Step 2. Identify the Sources of the Conflict

“It is essential to the sanity of mankind that each should think the other crazy . . .”
—Emily Dickinson, notebook, c. 1880.

In this chapter, you will learn . . .

- How the obvious cause of an interpersonal conflict is seldom the only cause, or even the most important one.
- Which sources of conflict lawyers are usually most comfortable dealing with.
- About the need to determine and understand the many sources of conflict.
- About twelve important sources of many conflicts.

The “source” of an interpersonal conflict is the underlying reason that there is conflict. Although it is simple to explain away all conflicts as simply “incompatible goals,” this explanation does nothing to move us along to the point of being able to develop strategies for the conflict’s resolution. Understanding, and conceptually organizing, the sources of a conflict can greatly improve the chances that effective means for managing and resolving the conflict can be found and implemented.

Understanding human behavior can help reveal the motivations of the individuals involved in a conflict and can further efforts to develop appropriate approaches to resolution. In Chapter 8, discussing the analysis of participant interests, this individual-by-individual approach to understanding conflict will be presented. While interests analysis illuminates the motivations of individual conflict participants, the process of identifying the sources of conflict illuminates the features of the relationship between conflict participants that foster conflict. A conflict diagnostician will find that identifying the sources of a conflict, and performing interests analyses for the conflict participants, go hand in hand. In practice, a conflict diagnostician does both simultaneously.
A critical point is that **there are usually multiple sources of any given conflict**. Certain sources of conflict are obvious and easy to spot, whereas other types of conflict sources often remain hidden from view. In legal disputes, there are two major obvious sources of conflict. First, many legal disputes are perceived and framed as differences over resource ownership or control (known as “resource conflicts”). For example, if a divorcing couple is disputing over entitlement to pension rights, it is easy to brand this conflict as a resource conflict, which is a conflict involving the right to control a resource, such as money, property, or intangible valuables. “Data-type conflicts” (disputes over facts or law) are also easy to spot in the legal domain. In our divorce example, the legal basis for determining the disputed entitlement will always boil down to either a determination of disputed facts (“What proportion of the time period during which this pension was earned took place during the disputants’ marriage?”) or law (“In a divorce, how is the entitlement of each spouse to a pension determined?”).

However, the obvious or presenting source of a conflict is seldom the only, or even the most important, source. Finding and understanding all the sources of conflict, even those that are hidden from view, leads to a richer understanding of the conflict and to a better idea of how to cope with it. Thus, in our divorce example, the more important reasons that the spouses are disputing over the pension might remain hidden from those who don’t go looking more deeply. Perhaps the reason that the pension is such a hotly contested issue for these spouses, for example, relates to the identities of the two spouses. It is common for husbands’ self-concepts to be tied up primarily with their careers, whereas wives commonly have more diffuse identities involving nonpaying home and parenting responsibilities, as well as career involvement. Thus, the husband may see the wife’s claim for half his pension as a direct threat to his life’s work and therefore to his sense of self, whereas the wife may see the husband’s belief that he should keep the entire pension as evidence
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that he devalues her important nonmonetary contributions to the marriage. Both spouses experience the issue of the pension as a threat to the sense of self, and, as long as the conflict is treated as a simple resource or data-type conflict, it will tend to be resistant to resolution. Recognizing this conflict for what it really is may hold important keys to creative, effective, and efficient settlement possibilities. For example, the husband may have an easier time giving up an asset not as closely tied to his personal identity, such as a bank account or real property, in a monetary exchange for the value of the wife’s interest in his pension rights.

The lawyer’s standard philosophical map (Riskin 1982; see Chapter 3) has been identified by Leonard Riskin as a force blinding legal professionals to the influence of important conflict sources. Lawyers are taught, in law school and by means of on-the-job training, to identify and focus on only those sources of conflict directly relevant to the establishment of, or defense against, causes of action: resource and data-type conflicts. Each of these sources of conflict relates directly to the art and skill of the litigator: resource conflicts illuminate the types of remedies the lawyer should be seeking, whereas conflicts over facts or law (data-type conflicts) define the causes of action the client or opponent might have, as well as the best defense to the opponent’s positions. Thus, if a lawyer focuses on only these specific conflict sources, it makes his or her work in representing a client in litigation more efficient. It is important to note, however, that although these categories of conflict sources are usually obvious and are the stuff of most legal activity, they may not be the most important sources on which to focus for the overall welfare of the client. Law students in recent years are being taught to identify other sources of conflict, so that their representation of clients may be more holistically supportive of their interests.

In this chapter, a typology of conflict sources will be presented, with helpful examples you might find interesting, enlightening, and even entertaining.1 The conflict sources will be addressed roughly in order of their obviousness, with the most obvious sources considered first. A brief summary of this typology, along with examples, is presented in Table 7-1.

RESOURCE CONFLICTS

As previously stated, resource conflicts are conflicts over the ownership or control of something of value—such as a tangible object or money—or an intangible item of value—such as the right to spend time with a loved one. Resource conflicts are probably the most obvious sources of conflicts, and most interpersonal conflict involves a conflict over resources. However, although it is important to understand what resources disputants are fussing over, this knowledge, in

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1 A number of scholars have developed other typologies, including preeminent conflict theorist Morton Deutsch (1973), from which some of these elements have been taken.
**TABLE 7-1 Sources of Conflict (Summary)**

