-Karpas

Negotiation and Conflict Management Research 8(3): 153–173 (August 2015)

Attachment theory has received scant consideration in the negotiation literature. We examined the effects of attachment anxiety and avoidance on negotiation propensity and performance in two studies. In terms of negotiation propensity (Study 1), attachment anxiety had significant, deleterious effects, though contrary to our predictions, attachment avoidance did not have significant effects. However, there was an interaction such that individuals high on attachment avoidance had a greater propensity to negotiate with an insecurely attached counterpart compared to a secure counterpart. In addition, attachment orientation influenced negotiation performance and information sharing (Study 2), but the effects depended upon role in the negotiation, with stronger effects for attachment avoidance as opposed to attachment anxiety. Theoretical and practical implications for research on negotiation and attachment theory are discussed.

Unraveling Business Negotiations Using Practitioner Data

Ray Fells, Helen Rogers & Ursula F. Ott

Negotiation and Conflict Management Research 8(2): 119–136 (May 2015)

Although negotiations are a core business activity, there is a lack of information about what actually occurs during a business negotiation. This study addresses this issue through an international survey of managers focusing on actual negotiations. The 294 respondents reported

on what actions they took as they sought to achieve an agreement, including how information was exchanged and how they looked for new solutions and managed concession making. The analysis suggests a pragmatic approach to negotiation, whereby information is not withheld, but neither is it freely given. Solutions emerge from discussion of priorities and commonalities rather than through more formal creative processes. The underlying script of negotiation appears to draw more on competitive than overtly collaborative tactics, suggesting that business negotiators are cautious co-operators. Further research avenues include investigating the pressures and context that impact upon negotiators' decision-making and closer examination of interactions between negotiation tasks en route to an agreement. [DRM Winter 2016]

Beyond Offers and Counteroffers: The Impact of Interaction Time and Negotiator Job Satisfaction on Subjective Outcomes in Negotiation

Shu-Cheng Steve Chi, Raymond A. Friedman & Huei-Lin Shih
Negotiation Journal 29(1): 39–60 (2014)

In this study, we examined real-world sales negotiations by collecting data in collaboration with a large Taiwanese eyeglasses company. We found, as has been established previously, that higher first offers predict higher company profits and that the impact of high opening offers can be muted by greater customer awareness of prices at other stores. When we investigated a more qualitative outcome, customers' perceptions of service quality, a different set of predictors emerged. Our results indicate that salespeople who spent more time introducing the products and services were perceived by the customers as providing higher service quality, but this effect only occurred for those salespeople who reported high levels of job satisfaction. Also, price reduction by salespeople did not improve customer satisfaction. Our results indicate that customer satisfaction does not require negotiated price concessions, but rather depends on extensive interaction with salespeople who are happy in their work. This is the first study to show that negotiator job satisfaction can affect important negotiation outcomes.

Communication In Multilateral Bargaining

Marina Agranov & Chloe Tergiman
Journal of Public Economics 118: 75-85 (October 2014)

One of the most robust phenomena in the experimental literature on multilateral bargaining is the failure of proposers to extract equilibrium rents. However, all previous experiments have overlooked the fact that outside the lab committee members are allowed to – and do – engage in sometimes intense communication processes prior to voting on a proposal. We conduct an experimental test of the Baron–Ferejohn model in which we allow committee members to engage in unrestricted cheap-talk communication before a proposal is submitted. We find that proposers extract a significantly higher share of resources when communication is allowed. Communication increases proposer power through two channels. First, it mitigates the uncertainty surrounding the amount a coalition member is willing to accept. Second, it allows potential coalition members to compete for a place in the coalition by lowering this stated price.

Modeling Negotiation Using “Narrative Grammar”: Exploring the Evolution of Meaning in a Simulated Negotiation

Sara Cobb, David Laws & Carlos Sluzki
Group Decision and Negotiation 23(5): 1047-1065 (July 2014)

Negotiation research, drawing on rational choice theory, provides a wealth of findings about how people negotiate successfully, as well as descriptions of some of the many pitfalls associated to negotiation failures. Building on narrative theory, this paper attempts to expand the theoretical base of negotiation in an effort to address the meaning making processes that structure negotiation. Drawing on Greimas's (*Diacritics* 7(1):23–40, 1977) notion of "narrative grammar," we argue that negotiation is a process that relies on a relatively limited set of narrative syntactical forms that structure the negotiation process. We conduct a simulation of a negotiation game and ask participants to storyboard their experience of the negotiation process. The use and evolution of narratives are identified via the storyboards, as well as participants' accounts of those storyboards. While the number of participants in the simulation is very small, limiting the nature of the claims that can be made, our analysis suggests regularities in the use of narrative syntax as well as in patterns of escalation and transformation. The study offers a new method for the analysis of negotiation, i.e., narrative syntax, aimed at understanding the dynamics of narrative processes in negotiation.

Competitive Representative Negotiations Worsen Intergroup Relations

Group Processes and Intergroup Relations 17(2): 143-160 (March 2014)

Özüm Saygı, Lindred L. Greer, Gerben A. van Kleef & Carsten K. W. De Dreu

Representative negotiation affords a unique opportunity to regulate intergroup competition and conflict. Although past research has identified factors that shape representative negotiations, little is known about how such interpersonal representative negotiations influence broader intergroup relations. Here we investigate how the representative negotiation process can affect intergroup relations, irrespective of negotiation outcomes. In Experiment 1, competitive (as opposed to cooperative or neutral) communication by the outgroup representative decreased satisfaction with the outcome and increased outgroup derogation. In Experiment 2, the timing of the competitive behavior of the outgroup representative was shown to affect ensuing intergroup relations, such that early rather than late competition led to higher outcome satisfaction because of reduced outcome expectations, but also decreased trust in and perceived closeness of the outgroup. Together, these findings show that competitive behavior, especially early rather than late in the representative negotiation process increases outcome satisfaction, but hurts intergroup relations, regardless of the actual negotiation outcome.

The Long-Term Impact of Negotiation Training and Teaching Implications

Cherine G. Soliman, Arnaud Stimec & Nicolas Antheaume

Conflict Resolution Quarterly 32(2): 129-153 (Winter 2014)

This article presents the subset of research on the enhancement of cooperation in negotiation with a focus on the intraorganizational context. It studies the long-term effect of negotiation training and its implications for the teaching of negotiation. We chose a qualitative approach over two cycles of action research. Cycle 1 was performed in a training course with sixty-four managers over six months. Cycle 2, using the focus group method, was carried out with eleven individuals selected from cycle 1 population over twelve months. This experiment enabled us to propose a dynamic typology of negotiator styles, which led us to suggest a number of recommendations to improve the teaching of negotiation.

Language Style Matching, Engagement, and Impasse in Negotiations

Molly E. Ireland & Marlone D. Henderson

Negotiation and Conflict Management Research 7(1): 1-16 (January 2014)

Humans and animals alike are known to mirror the behavior of both allies and opponents. However, existing models of behavior matching focus primarily on its prosocial functions. The current study explores whether both prosocial and adversarial sides of behavior matching can be found at different stages of an egoistic negotiation. In negotiations conducted over instant messenger, 64 dyads attempted to reach an agreement on four issues within 20 minutes while focusing solely on personal gain. We measured behavior matching with the language style matching (LSM) metric, which quantifies function word (e.g., pronouns, articles) similarity between partners. Although pairs with higher LSM throughout negotiations were more socially engaged, they were also less focused on the task and more likely to reach an impasse during the negotiation. Furthermore, early but not late style matching predicted more positive, socially attuned interactions. Implications for negotiation and mimicry research are discussed.

On the Role of Personality, Cognitive Ability, and Emotional Intelligence in Predicting Negotiation Outcomes: A Meta-Analysis

Sudeep Sharma, William Bottom & Hillary Anger Elfenbein

Organizational Psychology Review 3(4): 293-336 (2013)

The authors conducted a comprehensive meta-analysis of negotiation studies to investigate the role of individual differences in predicting negotiation outcomes. They found a substantial role for a wide range of individual difference variables. Cognitive ability, emotional intelligence, and numerous personality traits demonstrated significant relationships with multiple negotiation outcomes. These findings revealed that negotiators with higher levels of cognitive ability achieve greater individual economic value, joint economic value, and psychological subjective value. Results also showed that emotionally intelligent negotiators are likely to generate enhanced subjective psychological outcomes, such as satisfaction, liking, trust, and intentions to work again with the other party in the future. Except conscientiousness, each of the other “Big Five” personality traits (extraversion, agreeableness, neuroticism, and openness to experience) showed associations with at least one outcome measure. These findings imply that individual differences are valid predictors of negotiator effectiveness. The authors suggest, therefore, that negotiators should seek an understanding of their own and counterparts’ characteristics so that they can select themselves into negotiation settings in which they are likely to succeed. In addition, superiors should not overlook individual differences when assigning negotiation roles to subordinates. [DRM Winter 2014]

The Polarizing Effect of Arousal on Negotiation

Ashley D. Brown & Jared R. Curhan

Psychological Science 24(10): 1928-1935 (October 2013)

In this research, we examined the impact of physiological arousal on negotiation outcomes. Conventional wisdom and the prescriptive literature suggest that arousal should be minimized given its negative effect on negotiations, whereas prior research on misattribution of arousal suggests that arousal might polarize outcomes, either negatively or positively. In two experiments, we manipulated arousal and measured its effect on subjective and objective negotiation outcomes. Our results support the polarization effect. When participants had negative prior attitudes toward negotiation, arousal had a detrimental effect on outcomes, whereas when

participants had positive prior attitudes toward negotiation, arousal had a beneficial effect on outcomes. These effects occurred because of the construal of arousal as negative or positive affect, respectively. Our findings have important implications not only for negotiation, but also for research on misattribution of arousal, which previously has focused on the target of evaluation, in contrast to the current research, which focused on the critical role of the perceiver.

Terrorist Success in Hostage-Taking Missions: 1978-2010

Charlinda Santifort & Todd Sandler

Public Choice 156(1-2): 125-137 (July 2013)

This article investigates the determinants of logistical and negotiation successes in hostage-taking incidents using an expanded dataset that runs from 1978 to 2010. Unlike an earlier study, the current study has a rich set of negotiation variables in addition to political, geographical, and organizational variables associated with the perpetrators or targets of the attacks. The 33 years of data permit a split into two subperiods: 1978-1987 and 1988-2010, before and after the rise of religious fundamentalist terrorist groups. Logistical success depends on resource and target vulnerability proxies, while negotiation success hinges on bargaining variables. Among many novel findings, democracy significantly hampers logistical success throughout the entire period. Kidnappings, tropical climates, and high elevations foster logistical success. Religious fundamentalist terrorists' logistical advantage during 1978-1987 was lost during 1988-2010. Abducting protected persons, making demands on the host country, and staging incidents in a democracy limit negotiation success for the terrorists. If terrorists moderate or replace one or more demands, the likelihood of negotiation success for the terrorists goes up.

Why Hawks Fly Higher Than Doves: Intragroup Conflict in Representative Negotiation

Hillie Aaldering & Carsten K. W. De Dreu

Group Processes & Intergroup Relations 15: 713-724 (November 2012)

Intergroup conflicts are often regulated by negotiating group representatives, who are influenced by constituent pressures. We examined how within-constituent disagreement influences representative negotiations. In a 2×2 experiment, the majority of constituents was either hawkish or dovish vis-à-vis the out-group, and the minority had either low or high status. After being exposed to constituent voice, representatives negotiated in a multi-issue task with integrative potential. Results showed that representatives reached more integrative agreements when the constituent majority was dovish rather than hawkish, but only when the hawkish minority had low rather than high status; when the hawkish minority had high status, representatives reached suboptimal agreements equal to those reached when the constituent majority was hawkish. Additional results showed that under these circumstances, representatives perceived the cooperativeness of their constituency as highest and also had the most trust that the constituency would approve of the agreement. Implications are discussed for theory on intergroup relations, (representative) negotiation, and conflict resolution.

Beyond Negotiated Outcomes: The Hidden Costs of Anger Expression in Dyadic Negotiation

Lu Wang, Gregory Northcraft & Gerben Van Kleef

Organizational Behavior and Human Decision Processes 119(1): 54-63 (September 2012)

Anger frequently arises when people negotiate conflicting interests. This paper reports two experimental studies that examined the effects of expressing anger during negotiations. Results

showed that expressing anger at the negotiation table can have both positive and negative effects. On the one hand, expressing anger helps negotiators extract larger concessions from their opponents. Therefore, there are significant strategic benefits for anger expression. On the other hand, expressions of anger increase covert forms of retaliation by opponents. Given the insidious nature of covert relations, negotiators should take extra caution when expressing anger in negotiations. [DRM Summer 2013]

When and Why Individuals Obey Contracts: Experimental Evidence of Consent, Compliance, Promise, and Performance

Zev Eigen

Journal of Legal Studies 41(1): 67-93 (January 2012)

Negotiations often continue beyond the time when parties reach an agreement, when disputes arise about the enforceability of contract provisions. Sometimes, in spite of parties' negotiations, only one side unilaterally drafts the contract purporting to govern the parties' ongoing relationship. This article reports the results of an online experiment that suggests that individuals are more likely to comply with contracts they participated in negotiating (even marginally) than with ones they did not, and that preconsent notice of a contract term increases the likelihood of compliance with that term. The article also reports that a moral framing of a post-agreement attempt to compel performance of an undesirable task/contract provision was more effective than other frames. A positivistic legal threat was significantly less effective than other framings, and marginally less so than a generic request to continue performing the task in the absence of any contract. [DRM Summer 2013]

NEGOTIATION: OPENING OFFERS, ANCHORING AND FRAMING

How and Why Precise Anchors Distinctly Affect Anchor Recipients and Senders

David D. Loschelder, Malte Frieseb, and Roman Trötschel

Journal of Experimental Social Psychology 70: 164-176 (May 2017)

A negotiation commonly starts with one party sending and the other party receiving a first offer. This first offer anchors recipients and yields higher profits to the sender. Recent research has shown that precise anchors (e.g., \$28.75), those featuring fewer trailing zeros, are more potent than round anchors (such as \$30.00). The present studies extend this literature in two ways: First, prior research has exclusively focused on anchor recipients while ignoring the sender. Here, the authors examine precision effects for (1) recipients, (2) senders, and (3) both recipients and senders in a two-party negotiation. Also, while prior research disagreed about the theoretical mechanism behind the precision effect (with some positing that scale-granularity leads decision-makers to adjust in smaller steps on a finer-grained mental scale, and others suggesting that attribution of competence makes people ascribe more competence to someone who opens with a precise offer), these studies add to the literature by simultaneously examining these competing explanations. Multiple mediation analyses across three experiments consistently suggest that the beneficial impact of precise anchors on recipients is due to a social attribution-of-competence, whereas the detrimental impact on anchor-senders is due to a cognitive scale-granularity process. In all, the present findings show (a) that senders and recipients are distinctly affected by anchor precision, and (b) that these opposing effects are due to distinct psychological processes. [DRM Summer 2017]

Making the Most of First-Offer Advantage: Pre-Offer Conversation and Negotiation Outcomes

Najung Kim & Hun-Joon Park

Negotiation Journal 33(2): 153–170 (April 2017)

Why do some negotiators benefit from making the first offer during negotiations while others do not? This study explores the contents of conversations that take place before negotiators make their first offers in order to learn more about the differences between ultimately successful first offers that benefit from anchoring effects and ultimately unsuccessful ones in which negotiators apparently derive no benefit from making the first offer. In-depth qualitative analyses of the conversations that role players engaged in prior to their first offers were conducted in simulated negotiation exercises. Their analysis identified five different conversational tactics that negotiators employed in one-on-one negotiations to gain power in the negotiation, or what they call here “power conversation tactics.” Their findings suggest that the negotiation outcome (i.e., net value) was related to how the negotiators employed and combined these tactics during the pre-offer conversation. Based on these findings, they conceptualized four types of power-gaining/power-losing pre-offer conversation scenarios and explored the link between negotiation outcomes and each of these types of pre-offer conversations. This study further develops the literature on power dynamics and conversations in negotiations as well as the literature on the anchoring effect of a first offer. [DRM Summer 2017]

The Too-Much-Precision Effect: When and Why Precise Anchors Backfire With Experts

David D. Loschelder, Malte Friese, Michael Schaefer & Adam D. Galinsky

Psychological Science 27(2): 1573-1587 (2016)

Past research has suggested a fundamental principle of price precision: The more precise an opening price, the more it anchors counteroffers. The present research challenges this principle by demonstrating a too-much-precision effect. Five experiments (involving 1,320 experts and amateurs in real-estate, jewelry, car, and human-resources negotiations) showed that increasing the precision of an opening offer had positive linear effects for amateurs but inverted-U-shaped effects for experts. Anchor precision backfired because experts saw too much precision as reflecting a lack of competence. This negative effect held unless first movers gave rationales that boosted experts’ perception of their competence. Statistical mediation and experimental moderation established the critical role of competence attributions. This research disentangles competing theoretical accounts (attribution of competence vs. scale granularity) and qualifies two putative truisms: that anchors affect experts and amateurs equally, and that more precise prices are linearly more potent anchors. The results refine current theoretical understanding of anchoring and have significant implications for everyday life. [DRM Summer 2017]

The Information-Anchoring Model of First Offers: When Moving First Helps Versus Hurts Negotiators

David Loschelde, Roman Trotschel, Roderick Swaab, Malte Friese & Adam Galinsky

Journal of Applied Psychology 101(7): 995-1012 (July 2016)

Does making the first offer increase or impair a negotiator’s outcomes? Past research has found evidence supporting both claims. To reconcile these contradictory findings, we developed and tested an integrative model—the Information-Anchoring Model of First Offers. The model predicts when and why making the first offer helps versus hurts. We suggest that first offers have

2 effects. First, they serve as anchors that pull final settlements toward the initial first-offer value; this anchor function often produces a first-mover advantage. Second, first offers can convey information on the senders' priorities, which makes the sender vulnerable to exploitation and increases the risk of a first-mover disadvantage. To test this model, 3 experiments manipulated the information that senders communicated in their first offer. When senders did not reveal their priorities, the first-mover advantage was replicated. However, when first offers revealed senders' priorities explicitly, implicitly, or both, a first-mover disadvantage emerged. Negotiators' social value orientation moderated this effect: A first-mover disadvantage occurred when senders faced proself recipients who exploited priority information, but not with prosocial recipients. Moderated mediation analyses supported the model assumptions: Proself recipients used their integrative insight to feign priorities in their low-priority issues and thereby claimed more individual value than senders. The final discussion reviews theoretical and applied implications of the Information-Anchoring Model of First Offers.

