Pursuit of Happiness and Resolution of Conflict: An Agenda for the Future of ADR

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Pursuit of Happiness and Resolution of Conflict: An Agenda for the Future of ADR

Arthur Pearlstein*

I.   INTRODUCTION: WHY THE PURSUIT OF THE SCIENCE OF HAPPINESS SHOULD BE A HIGH PRIORITY FOR THE FIELD OF CONFLICT RESOLUTION

Interest in human happiness is at least as old as the advent of philosophy. It is framed in American society in terms of "the pursuit of happiness," starting with the Declaration of Independence.[1] The intensive study of the pursuit of happiness as a separate field, however, arguably has a more recent origin. Many scholars trace it to a revolution in the discipline of psychology that started in 1998 when Martin Seligman, the new president of the American Psychological Association, introduced the term "positive psychology" in his inaugural speech.[2] Seligman decried the common focus of psychology "on repairing damage using a disease model of human functioning."[3] Positive psychology is, instead, "the study of the traits and conditions that lead to human thriving. . . . It presupposes that happiness and well-being are not merely the absence of depression and anxiety, but rather are a whole host of states, traits, and emotions that combine to make life worth living."[4] This article demonstrates that the study of happiness has major implications for the field of conflict resolution.

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    1.   THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

    2.   *See generally* Martin E.P. Seligman & Mihaly Csikszentmihalyi, *Positive Psychology: An Introduction*, 55 AM. PSYCHOLOGIST 5 (2000); CHRISTOPHER PETERSON, A PRIMER IN POSITIVE PSYCHOLOGY (2006); Shelly L. Gable & Jonathan Haidt, *What (and Why) Is Positive Psychology?*, 9 REV. GEN. PSYCHOL. 103 (2005).

    3.   Seligman & Csikszentmihalyi, *supra* note 2, at 5.

    4.   Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL'Y L. & ETHICS 357, 385-86 (2009).

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Though emerging from the field of psychology, the growing study of happiness has reached across disciplines and methodologies.[5] In academia, those involved in happiness studies emphasize that their approach is scientific and systematic.[6] Christopher Peterson, a pioneer in positive psychology, explains that the approach assumes "that human goodness and excellence are as authentic as disease, disorder, and distress."[7] Positive psychology relies, he reminds us, "on empirical research to understand people and their lives."[8] Indeed, there is an enormous body of research on happiness with daily advances from a variety of scholarly perspectives.[9] In addition to psychology, disciplines involved in the systematic pursuit of research findings include economics, public policy, biology, neuroscience, philosophy, history, education, medicine, and many others.[10] The World Database of Happiness maintains a "Continuous Register of Scientific Research on Subjective Appreciation of Life," which, as of late March 2012, had cataloged "6896 publications on . . . happiness, of which 3408 report empirical investigations using accepted measures of happiness."[11] Among these were "748 measures of happiness used in 1440 studies[;] 4335 distributional findings in the general public in 159 nations[;] 14327 correlational findings observed in 1437 studies excerpted from 1087 publications," not to mention almost twice as many "findings waiting to be entered."[12]

In addition to more scientifically oriented work on happiness, interest in the field has sparked an explosion in the number of popular psychology and self-help books, magazine articles, and stories elsewhere in the media focusing on happiness.[13] Moreover, the development of corporate and institutional training and consultation on happiness has continued unabated for some time.[14] This has led to what one commentator, noting the degree to

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5. *See* PETERSON, *supra* note 2, at 10.

6. *Id.*

7. *Id.* at 5.

8. Christopher Peterson, *Positive Social Science*, 591 ANNALS AM. ACAD. POL. & SOC. SCI. 186, 187-88 (2004).

9. PETERSON, *supra* note 2, at 9.

10. *See generally* PETERSON, *supra* note 2.

11. Ruut Veenhoven, *World Database of Happiness: Continuous Register of Scientific Research on Subjective Appreciation of Life*, ERASMUS UNIVERSITY ROTTERDAM, http://worlddatabaseofhappiness.eur.nl (last visited Mar. 27, 2012).