<table>
<thead>
<tr>
<th>CONFLICT TYPE</th>
<th>EXPLANATION</th>
<th>EXAMPLES</th>
<th>USEFUL APPROACHES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Control over resources</td>
<td>Disputants disagree over control of valued items or struggle over ownership of scarce commodities.</td>
<td>The dispute is between neighbors over property boundaries.</td>
<td>Many conflicts that appear at first glance to be resource conflicts can be resolved by understanding and dealing with deeper sources of conflict that may be operating. Integrative tactics (tactics aimed at &quot;expanding the pie&quot;) can also be useful.</td>
</tr>
<tr>
<td>Data-type conflicts: conflicts over facts</td>
<td>The conflict is over reality, either past or present.</td>
<td>Two drivers disagree over who drifted into whose traffic lane.</td>
<td>Sometimes, a focus on satisfying the underlying interests of the disputants avoids the need to resolve the factual issue. If not, these types of conflicts can be resolved through factfinding, nonbinding evaluation, or adjudication. Many disputes over facts mask other, deeper conflicts.</td>
</tr>
<tr>
<td>Data-type conflicts: conflicts over law</td>
<td>The disagreement is over how the law impacts the relationship between the disputants.</td>
<td>The disagreement is between divorcing spouses over the appropriate appraisal and allocation of pension rights or between separating gay partners over property division and support payments.</td>
<td>Ironically, litigation is probably the least desirable way to handle most of these kinds of conflicts, because they typically arise when the law is vague. Often, the best tactic is for the disputants to educate themselves about the law (to verify the degree of uncertainty), then to engage in principled negotiation aimed at developing solutions that accommodate mutual interests. Litigation should be used primarily when the legal conflict masks a dispute over social structure and interpersonal power imbalance.</td>
</tr>
<tr>
<td>Preferences and nuisances</td>
<td>One disputant’s behavior disturbs the other.</td>
<td>Factory runoff pollutes the stream of a landowner who loves to fish.</td>
<td>These types of disputes are particularly amenable to creative problem solving that acknowledges and seeks to preserve the underlying interests of the disputant but rearranges the environment, modifies people’s schedules, and so on.</td>
</tr>
<tr>
<td>Communication difficulties</td>
<td>The meanings of language and behavior may be misunderstood.</td>
<td>Frequently, self-interested tactics on the part of one disputant are misunderstood by an opponent as motivated by malice.</td>
<td>Approaches include becoming familiar with the other disputant and his or her cultural practices; using active listening; hiring a mediator, an agent, a consultant who shares the cultural background of the other disputant, or a translator.</td>
</tr>
<tr>
<td>Differences in conflict orientation</td>
<td>There are differences in the basic approach to relationships.</td>
<td>One disputant sees the relationship of the parties as mutually cooperative. The other disputant is basically competitive.</td>
<td>It helps resolve the conflict if the disputants recognize the style differences to minimize communication difficulties that result from differences in conflict orientation. The cooperative disputant can refuse to negotiate unless the parties agree to use a set of objective principles to guide the negotiation. The cooperator may need to signal a willingness to fight hard if the other disputant fails to act cooperatively.</td>
</tr>
</tbody>
</table>
Values

Conflicts are over personal beliefs and deeply held values. Ongoing Middle-East conflicts have religious origins, which include values conflicts. Sometimes, values conflicts can be resolved if the disputants can agree to disagree about the underlying values, as when a disputant agrees to go along with a settlement without admitting liability. Values conflicts are difficult to resolve peacefully if the values involved are central to the self-concepts or world views of the disputants or if coupled with many other sources of conflict, such as disputes over limited resources.

Threats to self-concept and world view

One disputant’s viewpoint threatens the other disputant’s central ideas about him- or herself or about how the world works. In a medical malpractice case, the patient’s allegations of negligence threaten the physician’s self-concept as a competent professional. An employee’s allegation of racism on the part of a supervisor threatens the supervisor’s self-concept as racially tolerant and his concept of American society as color-blind and fair. As with values conflicts, occasionally these conflicts can be managed by having the disputants agree to disagree while implementing a solution that threatens neither disputant’s self-concept or world view. It helps to use negotiation tactics that confirm and protect the dignity of each participant. Sometimes, these conflicts can be handled through the use of negotiating agents. Conflicts based on the negative stereotypes held by one social group about another social group are very difficult to resolve.

Structural and interpersonal power issues

A disputant perceives an unjust balance of power and struggles to rectify it. School integration and affirmative action disputes are examples. The more powerful disputant is generally unwilling to give up power and may honestly fail to see that a power imbalance exists. If this disputant is made aware of the imbalance, sometimes he or she can be convinced to give up power to preserve long-term social structure, avoid violent struggle, or make his or her own actions consistent with deeply held values (as when discriminatory laws are pointed out as being inconsistent with national values of equality and equal rights). Frequently, however, appeal to a more powerful authority (e.g., litigation) is the only method that produces lasting change.

Differing attributions of causation

Each disputant believes that the existing state of affairs is due to a different cause and hence warrants a different remedy. In a products liability case, the manufacturer contends that the product was treated improperly, whereas the consumer contends that the product is defective. Some attributional disputes boil down to a data-type conflict (did the consumer kick the washing machine or didn’t she?), whereas other attributional disputes are really values conflicts (yes, she kicked it, but the washing machine should be built to handle occasional violent outbursts). The most effective treatments depend on which kind of attributional conflict is involved.

(Continued)
and of itself, does relatively little to help a conflict diagnostician come up with an effective strategy for dealing with the conflict. It tells one only that each disputant wants all or part of the same thing. Thus, focusing only on the resource aspects of a conflict tends to mislead the observer into thinking that the conflict is intractable. A conflict resolver might use this knowledge to help the disputants fashion a compromise or to do some “logrolling” (trading off some of this resource against entitlement to another resource of greater value to the disputant who is giving up his or her entitlement). However, in general, knowing the other sources of conflict can lead to greater understanding and more effective solutions.