Anchors Weigh More Than Power: Why Absolute Powerlessness Liberates Negotiators to Achieve Better Outcomes

Michael Schaerer, Roderick I. Swaab & Adam D. Galinsky
Psychological Science 26(2): 170-181 (February 2015)

Negotiation scholars and practitioners generally assume that negotiating with any alternative is better than having no alternative at all. After all, alternatives are a critical source of power and allow negotiators to walk away from the table. However, the authors argue that alternatives not only provide power but also serve as salient anchors that can weigh down negotiators' first offers and lead to worse deals, especially when the alternatives are unattractive. Five experiments show that although negotiators without alternatives felt *less* powerful, they actually made *higher* first offers and achieved *better* deals than those with a relatively unattractive alternative. Thus, having no alternative to fall back on and being completely powerless can be a liberating experience. However, when negotiators with weak alternatives were instructed to focus on their target price (i.e. their goal), they were as effective as those without an alternative. [DRM Summer 2015]

The Offer Framing Effect: Choosing Single Versus Bundled Offerings Affects Variety Seeking

Mauricio Mittelman, Eduardo B. Andrade, Amitava Chattopadhyay & C. Miguel Brendl
Journal of Consumer Research 41(4): 953-964 (December 2014)

Choices of multiple items can be framed as a selection of single offerings (e.g., a choice of two individual candy bars) or of bundled offerings (e.g., a choice of a bundle of two candy bars). Four experiments provide strong evidence that consumers seek more variety when choosing from single than from bundled offerings. The offer framing effect shows that the mechanics of choosing—the ways consumers go about making choices of multiple items—affect variety seeking in a systematic manner. The data also suggest that the effect is largely due to the single offering frame. Theoretical and managerial implications are discussed.

Lawyer and Nonlawyer Susceptibility to Framing Effects in Out-Of-Court Civil Litigation Settlement

Ian K. Belton, Mary Thomson & Mandeep K. Dhami
Journal of Empirical Legal Studies 11(3): 578-600 (September 2014)

Settling a legal dispute out of court is typically a good result for both parties. However, many disputes do not settle: the presence of cognitive biases, such as those observed through framing manipulations, is thought to be one of the many reasons for settlement failure. The present study used quantitative and qualitative data to compare the impact of a gain- or loss-framed hypothetical civil litigation scenario on settlement decisions made by lawyers and other nonlawyer professionals. A significant effect of framing was found for both groups. As predicted, both nonlawyers and lawyers were much more likely to settle their claim in the gain scenario than in the loss scenario. This finding was supported by the qualitative data: risk-averse comments were more frequent in the gain frame whereas risk-seeking statements were more common in the loss frame. There was also evidence that lawyers may be less affected by framing than nonlawyers, although a smaller difference was observed than in previous studies. In addition, lawyers were more likely than nonlawyers to consider the expected financial value of the litigation in making their decision. We discuss the implications of these results and suggest avenues for future research.

Too Good To Be True: Suspicion-Based Rejections Of High Offers

Wolfgang Steinle, Ilja van Beest & Eric van Dijk

Group Processes & Intergroup Relations 17(5): 682-698 (September 2014)

Should negotiators increase the value they offer to their counterparts, if they are eager to get to "yes"? It is a common belief that high offers are more readily accepted than low offers. In contrast to this general notion, the authors show that there is a limit to the beneficial effects of making high offers and that becoming too generous may backfire. This paradoxical finding is observed when offers are made in an ambiguous situation. In three studies, participants became suspicious about high offers (i.e., offers that were beneficial to themselves), but not about low or equal offers (i.e., offers that distributed the value equally benefitted the proposer) by a proposer who had an information advantage. Due to suspicion, participants rejected high offers more often than equal offers. The finding that low and equal offers are met with less suspicion than high offers suggests that people trust the validity of information provided by negotiators who make seemingly self-serving or equal offers. An interesting implication is that negotiators may in fact be held hostage by the perception that they are primarily motivated by self-interest. Making more valuable offers does not necessarily increase the chance of getting to yes. [DRM Winter 2015]

The Remarkable Robustness of the First-Offer Effect: Across Culture, Power, and Issues

Brian C. Gunia, Roderick I. Swaab, Niro Sivanathan & Adam D. Galinsky

Personality and Social Psychology Bulletin 39(12): 1547–1558 (December 2013)

In any negotiation or dispute, someone has to make the first offer. Studies of the first-offer effect demonstrate that the person who goes first achieves better final outcomes than the person who does not. Final prices are higher, for example, when sellers, not buyers, move first. The evidence for the first-offer effect, however, derives primarily from studies of Westerners who are negotiating over a single issue and do not have systematic power differences – contexts that may amplify the effect. Thus the authors explored the effect across cultures, among negotiators varying in power, and in negotiations involving multiple as well as single issues. Their first two studies showed that the first-offer effect remains remarkably robust across cultures and multi-issue negotiations. Their final two studies, however, demonstrated that low-power negotiators benefit from making the first offer across single- and multi-issue negotiations. By studying multi-issue negotiations with various types of negotiable issues, Studies 2 and 4 also

revealed that first offers exert their influence through the distributive (win-lose) issues, not the issues on which the parties have some common ground. Overall, these results demonstrate that negotiators and disputants can benefit from moving first in many situations, especially those that feature distributive issues. Mediators and arbitrators, in turn, may wish to anticipate and guard against the potentially biasing effect of the first offer. [DRM Summer 2014]

Precise Offers are Potent Anchors: Conciliatory Counteroffers and Attributions of Knowledge in Negotiations

Malia Mason, Alice Lee, Elizabeth Wiley & Daniel Ames

Journal of Experimental Social Psychology 49(4): 759-763 (July 2013)

People habitually use round prices as first offers in negotiations. We test whether the specificity with which a first offer is expressed has appreciable effects on first-offer recipients' perceptions and strategic choices. Studies 1a-d establish that first-offer recipients make greater counteroffer adjustments to round versus precise offers. Study 2 demonstrates this phenomenon in an interactive, strategic exchange. Study 3 shows that negotiators who make precise first offers are assumed to be more informed than negotiators who make round first offers and that this perception partially mediates the effect of first-offer precision on recipient adjustments. First-offer recipients appear to make assumptions about their counterpart's language choices and infer meanings that are not explicitly conveyed. Precise numerical expressions imply a greater level of knowledge than round expressions and are therefore assumed by recipients to be more informative of the true value of the good being negotiated.

A Homeowner's Dilemma: Anchoring in Residential Real Estate Transactions

Grace Bucchianeri & Julia Minson

Journal of Economic Behavior & Organization 89: 76-92 (May 2013)

We examine whether, and how, listing strategies impact sale prices in residential home sales. Literatures in housing economics, negotiations, and auctions offer diverse predictions around this question. On the one hand, housing studies typically treat home prices as an objective function of property and neighborhood characteristics. Yet, the large and robust literature on anchoring effects (Tversky & Kahneman, 1974) suggests a positive relationship between listing prices and sale prices. Finally, evidence from the auctions literature suggests the opposite pattern through herding behaviors. We analyzed more than 14,000 transactions, taking into account observable property heterogeneity, geographical location and timing of the sales. We find that higher starting prices are indeed associated with higher selling prices, consistent with anchoring. For the average home in our sample, over-pricing between 10 to 20 percent leads to an increase in the sale price of \$117 to \$163. This effect is particularly strong in areas with higher rates of mortgage foreclosure or serious delinquency. Additional analyses show that our results are unlikely to be driven by seller motivations or unobserved home qualities. We contrast our findings with recommendations and private beliefs of real estate agents, who provide services and advice for about 90 percent of home sales in the US.

NEGOTIATION: GENDER, RACE & CULTURE

Men and the Middle: Gender Differences in Dyadic Compromise Effects

Hristina Nikolova & Cait Lamberton

Journal of Consumer Research 43(3): 355-371 (2017)

Individual decision-makers show robust tendencies toward choosing the middle option in a choice set (a bias known as the compromise effect). Here, the authors examine the choice of compromise options in joint dyadic decisions. Findings reveal that the compromise effect emerges any time there is a female in a decision-making pair; when women are in a pair, either with another woman or with a man, people choose jointly basically as they would alone – middle alternatives take the lion's share of choice. Surprisingly, when men make decisions together, there's no compromise effect; men deciding together tend to stick to extreme, all-or-nothing options, far more than do men deciding with other women or men deciding alone. Why does this happen? Research has suggested that masculinity is considered to be precarious, necessitating constant proof and validation in social interactions. Thus, when men make decisions together, they feel driven to take actions that are maximally different from feminine norms, which prioritize moderation, and maximally similar to masculine norms, which prioritize extremity. So when men make decisions together, they signal their masculinity by choosing things that are extreme, which attenuates the compromise effect in male decision-making pairs. It is not impossible, however, for men making joint decisions to shift toward compromise alternatives. If male pairs are given the opportunity to signal their masculinity a priori (for example, by publicly selecting a highly-male-stereotyped magazine), their tendency to avoid compromise in an immediately subsequent decision dissolves. Then, they are likely to choose the middle option in the same way as do others – and in the same way they would if deciding alone. [DRM Summer 2017]

Trumping Norms: Lab Evidence on Aggressive Communication Before and After the 2016 US Presidential Election

Jennie Huang & Corinne Low

American Economic Review 107(5): 120-124 (May 2017)

This paper uses a simple lab experiment designed to test for gender differences in negotiation to show that the 2016 election of Donald Trump had a profound impact on individual behavior in the lab. Huang and Low (2017) use a "Battle of the Sexes" ("BoS") game with unstructured communication to show that men are less likely to use tough, but effective, negotiation tactics when paired with female partners, and more likely to offer the higher payoff to female partners. We repeat this experiment after the election, and found two important differences: 1) Individuals are less cooperative in general, more likely to use adversarial strategies, and less likely to reach an agreement, and 2) This is particularly driven by men acting more aggressively toward women.

Spillover Bias in Diversity Judgment

David P. Daniels, Margaret A. Neale & Lindred L. Greer

Organizational Behavior and Human Decision Processes 139: 92-105 (March 2017)

Diversity research has long assumed that individuals' perceptions of diversity are accurate, consistent with normative theories of judgments in economics and decision theory. We challenge this assumption. In six experiments, we show that when there is more diversity along one dimension (e.g., race, clothing color), people also perceive more diversity on other dimensions (e.g., gender, skill) even when this cannot reflect reality. This spillover bias in diversity judgment leads to predictable errors in decision making with economic incentives for accuracy, and it alters support for affirmative action policies in organizations. Spillover bias in diversity judgment may help explain why managerial decisions about groups often appear to be

suboptimal and why diversity scholars have found inconsistent associations between objective diversity and team outcomes.

What's a Masculine Negotiator? What's a Feminine Negotiator? It Depends on the Cultural and Situational Contexts

Wen Shan, Joshua Keller & Lynn Imai

Negotiation and Conflict Management Research 9(1): 22–43 (February 2016)

In two studies, the authors examine how people in the United States and China categorize specific negotiation goals and behaviors as masculine or feminine in different negotiation contexts. The authors found that while American participants categorized competitive goals and behaviors as masculine and cooperative ones as feminine across business-to-consumer (B2C) and business-to-business (B2B) negotiation contexts, Chinese participants' patterns depended on the negotiation context. In B2C contexts, Chinese participants categorized competitive goals and behaviors as feminine and cooperative ones as masculine; in B2B contexts, they made further distinctions, categorizing competitive goals and behaviors that are socially inappropriate as feminine, but competitive ones that are socially appropriate, as well as cooperative goals and behaviors, as masculine. The authors caution that for both male and female negotiators and for those negotiating with them, an oversimplified view of being masculine and feminine without considering culture and context may lead to inappropriate stereotyping. [DRM Summer 2016]

Formal Training Does Not Always Eliminate Gender-Based Negotiation Differences

Charles B. Craver

Cardozo J. Conflict Resolution 18: 1-21 (Fall 2016)

When men and women conduct bargaining interactions without any formal training, males tend to obtain more advantageous results than their female cohorts. They tend to establish more elevated goals, and do a better job of placing themselves in the shoes of their counterparts. They feel more comfortable than women dealing with the overtly competitive nature of legal negotiations. When individuals take formal Legal Negotiation courses that explore the relevant factors and the traits possessed by proficient bargainers, gender-based differences are usually diminished and the results achieved by men and women tend to become statistically insignificant. On the other hand, on rare occasions, if male class members continue to be highly competitive throughout the semester, and their female counterparts do not learn how to effectively counter such behavior, male results may still be more beneficial than the results achieved by their female cohorts. To avoid such unequal negotiation deals, we must carefully focus on the relevant male and female traits, and teach both male and female students what they should do to generate beneficial results for the parties they represent.

Numbers Are Gendered: The Role of Numerical Precision

Dengfeng Yan

Journal of Consumer Research 43(2): 303-316 (August 2016)

Marketing communications often contain numerical information that can be expressed more or less precisely. Earlier research has identified a number of ways in which consumers respond differently to precise versus round numbers. The current research attempts to enrich this literature by introducing a new theoretical perspective. Drawing on recent findings in the numerical cognition literature, this work proposes that individuals project gendered meanings to precise versus round numbers, with precise numbers seen as more masculine relative to round

ones. Seven studies provided convergent evidence for this proposition and demonstrated its marketing implications. Studies 1, 2, and 3, employing various approaches, show that participants do subscribe to this precision-masculinity intuition, at both implicit and explicit levels. Study 4 suppresses this effect by priming participants with examples where precision is connected to femininity. Building on these findings, subsequent studies demonstrate that marketing communications using precise (round) numbers lead to more favorable evaluations when the products or attributes are positioned as masculine (feminine).

How Many Cents on the Dollar? Women and Men in Product Markets

Tamar Kricheli-Katz & Tali Regev

Science Advances 2(2): e1500599 (February 2016)

Gender inequality in contemporary U.S. society is a well-documented, widespread phenomenon. However, little is known about gender disparities in product markets. This study is the first to use actual market data to study the behavior of women and men as sellers and buyers and differences in market outcomes. We analyze a unique and large data set containing all eBay auction transactions of most popular products by private sellers between the years 2009 and 2012. Women sellers received a smaller number of bids and lower final prices than did equally qualified men sellers of the exact same product. On average, women sellers received about 80 cents for every dollar a man received when selling the identical new product and 97 cents when selling the same used product. These findings held even after controlling for the sentiments that appear in the text of the sellers' listings. Nonetheless, it is worth noting that this gap varied by the type of the product being sold. As a policy, eBay does not reveal the gender of users. We attribute the price differences to the ability of buyers to discern the gender of the seller. We present results from an experiment that shows that people accurately identify the gender of sellers on the basis of typical information provided in postings. We supplement the analysis with an additional off-eBay experiment showing that, in a controlled setting, people are willing to pay less for money-value gift cards when they are sold by women rather than men.

A Meta-Analysis on Gender Differences in Negotiation Outcomes and Their Moderators

Jens Mazei, Joachim Huffmeier, Philipp Alexander Freund, Alice Stuhlmacher, Lena Bilke & Guido Hertel

Psychological Bulletin 141(1): 85-104 (2015)

This meta-analysis investigates gender differences in economic negotiation outcomes. As suggested by role congruity theory, we assume that the behaviors that increase economic negotiation outcomes are more congruent with the male as compared with the female gender role, thereby presenting challenges for women's negotiation performance and reducing their outcomes. Importantly, this main effect is predicted to be moderated by person-based, situation-based, and task-based influences that make effective negotiation behavior more congruent with the female gender role, which should in turn reduce or even reverse gender differences in negotiation outcomes. Using a multilevel modeling approach, this meta-analysis includes 123 effect sizes (overall $N = 10,888$, including undergraduate and graduate students as well as businesspeople). Studies were included when they enabled the calculation of an effect size reflecting gender differences in achieved economic negotiation outcomes. As predicted, men achieved better economic outcomes than women on average, but gender differences strongly depended on the context: Moderator analysis revealed that gender differences favoring men were reduced when negotiators had negotiation experience, when they received information about the

bargaining range, and when they negotiated on behalf of another individual. Moreover, gender differences were reversed under conditions of the lowest predicted role incongruity for women. In conclusion, gender differences in negotiations are contextually bound and can be subject to change. Future research is needed that investigates the underlying mechanisms of new moderators revealed in the current research (e.g., experience). Implications for theoretical explanations of gender differences in negotiation outcomes, for gender inequalities in the workplace, and for future research are discussed.

From “Good day” to “Sign here”: Norms Shaping Negotiations Within a Face Culture

Mendiola Teng-Calleja, Marshalee J. Baquiano & Cristina J. Montiel

Negotiation and Conflict Management Research 8(4): 228-242 (November 2015)

Using discourse analysis, we examine how culture shapes the dynamics and outcome of wage negotiations. With an intracultural lens, we look at how two opposing groups that share one overarching culture maximize group gains and achieve a bargaining agreement. We analysed audio recordings of collective bargaining meetings between labor and management negotiators of a multinational beverage company in the Philippines. Consistent with the claims of previous studies, negotiation between labor and management within this culture reflected low trust. Joint gains were however achieved through FACE dynamics that thwarted the impact of low trust bargaining. Specifically, our discursive analysis shows how utterances contain justifications, demands, rejections and threats. However, such apparently contentious talks are embedded in local language that conveys respect for authority, mixed with efforts to maintain harmony. These reflections of FACE culture in the bargaining process help shift the negotiations from a contentious to a collaborative and successful problem-solving process. [DRM Winter 2016]

Confucian Ideal Personality and Chinese Business Negotiation Styles: An Indigenous Perspective

Zhenzhong Ma, Weiwei Dong, Jie Wu, Dapeng Liang & Xiaopeng Yin

Group Decision and Negotiation 24(3): 383-400 (May 2015)

China has become one of the most important economies in the global market, but negotiating with the Chinese remains a great challenge for most Westerners. This study is to help better understand Chinese business negotiation styles with an indigenous perspective by exploring the impact of Confucian ideal personality on business negotiation process in China. This study tests the effects of three key components of Confucian ideal personality—benevolence (Ren), wisdom (Zhi), and courage (Yong) on Chinese negotiation behaviors and further on negotiation outcomes with 200 business students in a simulated negotiation exercise. The results support the significant effects of benevolence and courage on Chinese business negotiation styles but wisdom is not found to have any significant impact in China. The overall pattern of the results substantiates the strong influence of Confucianism on Chinese negotiation styles, and provides an important supplement to negotiation theories developed in the West.