12. *Id.*; *see, e.g.*, Bruno S. Frey & Alois Stutzer, *What Can Economists Learn from Happiness Research?*, 40 J. ECON. LITERATURE 402 (2002) (for an overview of happiness studies in the field of economics).

13. *E.g.,* Jeffrey Zaslow, *Happiness, Inc.*, WALL ST. J., Mar. 18, 2006, at P1.

14. *Id.*

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which "companies are putting the findings [of happiness research] to work," referred to as "a sort of happiness-industrial complex."[15]

In even a cursory review of major books and articles on the positive psychology movement and the burgeoning field of happiness science, those who study or practice conflict analysis and resolution will discover a great deal of familiar territory. The new packaging of approaches and perspectives, derived from age-old sets of principles and practices—such as negotiation, mediation, and arbitration—as Alternative Dispute Resolution (ADR) or "conflict resolution" in the late 1970s, may be seen as corresponding to a similar repackaging of happiness, well-being, and pursuit of the good life as "positive psychology" in the late 1990s.[16] The relationship between positions and interests emphasized in conflict resolution[17] greatly mirrors the relationship between pleasure and meaningfulness examined in the study of happiness[18]—in both cases, the focus is on what lies beneath surface expressions of preference. The difficulty human beings have in predicting their own future reactions to the outcomes of present decisions (framed as "psychological impediments" to resolving conflict, on the one hand, or to finding happiness on the other) is compelling in both worlds of study. The web of disciplines and findings embodied in both happiness studies and conflict resolution studies are substantially similar in many ways; where they are not the same, they are almost always complementary.[19]

In the application of happiness studies, as in that of conflict resolution studies, there is a strong focus on constructive goals and quality of life in relational settings.[20] Though the terminology often differs, both areas tend to place emphasis on exploring underlying interests in achieving superior results.[21] This article examines the modern study of happiness in Part I as a basis for comparison and application to the field of conflict resolution in later sections.

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15. *Id.*

16. TAL BEN-SHAHAR, HAPPIER: LEARN THE SECRETS TO DAILY JOY AND LASTING FULFILLMENT 127-28 (2007).

17. OLIVER RAMSBOTHAM, TOM WOODHOUSE & HUGH MIALL, CONTEMPORARY CONFLICT RESOLUTION 21 (3d ed. 2011).

18. *See, e.g.*, Morten L. Kringelbach & Kent C. Berridge, *The Functional Neuroanatomy of Pleasure and Happiness*, 9 DISCOVERY MED. 579 (2010).

19. Neil Thin, SOCIAL HAPPINESS: THEORY INTO POLICY AND PRACTICE 240 (2012).

20. MICHAEL ARGYLE, THE PSYCHOLOGY OF HAPPINESS 71 (2nd ed. 2001).

21. *Id.*

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A compelling argument supports applying the findings of happiness studies to the field of conflict resolution; this may be understood in the context of two assumptions at the outset: (1) Unhappy people are more likely to find themselves in unproductive or even destructive conflict than happy people (and conversely for happy people); and (2) People who find themselves in unproductive or destructive conflict are more likely than others to become unhappy.

While proof is beyond the scope of this article, and there is a surprising dearth of research into the connection between happiness and human conflict, there is at least some evidence of the truth of these statements in research findings.[22] "Those who identify themselves as happy in surveys," for example, are less likely "to get involved in disputes at work."[23] There is also research showing that happy people who marry are more likely to experience "marital well-being" and less likely to get divorced than unhappy people.[24] At the same time, a number of surveys and studies reveal a disproportionate amount of unhappiness within the legal profession.[25] Strong signs indicate that the "adversarial mindset amongst lawyers" contributes to their dissatisfaction.[26] This article explores the existing, if slim, body of evidence supporting the hypothesized connection between happiness and conflict in Part II. This article also discusses a corollary between the two initial basic hypotheses, namely that there is a feedback loop between unhappiness and lack of cooperation as well as between happiness and cooperation. Unhappiness leads to conflict, which leads to unhappiness, and so on. Likewise, happiness leads to cooperation (or less conflict), which leads to happiness.