The divorce field frequently exemplifies the sort of harm that focusing only on a resource conflict can have. In a typical contested divorce, each spouse feels angry and betrayed by the other, creating a desire for vengeance. Since each spouse finds making the other spouse feel good unpalatable, there is a tendency for resource conflicts to proliferate as spouses try to deny one another what they say they want. When the issue is child custody and visitation, for example, the spouses frequently tiff over the amount of time each gets to have with the child, as if the child were a sort of trophy whose possession is awarded to the victor. Lawyers are often prone to take the same, zero-sum perspective on child custody. For example, Penelope Bryan, a law professor, criticizing the use of mediation to handle custody disputes, explains that child custody is often used as a bargaining chip in negotiation because

if the wife has the children 300 days of the year, the husband can only have them for 65 days. If she bargains for more than 300 days, he necessarily loses. (Bryan 1992, p. 478, note 56)
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This perspective posits child custody disputes as a pure matter of resource allocation—“either you can see him, or I can see him, and the more I win the more you lose.”

In a child custody situation, however, the resource conflict is almost never the whole story, and focusing only on the resource conflict can lead to poor outcomes for all concerned. Assuming for a moment that neither parent is abusive, neglectful, or severely mentally ill, a parent who has effective parenting as an important life goal generally satisfies this goal more effectively by giving the child liberal access to the other parent. This is because children of divorce are generally known to do better if they have substantial and meaningful relationships with both parents (Wallerstein & Kelly, 1980). Minimizing the time the child spends with one parent undercuts this vital parenting goal. Moreover, a child typically senses the reason for the dispute, and, if vindictiveness is at the heart of the custody dispute, the child will come to feel exploited and used by both parents. Because this sense of exploitation is deeply harmful to a child’s healthy development, the vindictive effort to curtail parental access is actually bad parenting, and again the goal of being an effective parent is undercut. But there are more selfish reasons for the parent not to try to curtail the child’s access to the other parent. First, experts in child development have found that, by adolescence and young adulthood, children who have been denied time with a visiting parent in childhood often idealize the absent parent, rather than joining in vilifying the parent (Wallerstein & Kelly, 1980, 256), and generally refuse to remain in alliances with one parent against the other (Ibid, 88). Thus, a primary caregiver whose underlying reason for curtailing access is to “win” the child as a trophy can end up losing the war in the end. Since parenting is a heavy burden, the parent with the lion’s share of day-to-day caregiving responsibilities can often gain immediate personal benefit if the other parent shares the parenting. Thus,
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DATA-TYPE CONFLICTS

Data-type conflicts are disagreements over facts or law. Like resource conflicts, they are also relatively obvious. For example, suppose two disputants have been involved in a fender-bender. If one disputant thinks he was going below the speed limit and that the other entered his lane, but the other disputant disagrees and thinks she was cut off illegally, the situation involves a dispute over facts. On the other hand, if how the accident came about is not in dispute, but there is a disagreement over who has the right of way in the sort of intersection in which the accident occurred, this disagreement is over the applicable law. Much, if not most, personal injury litigation involves a combination of disputes over facts and law.

Lawyers generally feel quite comfortable handling data-type conflicts: they are the essence of what lawyers deal with in their practices. Lawyers frame disputes in data-type terms, so that the viability of any causes of action can be evaluated; if a cause of action or defense is warranted, this knowledge is used to determine the contents of pleadings, motions for judgment based on legal arguments, and evidentiary considerations.

Simple data-type conflicts are amenable to resolution using nonbinding evaluation processes, as well as binding adjudicatory procedures, such as litigation and arbitration. The nonbinding processes inform the parties of the most likely outcome, should they decide to take the action to court. Not wishing to invest the time and resources in litigation, many disputants will settle the dispute at or near the decision of the evaluator. Arbitration, like its cousin, litigation, will impose an authoritatively binding decision about the data-type conflict, should that conflict be amenable to submission to the adjudicatory process.

However, as with focusing attention on resource conflicts, concentrating on the data-type sources of a conflict can often shortchange a disputant. Since data-type issues are usually obvious, there is a natural tendency to stop there and not go deeper to determine whether other sources of conflict are also present. Because there are always other, often deeper reasons for the conflict, deciding it on this sort of basis often misses opportunities for more holistic, creative, effective, mutually beneficial, and permanent resolution. In fact, it can be argued that data-type conflicts are the least important sources of conflict from the perspective of disputant interests. To illuminate this point, consider this: data-type conflicts are practically never pursued unless another source of conflict is present.
for example, two drivers disagree about who swerved into whose lane of traffic, neither is likely to pursue any action against the other unless one of them is harmed in some way. And “what the law is” on some point is unlikely to matter to them (unless they happen to be law buffs and are just curious) unless a matter of real substance turns on the interpretation of the law.

PREFERENCES AND NUISANCES

In conflicts over preferences and nuisances, one disputant is doing something that harms, bothers, or irritates the other. A typical example is a neighborhood dispute in which barking dogs or loud, squealing tires disturb the sleep of a neighbor.

This category of conflict source is usually obvious: the client goes to a lawyer directly, complaining about the nuisance. Frequently, these kinds of conflicts are amenable to settlements that “restructure the environment”—for example, if the problem is a barking dog, the answer may be a sound-reducing barrier, paid for by both neighbors.

However, creative, effective, and progressive solutions are often missed by focusing only on the preferences-and-nuisances aspect of a conflict. For example, at an alternative dispute resolution conference many years ago, Ray Shonholtz (1986), who directed a preeminent community mediation (dispute resolution) program, told the story of two residents of an apartment building, each of whose noisy activities disturbed the other. In mediation, it came out that each resident’s schedule and typical activities were dictated by his fear of the neighborhood—one of the disputants was a person of color and the other was a white gay man, and both had been suffering from repeated intimidation, harassment, and threats to personal safety on the street. By identifying this underlying source of conflict (in this case, a threat to basic safety needs, which created a misattributed conflict), the two disputants were able not only to develop a schedule that minimized the nuisance that each imposed on the other but also to cofound a grass-roots activist program to fight hate in the community. This outcome went far beyond merely fixing the presenting problem: it also improved the quality of life for both disputants, provided a basis for an ongoing and caring relationship between them and others in the activist group, and had the potential for reforming the community as a whole.