When an Intercultural Business Negotiation Fails: Comparing the Emotions and Behavioural Tendencies of Individualistic and Collectivistic Negotiators

GROUP DECISION AND NEGOTIATION 24(3): 537-561 (May 2015)

Harri T. Luomala, Rajesh Kumar, J. D. Singh & Matti Jaakkola

This study explores the linkages between culture, emotion, and behavioural tendencies in unsuccessful intercultural business negotiations. A set of novel research hypotheses are

developed and are then tested using a negotiation scenario involving 106 Finnish and 114 Indian study participants. Three key findings emerge from the statistical tests conducted. First, the article presents new empirical evidence suggesting that qualitatively different emotions (dejection vs. agitation) are experienced after a failed intercultural business negotiation by individualists and collectivists. Dejection related emotions (e.g., sadness, disappointment) represent the absence of a positive outcome, whereas agitation related emotions (e.g., tension, fear, anxiety) represent the presence of a negative outcome (Higgins, 1987). Individualists are more likely to experience dejection related emotions whereas the collectivists are likely to experience agitation related emotions. This prediction was confirmed for the individualistic Finns but did not receive corresponding support among the collectivistic Indians. Second, the article reveals the existence of the relationship between perspective-taking ability and emotional volatility in the context of failed intercultural business negotiation involving individualists and collectivists. Collectivists were expected to show greater perspective ability relative to their individualistic counterparts and this prediction was confirmed. Third, the study finds partial support for the idea that different types of negative emotions can lead to the same behavioural tendency (approach) among individualists and collectivists when intercultural business negotiation fails. Agitation related emotions lead the Indians to approach their counterparts whereas dejection related emotions lead the Finns to approach their counterparts. The paper concludes by outlining a set of theoretical and managerial implications and suggestions for further research. Individualistic and collectivistic negotiators must be conscious of how emotions might impact their behavior and be mindful of any steps they take. It would also be helpful to behave in ways that do not trigger negative emotions among their counterparts. [DRM Summer 2015]

A Meta-Analysis of Gender Stereotypes and Bias in Experimental Simulations of Employment Decision Making

Amanda J. Koch, Susan D. D'Mello & Paul R. Sackett

Journal of Applied Psychology 100(1): 128-161 (January 2015)

Gender bias continues to be a concern in many work settings, leading researchers to identify factors that influence workplace decisions. In this study we examine several of these factors, using an organizing framework of sex distribution within jobs (including male- and female-dominated jobs as well as sex-balanced, or integrated, jobs). We conducted random effects meta-analyses including 136 independent effect sizes from experimental studies ($N = 22,348$) and examined the effects of decision-maker gender, amount and content of information available to the decision maker, type of evaluation, and motivation to make careful decisions on gender bias in organizational decisions. We also examined study characteristics such as type of participant, publication year, and study design. Our findings revealed that men were preferred for male-dominated jobs (i.e., gender-role congruity bias), whereas no strong preference for either gender was found for female-dominated or integrated jobs. Second, male raters exhibited greater gender-role congruity bias than did female raters for male-dominated jobs. Third, gender-role congruity bias did not consistently decrease when decision makers were provided with additional information about those they were rating, but gender-role congruity bias was reduced when information clearly indicated high competence of those being evaluated. Fourth, gender-role congruity bias did not differ between decisions that required comparisons among ratees and decisions made about individual ratees. Fifth, decision makers who were motivated to make careful decisions tended to exhibit less gender-role congruity bias for male-dominated jobs.

Finally, for male-dominated jobs, experienced professionals showed smaller gender-role congruity bias than did undergraduates or working adults. (PsycINFO Database Record (c) 2015 APA, all rights reserved)

Gender and the Emotional Experience of Relationship Conflict: The Differential Effectiveness of Avoidant Conflict Management

Julia B. Bear, Laurie R. Weingart & Gergana Todorova

Negotiation and Conflict Management Research 7: 213–231 (2014)

Conflict research has shown that managing relationship conflict via avoidance is beneficial for team performance, but it is unclear whether avoidant conflict management benefits individuals on an affective level. Drawing on theories of gender roles, we proposed that gender is an important factor that influences whether avoidant conflict management mitigates the negative affective effects of relationship conflict. In a field study of a healthcare organization, we found that relationship conflict resulted in negative emotions, which, in turn, were positively associated with emotional exhaustion two months later. Avoidant conflict management attenuated the relationship between negative emotions engendered by relationship conflict and emotional exhaustion, but this effect depended on gender. Among men, the extent to which they used an avoidant conflict management style mitigated the association between negative emotions and emotional exhaustion, whereas among women, avoidant conflict management did not attenuate this relationship. Findings are discussed in terms of theoretical and practical implications.

Not Competent Enough to Know the Difference? Gender Stereotypes About Women's Ease of Being Misled Predict Negotiator Deception

Laura J. Kray, Jessica A. Kennedy & Alex B. Van Zant

Organizational Behavior and Human Decision Processes 125(2): 61-72 (2014)

We examined whether gender differences in the perceived ease of being misled predict the likelihood of being deceived in distributive negotiations. Study 1 (N = 131) confirmed that female negotiators are perceived as more easily misled than male negotiators. This perception corresponded with perceptions of women's relatively low competence. Study 2 (N = 328) manipulated negotiator gender, competence and warmth and found that being perceived as easily misled via low competence affected expectations about the negotiating process, including less deception scrutiny among easily misled negotiators and lower ethical standards among their negotiating counterparts. This pattern held true regardless of buyer and seller gender. Study 3 (N = 298) examined whether patterns of deception in face-to-face negotiations were consistent with this gender stereotype. As expected, negotiators deceived women more so than men, thus leading women into more deals under false pretenses than men.

Physical Attractiveness and Cooperation in a Prisoner's Dilemma Game

Mizuho Shinada & Toshio Yamagishi

Evolution And Human Behavior 35(6): 451-455 (November 2014)

The modulating role of age on the relationship between physical attractiveness and cooperativeness in a prisoner's dilemma game (PDG) was investigated. Previous studies have shown that physical attractiveness is negatively related to cooperative choices among young men but not young women. Following the argument that the negative relationship between physical attractiveness and cooperation is a product of short-term mating strategies among attractive men, we predicted that this relationship is unique to young men and absent among women and older

men. We tested this hypothesis with 175 participants (aged 22–69 years). The results showed that physical attractiveness was negatively related to cooperative behavior among young men but not among women or older men. We further observed that the negative relationship between physical attractiveness and cooperation among young men was particularly strong when attractiveness was judged by women.

The Rules of Implicit Evaluation by Race, Religion and Age

Jordan R. Axt, Charles R. Ebersole & Brian A. Nosek

Psychological Science 25(9): 1804-1815 (September 2014)

The social world is stratified. Social hierarchies are known but often disavowed as anachronisms or unjust. Nonetheless, hierarchies may persist in social memory. In three studies (total N > 200,000), we found evidence of social hierarchies in implicit evaluation by race, religion, and age. Participants implicitly evaluated their own racial group most positively and the remaining racial groups in accordance with the following hierarchy: Whites > Asians > Blacks > Hispanics. Similarly, participants implicitly evaluated their own religion most positively and the remaining religions in accordance with the following hierarchy: Christianity > Judaism > Hinduism or Buddhism > Islam. In a final study, participants of all ages implicitly evaluated age groups following this rule: children > young adults > middle-age adults > older adults. These results suggest that the rules of social evaluation are pervasively embedded in culture and mind.

A Counterpart's Feminine Face Signals Cooperativeness and Encourages Negotiators to Compete

Eric Gladstone & Kathleen O'Connor

Organizational Behavior and Human Decision Processes 125: 18-25 (September 2014)

Traditionally, research demonstrates that compared to men, women suffer at the negotiation table. What if, either on top of or instead of, gender differences, facial femininity has a strong impact on negotiator outcomes? To examine this question, the authors' first study shows that when choosing a counterpart (someone to compete against), participants preferred others with more, versus less, feminine faces. However, this trend reversed itself when participants were asked to select an agent – someone who competes on their behalf. Here, people preferred the less feminine-faced individual. The reversal of the first choice preference suggests that people associate facial femininity with likely cooperativeness and less aggressiveness. In a second study, the authors designed a computer program that simulated “another participant” in the lab – participants in the study believed this person to be real. Just prior to beginning the negotiation exercise, participants viewed a picture of their ostensible counterpart – either a more feminine-faced male or female, or a less feminine-faced male or female. By the end of the negotiation exercise, participants had demanded more from the more feminine-faced counterparts – both male and female alike. Importantly, this effect held and was stronger than the effect for the counterpart's gender. According to the authors, while more feminine-faced others are believed to be less aggressive and more cooperative, this is not necessarily a bad thing. First, feminine-faced others are chosen more often as exchange partners. And more exchange opportunity equals more opportunity to profit. Second, if ostensible others believe more feminine-faced counterparts are more cooperative, and less aggressive, why not take advantage of these pre-existing beliefs? Come out of the gate swinging, recommend the authors, behaving in an unanticipated manner. [DRM Winter 2015]

Women And Negotiation: Permission To Skip The Chit-Chat?

Alexandra A. Mislin, Brooke A. Shaughnessy, Tanja Hentschel & Claudia Peus

Presentation at the August 2014 Academy of Management Conference

“Negotiators are often advised to engage in small talk before getting down to business.... But in a new research study, conducted by [the authors], only men—and not women—received positive results from chit-chatting with their counterparts. In the study, presented at the August annual meeting of the Academy of Management, participants read a transcript and evaluated a negotiator named either JoAnna or Andrew who either did or did not engage in small talk—about local restaurants and a hometown sports team—before negotiating with a business counterpart for control of a scarce resource. Participants judged Andrew to be more communal and likeable when he engaged in small talk before negotiating than when he did not, and the chit-chatting Andrew also was rewarded with better final offers from participants than was the all-business Andrew. JoAnna, on the other hand, was judged the same whether or not she chatted informally with her counterpart, and on a par with the Andrew who didn’t make small talk. Chatty Andrew was the clear winner. Gender stereotypes and expectations likely explain the results, according to the authors. Because men are generally viewed as less communal, sociable, and concerned about others than women, men who buck the stereotype with small and unexpected communal behaviors, like making small talk, may be rewarded in negotiation. (However, men may be penalized for more significant nonstereotypical behavior, such as staying home with their children.) Meanwhile, because we tend to expect women to behave communally, we may not punish them for the minor violation of a gender stereotype—electing not to shoot the breeze before negotiating—the authors hypothesize. Women may need to find “other ways than small talk to cultivate a positive regard in their counterparts,” says study author Shaughnessy. That doesn’t mean that women should assume they have carte blanche to skip the chit-chat. As we all have experienced, in the real world, idle conversation about the weather, sports, and so on can lead to discoveries of commonalities and connection that build bonds for male and female negotiators alike.” Summary courtesy of Program on Negotiation Daily Blog, Harvard Law School (with description available at: <https://www.pon.harvard.edu/daily/leadership-skills-daily/women-and-negotiation-permission-to-skip-the-chit-chat/>)

The Price of Racial Bias: Intergroup Negotiations in the Ultimatum Game

Psychological Science 24(12): 2498 –2504 (December 2013)

Jennifer Kubota, Jian Li, Eyal Bar-David, Mahzarin Banaji & Elizabeth Phelps

Existing stereotypes about Black Americans may influence perceptions of intent during financial negotiations. In this study, we explored whether the influence of race on economic decisions extends to choices that are costly to the decision maker. We investigated whether racial group membership contributes to differential likelihood of rejection of objectively equal unfair monetary offers. In the Ultimatum Game, players accept or reject proposed splits of money. Players keep accepted splits, but if a player rejects an offer, both the player and the proposer receive nothing. We found that participants accepted more offers and lower offer amounts from White proposers than from Black proposers, and that this pattern was accentuated for participants with higher implicit race bias. These findings indicate that participants are willing to discriminate against Black proposers even at a cost to their own financial gain.

Women in Negotiation: Effects of Gender and Power on Negotiation Behavior

Alain P. C. I. Hong & Per J. van der Wijk

Negotiation and Conflict Management Research 6(4): 273-284 (November 2013)

Research shows that women often fare worse at the negotiation table than men. In a recent experimental study using a face-to-face distributive bargaining situation, the authors examined to what extent women's and men's negotiation behavior was influenced by power. The authors argue that women are less aware of their power position than men. The experiment stimulated such awareness by having participants recall moments at which they experienced having power (the "power-prime"), before entering a bargaining situation. The power-primed women made better first offers and negotiated better outcomes than women who did not receive that prime. Men's first offers and negotiation outcomes turned out to be unaffected by power. As a result, the power-prime significantly reduced gender differences in negotiation outcomes. Empowering women via a psychological power boost before they enter a negotiation or any form of dispute resolution interaction seems an effective method of providing them with a better starting point and may be particularly relevant for disputes in which they have to deal with a male party – divorce negotiations, for instance. The authors are currently extending their gender study to leadership issues, where women, after a boost in their leadership confidence, seem to be more inclined to take the lead than without that boost. [DRM Summer 2014]

Ask and Ye Shall Receive? How Gender and Status Moderate Negotiation Success

Negotiation and Conflict Management Research 6(4): 253-272 (November 2013)

Emily T. Amanatullah & Catherine H. Tinsley

The backlash effect is a well-documented negative social reaction toward women who are seen as violating gender norms because they engage in counterstereotypical (noncommunal, agentic) behaviors during the performance of their jobs. This social disincentive has been shown to account for women's diminished likelihood to initiate negotiations relative to men. But we question whether women who ignored this disincentive and initiated negotiations would even receive the resources they requested. We extend past research by showing women also incur financial penalties for initiating negotiations. This financial penalty can be explained by women's lower ascribed status relative to men's status and fortunately can be attenuated if women have achieved status. In two studies, we find consistent evidence that women who ask do not receive unless they have externally conferred status.

Narrow Imaginations: How Imagining Ideal Employees Can Increase Racial Bias

Jazmin L. Brown-Iannuzzi, B. Keith Payne & Sophie Trawalter

Group Processes & Intergroup Relations 16: 661-670 (November 2013)

When people make important decisions, such as selecting a job candidate or graduate school applicant based on how well they fit with that imagined ideal. In two experiments we provide evidence that imagining the ideal has unintended consequences. Imagining an ideal candidate for a professional job led participants to preferentially imagine a White candidate (Experiment 1) and to preferentially hire a White candidate over a Black candidate with matched qualifications (Experiment 2). These effects were independent of explicit prejudice, suggesting that even low-prejudice individuals may be affected by this bias. However, an alternative imagery strategy—imagining a variety of suitable applicants—was effective at remediating the bias. In some cases discrimination may result not from prejudiced attitudes but from failures of the imagination.

How Can Women Escape the Compensation Negotiation Dilemma? Relational Accounts Are One Answer

Hannah Riley Bowles & Linda Babcock

Psychology of Women Quarterly 37(1): 80-96 (March 2013)

Policy makers, academics, and media reports suggest that women could shrink the gender pay gap by negotiating more effectively for higher compensation, yet women entering compensation negotiations face a dilemma. They have to weigh the benefits of negotiating against the social consequences of having negotiated. Research shows that women are penalized socially more than men for negotiating for higher pay. To examine this dilemma, the authors tested strategies to help women improve both their negotiation and social outcomes in compensation negotiations. In Study 1, female negotiators improved social outcomes by communicating concern for organizational relationships, and they improved negotiation outcomes by offering a legitimate account for compensation requests. However, neither strategy—alone or in combination—improved both social and negotiation outcomes. Study 2 tested two strategies for improving social and negotiation outcomes by explaining why a compensation request is legitimate in relational terms. Results showed that, although adherence to the feminine stereotype is insufficient, using these “relational accounts” can improve women’s social and negotiation outcomes at the same time. [DRM Summer 2013]

Exploring the Effect of Media Images on Women's Leadership Self-Perceptions and Aspirations

Stefanie Simon & Crystal Hoyt

Group Processes & Intergroup Relations 16(2): 232-245 (2012)

Across two experimental studies, the present research explores how media images depicting counterstereotypical roles for women, compared to those that depict stereotypical roles for women, affect women's gender role beliefs (Study 1) and responses to a leadership situation (Study 2). Study 1 predicted and found that women exposed to images depicting counterstereotypical roles subsequently reported stronger nontraditional gender role beliefs than women exposed to images depicting stereotypical roles. Study 2 then directly assessed the effect of media images of women on female participants' self-reported responses following a leadership task. Women exposed to media images of women in counterstereotypical roles reported less negative self-perceptions and greater leadership aspirations than women exposed to images of women in stereotypical roles. Moreover, negative self-perceptions mediated the relationship between media images and leadership aspirations. Implications for increasing women's representation in the leadership domain are discussed.

Gender Differences in Initiation of Negotiation: Does the Gender of the Negotiation Counterpart Matter?

Karin Hederörs Eriksson & Anna Sandberg

Negotiation Journal 28(4): 407-428 (October 2012)

In this study, we investigated if and how gender differences in the propensity to initiate a negotiation are affected by the gender of the counterpart in the negotiation. We enlisted 204 Swedish students to take part in an experiment in which they had to decide whether to initiate a negotiation for higher compensation. In line with previous research, we found that men were more likely than women to initiate a negotiation: 42 percent of the male and 28 percent of the female participants initiated a negotiation. The gender difference, however, was only large and

statistically significant when the negotiation counterpart was a woman. With a female negotiation counterpart, women were less likely than men to initiate a negotiation by 24 percentage points, while with a male negotiation counterpart, the gender difference was only 5 percentage points and not statistically significant. This result suggests that the gender of the negotiation counterpart should be taken into consideration when analyzing gender differences in initiation of negotiation.

