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Dispute Resolution, Psychology Of

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Psychological research has helped to illuminate the individual decision-making processes involved in the resolution of disputes. One line of inquiry, conducted primarily by psychologists publishing in psychological journals, explores individuals' relative preferences for, and satisfaction with, various dispute resolution procedures—such as trial, mediation, and arbitration—and what drives these preferences. The second, largely conducted by lawyers publishing in law reviews, explores the cognitive biases that make negotiators less likely to settle disputes even when it would be rational for them to do so. The third area of research focuses on the uses of interests, rights, and power as ways to resolve disputes.

These research areas primarily, but not exclusively, use experimental or quasi-experimental laboratory studies to discern the causal or correlational relationships between various variables of interest. While psychological research on dispute resolution has been primarily descriptive in nature, it has informed normative and prescriptive debates involving, for example, the types of procedures that court-annexed alternative dispute resolution programs ought to **[p. 427 ↓]** offer, and how effectively to negotiate the settlement of disputes.

Procedural Justice Literature

The psychological perspective on dispute resolution builds on the classic procedural justice research of psychologist John Thibaut (1917–1986) and attorney Laurens Walker. They published, in 1975, the first systematic experiments investigating the types of trial procedures that individuals favor for resolving disputes. Much of their research examined how individuals evaluate two particular procedural models: the adversarial and the inquisitorial. As defined by these researchers, the “adversarial” model, which essentially consists of formal adjudication as it exists in United States courtrooms, assigns responsibility for the presentation of evidence and arguments at trial to the disputants. In contrast, in the “inquisitorial” model, the development of the issues and evidence is controlled by the decision maker (for example, the judge) and his or her agents. By having U.S.-based participants evaluate dispute resolution options for a hypothetical legal dispute, Thibaut and Walker found a preference for the adversarial model, and argued on the basis of their findings that participants favored

adversarial procedures because they found them more fair. Scholars subsequently replicated this preference for the adversarial model even in countries with more inquisitorial systems, such as France and West Germany, suggesting that U.S.-based participants did not favor the adversarial model simply because it reflected the system to which they were culturally accustomed.

Many subsequent studies explored the idea that individuals evaluate procedures primarily based on how fair they perceive them to be. This line of research, which typically involved participants evaluating hypothetical disputes, revealed that individuals use fairness standards to evaluate both the outcomes of procedures and the process that yielded those outcomes, and that they evaluate these two dimensions separately. Individuals who believe that the process they experienced was fair and the outcomes they received were favorable tend to report the greatest satisfaction with a given procedure, but those who receive unfavorable outcomes are also satisfied provided that they perceive the process as fair. Given that early justice research had focused on outcome fairness (distributive justice) on the assumption that outcome was the primary determinant of evaluations, the finding that fair treatment (procedural justice) contributed independently and significantly to overall assessments of procedures was surprising and highly important. Subsequent research found that disputants not only reported greater preference for procedures that they perceived as offering fairer treatment; they were also more likely to comply with the outcomes of such procedures.

Several theories attempt to explain how individuals come to regard a given procedure as “fair.” One theory suggests that individuals define fairness partly in terms of how much control they retain over the development and selection of information that will be used to resolve the dispute—variably known as “process control” or the “voice” hypothesis. The “instrumental” or “social exchange” explanation for this effect suggests that control over process is an indirect means of obtaining favorable outcomes. Later work, however, demonstrated that the opportunity for voice heightens disputants' judgment of fair treatment, even when they know that their voice will not and cannot influence the outcome. Thus, instead of perceiving procedures strictly in instrumental terms, individuals often define fair process in terms of how respectfully the involved third party or authority figure treated them, because such treatment communicates status and inclusion in groups. This explanation has underscored support for another theory, known as the “group values” model. A newer theory, the “fairness heuristic” hypothesis,

suggests that when individuals lack a clear metric for assessing the fairness of a given dispute outcome, they use their evaluation of the process as a mental shortcut for assessing the outcome.