DIFFERING ATTRIBUTIONS OF CAUSATION

In conflict over differing attributions of causation, the disputants disagree about the cause of some outcome. For example, suppose a baby is born with the umbilical cord wrapped around her neck, with the resulting loss of brain oxygenation responsible for cerebral palsy and developmental delays. Even though there may
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COMMUNICATION PROBLEMS

In some interpersonal conflicts, the meaning of language or behavior may be misunderstood, creating conflict. These differences may be due to environmental forces, language problems, cultural differences, or differences in communication style.

An example of a communication problem occurred in a small claims dispute mediated many years ago. A landlord and tenant were in an angry dispute: the tenant had wanted something in the apartment fixed, and, having had no response from his complaints, he withheld rent. In fact, when the tenant had discovered the problem in the apartment, he had left a message on the landlord's answering machine describing the problem and asking for help, but the machine had malfunctioned and the message had been lost. Then, the tenant had sent a letter to the landlord, and, by unfortunate coincidence, that letter had been misdirected and lost as well. By the time the tenant actually made direct contact with the landlord, he was so angry that his tone with the landlord was nasty and arrogant. The landlord became hostile in return and was in no hurry to respond to the request. Litigation followed. Only when each party to the dispute learned of the interrupted communication, and was able to acknowledge to the other that it was reasonable for the other in the circumstances to feel angry and frustrated, was the dispute able to move forward to an eventual settlement.

An example of a culturally based communication problem is presented by Thomas Hochman in his book *Black and White: Styles in Conflict* (1981). Hochman is a white college professor who taught college in multiracial New
Professor Thomas Kochman believes the violent conclusion to this altercation between NBA players Rudy Tomjanovich (shown going down, at right) and Kermit Washington (throwing the punch) resulted from cultural differences in interpreting nonverbal communication. NBC/Corbis Bettmann

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York City in the 1970s. As a sociologist, it was his professional habit to make observations about the behaviors of subcultures within his student body, and the book arose from his observations. Hochman observed that, for his white middle-class students, when an argument became loud and verbally abusive, this characteristic usually signaled that violence was about to erupt. For inner-city African Americans, this pattern did not hold. In general, he observed that African-American arguing could become extremely loud and verbally abusive without erupting into violence. However, for his African-American students, imminent violence was signaled by physical movement, however slight.

Hochman generalized his observations from his classroom to American society in general. He interprets an incident occurring during a 1977–1978 NBA game as follows:

[A]ctual violence [could not be averted] between Kermit Washington, a black player, and Rudy Tomjanovich, a white one. According to Tomjanovich, he tried to break up a fight that he thought was about to erupt between Washington and someone else [because he saw loud and abusive argument and interpreted the situation as imminently violent]. Washington, however, interpreted Tomjanovich’s movement toward him as provocative, signaling an [imminent] intent to hit him. Washington swung first and broke Tomjanovich’s jaw. (Hochman 1981, 47)

In situations ripe for communication problems, it can help to include a “translator” in any dialogues between disputants. Intermediaries such as mediators and facilitators, hailing from all the represented cultures if the difference is culturally based, can be quite helpful in interpreting past or present communication and sidestepping this sort of problem, or at least helping the disputants come to some sort of peace with one another based on their mutual understanding and acknowledgment of what went wrong in the communication process.
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DIFFERENCES IN CONFLICT ORIENTATION

Differences in conflict orientation are differences in the way people preferentially or automatically respond to conflict. These differences can cause communication problems and leave disputants feeling aggrieved and betrayed.

Conflict orientation frequently causes disturbance in a relationship when one disputant prefers the rough and tumble of a competition, whereas the other disputant prefers a cooperative, mutually collaborative approach. The competitive disputant’s orientation blinds him or her to solutions that would benefit everyone. If the cooperator proposes a settlement, the competitor is likely to see the offer as a come-on or ruse since, in general, the competitor expects others to compete with him or her, or, if the competitor believes its sincerity, as an opportunity to exploit an easy mark. Either response on the part of the competitor will typically leave the cooperator feeling betrayed and disempowered, leading to a withdrawal of cooperation and the creation of impasse.

Many times, a difference in conflict orientation can lead to communication problems. As with other similar conflicts, the use of an intermediary, such as a mediator, can help disputants effectively interpret one another’s tactics and avoid misunderstanding and needless conflict escalation. Unfortunately, if one disputant loves competition, it may not be easy to convince him or her to modify that orientation. This unfortunate generality is due to the fact that adversarial interaction is an inherently positive goal for this disputant. To persuade him or her to depart from the orientation, the person has to first be made aware of the nature of his or her preferences (sometimes disputants have no idea that they have such an orientation) and then convinced that, overall, he or she would be better served by cooperating. If the competitive orientation is habitual, even this effort may not succeed.

STRUCTURAL AND INTERPERSONAL POWER CONFLICTS

Structural and interpersonal power conflicts involve inequalities of power, choice, and freedom. In these conflicts, a more powerful disputant and a less powerful disputant are in a relationship harmful to the less powerful disputant. Disputes break out when the less powerful disputant becomes self-aware about the discrepancy and moves to find a remedy for the situation. Conflicts over affirmative action, equal-pay, and civil rights abuses are perfect examples. In these conflicts, one disputant (or disputant group) has more power than the other, leading to inequities, oppression, harm to the less powerful disputant(s), and, in time, harm to the social structure as a whole.

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3 This tendency for people in a competitive orientation to distrust the cooperative moves of the other disputant is referred to as “reactive devaluation.” This concept will be discussed in detail in Chapter 9.

4 These sorts of differences in negotiation orientation can be culturally or ethnically based. For examples of this sort of mismatch between Hispanic and white disputants, see Rack 1999.
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These conflicts are often invisible to the more powerful disputants, due either to subconscious denial or to an authentic failure, arising out of the limitations brought on by a privileged background and experience, to see the inappropriateness of the existing social structure. Powerful disputants are also, naturally, reluctant to give up the power associated with privileged status. Indeed, if the power imbalance is longstanding and has been very harmful to the disempowered disputants, the more powerful disputants may fear retaliation if they allow the other group to gain enough strength to retaliate. Moreover, there may be a data-type conflict, with the less powerful disputant seeing a structural or interpersonal power conflict and the more powerful disputant seeing the existing structure as equitable and problems, if any, attributable to other features, such as genetic inferiority or counterproductive social behaviors.