Do Women Avoid Salary Negotiations? Evidence from a Large Scale Natural Field Experiment

Andreas Leibbrandt & John List

National Bureau of Economic Research Working Paper 18511 (November 2012). Available at <http://www.nber.org/papers/w18511>

One explanation advanced for the persistent gender pay differences in labor markets is that women avoid salary negotiations. By using a natural field experiment that randomizes nearly 2,500 job-seekers into jobs that vary important details of the labor contract, we are able to observe both the nature of sorting and the extent of salary negotiations. We observe interesting data patterns. For example, we find that when there is no explicit statement that wages are negotiable, men are more likely to negotiate than women. However, when we explicitly mention the possibility that wages are negotiable, this difference disappears, and even tends to reverse. In terms of sorting, we find that men in contrast to women prefer job environments where the 'rules of wage determination' are ambiguous. This leads to the gender gap being much more pronounced in jobs that leave negotiation of wage ambiguous.

Gender Differences in Initiation of Negotiation: Does the Gender of the Negotiation Counterpart Matter?

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Negotiation Topic as a Moderator of Gender Differences in Negotiation

Julia Bear & Linda Babcock

Psychological Science 23(7): 743-744 (July 2012)

In the current study, we examined whether the masculinity or femininity of the negotiation issue moderates gender differences in performance. We predicted an interaction between the gender of the negotiator and the nature of the negotiation topic: That is, we expected

that men would outperform women when negotiating over a masculine issue, and that women would outperform men when negotiating over a feminine issue.

Feminine Charm: An Experimental Analysis of Its Costs and Benefits in Negotiations

Laura Kray, Connson Locke & Alex Van Zant

Personality and Social Psychology Bulletin 38(10): 1343-1357 (July 2012)

The authors examined feminine charm, an impression management technique available to women that combines friendliness with flirtation. They asked whether feminine charm resolves the impression management dilemma facing women who simultaneously pursue task (i.e., economic) and social goals in negotiations. They compared women's social and economic consequences after using feminine charm versus a neutral interaction style. They hypothesized that feminine charm would create positive impressions of its users, thus partially mitigating the social penalties women negotiators often incur. They also expected that the degree to which females were perceived as flirtatious (signaling a concern for self), rather than merely friendly (signaling a concern for other), would predict better economic deals for females. Hypotheses were supported across a correlational study and three experiments. Feminine charm has costs and benefits spanning economic and social measures. Theoretical and practical implications are discussed.

NEGOTIATION: EMOTION

When Is Anger Helpful or Hurtful? Status and Role Impact on Anger Expression and Outcomes

Ronda Roberts Callister, Deanna Geddes & Donald F. Gibson

Negotiation and Conflict Management Research 10(2): 69-87 (May 2017)

Anger expressers and targets often experience anger as an unpleasant and potentially damaging emotion. However, emerging social functional perspectives on workplace anger suggest that anger expressions can promote valued dialogue, facilitating the airing of differences that can lead to improved working relationship and movement toward organizational goals and beneficial change. While supervisors typically express work-related anger with impunity, subordinate anger may be challenged and sanctioned more frequently. Hypotheses tested status (supervisor vs. subordinate) and role (expresser vs. target) effects on perceived outcomes. Findings indicate a significant main effect for status and significant interaction with role such that subordinates who are targets of supervisor anger, reported significantly more negative outcomes from anger expression than any other type of anger interaction. We also found that existing strong relationships between supervisors and subordinates contribute to outcomes that are more favorable following anger expressions at work.

Mad and Misleading: Incidental Anger Promotes Deception

Organizational Behavior and Human Decision Processes 137: 207-217 (November 2016)

Jeremy A. Yip & Maurice E. Schweitzer

Emotions influence ethical behavior. Across four studies, we demonstrate that incidental anger, anger triggered by an unrelated situation, promotes the use of deception. In Study 1, participants who felt incidental anger were more likely to deceive their counterpart than those who felt neutral emotion. In Study 2, we demonstrate that empathy mediates the relationship between anger and deception. In Study 3, we contrast anger with another negative-valence

emotion, sadness. We find that participants who felt incidental anger were more likely to use deception than were participants who felt incidental sadness or neutral emotion. In Study 4, we show that incentives moderate the relationship between anger and deception. Collectively, our work reveals that incidental anger promotes unethical behavior because angry people become less empathetic when pursuing their self-interest. [DRM Winter 2017]

Head Movements Encode Emotions During Speech and Song

Steven R. Livingstone & Caroline Palmer

Emotion 16(3): 365-380 (October 2016)

When speaking or singing, vocalists often move their heads in an expressive fashion, yet the influence of emotion on vocalists' head motion is unknown. Using a comparative speech/song task, we examined whether vocalists' intended emotions influence head movements and whether those movements influence the perceived emotion. In Experiment 1, vocalists were recorded with motion capture while speaking and singing each statement with different emotional intentions (very happy, happy, neutral, sad, very sad). Functional data analyses showed that head movements differed in translational and rotational displacement across emotional intentions, yet were similar across speech and song, transcending differences in F0 (varied freely in speech, fixed in song) and lexical variability. Head motion specific to emotional state occurred before and after vocalizations, as well as during sound production, confirming that some aspects of movement were not simply a by-product of sound production. In Experiment 2, observers accurately identified vocalists' intended emotion on the basis of silent, face-occluded videos of head movements during speech and song. These results provide the first evidence that head movements encode a vocalist's emotional intent and that observers decode emotional information from these movements. We discuss implications for models of head motion during vocalizations and applied outcomes in social robotics and automated emotion recognition.

Personality Similarity in Negotiations: Testing the Dyadic Effects of Similarity in Interpersonal Traits and the Use of Emotional Displays on Negotiation Outcomes

Kelly Schwind Wilson, D. Scott DeRue, Fadel K. Matta, Michael Howe & Donald E. Conlon
Journal of Applied Psychology 101(10): 1405-1421 (October 2016)

We build on the small but growing literature documenting personality influences on negotiation by examining how the joint disposition of both negotiators with respect to the interpersonal traits of agreeableness and extraversion influences important negotiation processes and outcomes. Building on similarity-attraction theory, we articulate and demonstrate how being similarly high or similarly low on agreeableness and extraversion leads dyad members to express more positive emotional displays during negotiation. Moreover, because of increased positive emotional displays, we show that dyads with such compositions also tend to reach agreements faster, perceive less relationship conflict, and have more positive impressions of their negotiation partner. Interestingly, these results hold regardless of whether negotiating dyads are similar in normatively positive (i.e., similarly agreeable and similarly extraverted) or normatively negative (i.e., similarly disagreeable and similarly introverted) ways. Overall, these findings demonstrate the importance of considering the dyad's personality configuration when attempting to understand the affective experience as well as the downstream outcomes of a negotiation. [DRM Winter 2017]

Strategic Consequences of Emotional Misrepresentation in Negotiation: The Blowback Effect

Rachel L. Campagna, Alexandra A. Mislin, Dejun Tony Kong & William P. Bottom
Journal of Applied Psychology 101(5): 605-624 (May 2016)

Recent research indicates that expressing anger elicits concession making from negotiating counterparts. When emotions are conveyed either by a computer program or by a confederate, results appear to affirm a long-standing notion that feigning anger is an effective bargaining tactic. We hypothesize this tactic actually jeopardizes post-negotiation deal implementation and subsequent exchange. Four studies directly test both tactical and strategic consequences of emotional misrepresentation. False representations of anger generated little tactical benefit but produced considerable and persistent strategic disadvantage. This disadvantage is because of an effect we call “blowback.” A negotiator’s misrepresented anger creates an action-reaction cycle that results in genuine anger and diminishes trust in both the negotiator and counterpart. Our findings highlight the importance of considering the strategic implications of emotional misrepresentation for negotiators interested in claiming value. We discuss the benefits of researching reciprocal interdependence between 2 or more negotiating parties and of modeling value creation beyond deal construction to include implementation of terms. [DRM Winter 2017]

Unlocking Integrative Potential: Expressed Emotional Ambivalence and Negotiation Outcomes

Naomi Rothman & Gregory Northcraft

Organizational Behavior and Human Decision Processes 126: 65-76 (2015)

This paper examines how one negotiator’s expressed emotional ambivalence can foster integrative outcomes. Study 1 demonstrated that observing a negotiation partner’s emotional ambivalence leads negotiators to come up with more integrative agreements. Study 2 examined a proposed mechanism: Expressed ambivalence leads to an increased perceived ability to influence the ambivalent negotiator because it suggests submissiveness. Study 3 demonstrated that perceived submissiveness mediates the effects of observed emotional ambivalence on integrative agreements. Implications of these findings for negotiation and emotions research, and directions for future research, are discussed.

Testing the Prosocial Effectiveness of the Prototypical Moral Emotions: Elevation Increases Benevolent Behaviors and Outrage Increases Justice Behaviors

J. Van de Vyver & D. Abrams

Journal of Experimental Social Psychology 58: 23-33 (2015)

How can we overcome apathy and instigate a desire to help others? This research tests and compares the prosocial effects of two of the most prototypical emotions on a range of prosocial intentions and behaviors. Emotion-inducing videos were used to instigate states of moral elevation (felt when witnessing a moral virtue) and/or moral outrage (felt when witnessing a moral transgression). Although elevation and outrage are derived from opposing appraisals, separate strands of research show that they both instigate a desire to help others. The current research tests the appraisal tendency framework to explore whether elevation and outrage increase prosociality across moral domains or whether their prosocial effects are domain specific. Results of Experiment 1 showed that elevation, but not outrage, increased donations to charity (i.e., benevolence domain). Experiment 2 showed that outrage, but not elevation,

increased prosocial political action intentions (i.e., justice domain). Experiment 3 showed that outrage, but not elevation, increased compensation in a third-party bystander game (i.e., justice domain). This research shows that although elevation and outrage both inspire a desire to help others, they affect distinct types of prosocial behaviors, offering support for the appraisal tendency framework. Applied and theoretical implications are discussed.

Poker-Faced Morality: Concealing Emotions Leads to Utilitarian Decision Making

Jooa Julia Lee & Francesca Gino

Organizational Behavior and Human Decision Processes 126: 49-64 (2015)

This paper examines how making deliberate efforts to regulate aversive affective responses influences people's decisions in moral dilemmas. We hypothesize that emotion regulation—mainly suppression and reappraisal—will encourage utilitarian choices in emotionally charged contexts and that this effect will be mediated by the decision maker's decreased deontological inclinations. In Study 1, we find that individuals who endorsed the utilitarian option (vs. the deontological option) were more likely to suppress their emotional expressions. In Studies 2a, 2b, and 3, we instruct participants to either regulate their emotions, using one of two different strategies (reappraisal vs. suppression), or not to regulate, and we collect data through the concurrent monitoring of psycho-physiological measures. We find that participants are more likely to make utilitarian decisions when asked to suppress their emotions rather than when they do not regulate their affect. In Study 4, we show that one's reduced deontological inclinations mediate the relationship between emotion regulation and utilitarian decision making.

Is Waiting the Hardest Part? Comparing the Emotional Experiences of Awaiting and Receiving Bad News

Kate Sweeny & Angelica Falkenstein

Personality and Social Psychology Bulletin 41(11): 1551-1559 (November 2015)

Awaiting uncertain news is stressful, but is it more stressful than receiving bad news? We compared these emotional experiences in two studies. Participants in Study 1 reflected on a personal experience awaiting news that ultimately turned out badly, and participants in Study 2 were law graduates awaiting their results on the bar exam who ultimately failed the exam. In Study 1, participants were ambivalent as to whether awaiting or receiving bad news was more difficult, and emotion ratings in both studies confirmed this ambivalence. Anxiety was higher in anticipation of bad news (at least at the moment of truth) than in the face of it, whereas other negative emotions were more intense following the news than during the waiting period. Thus, whether waiting is “the hardest part” depends on whether one prefers to be racked with anxiety or afflicted with other negative emotions such as anger, disappointment, depression, and regret.

Context Matters: The Social Effects of Anger in Cooperative, Balanced, and Competitive Negotiation Situations

Hajo Adam & Jeanne M. Brett

Journal of Experimental Social Psychology 61: 44-58 (November 2015)

When does expressing anger in negotiations lead to concessions? Although research has begun to address this question, it has not yet examined the influence of the negotiation context. We propose that the effect of expressing anger depends on the competitiveness of the negotiation situation. Specifically, when the negotiation situation balances cooperative and competitive

elements, expressing anger elicits larger concessions than no anger, and responses are driven by cooperation-inducing strategic inferences (e.g., a perception that the anger expresser is tough and threatening). However, when the negotiation context is predominantly cooperative or predominantly competitive, expressing anger does not elicit larger concessions than no anger, and responses are driven by cooperation-inhibiting affective reactions (e.g., reciprocal anger and a desire to retaliate against the anger expresser). Results from two computer-mediated negotiation experiments using different negotiation scenarios, different manipulations of the competitiveness of the situation, and different subject populations supported our hypotheses. [DRM Winter 2016]

The Persuasive Power of Emotions: Effects of Emotional Expressions on Attitude Formation and Change

Gerben A. Van Kleef, Helma van den Berg & Marc W. Heerdink
Journal of Applied Psychology 100(4): 1124-1142 (July 2015)

Despite a long-standing interest in the intrapersonal role of affect in persuasion, the interpersonal effects of emotions on persuasion remain poorly understood—how do one person's emotional expressions shape others' attitudes? Drawing on emotions as social information (EASI) theory (Van Kleef, 2009), we hypothesized that people use the emotional expressions of others to inform their own attitudes, but only when they are sufficiently motivated and able to process those expressions. Five experiments support these ideas. Participants reported more positive attitudes about various topics after seeing a source's sad (rather than happy) expressions when topics were negatively framed (e.g., abandoning bobsleighbing from the Olympics). Conversely, participants reported more positive attitudes after seeing happy (rather than sad) expressions when topics were positively framed (e.g., introducing kite surfing at the Olympics). This suggests that participants used the source's emotional expressions as information when forming their own attitudes. Supporting this interpretation, effects were mitigated when participants' information processing was undermined by cognitive load or was chronically low. Moreover, a source's anger expressions engendered negative attitude change when directed at the attitude object and positive change when directed at the recipient's attitude. Effects occurred regardless of whether emotional expressions were manipulated through written words, pictures of facial expressions, film clips containing both facial and vocal emotional expressions, or emoticons. The findings support EASI theory and indicate that emotional expressions are a powerful source of social influence.

Emotional Intelligence and Negotiation Outcomes: Mediating Effects of Rapport, Negotiation Strategy, and Judgment Accuracy

Kihwan Kim, Nicole L. Cundiff & Suk Bong Choi
Group Decision and Negotiation 24(3): 477-493 (May 2015)

The current research was designed to examine the effects of emotional intelligence on both economic and social outcomes, as well as to explore the extent to which rapport, bargaining strategy, and judgment accuracy would mediate relationships between emotional intelligence and negotiation outcomes. Upper-level business students (284 individuals, 142 dyads) were pre-tested on emotional intelligence using the 33-item measure from Schutte et al. (Personal Individ Differ 25:167–177, 1998). They were then recruited to participate in a job contract negotiation in which one party played the role of personnel manager and the other played the role of a new employee. Emotional intelligence had a significant, positive effect on the three social negotiation

outcomes of trust, satisfaction, and desire to work together again in the future. Moreover, rapport and negotiation strategy either fully or partially mediated each of these relationships. In contrast, emotional intelligence had no significant effects on economic outcomes.

Life History, Code of Honor, and Emotional Responses to Inequality in an Economic Game

Eric J. Pedersen, Daniel E. Forster & Michael E. McDonough

Emotion 14(5): 920–929 (2014)

The code of honor, which is characterized by a preoccupation with reputation and willingness to take retaliatory action, has been used extensively to explain individual and cultural differences in peoples' tendencies to behave aggressively. However, research on the relationship between the code of honor and emotional responses to social interactions has been limited in scope, focusing primarily on anger in response to insults and reputational threats. Here we broaden this scope by examining the relationship between code of honor and emotional reactions in response to an unfair economic exchange that resulted in unequal monetary earnings among 3 laboratory participants. We found that endorsement of the code of honor was related to anger and envy in response to unfair monetary distributions. Interestingly, code of honor predicted envy above and beyond what could be accounted for by anger, but the converse was not the case. This suggests that the code of honor influenced perceptions of how subjects viewed their own earnings relative to those of others, which consequently was responsible for their apparent anger as a result of the economic transaction. Furthermore, the unique relationship between code of honor and envy was present only for subjects who received unfair treatment and not for subjects who merely witnessed unfair treatment. Additionally, we replicated previous findings that harsh childhood environmental conditions are associated with endorsement of the code of honor, highlighting the potential value of incorporating a life history theoretical approach to investigating individual differences in endorsement of the code of honor.

Emotions Shape Decisions Through Construal Level: The Case of Guilt and Shame

DaHee Han, Adam Duhachek & Nidhi Agrawal

Journal of Consumer Research 41(4): 1047-1064 (December 2014)

Abstract:

Four experiments show that emotions systematically influence judgments and persuasion by altering construal levels. Guilt-laden consumers, relative to those who were shame-laden, adopted lower levels of construal. In subsequent unrelated judgments, guilt increased reliance on feasibility over desirability attributes and emphasized secondary rather than primary features. Shame led to the opposite pattern. Guilt's tendency to draw behavior-specific appraisals activates local appraisal tendencies and endows lower construal levels, whereas shame's tendency to implicate the entire self activates global appraisal tendencies and endows consumers with higher construal levels. As a boundary condition to the core effect, the results showed that the differences between guilt and shame only held when the emotions arose from actions rather than from inaction situations. These findings provide insight into when and why guilt and shame have different effects on subsequent decisions

With Feeling: How Emotions Shape Negotiation

Mara Olekalns & Daniel Druckman

Negotiation Journal, 30: 455–478 (October 2014)

Recognition of the role played by emotions in negotiation is growing. This article synthesizes current research around four broad themes: moves and exchanges, information processing, social interaction, and context. The authors' review reveals that much of the research on this topic has focused on two key emotions, anger and happiness. More recently, negotiators have turned to other emotions such as guilt and disappointment, demonstrating that not all negative emotions have the same consequences, or activate the same regions of the brain. Focusing on social interaction, the authors note that negotiators may influence each others' emotions: whether negotiators converge to anger or happiness has different consequences for agreement. Researchers have broadened their examination of emotion by considering how external factors such as power, the number of negotiators, culture, and gender influence the impact of emotional expression. The authors also consider the function and impact of expressing authentic emotions, or choosing to use emotions strategically to gain an advantage — an issue that raises important ethical questions for negotiators. The article concludes with some practical implications of the research.