Following Thibaut and Walker's seminal research, psychologists have tried to determine which type of dispute resolution procedure disputants generally prefer. Early research, in which participants read summaries of disputes and evaluated different procedural **[p. 428 ↓]** options, suggested a preference for adjudicative procedures in which third parties controlled the outcome by making a binding decision—for example, arbitration. Following this direction, research focused primarily on comparisons between various binding procedures, and it was not until the early 1980s that research on nonbinding procedures, particularly mediation, became more common. Subsequent field research comparing postexperience evaluations of mediation and arbitration, with actual disputants and their advocates, produced reliable results suggesting that disputants favor mediation over arbitration, because the former provides greater control over process and outcome.

Legal commentators have speculated on why some studies suggest a relative preference for adjudicative procedures (for example, trial or arbitration), while others suggest greater support for more nonbinding, consensual ones (for example, mediation). Recent psychological research suggests that there may be “two psychologies” relating to preferences, such that the distinction may depend on when disputants indicate their preferences. That is, if individuals are asked to state their preferences *before* they experience a procedure, they favor procedures that they believe will help them to maximize their self-interest in terms of material outcomes, but if asked to evaluate a procedure *after* experiencing it, they base evaluations on the quality of the treatment they received.

The body of psychological research on dispute resolution exists within a broader social science perspective, including research from economics, public policy, and sociology, which has compared procedures using factors such as settlement rate, financial cost, and time to settlement. Scholars cite psychological research in conjunction with such research in academic and policy debates concerning how to design dispute resolution systems, particularly in the context of court-annexed programs.

While these research highlights describe the primary focus of psychological inquiry into dispute resolution, the breadth of the relevant research is more expansive. For example, researchers with a clinical interest have explored issues such as how mediated divorces psychologically affect children and how third-party neutrals might use clinical techniques to resolve disputes. As Internet use has become more prevalent, researchers have also begun to explore the psychological processes involved in using e-mail and formal online dispute resolution programs to resolve disputes.

Cognitive Bias Literature

Another significant part of the psychological literature on dispute resolution stands explicitly as an alternative to understanding decision making from the law and economics perspective, which assumes that people exercise logical deduction and induction in judgment and pursue rational self-interest in decision making. Empirical studies by psychologists have demonstrated that this rational actor model fails to accurately describe how individuals actually process information and make decisions under risk and uncertainty. Negotiation scholars have argued that many of the cognitive biases that operate elsewhere also affect the negotiation process by operating as barriers to settlement and producing suboptimal outcomes when settlements do occur.

Although researchers have investigated dozens of cognitive biases in the domain of dispute resolution, several have received particular attention. One such bias, known as the “framing effect,” reflects the general tendency to prefer definite alternatives to risky ones in the realm of potential gains but to prefer risky alternatives to definite ones when faced with potential losses. Applying this idea to negotiations, studies have demonstrated that negotiators who perceive a settlement offer as a net loss tend to reject that offer even if it is economically sensible, although they would accept the same offer if they construed it in light of a reference point that made it appear as a gain. Similarly, in the civil litigation context, insofar as defendants tend to frame litigation decisions as choices among losses, they may be more risk seeking (that is, willing to forego settlement and take their chances at trial) compared with plaintiffs. Plaintiffs are more apt to view litigation decisions as choices among gains and therefore are relatively more riskaverse (that is, ready to take a sure gain offered by settlement). This pattern tends to reverse, however, for **[p. 429 ↓]** “frivolous” lawsuits where the expected value

of settlement and trial are identical but the plaintiff's chances at prevailing at trial are very low, but with a potentially high financial payoff.