Take the following example:

An employment dispute has developed between a Ron, a white/European-American male supervisor, and Stella, his African-American, female staff member. Stella, challenged to fit into an office consisting largely of white coworkers, has been denied advancement. She entered the office on fairly good terms, but seemed to keep to herself. The other employees complained that she is aloof, and she failed to acquire the knowledge she needed to fit effectively into the office environment and become proficient in her responsibilities. Thus, the quality of her work was mediocre, at best. Stella, with her lifetime of experience of racism and gender discrimination, perceives the problem as one of her exclusion from the social circle of the office, her denial of essential on-the-job training, and the acquiescence of the supervisor in her difficulties. In contrast, Ron, with his privileged background, does not have past experience being the victim of discrimination, and accordingly concludes that her difficulties must result from personality issues with Stella (“Everyone else gets along, so it must be her. She is always complaining!”).  

Stella, the African-American employee, perceives her inability to advance in her career, as well as her isolation from others in the office, as clear evidence of invidious racism. Ron, her (white) supervisor, as a member of a privileged class who has never first-hand been victimized by bigotry, assumes that the cool demeanor of others in the office toward the employee, as well as her slowness to climb the corporate ladder, is due to the employee’s withdrawn and suspicious personality.

Structural/interpersonal power conflicts are among the hardest to resolve via settlement. Most often, they require the intervention of a powerful and authoritative figure, such as a court, legislative enactment, or a constitutional amendment.

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5 This scenario is adapted from Howard Gadlin’s excellent example in his article, “Conflict, Cultural Differences, and the Culture of Racism” (Gadlin 1994).

6 Both may be right in the sense that the uncomfortable, avoidant, and ostracizing conduct of those in the office may create a mistrustful and withdrawn attitude on the part of the employee. So-called self-fulfilling prophecies, of which this situation is an example, are well documented in the arena of race relations.
IDENTITY CONFLICTS

Identity can be understood as the features one attributes to oneself. Identity can also include a judgment about self: self-worth and self-esteem, as well as important roles that the individual plays, such as student, mother, husband, sales manager, and so forth.

Identity conflicts are conflicts in which a disputant's personal identity is threatened by the other disputant. Identity conflicts are usually very difficult to resolve. Maslow's needs theory (see Chapter 8) can help explain this intransigent feature of identity conflict. Developmental psychologist Abraham Maslow conceptualized a hierarchy of needs and postulated that human beings are driven to satisfy the needs that are most basic on the hierarchy before they move on to higher-order needs. The need for a positive and consistent self-concept is considered a primary and deeply seated human need, superseded in importance only by the most basic physiological (food, shelter, sleep, etc.) and safety needs (Goble 1970). Identity functions as a "theory of self," making deliberate action possible (Epstein 1973). Without a consistent identity, individuals cannot plan their daily activities, since they cannot predict how their own actions will affect them. Conflicts that threaten the sense of identity and self-worth are therefore experienced as profoundly threatening.

LOSS OF FACE

One extremely important and common identity conflict prevalent in legal disputing is the problem of loss of face. This identity conflict is the almost inevitable product of the most common ways we have of expressing disputes. Face in this context refers to the dignity and respectability of the social presence displayed by an individual to others. The loss of face, with its accompanying sense of shame and embarrassment, is intolerable to most individuals (in the literature of collectivist societies, such as Asian countries, the suicide of a character who has experienced a loss of face is common). During positional bargaining, once a disputant sticks his or her neck out by taking a position, moving off that position is often experienced as a loss of face and as an intolerable threat to the self-concept. For example, a defendant in a tort case tells the other side that she'll pay no more than $5,000 to settle the case. Later, legal research by her attorney reveals that, in fact, she is likely to lose much more if she takes the case to court. Unless her lawyer can find a way to help her present her new position as one of strength rather than of losing face, she is unlikely to budge. Loss of face is a particular problem in the United States, where adversarial negotiation is the predominant method of resolving conflicts; therefore, disputants tend to negotiate by “drawing lines in the sand.”
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**Relationship Break-Ups and Identity Conflicts**

Conflicts that involve the end of an ongoing and important relationship present another variety of identity conflict and offer some of the most difficult identity conflicts to manage. Multiple threats to identity are often involved:

- The loss of a predominant life’s work
- Profound disruption of roles critical to identity
- Direct attacks and counterattacks on the self-concepts of each disputant by the other

For example, consider the case of longstanding business partners who have a falling-out that threatens the viability of the venture. The enterprise itself may comprise a large element of the identity of one or both disputants, and the threat of its loss can therefore cause a disputant to feel as if his or her life’s work is being obliterated; and, accordingly, that he or she is being erased from existence. Moreover, if the dispute disrupts ongoing business activities, then familiar, everyday roles played by each partner will be impeded. Not only is an identity threat created by this loss of crucial roles, but the loss of familiar, everyday life structure also undermines each disputant’s ability to engage in rational and effective behavior. These losses and disruptions leave the affected disputant disoriented, confused, and disempowered at the precise time that he or she most needs to have his or her wits intact. Moreover, if the dispute is accompanied by accusations of incompetence or bad character, then the recipient of the accusations will experience a direct verbal assault on self-esteem and self-concept.