Emotional Reactions to Unequal Payment: The Impact of Meritocratic Ideology and Salary Negotiability

Group Processes & Intergroup Relations 18(2): 153-172 (July 2014)

Angela T. Maitner

People respond to low-status inequality with feelings of anger and shame. This work investigates the impact of meritocracy beliefs and implied salary negotiability on individuals' emotional reactions within a stable status hierarchy. When an unequal system appears negotiable, believing that hard work pays off may decrease anger felt in response to inequality. However, learning that a system is non-negotiable violates expectations associated with meritocratic beliefs, and may therefore increase negative emotion. In two experiments investigating participants' emotional reactions to payment systems, the more participants endorsed meritocratic ideologies, the less anger they felt when unequal treatment appeared negotiable. Experiment 2 showed that endorsement of meritocracy beliefs increased negative emotions when individuals learned that the unequal payment was non-negotiable. Taken together, this work suggests that it is important to consider beliefs about individual agency alongside system parameters establishing opportunities for individual mobility to understand emotional reactions to unequal treatment.

“I Am Disgusted By Your Proposal”: The Effects Of A Strategic Flinch In Negotiations

Neil Fassina & Glen Whyte

Group Decision and Negotiation 23(4): 901-920 (July 2014)

To flinch in negotiations refers to verbal or physical displays of shock, disgust, or disbelief made in response to an opening offer. We investigated the impact of advising negotiators to strategically flinch in distributive bargaining. In experiment 1, negotiators who flinched claimed significantly more value than negotiators who did not flinch. Targets of a flinch, however, viewed the negotiation relationship less positively than negotiators in a control condition. Yet, flinching appeared to have no effect on the target negotiators' perceptions of how well they did. In experiment 2, the notion that a subtle flinch might still facilitate value claiming but without imperilling the bargaining relationship was supported. Implications for negotiation theory and practice, and directions for future research, are discussed.

Strategic Display of Anger and Happiness in Negotiation: The Moderating Role of Perceived Authenticity

H.-Y. Tng & A.K.C. Au

Negotiation Journal, 30: 301–327 (July 2014)

Emotional display is often used as a strategy in negotiation to manipulate one's counterpart's behavior. Previous research has examined the interpersonal effects of emotions in negotiation, but the evidence so far has largely focused on the perspective of the negotiator displaying the emotion with little attention paid to the impact of the emotional display on that negotiator's counterparts. In this study, we conducted two experiments to examine whether a negotiator's perceptions about the authenticity of his or her counterpart's displayed emotions of anger and happiness moderate the impact of those emotions on the negotiator. In Experiment One, we manipulated the perceived authenticity of the counterpart's anger as a between-subjects factor (authentic versus inauthentic). Negotiators who perceived their counterpart's anger as inauthentic conceded less than did negotiators who perceived it as authentic. In Experiment Two, we corroborated this finding with a two-variable (counterpart's emotion: anger versus happiness) times three-variable (perceived authenticity of counterpart's displayed emotion: authentic versus ambiguous versus inauthentic) between-subjects design. Negotiators conceded more to an angry counterpart than to a happy one when they perceived their counterpart's emotion as authentic, but we found the reverse pattern among negotiators who perceived their counterparts' emotions as inauthentic. Negotiators who perceived their counterparts' emotions as ambiguous in authenticity did not differ in concessions whether the counterpart displayed anger or happiness. We discuss the theoretical and practical implications of these findings.

The Interactive Effect of Anger and Disgust on Moral Outrage and Judgments

Jessica M. Salerno & Liana C. Peter-Hagene

Psychological Science 24(10): 2069-2078 (October 2013)

The two studies reported in this article demonstrated that a combination of anger and disgust predicts moral outrage. In Study 1, anger toward moral transgressions (sexual assault, funeral picketing) predicted moral outrage only when it co-occurred with at least moderate disgust, and disgust predicted moral outrage only when it co-occurred with at least moderate anger. In Study 2, a mock-jury paradigm that included emotionally disturbing photographs of a murder victim, revealed that, compared to anger, disgust was a more consistent predictor of moral outrage (i.e., it predicted moral outrage at all levels of anger). Furthermore, moral outrage influenced the effect of participants' anger on their confidence in a guilty verdict - but only when anger co-occurred with at least a moderate level of disgust - whereas moral outrage influenced the effect of participants' disgust on their verdict confidence at all levels of anger. The interactive effect of anger and disgust has important implications for theoretical explanations of moral outrage, moral judgments in general, and legal decision making. [DRM Winter 2014]

Not All Anger is Created Equal: The Impact of the Expresser's Culture on the Social Effects of Anger in Negotiations

Hajo Adam & Aiwa Shirako

Journal of Applied Psychology 98(5): 785-798 (September 2013)

The influence of culture on the social effects of emotions in negotiations has recently gained the attention of researchers, but to date this research has focused exclusively on the cultural background of the *perceiver* of the emotion expression. The current research offers the

first investigation of how the cultural background of the *expresser* influences negotiation outcomes. On the basis of the stereotype that East Asians are emotionally inexpressive and European Americans are emotionally expressive, the authors predicted that anger would have a stronger signaling value when East Asians rather than European American negotiators expressed it. Specifically, they predicted that angry East Asian negotiators would be perceived as tougher and more threatening and therefore elicit greater cooperation from counterparts compared with angry European American negotiators. Results from four negotiation studies supported the predictions. In Study 1, angry East Asian negotiators elicited greater cooperation than angry European American and Hispanic negotiators. In Study 2, angry East Asian negotiators elicited greater cooperation than angry European American ones, but emotionally neutral East Asian and European American negotiators elicited the same level of cooperation. Study 3 showed that this effect holds for both East Asian and European American perceivers and is influenced by perceptions of angry East Asian negotiators as tougher and more threatening than angry European American negotiators. Finally, Study 4 demonstrated that the effect emerges only when negotiators hold the stereotype of East Asians being emotionally inexpressive and European Americans being emotionally expressive. The authors discuss the implications for our understanding of culture, emotions, and negotiations. [DRM Winter 2014]

The Consequences of Faking Anger in Negotiations

Stéphane Côté, Ivona Hideg & Gerben van Kleef

Journal of Experimental Social Psychology 49(3): 453-463 (May 2013)

Past research has found that showing anger induces cooperative behavior from counterparts in negotiations. We build on and extend this research by examining the effects of faking anger by surface acting (i.e., showing anger that is not truly felt inside) on the behavior of negotiation counterparts. We specifically propose that surface acting anger leads counterparts to be intransigent due to reduced trust. In Experiment 1, surface acting anger increased demands in a face-to-face negotiation, relative to showing no emotion, and this effect was mediated by (reduced) trust. In Experiment 2, surface acting anger increased demands in a video-mediated negotiation, relative to showing no emotion, and this effect was explained by (reduced) trust, as in Experiment 1. By contrast, deep acting anger (i.e., showing anger that is truly felt inside) decreased demands, relative to showing no emotion, and this effect was explained by (increased) perceptions of toughness, consistent with prior research on the effects of showing anger in negotiations. The findings show that a complete understanding of the role of anger in negotiations requires attention to how it is regulated. In addition, the results suggest that faking emotions using surface acting strategies may generally be detrimental to conflict resolution.

The Advantages of Being Unpredictable: How Emotional Inconsistency Extracts Concessions in Negotiation

Marwan Sinaceur, Hajo Adam, Gerben A. Van Kleef & Adam D. Galinsky

Journal of Experimental Social Psychology 49: 498-508 (May 2013)

Integrating recent work on emotional communication with social science theories on unpredictability, the authors investigated whether communicating emotional inconsistency and unpredictability would affect recipients' concession-making in negotiation. They hypothesized that emotional inconsistency and unpredictability would increase recipients' concessions by making recipients feel less control over the outcome. In Experiment 1, dyads negotiated face-to-face after one negotiator within each dyad expressed either anger or emotional inconsistency (by

alternating between anger and happiness). In Experiment 2, participants received angry and/or happy messages from a simulated negotiation opponent. In Experiment 3, participants read a scenario about a negotiator who expressed either anger or emotional inconsistency by alternating between anger and disappointment. In all three experiments, emotional inconsistency induced recipients to make greater concessions compared to expressing a consistent emotion. [DRM Summer 2013]

NEGOTIATION: POWER DYNAMICS

Blinded by Power: Untangling Mixed Results Regarding Power and Efficiency in Negotiation

Ricky S. Wong & Susan Howard

Group Decision and Negotiation 26(2): 215-245 (2017)

Negotiators are often advised to seek information about their counterparts' power. However, we know little about how such information affects negotiators' behaviours and outcomes. Study 1 considered dyadic negotiations in which negotiators have SYMMETRIC or ASYMMETRIC best alternatives to the negotiated agreement (BATNAs). It also examined the impacts of (a)symmetry and knowledge of a counterpart's BATNA on agreement efficiency (indexed by joint gains), and how knowledge alters negotiators' realised power (indexed by percentage of resource claimed) in BATNA-asymmetric negotiations. Studies 2 and 3 focussed on BATNA-asymmetric negotiations. Study 2 tested the mechanism by which knowledge affects efficiency. Study 3 considered the impacts of knowledge on equity concerns, perceived power and information exchange about preferences. The findings indicate the following: knowledge of BATNA asymmetries (rather than the existence of BATNA asymmetries) adversely affects agreement efficiency; this knowledge increases strong negotiators' focus on value claiming, judgement errors about counterparts' preferences, perceived power and realised power, but impedes their information-sharing behaviour about preferences. Their focus on value claiming mediates the relationship between knowledge and judgement errors, whereas judgement errors mediate the relationship between their focus on value claiming and agreement efficiency. Furthermore, knowledge of BATNA asymmetries leads to contrasting perceptions of fairness. Strong negotiators with knowledge believe that a fair agreement should reflect their power advantage; weak negotiators generally tend to judge fairness based on equality. Counterintuitively, knowing one's own strengths can lead to 'winning' a meagre prize and neglecting the opportunity for value creation by trading-off on negotiated issues.

Are the Powerful Really Blind to the Feelings of Others? How Hierarchical Concerns Shape Attention to Emotions

Eftychia Stamkou, Gerben A. van Kleef, Agneta H. Fischer & Mariska E. Kret Personality and Social Psychology Bulletin 42(6): 755-768 (June 2016)

Paying attention to others' emotions is essential to successful social interactions. Integrating social-functional approaches to emotion with theorizing on the reciprocal nature of power, we propose that attention to others' emotions depends on concerns over one's power position and the social signal conveyed by the emotion. Others' anger signals attack—information relevant to high-power individuals who are concerned about the legitimacy or suitability of their position. On the contrary, others' fear signals vulnerability—information relevant to low-power individuals who are concerned about their unfair treatment within an

illegitimate hierarchy. Accordingly, when power roles were illegitimately assigned or mismatched with one's trait power, leaders were faster at detecting the appearance of anger (Studies 1 and 2), slower at judging the disappearance of anger (Study 2), and more accurate in recognizing subordinates' anger, whereas subordinates were more accurate in recognizing leaders' fear (Study 3). Implications for theorizing about emotion and social hierarchy are discussed.

Cooperation in Multicultural Negotiations: How the Cultures of People with Low and High Power Interact

Shirli Kopelman, Ashley E. Hardin, Christopher G. Myers & Leigh Plunkett Tost
Journal of Applied Psychology 101(5): 721-730 (May 2016)

This study examined whether the cultures of low- and high-power negotiators interact to influence cooperative behavior of low-power negotiators. Managers from 4 different cultural groups (Germany, Hong Kong, Israel, and the United States) negotiated face-to-face in a simulated power-asymmetric commons dilemma. Results supported an interaction effect in which cooperation of people with lower power was influenced by both their culture and the culture of the person with higher power. In particular, in a multicultural setting, low-power managers from Hong Kong, a vertical-collectivist culture emphasizing power differences and group alignment, adjusted their cooperation depending on the culture of the high-power manager with whom they interacted. This study contributes to understanding how culture shapes behavior of people with relatively low power, illustrates how a logic of appropriateness informs cooperation, and highlights the importance of studying multicultural social interactions in the context of negotiations, work teams, and global leadership. [DRM Winter 2017]

Equity and Bargaining Power in Ultimatum Games

Ismael Rodriguez-Lara
Journal of Economic Behavior & Organization 130: 144-165 (October 2016)

This paper studies the extent to which offers and demands in ultimatum games are consistent with equity theory when there is a joint endowment to be distributed. Using a within-subject design, we also investigate the importance of the bargaining power by comparing the subjects' behavior in the ultimatum and the no-veto-cost game, which differ in the possible cost of responders rejecting the proposers' offer. Our findings suggest that proposers are willing to reward responders for their contribution to the joint endowment in any of the two games. As for responders, their behavior is consistent with equity theory only in the no-veto-cost game (in which a rejection is costless for them) when the game is first played. When the no-veto-cost game is played after the ultimatum game, we observe that the responders' demands usually exceed their contribution to the endowment. Finally, this paper reports evidence that the ultimatum and the no-veto-cost game differ in terms of efficiency and rejection rates.

Status Decreases Dominance in the West but Increases Dominance in the East

Ko Kuwabara, Siyu Yu, Alice J. Lee & Adam D. Galinsky
Psychological Science 27: 127-137 (February 2016)

What motivates people to exercise coercive power against others is an important question for understanding conflict. Research shows that in Western cultures, people are more likely to assert power by engaging in acts of dominance when they feel they are not sufficiently respected. The authors predicted that, in contrast, people in Asian cultures are more likely to use power

when they feel respected and regarded as high status. This is because individualists view power as means toward personal ends (pursuing self-interest, affirming self-worth) but collectivists view power in regards to collective ends (reinforcing the existing social order). In experiments simulating groups tasks in which one person could impose punishment to enforce cooperation, having high status decreased the use of punishment by enforcers in the United States but increased it in China and India. In the third experiment, Asian-Americans advocated punishment in different ways depending on whether they felt more Asian or American. [DRM Summer 2016]

The Power to Oblige: Power, Gender, Negotiation Behaviors, and Their Consequences

Noa Nelson, Ilan Bronstein, Rotem Shacham & Rachel Ben-Ari
Negotiation and Conflict Management Research 8(1): 1–24 (2015)

This study experimentally examined how power and gender affect negotiation behaviors and how those behaviors affect negotiated outcomes. One hundred and forty-six dyads, in four combinations of power and gender, negotiated compensation agreements. In line with gender stereotypes, male negotiators were more dominating and females more obliging and somewhat more compromising. However, partially challenging the common association of power and masculinity, high-power negotiators were less dominating and more collaborating, obliging and avoiding than their low-power opponents. Generally, feminine and high-power behaviors induced agreement while masculine and low-power behaviors enhanced distributive personal gain. [DRM Summer 2015]

NEGOTIATION: TRUST

Is Trust Always Better than Distrust? The Potential Value of Distrust in Newer Virtual Teams Engaged in Short-Term Decision-Making

Paul Benjamin Lowry, Ryan M. Schuetzler, Justin Scott Giboney & Thomas A. Gregory
Group Decision and Negotiation 24(4): 723-752 (July 2015)

The debate on the benefits of trust or distrust in groups has generated a substantial amount of research that points to the positive aspects of trust in groups, and generally characterizes distrust as a negative group phenomenon. Therefore, many researchers and practitioners assume that trust is inherently good and distrust is inherently bad. However, recent counterintuitive evidence obtained from face-to-face (FtF) groups indicates that the opposite might be true; trust can prove detrimental, and distrust instrumental, to decision-making in groups. By extending this argument to virtual teams (VTs), we examined the value of distrust for VTs completing routine and non-routine decision tasks, and showed that the benefits of distrust can extend to short-term VTs. Specifically, VTs seeded with distrust significantly outperformed all control groups in a non-routine decision-making task. In addition, we present quantitative evidence to show that the decision task itself can significantly affect the overall levels of trust/distrust within VTs. In addition to its practical and research implications, the theoretical contribution of our study is that it extends to a group level, and then to a VT setting, a theory of distrust previously tested in the psychology literature in the context of completing non-routine and routine decision tasks at an individual level.

Gender Differences in Trust Dynamics: Women Trust More Than Men Following a Trust Violation

Michael P. Haselhuhn, Jessica A. Kennedy, Laura J. Kray, Alex B. Van Zant & Maurice E. Schweitzer

Journal of Experimental Social Psychology 56: 104-109 (January 2015)

Despite the importance of trust for efficient social and organizational functioning, transgressions that betray trust are common. We know little about the personal characteristics that affect the extent to which transgressions actually harm trust. In this research, the authors examine how gender moderates responses to trust violations. Across three studies, they demonstrate that following a violation, women are both less likely to lose trust and more likely to restore trust in a transgressor than men. Women care more about maintaining relationships than men, and this greater relational investment mediates the relationship between gender and trust dynamics. These findings deepen our understanding of gender differences in dispute resolution settings, particularly in contexts in which negotiators must work together to reach mutually-beneficial outcomes. In these situations, women's relatively persistent trust may enable them to overlook minor misunderstandings or initial competitive posturing and collaborate with the other party to reach a creative solution, whereas men may lose trust quickly and be less willing to collaborate with a counterpart after a minor violation. Given the myriad benefits of high trust, perhaps the best solution is for women and men alike to build trust, draw careful inferences from violations, and stand ready to restore trust. [DRM Winter 2015]

What Is Typical Is Good: The Influence of Face Typicality on Perceived Trustworthiness

Carmel Sofer, Ron Dotsch, Daniel H. J. Wigboldus & Alexander Todorov

Psychological Science 26(1): 39-47 (January 2015)

The role of face typicality in face recognition is well established, but it is unclear whether face typicality is important for face evaluation. Prior studies have focused mainly on typicality's influence on attractiveness, although recent studies have cast doubt on its importance for attractiveness judgments. Here, we argue that face typicality is an important factor for social perception because it affects trustworthiness judgments, which approximate the basic evaluation of faces. This effect has been overlooked because trustworthiness and attractiveness judgments have a high level of shared variance for most face samples. We show that for a continuum of faces that vary on a typicality-attractiveness dimension, trustworthiness judgments peak around the typical face. In contrast, perceived attractiveness increases monotonically past the typical face, as faces become more like the most attractive face. These findings suggest that face typicality is an important determinant of face evaluation.