Dispute resolution researchers have also explored what cognitive psychologists have labeled the “anchoring effect.” This bias emerges when people make judgments based on a numerical value that is initially provided (the “anchor”), even if this value is arbitrary or inappropriate for the issue to be decided. Such anchor values can influence the ultimate judgment under consideration, by making the judgment more extreme in the anchor's direction. As applied to disputes, research has found that an opponent's opening offer can unduly influence disputants' expectations and, consequently, their negotiated settlements, by shifting the settlement figure in the direction of the anchor.

Negotiators also succumb to the “self-serving” or “egocentric” bias, which is the general tendency to evaluate ambiguous information in a self-interested way. This bias helps to explain why both parties to a dispute often view their trial odds in a favorable light, which can in turn make them more likely to reach an impasse in settlement negotiations. This tendency exists even if individuals who play opposing roles in a dispute have complete, identical information or have incentives to make impartial evaluations. Research on ways to mitigate the effects of this bias suggests that having parties explicitly list the weaknesses of their case in writing can significantly increase settlement rates and result in shorter negotiations.

Reactive devaluation, a bias that originated in the dispute resolution literature, occurs when disputants devalue a proposal or concession offered by the opposing party merely because it comes from the opposing party. When negotiators are presented with a proposal from the opposing party, they tend to rate that proposal less positively than when the same offer ostensibly has been suggested by a neutral third party or by a representative of their own party. They also generally rate concessions by the opposing party less favorably than potential but withheld concessions. In addition, negotiators tend to evaluate a proposal less favorably after a party has offered it or a person with authority has suggested it, relative to when the same proposal existed merely as a hypothetical possibility. Psychologists have suggested that such findings help to explain why negotiators negatively evaluate and decline even advantageous settlement offers.

Altogether, the body of scholarship on biases helps to explain why disputants may fail to resolve their disputes through negotiation even when settlement makes sound economic sense. Recent research has shown that members of the judiciary evidence many of the same decision-making biases.

The psychological study of settlement negotiations constitutes but a small portion of psychological research on negotiations more broadly. The majority of negotiation studies have investigated nonlegal disputes and business “deal-making” negotiations. As research specifically dedicated to legal disputes continues to expand, one would expect greater exploration of basic psychological principles in this domain.

Framing Literature

A significant theoretical contribution to understanding dispute resolution derives from research identifying three conceptually distinct frames (that is, approaches) for resolving disputes. The “interests” strategy involves resolving disputes by attempting to satisfy each party's interests (that is, underlying needs or desires). A second approach, the “rights” approach, involves relying on some objective and independent standard, such as law or custom, and applying that standard to the issues in a given dispute. A third strategy, the “power” approach, involves using power or status to force an opposing party to agree to terms that the party would not otherwise accept.

This “interests, rights, and power” framework suggests that disputants should focus on what they would like to do based on their interests, rather than on what they can do based on rights or power. Reliance on rights or power should be limited to situations in which such reliance is necessary. The premise is that interestsbased claims are more negotiable, and hence less likely to become intractable. Moreover, framing disputes in terms of interests tends to yield more mutually beneficial, enduring agreements. Psychological research on this framework suggests that negotiators tend to cycle **[p. 430 ↓]** through all three approaches during a given negotiation, and that a statement signaling any of the approaches is likely to be reciprocated by the opposing party. Interestbased statements are more likely to be reciprocated then are rightsor power-based communications, reflecting the more mutually advantageous nature of a focus on interests. Disputants can end contentious cycles prompted by the use of rights or power

by not reciprocating rightsor power-based statements, reciprocating a rightsor power-based statement but pairing it a with an interest-focused statement, not rewarding contentious remarks with concessions, or labeling the rights or power strategy as ineffective and proposing another approach. The interests, rights, and power model has served as the foundational framework for literature on dispute resolution systems design.

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See also

- Arbitration, National
- Causal Inference
- Dispute Resolution, Alternative
- Experiments, Randomized
- Mediation
- Negotiation
- Procedural Justice
- Rational Choice and the Rational Actor
- Risk
- Settlement

Further Readings

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