Divorce cases provide a wellspring of similar sorts of threats to identity and self-esteem. If one spouse announces to the other that he or she no longer wants to be married, it is often a devastating blow to the self-esteem of the “left” spouse. There is the obvious pain of a profound rejection: the leaving spouse has been as close as anyone ever has been, and the rejection implies that his or her most deep, private, and important attributes have been judged as wanting. At the same time, the everyday roles of the spouses in a marriage—who takes out the garbage, feeds the children, mows the lawn, and so forth—are swept away, leaving both spouses disoriented, bereft, and confused. (Indeed, according to Isolina Ricci (1980), vulnerability to accidents surges in the period right after a marital separation.) If the spouse derived a great deal of self-worth from the role of husband or wife, the blow can be even more devastating. Then there can be specific disputes related to the divorce that are experienced as a threat to identity, such as when one spouse wants to limit the other’s time with the children, threatening his or her identity as a parent.
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“MEN ARE FROM MARS . . . ”: SEPARATION AND INDIVIDUATION ISSUES IN IDENTITY CONFLICT

Another variety of identity-based conflict, separation and individuation problems, applies primarily to intimate relationships between males and females and might be appropriately described as the “men are from Mars/women are from Venus” (Gray 1992) phenomenon.\(^7\)

These problems arise when deep-seated tendencies to connect and disconnect with others are in conflict at a time of great crisis. Psychologists (such as Gilligan 1982) have theorized that, because small children are cared for primarily by their mothers, little girls (who are “like Mommy” in terms of gender) tend to develop an identity of “merging with the beloved,” whereas little boys (who are “unlike Mommy” in terms of gender) tend to develop an identity of “separating from the beloved.” When little girls and little boys grow up and take mates or partners, these hidden features of their identities can cause problems, as women tend to want close intimacy and communication with their partners, whereas men tend to want clear boundaries with their partners.

These disputes are sometimes managed in an ongoing relationship through compromise, recourse to friends and relatives, or simply an uneasy adjustment to personality differences. But sometimes the differences are so large as to be unresolvable. Moreover, when an intimate relationship ends, the mental and emotional functioning of members of the couple tends to be compromised by the relationship crisis, bringing out these differences at a moment of great psychological vulnerability for both. This phenomenon can create conflict, causing either or both disputants to have difficulty disconnecting from the relationship and moving on. In a divorce in which separation/individuation problems are significant, the wife tends to want continuing, sometimes unnecessary communication with the husband, whereas the husband tends to avoid communication, even to the point of leaving essential issues unresolved. Thus, the wife often tries to initiate or perpetuate contact with the husband even for matters of dubious relevance to the substantive issues they need to resolve. The husband, who typically fears being “swallowed up” by the wife’s incessant intrusions, tends to avoid communication altogether. Moreover, even when the husband can bring himself to negotiate with the wife, he tends to find agreement on anything intolerable (because it means he is “like her” on the issue in question). Since the content of the wife’s communication includes matters of dubious relevance, the husband is able to rationalize his own avoidance of contact and agreement as “more reasonable,” so he can paint his own behavior as rational and healthy and the wife’s behavior as irrational or even as indicative of mental illness. On the other hand, the husband’s avoidance, even of relevant issues, “proves” to the wife that the hus-

\(^7\) These identity conflicts are most common in the divorce context, given the extreme intimacy of the relationships involved, but they can occur whenever a longstanding and important relationship ends and the disputants are of different genders or are at different extremes of this psychological dimension.
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band is the unreasonable or “sick” one and that her own attempts to make contact should be continued, or even escalated. A vicious circle results. The wife seeks to fulfill her deep-seated need for fusing with the person to whom she is attached by seeking communication with the husband, while the husband seeks to fulfill his deep-seated need to separate himself from the person to whom he is attached by seeking curtailed communication with the wife.

A key point is that, in this sort of dispute, both disputants intensely resist finalizing any settlement. The wife has a desperate need to avoid finalizing settlement because “then the relationship will truly be over and I’ll be cut off forever,” while the husband is desperate to avoid being “smothered” or “swallowed up” (“any time I agree with her, it feels like ‘being like her,’ which is utterly intolerable”). It cannot be overemphasized that, although it would appear irrational to observers of such couples, from the vantage of the disputants themselves the stakes are survival itself. Both the wife and the husband truly feel that they will be annihilated if (from the wife’s perspective) the issues are settled and the relationship ends, or (from the husband’s perspective) communication occurs and a connection is made. These couples are immensely frustrating to conflict professionals because they actively seek out professional intervention to help them with their disputes, yet simultaneously at a deep level they want NOT to resolve their disputes and move on.

These can also be the couples we read about in the homicide section of the newspaper. It takes a skilled professional to manage these sorts of deep-seated issues of separation and individuation.

**World View and Identity**

World view is closely tied to identity because, first, one’s world view defines how one sees oneself in relation to the world and, second, because one’s world view directly influences one’s sense of self-worth and self-esteem. A stable world view also enhances self-confidence by giving a person reassurance that he or she will be reasonably able to anticipate what will happen and, so, will be prepared to deal with life challenges. Conflicts over world view, therefore, often present difficulties similar to conflicts over identity.

An example may be helpful. In the employment dispute between Ron and Stella (page 115), both self-esteem and world view are on the line for both disputants.8 The manager, Ron, has developed a world view clustered around the basic concept that people succeed by merit and hard work. This gentleman, moderately successful on his job, hails from a privileged background in which discrimination based on substantively irrelevant factors such as gender, skin

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8 We will be imposing assumptions about the world views of these individuals. These assumptions are consistent with the background of each person, but they are not intended to imply that others in their position would necessarily hold the same world views. In general, it is not known with statistical accuracy what sorts of world views are held by various gender and ethnic groups.
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color, or religious background is not directly experienced. It enhances Ron's self-esteem to have this merit-based world view, since it implies that his success on the job is due to who he is as an individual.