Interpersonal Trust Within Negotiations: Meta-Analytic Evidence, Critical Contingencies, and Directions For Future Research

Dejun Tony Kong, Kurt T. Dirks & Donald L. Ferrin

Academy of Management Journal 57(5): 1235-1255 (October 2014)

Trust has long been recognized, by scholars and practitioners alike, as an important factor for negotiation success. However, there has been little effort to date to empirically review or theoretically synthesize the research on trust in the context of negotiations. We present a social exchange framework that describes the processes through which trust influences negotiation behaviors and outcomes. We identified three critical contingencies that modified the effects of trust on negotiation behaviors and outcomes. A meta-analysis on a sample of 38 independent

studies provided considerable support for the model, and also confirmed the importance of the three contingencies for understanding the effects of trust. The framework and accompanying empirical evidence provide a necessary theoretical and empirical integration of the trust and negotiation literatures. Based on the theory and meta-analytical findings, we identified critical gaps and limitations in existing research, and we propose a research agenda to address key theoretical, empirical, and methodological issues identified by our framework and review.

The Experience Versus the Expectations of Power: A Recipe For Altering the Effects of Power on Behavior

Derek D. Rucker, Miao Hu & Adam D. Galinsky

Journal of Consumer Research 41(2): 381-396 (August 2014)

Power transforms consumer behavior. This research introduces a critical theoretical moderator of power's effects by promoting the idea that power is accompanied by both an experience (how it feels to have or lack power) and expectations (schemas and scripts as to how those with or without power behave). In some cases, the psychological experience of power predisposes people to behave one way, whereas attention to the expectations of power suggests behaving in another way. As a consequence, power's effects for consumer behavior can hinge on consumers' focus. Specifically, a focus on the experience or expectations of power critically moderates how power affects both information processing and status seeking. However, as the experience of power incites a desire to act, and the powerful are expected to act, power produces more action regardless of focus. These findings provide a new lens on power and have important implications for consumer behavior.

OMBUDS

Australia's Financial Ombudsman Service: An Analysis of its Role in the Resolution of Financial Hardship Disputes

Paul Ali, Evgenia Bourova, Joseph Horbec & Ian Ramsay

Conflict Resolution Quarterly 34(2): 163-188 (2016)

The Financial Ombudsman Service (FOS) was established in 2008 to resolve disputes between Australian consumers and financial service providers. This article outlines the role of FOS in resolving disputes under the statutory protections for Australians in financial hardship. This article also sets out the results of a study of data collected by FOS in relation to financial hardship disputes resolved between 2010 and 2014. This data highlights the importance of FOS in a context where most disputes are resolved outside the courts, particularly in the aftermath of the global financial crisis, when the number of financial hardship disputes rose significantly.

Dispute Resolution Outside of Courts: Procedural Justice and Decision Acceptance Among Users of Ombuds Services in the UK

Naomi J. Creutzfeldt & Ben Bradford

Law & Society Review 50(4): 985-1016 (December 2016)

Attitudes towards legal authorities based on theories of procedural justice have been explored extensively in the criminal and civil justice systems. This has provided considerable empirical evidence concerning the importance of trust and legitimacy in generating cooperation, compliance and decision acceptance. However, not enough attention has been paid to attitudes towards institutions of informal dispute resolution. This paper asks whether the theory of

procedural justice applies to the alternative dispute resolution (ADR) context, focusing on ombuds services. What are the predictors of perceptions of procedural justice during the process of dealing with an ombuds, and what factors shape outcome acceptance? These questions are analyzed using a sample of recent ombuds users. The results indicate that outcome favorability is highly correlated with perceived procedural justice, and both predict decision acceptance. [DRM Winter 2017]

ONLINE DISPUTE RESOLUTION

Ask in Person: You're Less Persuasive Than You Think Over Email

M. Mahdi Roghanizad & Vanessa K. Bohns

Journal of Experimental Social Psychology 69: 223-226 (March 2017)

Research has found people underestimate the likelihood strangers will comply with their direct requests (Bohns, 2016; Flynn & Lake (Bohns), 2008). Here we argue this “underestimation-of-compliance effect” may be limited to requests made face-to-face. We find when making direct requests over EMAIL, requesters instead OVERESTIMATE compliance. In two studies, participants asked strangers to comply with requests either face-to-face or over email. Before making these requests, requesters estimated the number of people they expected to say “yes”. While requesters underestimated compliance in face-to-face contexts, replicating previous research, they overestimated compliance in email contexts. Analyses of several theorized mechanisms for this finding suggest that requesters, anchored on their own perspectives, fail to appreciate the suspicion, and resulting lack of empathy, with which targets view email requests from strangers. Given the prevalence of email and text-based communication, this is an extremely important moderator of the underestimation-of-compliance effect. [DRM Summer 2017]

Team Decision Making in Virtual and Face-to-Face Environments

Thomas O'Neill, Samantha Hancock, Katarina Zivkov, Nicole Larson & Stephanie Law

Group Decision and Negotiation 25(5): 995-1020 (September 2016)

We conducted a laboratory study on 65 teams performing a decision-making task. The two experimental manipulations involved the use of different communication media and decision frames. The decision frame manipulation involved informing the team to choose the demonstrably correct solution versus the solution that seemed most likely. These factors interacted to reveal novel insights about their multiplicative effects on decision processes and team psychological states. Further, main effects of the communication medium were found for team psychological states and decision behavior. Results suggest that virtual teams were at a disadvantage when the task was framed as having a demonstrably correct solution. Conversely, face-to-face teams were more effective, particularly when told that the task had a demonstrably correct solution. Face-to-face teams were more effective on all decision behaviors. Media synchronicity theory serves as a unifying framework to contextualize this research in the literature.

Mind the Medium: A Qualitative Analysis of Email Negotiation

Jennifer D. Parlamis & Ingmar Geiger

Group Decision and Negotiation 24(2): 359-381 (March 2015)

Using qualitative analysis of email transcripts, this research investigated the behavioral differences in more or less successful email negotiations. We hypothesized that proactive and reactive medium management, relationship building, positive and negative emotion transmission along with integrative and distributive behaviors would influence joint gain and subjective value in email negotiation dyads. The hypotheses were tested on simulated buyer-seller email negotiations ($n = 52$ dyads) from a US and a German university. Ordinary least squares regression revealed that value creating behaviors and the total amount of communication increased joint gain while reactive medium management decreased joint gain. Controlling for individual gain and individual target profit, negotiators' global subjective value of the negotiation was negatively impacted by distributive negotiation behaviors and reactive medium management, as revealed by hierarchical linear modeling. Practical implications and future research are discussed.

“I Can't Lie To Your Face”: Minimal Face-To-Face Interaction Promotes Honesty

Alex B. Van Zant & Laura J. Kray

Journal of Experimental Social Psychology 55: 234–238 (2014)

Scholars have noted that face-to-face (FTF) interaction promotes honesty because it provides opportunities for conversation in which parties exchange information and build rapport. However, it is unclear whether FTF interaction promotes honesty even in the absence of opportunities for back-and-forth conversation. We hypothesized a minimal interaction effect whereby FTF interaction promotes honesty by increasing potential deceivers' consideration of their own moral-interest. To test this account of how FTF interaction may promote honesty, we used a modified version of the deception game (Gneezy, 2005). We found that people were more honest when communicating FTF as opposed to through an intermediary. While FTF interaction tended to promote honesty irrespective of whether it occurred prior to or during the game, the effect was more pronounced when it occurred during the game. The effect of in-game communication medium was mediated by the activation of potential deceivers' moral-interest. We also ruled out alternate accounts involving interpersonal liking, expected counterpart trust, and retaliation fear as honesty-promoting mechanisms. Furthermore, because these effects were not moderated by whether participants had been visually identified during a pre-game interaction, we suggest that our effects are distinct from theoretical accounts involving anonymity.

Media Effects On The Formation Of Negotiator Satisfaction: The Example Of Face-To-Face And Text Based Electronically Mediated Negotiations

Ingmar Geiger

Group Decision and Negotiation 23(4): 735-763 (July 2014)

Recently, scholars have highlighted the importance of subjective negotiation outcomes such as negotiator satisfaction for future negotiations and the relationship between negotiators. This study considers the major antecedents of satisfaction formation in negotiation and analyses how the communication medium, i.e. the face-to-face (FTF) and the text based electronically mediated (TBEM) mode, influence satisfaction formation. Drawing on grounding in communication (Clark and Brennan in Perspectives on socially shared cognition. American Psychological Association, Washington DC, pp 127–149, 1991), hypotheses are developed and tested in an experimental gaming simulation in which graduate students negotiated in $n = 52$ dyads. The empirical analysis supports the notion that the communication medium has a mediated and a moderating effect on negotiator satisfaction. Aspirations, individual profit and

positive relational messages mediate the medium's effect on satisfaction. Furthermore, the impact of contentious behaviour and positive relational messages on negotiator satisfaction is stronger in TBEM than in FTF negotiations. This study also contributes to the wider negotiation literature by employing a context-rich gaming simulation for experimental purposes.

Far From Eye, Far From Heart: Analysis Of Graphical Decision Aids In Electronic Negotiation Support

Johannes Gettinger & Sabine T. Koeszegi

Group Decision and Negotiation 23(4): 787-817 (July 2014)

Information is probably the most relevant element upon which decision makers base their judgments. Empirical evidence has demonstrated that the way information is presented inevitably influences human cognition and, consequently, the (electronically supported) decision making process. Presently, we lack an analytical approach of studying graphical decision aids implemented in electronic negotiation support systems (NSS). Therefore, the aim of this paper is to identify relevant factors for graphical decision aids in NSS, which provides negotiators with an analytical support approach. Secondly, based on a developed framework, we intend to categorize and analyze existing and newly developed graphical decision aids. Last, we develop research propositions showing avenues for future investigations in the field of graphical decision aids.

Signaling Dominance in Online Negotiations: The Role of Affective Tone

Liuba Y. Belkin, Terri R. Kurtzberg & Charles E. Naquin

Negotiation and Conflict Management Research 6(4): 285-304 (November 2013)

Do people interpret emotional expressions as signals of power in the limited-cues environment of electronic negotiations? This work examines how expressions of anger and happiness in online negotiation influence perceptions of dominance and negotiation outcomes. The results indicate that expressed anger positively influences perceptions of partner dominance and subsequent individual gains. On the other hand, displays of happiness may signal the opposite (i.e., powerlessness). Happiness hurt the bottom line when the happy-message sender actually had more power, potentially because of a mismatch between an original perception of powerfulness and a signal of powerlessness, but was beneficial when the message sender actually held less power than the opponent. The results suggest that one needs to be careful with affective displays in online negotiation contexts, because the ramifications of those expressions (including effects on outcomes) may depend on the partner's expectations. [DRM Summer 2014]

The Effect of Red Background Color on Willingness-to-Pay: The Moderating Role of Selling Mechanism

Rajesh Bagchi & Amar Cheema

Journal of Consumer Research 39(5): 947-960 (February 2013)

The authors investigate the effect of red backgrounds on willingness-to-pay in auctions and negotiations. Data from eBay auctions and the lab show that a red (vs. blue) background elicits higher bid jumps. By contrast, red (vs. blue) backgrounds decrease price offers in negotiations. An investigation of the underlying process reveals that red color induces aggression through arousal. In addition, the selling mechanism - auction or negotiation - alters the effect of color by focusing individuals on primarily competing against other bidders (in auctions) or

against the seller (in negotiations). Specifically, aggression is higher with red (vs. blue or gray) color and, therefore, increases bid jumps in auctions but decreases offers in negotiations.

PERSUASION AND DECISION-MAKING

Risk(Mis)Perception: When Greater Risk Reduces Risk Valuation

Uzma Khan & Daniella M. Kupor

Journal of Consumer Research 43(5): 769-786 (2017)

The authors show that the value of a risky option decreases upon addition of risky prospects of the same valence. For instance, a medical drug with a potential side effect of seizures is viewed as less threatening when it also has smaller potential side effects, such as congestion and fatigue; travel insurance covering serious injury is viewed as less attractive when it also covers minor ailments; a lottery offering a chance to win an iPad is viewed as less attractive when it also offers a chance to win smaller prizes. As a result, consumers can perceive normatively more dangerous (beneficial) options to be less dangerous (beneficial) and normatively less dangerous (beneficial) options to be more dangerous (beneficial). This effect arises because people believe that larger prospects (e.g., seizures) are less likely than smaller prospects (e.g., congestion). Therefore, inclusion of smaller prospects by contrast makes a larger prospect appear less likely, which in turn reduces the perceived value of the risky option. Thus, this effect arises only when smaller prospects are added to a larger prospect, and only when the prospects are probabilistic. Cognitive load and feelings of personal control also moderate the effect. [DRM Summer 2017]

Thinking Fast Increases Framing Effects in Risky Decision Making

Lisa Guo, Jennifer S. Trueblood & Adele Diederich

Psychological Science 28(4): 530-543 (2017)

Every day, people face snap decisions when time is a limiting factor. In addition, the way a problem is presented can influence people's choices, which creates what are known as framing effects. In this research, we explored how time pressure interacts with framing effects in risky decision making. Specifically, does time pressure strengthen or weaken framing effects? On one hand, research has suggested that framing effects evolve through the deliberation process, growing larger with time. On the other hand, dual-process theory attributes framing effects to an intuitive, emotional system that responds automatically to stimuli. In our experiments, participants made decisions about gambles framed in terms of either gains or losses, and time pressure was manipulated across blocks. Results showed increased framing effects under time pressure in both hypothetical and incentivized choices, which supports the dual-process hypothesis that these effects arise from a fast, intuitive system.

Take It or Leave It: How Choosing versus Rejecting Alternatives Affects Information Processing

Tatiana Sokolova & Aradhna Krishna

Journal of Consumer Research 43(4): 614-635 (2017)

People can make decisions by choosing or by rejecting alternatives. This research shows that changing a task from choice to rejection makes people more likely to rely on deliberative processing, what we label the task-type effect. To demonstrate this effect, we use a set of established decision biases that can be attenuated under deliberative processing. We show that

changing a task from choice to rejection makes people express more consistent preferences between safe and risky options in the Asian disease problem (study 1A) and in financial decision making (study 1B), even with real monetary consequences (study 1C). Further, switching a task from choice to rejection increases the quality of consideration sets in the context of hotel reviews (study 2) and leads to more rational decisions in the context of cell phone plan selection (study 3). Studies 4 and 5 tap into the process underlying the effect of task type. We demonstrate that a rejection task produces decisions similar to those observed in a choice task when decision makers are cognitively depleted (study 4) or encouraged to rely on their feelings (study 5). The findings provide insight into the effect of task type on deliberation and decision outcomes. [DRM Summer 2017]

Collective Choices Under Ambiguity

M. Vittoria Levati, Stefan Napel & Ivan Soraperra

Group Decision and Negotiation 26(1): 133-149 (2017)

We investigate experimentally whether collective choice environments matter for individual attitudes to ambiguity. In a simple two-urn Ellsberg experiment, one urn offers a 45 % chance of winning a fixed monetary prize while the other offers an ambiguous chance. Participants choose either individually or in groups of three. Group decision rules vary in the level of individual responsibility for the others' payoffs: the collective choice is taken by majority, randomly delegated to two group members, or randomly delegated to a single group member. Although most participants display consistent ambiguity attitudes across their decisions, taking responsibility for the others tends to foster ambiguity aversion.

Maximin Envy-Free Division of Indivisible Items

Steven J. Rams, D. Marc Kilgour & Christain Klamler

Group Decision and Negotiation 26(1): 115-131 (2017)

Assume that two players have strict rankings over an even number of indivisible items. We propose two algorithms to find balanced allocations of these items that are maximin—maximize the minimum rank of the items that the players receive—and are envy-free and Pareto-optimal, if such allocations exist. To determine whether an envy-free allocation exists, we introduce a simple condition on preference profiles; in fact, our condition guarantees the existence of a maximin, envy-free, and Pareto-optimal allocation. Although not strategy-proof, our algorithms would be difficult to manipulate unless a player has complete information about its opponent's ranking. We assess the applicability of the algorithms to real-world problems, such as allocating marital property in a divorce or assigning people to committees or projects.

Does Uncertainty Cause Inertia in Decision Making? An Experimental Study of the Role of Regret Aversion and Indecisiveness

Santiago I. Sautua

Journal of Economic Behavior & Organization 136: 1-14 (April 2017)

Previous research has shown that individual decision making is often characterized by inertia—that is, a tendency for decision makers to choose options that maintain the status quo. In this study, I conduct a laboratory experiment to investigate two potential determinants of inertia in uncertain environments: (i) regret aversion and (ii) ambiguity-driven indecisiveness. I use a between-subjects design with varying conditions to identify the effects of these two mechanisms on choice behavior. In each condition, participants choose between two simple real gambles, one

of which is the status quo option. The findings indicate that regret aversion and ambiguity-driven indecisiveness are equally important determinants of inertia, which in turn plays a major role in individual decision making.

The Effects of Perceived Procedural Justice on Conflict Management between Spouses, and the Mediating Role of Dyadic Adjustment

Inbal Peleg-Koriat, Noa Nelson & Rachel Ben-ari

Negotiation Journal 33(2): 129–152 (April 2017)

In this study, we examined the role that perceived procedural justice (PPJ) plays in the conflict management behaviors that intimate spouses adopt and endorse. In this context, PPJ has been defined as the degree to which one perceives that his or her spouse makes decisions fairly, considerately, and in a participatory manner. To test the impact of perceived procedural justice on conflict resolution behavior, we applied the dual-concern model of conflict management style. In an experiment in which participants read fictional scenarios and predicted spouses' responses, we found that perceptions of strong PPJ enhanced the prediction of integrating (problem solving), compromising, and, to a lesser degree, obliging behavior. Perceived procedural justice also caused a reduction in avoidance behavior, but no effect we found on dominating (competing) behavior. In a following correlational study, we also found that PPJ positively correlated to enhanced integrating, compromising, and obliging behaviors, and these correlations were partially or fully mediated by the degree of "dyadic adjustment," which is a measure of relationship health. In addition, in this second study, we found no correlation between perceived procedural justice and dominating or avoiding behavior. In both studies, participants either predicted or chose collaborative behaviors more than non-collaborative ones. We conclude that the perception that one's partner is behaving in a procedurally just way can enhance active and egalitarian collaboration in marriage and other intimate partner relationships, but that the absence of PPJ does not seem to encourage active non-collaboration, particularly not highly self-centered dominating behavior.

Choosing One at a Time? Presenting Options Simultaneously Helps People Make More Optimal Decisions Than Presenting Options Sequentially

Shankha Basu & Krishna Savani

Organizational Behavior and Human Decision Processes 139: 76-91 (March 2017)

This research examines an element of choice architecture that has received little attention—whether options are presented simultaneously or sequentially. Participants were more likely to choose dominating options when the options were presented simultaneously rather than sequentially, both when the dominance relationship was transparent (Experiment 1) and when it was not (Experiments 2–3). Depth of cognitive processing mediated the effect of option presentation on optimal choice (Experiment 4). Memory load was unlikely to be the underlying mechanism, as individual differences in working memory span did not predict optimal choice in the sequential condition (which places a greater memory load; Experiment 5), and manipulations of memory load did not reduce the benefits of simultaneous presentation (Experiments 6a–6c). Instead, participants' working memory span predicted optimal choice in the simultaneous condition (which allows for more in-depth processing; Experiment 5), and a manipulation of processing load eliminated the benefits of simultaneous presentation (Experiment 7).

Repairing the Damage: The Effect of Price Expectations on Auto-Repair Price Quotes

Meghan Busse, Ayelet Israeli & Florian Zettelmeyer

Journal of Marketing Research 54(1): 75-95 (February 2017)

The authors investigate whether sellers treat consumers differently on the basis of how well informed consumers appear to be. They implement a large-scale field experiment in which callers request price quotes from automotive repair shops. The authors show that sellers alter their initial price quotes depending on whether consumers appear to be correctly informed, uninformed, or misinformed about market prices. The authors find that repair shops quote higher prices to callers who cite a higher benchmark price and that women are quoted higher prices than men when callers signal that they are uninformed about market prices. However, gender differences disappear when callers mention a benchmark price for the repair. Finally, the authors find that repair shops are more likely to offer a price concession if asked to do so by a woman than if asked by a man.

Beyond Skepticism: Can Accessing Persuasion Knowledge Bolster Credibility

Mathew S. Isaac & Kent Grayson

Journal of Consumer Research 43(6): 895-912 (January 2017)

As defined by Friestad and Wright (1994), “persuasion knowledge” is personal knowledge about persuasion attempts that consumers develop and use whenever they believe they are targets of persuasion. A significant majority of research on persuasion knowledge has suggested that persuasion knowledge and skepticism invariably go hand in hand, and that accessing persuasion knowledge therefore leads consumers to evaluate the agent and its offering less favorably. Across four studies, the authors demonstrate the novel effect that persuasion knowledge access can lead to greater credibility (rather than greater skepticism), a finding that they argue is theoretically consistent with Friestad and Wright’s (1994) Persuasion Knowledge Model. Further, the authors demonstrate that when a persuasive agent uses a credible tactic, persuasion knowledge access can lead consumers to evaluate the agent and its offering more (rather than less) favorably. They also develop and test a new approach for increasing persuasion knowledge access in lab experiments, which can facilitate the investigation of other occasions where persuasion knowledge access increases trust and belief in a persuasive message.

Why Wait To Settle? An Experimental Test of the Asymmetric Information Hypothesis

Sean Patrick Sullivan

The Journal of Law and Economics 59(3): 497-525 (2016)

The US legal system encourages civil litigants to quickly settle their disputes, yet lengthy and expensive delays often precede private settlements. The causes of these delays are uncertain. This paper describes an economic experiment designed to test one popular hypothesis: that asymmetric information might be a contributing cause of observed settlement delays. Experimental results provide strong evidence that asymmetric information can delay settlements, increasing average time to settlement by as much as 90 percent in some treatments. This causal relationship is robustly observed across different bargaining environments. On the other hand, results do not obviously confirm all aspects of the game-theoretic explanation for this relationship and suggest that asymmetric information may be only one of several contributing causes of settlement delay. [DRM Winter 2015]

Bargaining Zone Distortion in Negotiations: The Elusive Power of Multiple Alternatives

Michael Schaerer, David D. Loschelder & Roderick I. Swaab

Organizational Behavior and Human Decision Processes 137: 156-171 (November 2016)

We challenge the assumption that having multiple alternatives is always better than a single alternative by showing that negotiators who have additional alternatives ironically exhibit downward-biased perceptions of their own and their opponent's reservation price, make lower demands, and achieve worse outcomes in distributive negotiations. Five studies demonstrate that the apparent benefits of multiple alternatives are elusive because multiple alternatives led to less ambitious first offers (Studies 1–2) and less profitable agreements (Study 3). This distributive disadvantage emerged because negotiators' perception of the bargaining zone was more distorted when they had additional (less attractive) alternatives than when they only had a single alternative (Studies 1–3). We further found that this multiple-alternatives disadvantage only emerges when negotiators used quantitative (versus qualitative) evaluation standards to gauge the extremity of their offers (Study 4), and when they base their offers on their own numerical alternative(s) versus on opponent information (Study 5). [DRM Winter 2017]

Money and Relationships: When and Why Thinking About Money Leads People to Approach Others

Fei Teng, Zhansheng Chen, Kai-Tak Poon, Denghao Zhang & Yuwei Jiang

Organizational Behavior and Human Decision Processes 137: 58-70 (November 2016)

Monetary reminders have been shown to discourage people from affiliating with others. We proposed such an effect can be reversed when others are instrumental to people's goals. Results from four experiments converged to support our proposition. We found that thinking about money increased people's focus on the instrumentality aspects of others (Experiment 1). In a goal pursuit context, monetary reminders increased people's tendency to approach others who were instrumental to achieving their goals (Experiment 2). The effect of money prime on approaching others was dismissed or reversed when people were highly competent in achieving the goal themselves (Experiment 3) and when the instrumentality of others was ambiguous (Experiment 4). Moreover, these effects were driven by the perceived instrumentality of others (Experiments 2–4). Taken together, our findings suggest that thinking about money leads to an instrumentality orientation in social interactions, which changes how people view relationships and how they interact with others.

Dancing on the Slippery Slope: The Effects of Appropriate Versus Inappropriate Competitive Tactics on Negotiation Process and Outcome

Denise Fleck, Roger Volkema & Sergio Pereira

Group Decision and Negotiation 25(5): 873-899 (September 2016)

As negotiation is critical to all forms of organizational decision-making, researchers have shown an interest in understanding how the flow of information (valid and otherwise) influences this process. Often, competitive, questionable, and unethical tactics have been treated as interchangeable in these studies, despite presumed differences in appropriateness. The purpose of this study was to examine the similarities and differences in negotiators' use and efficacy of appropriate competitive tactics (e.g., exaggerated offers) versus inappropriate competitive tactics (e.g., factual misrepresentations), primarily through a negotiation simulation. The study found that although these two categories of tactics were correlated in terms of overall use, appropriate competitive behaviors were used more frequently, especially early in negotiations, and these

behaviors often resulted in comparable responses from counterparts. While ultimately increasing the likelihood of a negotiation impasse, the use of appropriate competitive tactics improved an individual's substantive outcome where agreements could be reached. Inappropriate competitive tactics were likely to increase in number the sooner they were first employed in negotiations, with a response of inappropriate competitive tactics to the first use of competitive tactics increasing the likelihood of subsequent use of inappropriate tactics. The implications of these and other findings for both practitioners and future research are discussed.

Why Do People Tend to Infer “Ought” From “Is”? The Role of Biases in Explanation

Christina M. Tworek & Andrei Cimpian

Psychological Science 27: 1109-1122 (August 2016)

People tend to judge what is typical as also good and appropriate—as what ought to be. What accounts for the prevalence of these judgments, given that their validity is at best uncertain? We hypothesized that the tendency to reason from “is” to “ought” is due in part to a systematic bias in people's (nonmoral) explanations, whereby regularities (e.g., giving roses on Valentine's Day) are explained predominantly via inherent or intrinsic facts (e.g., roses are beautiful). In turn, these inherence-biased explanations lead to value-laden downstream conclusions (e.g., it is good to give roses). Consistent with this proposal, results from five studies (N = 629 children and adults) suggested that, from an early age, the bias toward inherence in explanations fosters inferences that imbue observed reality with value. Given that explanations fundamentally determine how people understand the world, the bias toward inherence in these judgments is likely to exert substantial influence over sociomoral understanding.

Mutual Persuasion

Giuseppe Dari-Mattiacci & Davide Grossi

Amsterdam Law School Research Paper No. 2016-41 (August 2016). Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2841160

Two agents have to collectively select one of two options. They are endowed with a personal bias, each in favor of a different option, and they observe a private signal with known quality. They then need to reveal their private signal to the other agent, but may decide to withhold some of the evidence the private signal provides, in order to persuade the other agent in the direction of their own bias. We present a Bayesian model capturing this form of persuasion. The model applies to a variety of phenomena, including political discussions, settlement negotiations and trade.

Models of Affective Decision Making: How Do Feelings Predict Choice?

Caroline J. Charpentier, Jan-Emmanuel De Neve, Xinyi Li, Jonathan P. Roiser & Tali Sharot

Psychological Science 27: 763-775 (June 2016)

Intuitively, how you feel about potential outcomes will determine your decisions. Indeed, an implicit assumption in one of the most influential theories in psychology, prospect theory, is that feelings govern choice. Surprisingly, however, very little is known about the rules by which feelings are transformed into decisions. Here, we specified a computational model that used feelings to predict choices. We found that this model predicted choice better than existing value-based models, showing a unique contribution of feelings to decisions, over and above value. Similar to the value function in prospect theory, our feeling function showed diminished sensitivity to outcomes as value increased. However, loss aversion in choice was explained by an

asymmetry in how feelings about losses and gains were weighted when making a decision, not by an asymmetry in the feelings themselves. The results provide new insights into how feelings are utilized to reach a decision.

Measuring Intuition: Nonconscious Emotional Information Boosts Decision Accuracy and Confidence

Galang Lufityanto, Chris Donkin & Joel Pearson

Psychological Science 27: 622-634 (May 2016)

The long-held popular notion of intuition has garnered much attention both academically and popularly. Although most people agree that there is such a phenomenon as intuition, involving emotionally charged, rapid, unconscious processes, little compelling evidence supports this notion. Here, we introduce a technique in which subliminal emotional information is presented to subjects while they make fully conscious sensory decisions. Our behavioral and physiological data, along with evidence-accumulator models, show that nonconscious emotional information can boost accuracy and confidence in a concurrent emotion-free decision task, while also speeding up response times. Moreover, these effects were contingent on the specific predictive arrangement of the nonconscious emotional valence and motion direction in the decisional stimulus. A model that simultaneously accumulates evidence from both physiological skin conductance and conscious decisional information provides an accurate description of the data. These findings support the notion that nonconscious emotions can bias concurrent nonemotional behavior—a process of intuition.

The Pandora Effect: The Power and Peril of Curiosity

Christopher K. Hsee & Bown Ruan

Psychological Science 27: 659-666 (May 2016)

Curiosity—the desire for information—underlies many human activities, from reading celebrity gossip to developing nuclear science. Curiosity is well recognized as a human blessing. Is it also a human curse? Tales about such things as Pandora’s box suggest that it is, but scientific evidence is lacking. In four controlled experiments, we demonstrated that curiosity could lead humans to expose themselves to aversive stimuli (even electric shocks) for no apparent benefits. The research suggests that humans possess an inherent desire, independent of consequentialist considerations, to resolve uncertainty; when facing something uncertain and feeling curious, they will act to resolve the uncertainty even if they expect negative consequences. This research reveals the potential perverse side of curiosity, and is particularly relevant to the current epoch, the epoch of information, and to the scientific community, a community with high curiosity.

For a Dollar, Would You...? How (We Think) Money Affects Compliance With Our Requests

Vanessa K. Bohnsa, Daniel A. Newark & Amy Z. Xuc

Organizational Behavior and Human Decision Processes 134: 45-62 (May 2016)

Research has shown a robust tendency for people to underestimate their ability to get others to comply with their requests. In five studies, we demonstrate that this underestimation-of-compliance effect is reduced when requesters offer money in exchange for compliance. In Studies 1 and 2, participants assigned to a no-incentive or monetary-incentive condition made actual requests of others. In both studies, requesters who offered no incentives underestimated

the likelihood that those they approached would grant their requests; however, when requesters offered monetary incentives, this prediction error was mitigated. In Studies 3–5, we present evidence in support of a model to explain the underlying mechanism for this attenuation effect. Studies 3 and 4 demonstrate that offering monetary incentives activates a money-market frame. In Study 5, we find that this activation reduces the discomfort associated with asking, allowing requesters to more accurately assess the size of their request and, consequently, the likelihood of compliance.

Incidental Fear Cues Increase Monetary Loss Aversion

Stefan Schulreich, Holger Gerhardt & Hauke R. Heekeren
Emotion 16(3): 402-412 (April 2016)

In many everyday decisions, people exhibit loss aversion—a greater sensitivity to losses relative to gains of equal size. Loss aversion is thought to be (at least partly) mediated by emotional—in particular, fear-related—processes. Decision research has shown that even incidental emotions, which are unrelated to the decision at hand, can influence decision making. The effect of incidental fear on loss aversion, however, is thus far unclear. In two studies, we experimentally investigated how incidental fear cues, presented during (Study 1) or before (Study 2) choices to accept or reject mixed gambles over real monetary stakes, influence monetary loss aversion. We find that the presentation of fearful faces, relative to the presentation of neutral faces, increased risk aversion—an effect that could be attributed to increased loss aversion. The size of this effect was moderated by psychopathic personality: Fearless dominance, in particular its interpersonal facet, but not self-centered impulsivity, attenuated the effect of incidental fear cues on loss aversion, consistent with reduced fear reactivity. Together, these results highlight the sensitivity of loss aversion to the affective context.

Bargaining Under Time Pressure

Emin Karagozoglu & Martin G. Kocher
CESifo Working Paper Series No. 5685 (January 2016). Available at SSRN:
<http://ssrn.com/abstract=2727156>

We experimentally investigate the effect of time pressure in a rich-context, unstructured bargaining game with earned status and competing reference points. Our results show that average opening proposals, concessions, and agreed shares are very similar across different levels of time pressure. Nevertheless, as predicted, time pressure systematically influenced agreements. In particular, the likelihood of bargainers reaching the explicit reference point outcome in agreements increases with time pressure, and the likelihood of reaching the implicit reference point (equal division) in agreements decreases with time pressure. Disagreement rates and the frequency of last-moment agreements are strongly affected: the disagreement rate rises dramatically with time pressure, and last-moment agreements are significantly more frequent. This effect is explained by a stronger connection between the tension in first proposals and the final bargaining outcome under time pressure than without time pressure.

The Prospect of a Perfect Ending: Loss Aversion and The Round-Number Bias

P. Fraser-Mackenzie, M. Sung & J.E.V. Johnson
Organizational Behavior and Human Decision Processes 131: 67-80 (November 2015)

Studies across a range of domains have shown that individuals tend to focus on round numbers as cognitive reference points; a so-called left-digit effect. We explain this effect by

combining analog numerical heuristics with prospect theory in order to develop an analog value function that predicts the key characteristics of the left-digit effect. Most importantly, this value function predicts an unreported phenomenon, namely; that the left-digit effect will be more pronounced in situations involving losses (cf. gains). We confirm this prediction in both a laboratory experiment regarding hypothetical investments and analysis of buy–sell imbalances in over 15 million trades by investors in a financial market. We conclude that our analog value function is a promising explanation for the left-digit effect. Furthermore, we suggest that interventions aimed at reducing costly buy–sell imbalances in financial markets should focus on the decisions made by investors when they are facing loss.

Pushing Away From Representative Advice: Advice Taking, Anchoring, and Adjustment

Christina A. Rader, Jack B. Soll & Richard P. Larrick

Organizational Behavior and Human Decision Processes 130: 26-43 (September 2015)

Five studies compare the effects of forming an independent judgment prior to receiving advice with the effects of receiving advice before forming one's own opinion. We call these the independent-then-revise sequence and the dependent sequence, respectively. We found that dependent participants adjusted away from advice, leading to fewer estimates close to the advice compared to independent-then-revise participants (Studies 1–5). This “push-away” effect was mediated by confidence in the advice (Study 2), with dependent participants more likely to evaluate advice unfavorably and to search for additional cues than independent-then-revise participants (Study 3). Study 4 tested accuracy under different advice sequences. Study 5 found that classic anchoring paradigms also show the push-away effect for median advice. Overall, the research shows that people adjust from representative (median) advice. The paper concludes by discussing when push-away effects occur in advice taking and anchoring studies and the value of independent distributions for observing these effects.

Seeing the Other Side: Perspective Taking and the Moderation of Extremity

Hannah M. Tuller, Christopher J. Bryan, Gail D. Heyman & Nicholas J. S. Christenfeld

Journal of Experimental Social Psychology 59: 18-23 (July 2015)

Recognizing the reasonableness of others' positions is important for conflict reduction, but is notoriously hard. The authors tested a perspective-taking approach to decreasing attitude entrenchment. Participants were held accountable in a task in which they wrote about a controversial issue from the perspective of a partner with an opposing viewpoint. This approach was effective at changing views on controversial issues—in Study 1 on weight discrimination, an issue participants were unlikely to have thought much about, and in Study 2 on abortion, where beliefs tend to be more deeply held. Studies 3 and 4 showed this change only took place under conditions where participants met the individual with an opposing view in person, and where that individual would see the perspective-taking effort. These results suggest that it is possible to reduce attitude entrenchment by encouraging people to think about the opposing perspective of another, as long as there is real contact and accountability. [DRM Summer 2015]

Self-Interest Bias in Moral Judgments of Others' Actions

Konrad Bocian & Bogdan Wojciszke

Personality and Social Psychology Bulletin 40(7): 898-909 (2014)

The automatic and affective nature of moral judgments leads to the expectation that these judgments are biased by an observer's own interests. Although the idea of self-interest bias is

old, it has never been directly tested with respect to the moral judgments of other individuals' behaviors. The participants of three experiments observed other individuals' counternormative behavior (breaking a rule or cheating for gain), which was judged as immoral. However, this judgment became much more lenient when the observers gained from the observed behavior. All three studies showed that the influence of self-interest on moral judgments was completely mediated by the observer's increased liking for the perpetrator of the immoral acts but not by changes in mood. When the participants were induced to dislike the perpetrator (in a moderation-of-process design), the self-interest bias disappeared. Implications for the intuitionist approach to moral judgment are discussed.