Similarly, employee Stella's world view and self-esteem are closely linked. In a position subordinate to the manager, and moving through life with the dual identities "woman" and "black," she has lived in a very different world than the manager: repeatedly, she has seen hatred and bigotry applied to herself and others with physical appearances similar to hers. For this woman, even if she is fairly successful, disappointment is an expected phenomenon, and it serves her self-esteem well to hold the world view that people are frequently victimized by bigotry, a process beyond their control, and that their progress is impeded, despite their hard work and merit.9

Both Stella and Ron have been operating using world views that, if not wholly accurate and healthy, have supported their senses of self-worth and self-confidence. Accepting the argument of the other disputant is a direct threat. In arguing that her troubles are caused by racism, Stella raises to Ron the possibility that his neat and tidy, merit-based world view is flawed. This, in turn, raises the disturbing possibilities that he has not gotten to his present level of success strictly by merit but, instead, has been the recipient of privilege. This conclusion leads to the further conclusion that he is not as "meritorious" as he had previously believed. Moreover, if merit does not routinely lead to advancement, the manager is less able to predict whether, if he has been working hard, his director will promote him next time around. Similarly, the employee, by having her victimization world view challenged by the manager, is faced with the possibility that she is personally deficient in some way that she did not previously see and that this deficiency is what has held her back from greater advancement on the job. Thus, each disputant in this example has a vested interest in maintaining his or her existing world view and, thus, in rejecting the idea that the other disputant's world view explains the situation. Each disputant's world view maintains high self-esteem and provides a sense of predictability. It is hard to reach a settlement when beliefs so critical to self-worth and the basic predictability of the future are at stake.

A favorable resolution to a conflict over world view must take into account the identity issues hidden in the outward dispute. For example, in the employment example, both of these disputants must be given support in their senses of self-worth (for example, by encouraging each disputant to give honest and substantive compliments to the other during the settlement process), so that they can rationally consider the possibility that this situation is, at least, an exception to their overall world view. As a possible increased benefit to settling the employment dispute, each disputant has the opportunity to enrich and improve the accuracy of his or her world view, coming to recognize that there are important

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9 No opinion as to the merit of either world view is implied by this discussion. It is virtually impossible to accurately determine the extent to which either world view is valid.
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exceptions to the rule he or she has lived by, realizing that some situations can have multiple causes, and discovering that rigidly holding to his or her world view can occasionally blind him or her to the truth. Each might thereby become more able to cope with new situations as they arise in the future.

VALUES CONFLICTS

In a values conflict, disputants are in conflict over deeply held personal, community, or societal beliefs and values. For example, in a divorce, one spouse’s strong traditional beliefs about the inappropriateness of extramarital sex may set the stage for a custody conflict, particularly when the other spouse begins dating.

Some values conflicts can be resolved by an agreement to disagree. For example, in the custody example, the parents could settle the case by agreeing that, regardless of the personal beliefs of each, neither parent will bring home a date for the night while the children are in the home. The parent with less traditional beliefs suspends his or her lifestyle choice during the period that his or her children are in the home for the sake of lessened parent-to-parent conflict.

Values conflicts can also be settled using creative approaches that respect and put into practice the conflicting values. For example, a divorcing couple in a real-life mediation disagreed concerning whether one of the spouses contributed on an equal basis to the marriage, home, and parenting. The accusing spouse, Janet, argued that the other spouse, Brad, failed to work as hard as she did in the marriage. Consequently, Janet argued, Brad should not receive half the marital property. Brad, naturally, disagreed vehemently with this assessment. Rather than have a court decide the issue—with the time, expense, and emotional damage litigation would likely impose—this couple came up with the idea that Janet would keep half the marital property, Brad would receive one-third, and the remaining one-sixth would be put into trust for the children. Janet was comfortable with this outcome, because it put her beliefs about fault in the marriage into concrete terms. On the other hand, Brad could live with this arrangement, since he intended the children to eventually receive a substantial share of the parents’ property, anyway, and he had the strength of character to realize that the financial settlement did not have to have the meaning for him that it held for Janet.

Despite the preceding examples, many values conflicts are extremely difficult to resolve because of the close connection between values and personal identity. Some of the most difficult situations are those in which the values involved are social group values held by groups to which the disputants belong and with which they have strong identification. Again, Maslow’s needs theory can help us understand this phenomenon (Goble 1970). Maslow assigned the need for self-esteem, esteem from others, and belongingness to the category of intermediate needs, just above the most basic physiological and security needs. Thus, threats to these needs are experienced deeply. And people obtain a strong sense of self-worth and belongingness from being a member of a social group with which they identify
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intensely. For example, devoutly religious people often derive great self-worth and belongingness from their religious affiliation. The sense of belonging and identification is further strengthened and deepened when the group members band together against a common enemy (often called an “outgroup”). Thus, having a dispute with a member of an outgroup, engaging in intergroup struggle, and triumphing over the outgroup, whether by means of substantive or psychological put-downs, makes group members feel more accepted, loved, and righteous.10

For example, consider the Palestinian-Israeli conflict. The Israeli notions of a homeland in the geographic location known previously as Palestine, and of historical Jewish oppression and victimization, are essential components of Israeli identity. The alleged evil of the Jews having wrested away Palestine from the Arab population is an essential component of Palestinian identity. Each group thus gains esteem, love, and belongingness, as well as strengthens important aspects of group identity, by making war against the other. The conflict is deepened—inflamed—by the identity implications of having, and being denied, a geographic homeland and made more difficult to cope with because basic safety and security needs are perceived as being threatened. This conflict has proven to be intractable: a legion of conflict-resolution experts has tried for decades to help the parties involved to come to a settlement, without much success. However, any conflict-resolution process will be more successful if it takes into account, and works with, the group identities of the involved disputants. A conflict resolver working with the Israelis might, for example, emphasize the Jewish identity components of intellectualism, tolerance, progressivism, and activism, rather than those elements of identity tied up with a sense of historical victimization and anti-Semitism.

Step 2. Identify the Sources of the Conflict

DISPLACED AND MISATTRIBUTED CONFLICT

Displaced and misattributed conflicts are “the wrong conflicts.” In a displaced conflict, the disputants, for some reason, aren’t fighting about what’s really bothering them. For example, a tenant who is unhappy with a rent increase but, instead, raises a fuss about chipped paint is involved in a displaced conflict.

Misattributed conflicts are similar to displaced conflicts, except that, instead of the right people fussing over the wrong conflict, the fight is being picked with the wrong people. Typically, there is a reason that disputants are avoiding the underlying conflict. For example, in a real estate office, the broker gave his top agent the task of training a newly hired agent but paid the employees a percentage of commissions and did not give the top agent any additional wages for her training efforts. The experienced agent had a Hobson’s choice: train the trainee poorly, keeping the business for herself, or train the trainee well and impair her own earnings. Reluctant to complain about her overall job responsibilities for fear of being fired, the top agent ended up bickering with the trainee over a host of minor issues. The real conflict, in this case, was between the top agent and her boss, who had put her into this dilemma with his decisions about job responsibilities and compensation.

Displaced conflicts and misattributed conflicts share many similarities. In the first place, generally there is some very important reason the real conflict is either not recognized by the disputants or, if recognized, not overtly acknowledged. There may be fear of repercussions (as with the real estate office example). There may be threats to basic needs involved or underlying motivations of which the disputants are unaware. In any case, displaced and misattributed conflicts are generally easy to resolve, once the underlying conflict can be recognized and acknowledged. (The underlying conflict, however, is often a much different story.) Nonetheless, to achieve lasting and effective conflict resolution, the falsity of displaced and misattributed conflicts must be discovered and the nature of the underlying conflict must be identified.

USING SOURCES OF CONFLICT TO UNDERSTAND AND DIAGNOSE CONFLICT

It should be clear from the foregoing discussion that most interpersonal conflicts go far beyond disputes over money, what the witnesses would say, or the appropriate law to apply to a situation. Although conflict diagnosticians need to consider data-type and resource aspects of a conflict, particularly in the case of legal conflicts that might eventually be litigated, a holistic approach to serving a disputant’s legal needs should never stop there. An in-depth consideration of the sources of a disputant’s conflict is an essential step in understanding how
the motivations of each disputant and his or her important underlying interests and needs are juxtaposed with those of others in the conflict, as well as in developing the most efficient and effective strategies for achieving a just, effective, humane solution.

**EXERCISES, PROJECTS, AND “THOUGHT EXPERIMENTS”**

1. *Conflict journal.* Identify the sources of conflict at play in your main conflict (the conflict you have decided to focus on, if there are several conflicts among participants). Typically, a conflict has an obvious, or “presenting,” cause, such as a dispute over resources, preferences and nuisances, facts, or law. Justify your identification of this source of conflict. Then go further. Applying the categories discussed in this chapter, identify all the sources of conflict you can. Can you uncover any hidden sources of conflict? How do you think these hidden factors complicate the conflict or make it harder to resolve? Do you think that knowing about these hidden sources of conflict will help you find a better way to resolve it? Be sure to keep sources of conflict in mind as you proceed with the journal project. As you continue to have experiences and acquire additional information, you may uncover yet more hidden sources of conflict.

2. Do you agree or disagree with the following statement? “To serve a client adequately, a lawyer should consider all sources of the client’s dispute, not just those legal issues that may be relevant to a cause of action.” Note reasons in support of the statement, as well as reasons in opposition to it.

3. Imagine that you are a benevolent despot, capable of reforming the legal system with just a royal declaration. How could you improve the legal system so that underlying sources of conflict in legal disputes were dealt with? Consider formal methods of dispute resolution, as well as lawyer-client relationships and legal ethics.

4. Peruse a newspaper or an Internet news site. If you can, find and write down an example of each of the twelve sources of conflict described in Table 7-1.

5. In an effort to maintain control over potentially damaging admissions by clients, lawyers often ask their clients to stop communicating directly with the other disputants or their legal representatives: during the pendency of legal representation, communication generally is performed only by the lawyers. Do the ideas presented in this chapter suggest that this practice will reduce, or exacerbate, interpersonal conflict? Explain your answer.

6. Consider one of the following two conflicts: (1) the so-called war against terrorism or (2) the Israeli-Palestinian conflict. Write an essay discussing all of the sources of your chosen conflict. In your conclusion, speculate on how understanding these sources of the conflict could help resolve it. Be specific.

7. Harry, a paralegal, has come to your law office complaining about a dispute between himself and attorney Rona Rhododendron. Harry was employed by Rona’s law office. Harry recently went to Rona, complaining that his
level of responsibility in the office was inconsistent with his high degree of training, and he demanded additional responsibilities and a 30 percent raise. Rona acknowledged his qualifications but refused to give him the promotion. According to Harry, her comments were demeaning to him. Harry erupted in anger and Rona fired him for his insubordination. In explaining his angry outburst, Harry comments, “It’s not the money; it’s that Rona refused to give me the recognition I deserved. I have been a paralegal for over ten years, and I’m more highly qualified than 99 percent of the other paralegals in the community. She utterly failed to acknowledge my superiority by giving me the promotion I deserve.” Discuss the sources of conflict at play in this dispute.

8. Each of the following statements describes a disputant’s point of view about the source of a conflict. For each one, take the disputant’s statement at face value. What is the source of conflict implied by each statement?

   a. “Georgiana and I are fighting because I want the piano and so does she.”
   b. “I’m fighting with him over ownership of the piano because he is responsible for our breaking up, and he shouldn’t be rewarded for his bad behavior. He admits he caused the breakup but says it shouldn’t matter who was responsible and that we should just divide our property 50/50. Neither of us cares about what the law is on this issue.”
   c. “I really lost my temper when he refused to pay a reasonable price for the business. This is my life’s work, and the price he offered was a personal insult to me.”
   d. “We don’t disagree about what happened. We are in conflict over the negligence standard to be applied to my behavior.”
   e. “This situation escalated into a conflict because he never returns my phone calls.”

RECOMMENDED READINGS