Do You Want the Good News or the Bad News First? The Nature and Consequences of News Order Preferences

Angela M. Legg & Kate Sweeny

Personality and Social Psychology Bulletin 40(3): 279–288 (2014)

Information often comes as a mix of good and bad news, prompting the question, “Do you want the good news or the bad news first?” In such cases, news-givers and news-recipients differ in their concerns and considerations, thus creating an obstacle to ideal communication. In three studies, we examined order preferences of news-givers and news-recipients and the consequences of these preferences. Study 1 confirmed that news-givers and news-recipients differ in their news order preferences. Study 2 tested two solutions to close the preference gap between news-givers and recipients and found that both perspective-taking and priming emotion-protection goals shift news-givers' delivery patterns to the preferred order of news-recipients. Study 3 provided evidence that news order has consequences for recipients, such that opening with bad news (as recipients prefer) reduces worry, but this emotional benefit undermines motivation to change behavior.

Avoiding the Agreement Trap: Teams Facilitate Impasse in Negotiations with Negative Bargaining Zones

Taya R. Cohen, Geoffrey J. Leonardelli & Leigh Thompson

Negotiation and Conflict Management Research 7: 232–242 (2014)

Effective negotiation requires understanding not only how to “get to yes” but also when and how to say no. The *agreement trap* can occur in situations in which mutual agreement is not viable because parties' interests cannot simultaneously be met. Two experiments tested whether teams are more adept than solos at avoiding the agreement trap. These studies compared teams and solos in a negotiation involving a real-estate transaction in which the optimal solution was for the parties to declare an impasse. Study 1 found that two- and three-person teams were more likely than solos to impasse. Study 2 found that the party faced with the greater need to make accurate judgments about the alignment between their own and their counterpart's interests benefited most from the addition of a teammate. Our findings suggest one factor underlying the agreement trap (faulty judgment) and a potential solution (greater information processing capability via teams). [DRM Summer 2015]

Decision Time as Information in Judgment and Choice

Philippe P.F.M. Van de Calseyde, Gideon Keren & Marcel Zeelenberg

Organizational Behavior and Human Decision Processes 125(2): 113-122 (2014)

People often observe others' decisions and the corresponding time it took them to reach the decision. In this study, the authors demonstrate that people derive information from the time that others needed in reaching a decision. Specifically, the findings of multiple experiments and a field study using data from the television show *The Voice* reveal that decision times are perceived as indicative of the degree of doubt that the decision maker experienced. In turn, these inferences of doubt reliably affected people's preferences such as with whom to collaborate and negotiate, even when the collaboration would yield a normatively inferior outcome. These results are incompatible with the idea that an alternative will be chosen only on the basis of its outcomes. Instead, the authors portray a model that incorporates others' decision times as a component of the choice process. [DRM Summer 2015]

Judging a Part by the Size of its Whole: The Category Size Bias in Probability Judgments

Mathew S. Isaac & Aaron R. Brough

Journal of Consumer Research 41(2): 310-325 (August 2014)

Whereas prior research has found that consumers' probability judgments are sensitive to the number of categories into which a set of possible outcomes is grouped, this article demonstrates that categorization can also bias predictions when the number of categories is fixed. Specifically, five experiments document a category size bias in which consumers perceive an outcome as more likely to occur when it is categorized with many rather than few alternative possibilities, even when the grouping criterion is irrelevant and the objective probability of each outcome is identical. For example, participants in one study irrationally predicted being more likely to win a lottery if their ticket color matched many (vs. few) of the other gamblers' tickets—and wagered nearly 25% more as a result. These findings suggest that consumers' perceptions of risk and probability are influenced not only by the number of categories into which possible outcomes are classified but also by category size.

When Parity Promotes Peace: Resolving Conflict Between Asymmetric Agents

Erik O. Kimbrough, Roman M. Sheremeta & Timothy W. Shields

Journal of Economic Behavior & Organization 99: 96-108 (March 2014)

Due to the high costs of conflict both in theory and practice, we examine and experimentally test the conditions under which conflict between asymmetric agents can be resolved. We model conflict as a two-agent rent-seeking contest for an indivisible prize. Before conflict arises, both agents may agree to allocate the prize by fair coin flip to avoid the costs of conflict. The model predicts that “parity promotes peace” : in the pure-strategy equilibrium, agents with relatively symmetric conflict capabilities agree to resolve the conflict by using a random device; however, with sufficiently asymmetric capabilities, conflicts are unavoidable because the stronger agent prefers to fight. The results of the experiment confirm that the availability of the random device partially eliminates conflicts when agents are relatively symmetric; however, the device also reduces conflict between substantially asymmetric agents.

Egocentrism Drives Misunderstanding in Conflict and Negotiation

John R. Chambers & Carsten K.W. De Dreu

Journal of Experimental Social Psychology 51: 15–26 (March 2014)

A key barrier to effective conflict resolution is that parties often exaggerate the degree to which the other side's interests oppose their own. In this paper, the authors examine egocentrism as a fundamental source of such biased conflict perceptions. They propose that when assessing

the interests and priorities of the other side, parties rely on their own interests and priorities, ignoring those of their opponents. Three experiments involving multi-issue negotiations provide strong evidence of such egocentric misperception. In the first experiment, participants judged their own important issues to be important to their negotiation opponent, regardless of the opponent's actual interests. In the second, accuracy in perceptions of the opponent's interests increased when attention was experimentally focused on those interests rather than on the party's own. The third experiment found that a participant's perceptions of the opponent's interests were more closely related to the participant's own interests than to the opponent's actual interests. Although the authors demonstrate that egocentrism may often blind disputants to opportunities for tradeoffs, their research also shows that focusing disputants on the opponents' interests can undermine egocentrism and allow for constructive negotiation. In the discussion, the authors highlight the broader implications of egocentrism for other areas of conflict. [DRM Summer 2014]

Barriers to Transforming Hostile Relations: Why Friendly Gestures Can Backfire

Tanya Menon, Oliver J. Sheldon & Adam D. Galinsky

Negotiation and Conflict Management Research 7(1): 17-37 (January 2014)

Friendly gestures (e.g., smiles, flattery, favors) typically build trust and earn goodwill. However, the authors propose that people feel unsettled when enemies initiate friendly gestures. To resolve these sense-making difficulties, people find order through superstitious reasoning about friendly enemies. Across three experiments, the authors found that enemies' friendly gestures led counterparts to blame them, perceive future contact with them as unlucky, and avoid them. Individuals high in need of structure were especially prone to make these attributions. Taken together, these results suggest that rather than transforming hostile relationships, an enemy's friendliness can be so unnerving that it sometimes leads people down blind alleys of superstitious reasoning. [DRM Summer 2014]

Money, Well-Being, and Loss Aversion: Does an Income Loss Have a Greater Effect on Well-Being Than an Equivalent Income Gain?

Christopher J. Boyce, Alex M. Wood, James Banks, Andrew E. Clark & Gordon A. Brown

Psychological Science 24(12): 2557–2562 (December 2013)

Higher income is associated with greater well-being, but do income gains and losses affect well-being differently? Loss aversion, whereby losses loom larger than gains, is typically examined in relation to decisions about anticipated outcomes. Here, using subjective-well-being data from Germany (N = 28,723) and the United Kingdom (N = 20,570), we found that losses in income have a larger effect on well-being than equivalent income gains and that this effect is not explained by diminishing marginal benefits of income to well-being. Our findings show that loss aversion applies to experienced losses, challenging suggestions that loss aversion is only an affective-forecasting error. By failing to account for loss aversion, longitudinal studies of the relationship between income and well-being may have overestimated the positive effect of income on well-being. Moreover, societal well-being might best be served by small and stable income increases, even if such stability impairs long-term income growth.

In the Eye of the Beholder: Eye Contact Increases Resistance to Persuasion

Frances S. Chen, Julia A. Minson, Maren Schöne & Markus Heinrichs

Psychological Science 24(11): 2254-2261 (November 2013)

Popular belief holds that eye contact increases the success of persuasive communication. However, two recent studies demonstrate that more eye contact between the listener and speaker during persuasive communication predicts less attitude change in the direction advocated. These findings highlight that eye contact can signal very different kinds of messages, ranging from attraction and interest to aggression and a desire to intimidate. Prolonged eye contact in a tense or adversarial interaction is likely to be interpreted differently than it would be in a friendly interaction. Speakers attempting to use eye contact in a persuasion attempt are advised to pay attention to their listener's body language. If a listener seems receptive and open to a message, direct eye contact might have a positive impact on persuasion. However, if he or she seems upset or overwhelmed or starts looking away, trying to force direct eye contact might backfire. [DRM Summer 2014]

Loss Aversion and Foreign Policy Resolve

Jeffrey Berejikian & Bryan Early

Political Psychology 34(5): 649-671 (October 2013)

This article draws upon recent findings from the field of neuroscience to explore how loss aversion affects foreign policy resolve. We theorize that U.S. policy makers are more resolute in pursuing preventive policies that seek to avoid losses than they are in pursuing promotive policies that seek to acquire new gains. To test our theory, we conduct the first large-n analysis of foreign policy hypotheses derived from the neuroscience of loss aversion using data from 100 cases of U.S.-initiated Section 301 trade disputes. The results provide strong support for the loss-aversion-based theory, revealing that American policy makers are willing to fight harder and hold out longer in trade disputes with preventive objectives than they are in cases with promotive ones. Our study demonstrates that hypotheses derived from neuroscientific findings can be tested using large-n techniques in study of foreign policy, revealing a new avenue of inquiry within the field.

The Illusion of Saving Face: How People Symbolically Cope With Embarrassment

Ping Dong, Xun (Irene) Huang & Robert S. Wyer, Jr.

Psychological Science 24: 2005-2012 (October 2013)

People who feel embarrassed are often motivated to avoid social contact—that is, to hide their face. At the same time, they may be motivated to restore the positive image that has been tarnished by the embarrassing event (or, in other words, to restore the face lost in the event). Individuals can symbolically employ these coping strategies by choosing commercial products that literally either hide their face (e.g., sunglasses) or repair it (e.g., restorative cosmetics). However, the two coping strategies have different consequences. Although symbolically repairing one's face eliminates aversive feelings of embarrassment and restores one's willingness to engage in social activities, symbolically hiding one's face has little impact.

The Invisible Gorilla Strikes Again: Sustained Inattentional Blindness in Expert Observers

Trafton Drew, Melissa L.-H. Võ & Jeremy M. Wolfe

Psychological Science 24(9): 1848-1853 (September 2013)

Researchers have shown that people often miss the occurrence of an unexpected yet salient event if they are engaged in a different task, a phenomenon known as inattentional blindness. However, demonstrations of inattentional blindness have typically involved naive observers engaged in an unfamiliar task. What about expert searchers who have spent years

honing their ability to detect small abnormalities in specific types of images? We asked 24 radiologists to perform a familiar lung-nodule detection task. A gorilla, 48 times the size of the average nodule, was inserted in the last case that was presented. Eighty-three percent of the radiologists did not see the gorilla. Eye tracking revealed that the majority of those who missed the gorilla looked directly at its location. Thus, even expert searchers, operating in their domain of expertise, are vulnerable to inattention blindness.

Predictive and Reactive Mechanisms in Smile Reciprocity

Erin A. Heerey & Helen M. Crossley

Psychological Science 24(8): 1446-1455 (August 2013)

During face-to-face interactions, people reciprocate their conversation partners' genuine and polite smiles with matching smiles. In the research reported here, we demonstrated that predictive mechanisms play a role in this behavior. In natural interactions (Study 1), participants anticipated a substantial proportion of genuine smiles but almost no polite ones. We propose that reinforcement-learning mechanisms underpin this social prediction and that smile-reciprocity differences arise because genuine smiles are more rewarding than polite smiles. In Study 2, we tested this idea using a learning task in which correct responses were rewarded with genuine or polite smiles. We measured participants' smile reactions with electromyography (EMG). As in natural interactions, people mimicked polite smiles reactively, after seeing them appear. Interestingly, the EMG data showed predictive responding to genuine smiles only. These results demonstrate that anticipating social rewards drives predictive social responding and therefore represent a significant advance in understanding the mechanisms that underpin the neural control of real-world social behavior.

Exploring the Impact of Various Shaped Seating Arrangements on Persuasion

Rui (Juliet) Zhu & Jennifer J. Argo

Journal of Consumer Research 40(2): 336-349 (August 2013)

Despite the common belief that seating arrangements matter, little research has examined how the geometrical shape of a chair arrangement can impact persuasion. Across three studies, this research demonstrates that the shape of seating arrangements can prime two fundamental human needs, which in turn influence persuasion. When seated in a circular-shaped layout, individuals evaluate persuasive material more favorably if it contains family-oriented cues or majority endorsement information. In contrast, when seated in an angular-shaped seating arrangement, individuals evaluate persuasive material more favorably when it contains self-oriented cues or minority endorsement. Further, results reveal that these responses to persuasive material arise because circular-shaped seating arrangements prime a need to belong, while angular-shaped seating arrangements prime a need to be unique. Thus, this research shows that a subtle environmental cue – the shape of a seating arrangement – can activate fundamental human needs and consequently affect persuasion. [DRM Winter 2014]

Intentional Harms Are Worse, Even When They're Not

Daniel L. Ames & Susan T. Fiske

Psychological Science 24(7): 1755-1762 (July 2013)

People and societies seek to combat harmful events. However, because resources are limited, every wrong righted leaves another wrong left unchecked. Responses must therefore be calibrated to the magnitude of the harm. One under-appreciated factor that affects this calibration

may be people's over-sensitivity to intent. Across a series of studies, the authors found that people saw intended harms as worse than unintended harms, even though the two harms were identical. This harm-magnification effect is attributable to differences in blame motivation and occurred for both subjective and monetary estimates of harm, and it remained when participants were given incentives to be accurate. People may therefore focus on intentional harms to the neglect of unintentional (but equally damaging) harms. [DRM Winter 2014]

Accentuation of Bias in Jury Decision-Making

Masami Takada & Koji Murata

Group Processes & Intergroup Relations 17(1): 110-124 (June 2013)

We investigated the bias accentuation effect of group decision-making. Previous studies have shown that individuals were more likely to endorse the guilty verdict when the prosecution evidence was presented in a temporal order (story condition) than when the same evidence was presented in a nontemporal order (witness condition). We expected that group deliberation would accentuate this biasing effect of evidence order through a majority-wins process. Sixty-six 3-person groups engaged in a mock jury task either in the story or witness condition. As predicted, group deliberation accentuated the difference in the verdict judgments between the two conditions through a majority-wins/leniency asymmetry process. This accentuation effect was not moderated by how juries deliberated (evidence-driven vs. verdict-driven). Some theoretical and practical implications of these findings were discussed.

RESTORATIVE JUSTICE

Reoffending Analysis for Restorative Justice Cases 2008–2013

New Zealand Department of Justice (April 2014). Available at:

<https://www.justice.govt.nz/assets/Documents/Publications/rj-Reoffending-Analysis-for-Restorative-Justice-Cases-2008-2013-Summary-Results.pdf>

Key findings from this study include that:

- The reoffending rate for offenders who participated in restorative justice was 15% lower over the following 12 month period than comparable offenders and 7.5% lower over three years.
- Offenders who participated in restorative justice committed 26% fewer offences per offender within the following 12 month period than comparable offenders (20% fewer offences within three years).
- Restorative justice appeared to help reduce reoffending across many offence types including violence, property abuse/damage and dishonesty. However, the reoffending rate was not lower for restorative justice participants who committed a driving causing death/injury offence.
- The reoffending rate for Māori who participated in restorative justice was 16% lower over the following 12 month period than comparable Māori offenders (6.9% lower over three years). Māori offenders who participated in restorative justice committed 37% fewer offences per offender within the next 12 month period than comparable Māori offenders (23% fewer offences within three years).
- The reoffending rate for young offenders (aged 17 to 19) who participated in restorative justice was 17% lower than comparable young offenders over the following 12 month period (8.9% lower over three years). Young offenders who participated in restorative

justice committed 30% fewer offences per offender than comparable young offenders within 12 months (32% fewer offences within three years).

Exploring Communities of Facilitators: Orientations toward Restorative Justice

Gregory D. Paul & Ian M. Borton

Conflict Resolution Quarterly 31(2): 189-218 (Winter 2014)

Although current research on restorative justice largely has overlooked facilitators' roles in victim-offender conferences, research on third parties suggests that they are more than neutral process guides. The study examined in this article involved an exploration of restorative justice facilitators' backgrounds, perceived responsibilities, and ideal outcomes to arrive at a theory of facilitated justice rooted in facilitator orientation and conference context. Based on individual interviews with facilitators from two restorative justice organizations, the results of this study suggest the presence of four orientations rooted in participant orientation and outcome orientation. These orientations lead to the development of a theory of facilitated justice.

Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review

Heather Strang, Lawrence W. Sherman, Evan Mayo-Wilson, Daniel Woods & Barak Ariel

Campbell Systematic Reviews 2013: 12 (November 2013), available at

<https://www.restorativejustice.org.uk/sites/default/files/resources/files/Campbell%20RJ%20review.pdf>

This review distils the strongest available evidence on the effectiveness of face-to-face restorative justice (RJ) in the reduction of repeat offending, relative to formal justice processes, and in the benefits it provides for victims. Those working in dispute resolution can use the review to help their practice by noting the findings about where RJ has been found most effective. To the surprise of some, RJ is most effective for more serious offenses, including violent crime, and perhaps more effective for adults than for juveniles. The evidence is limited at present to just one type of RJ, and the authors urge caution about generalizing these results to other forms. But there is reason to be optimistic that RJ techniques employing the principles and processes found in this research can be used for more serious and complex disputes and conflicts and can be more successful than court processing for preventing future crime and giving victims what they seek from the justice system. [DRM Summer 2014]