There is a remarkable similarity in the interventions being developed and prescribed in the fields of "conflict interventions" and "happiness interventions." From the importance of forgiveness and social connections, to the use of appreciative inquiry, interventions tailored to the advancement of happiness are often nearly identical to key interventions in conflict. The large degree to which happiness interventions and conflict interventions

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22. *See generally* Robert H. Frank, *Should Public Policy Respond to Positional Externalities?*, 92 J. PUB. ECON. 1777 (2008).

23. *Id.* at 1779.

24. Sonja Lyubomirsky, Laura King & Ed Diener, *The Benefits of Frequent Positive Affect: Does Happiness Lead to Success?*, 131 PSYCHOL. BULL. 803, 832 (2005).

25. Nancy Levit & Douglas O. Linder, *Happy Law Students, Happy Lawyers*, 58 SYRACUSE L. REV. 351, 351-52 (2008).

26. Krista Riddick Rogers, Comment, *Promoting a Paradigm of Collaboration in an Adversarial Legal System: An Integrated Problem Solving Perspective for Shifting Prevailing Attitudes from Competition to Cooperation Within the Legal Profession*, 6 BARRY L. REV. 137, 138 (2006).

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overlap is unlikely to be coincidental. Much of this replication may be linked to the high placement of happiness on the hierarchy of human interests—conflict resolution ultimately focuses to a large degree on meeting needs and interests in the most profound way.[27] Part III addresses the apparent convergence between interventions for happiness and conflict, and suggests this convergence is a further demonstration of the link between conflict and happiness.

Central to the similarities in the studies of conflict and happiness is the element of interest.[28] Part IV examines whether happiness is, in effect, the ultimate human interest. In looking at the implications of an affirmative answer, this article also shows how lessons from happiness studies apply to the value of a dispute settlement and to the methods for handling conflict within organizations. Alternatively, this article explores whether the emphasis on happiness, like the emphasis on resolution of conflict, can be taken too far and lead, for example, to injustice.

In the Conclusion, this article consolidates and underscores the implications for the field of conflict resolution. Additionally, this article considers an agenda and major issues for future research and looks at some policy implications for ADR, implicit in what I refer to as the potential for capitalizing on happiness. By accumulating "happiness capital," this article argues that we can develop and leverage a major asset for the more effective engagement and resolution of conflict.

II. THE STUDY AND SCIENCE OF HAPPINESS

A. Positive Psychology

Positive psychology is the term most closely associated with the modern study of happiness.[29] As noted above, the term was coined by Seligman in 1998 and refers to placing a greater emphasis on our well-being as opposed to our deficits.[30] It is tied to "human goodness and excellence" rather than mental illness or disease.[31] The field of positive psychology has been

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27. Gable & Haidt, *supra* note 2, at 104.
28. *See generally* BEN-SHARAR, *supra* note 16.
29. *See generally* Seligman & Csikszentmihalyi, *supra* note 2.
30. *Id.*
31. PETERSON, *supra* note 2, at 11.

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associated with humanistic traditions in general and has been significantly influenced by humanistic psychology.[32] Unlike humanistic psychology, which shied away from quantitative research and more broadly acknowledged the limitations of the experimental method, positive psychology has involved a heavy focus on quantitative, experimental research.[33] It has sought standing in the scientific community through the use of the latest tools and techniques in science and has successfully established itself on par with other, more science-oriented branches of psychology.[34] A recent historical analysis argues that "[t]he reputation of positive psychology may match the popularity of contemporary cognitive psychology closely associated with cognitive neuroscience and computer science."[35] Arguably, then, the science of happiness is largely based on empirical research using validated measures, the relative lack of which is detrimental to the reputation and effectiveness of the field of conflict resolution.[36]

B. Defining Happiness

The word happiness is used to describe many different things, and in some ways it is an elusive term. Etymologically, it is from the same root— *hap*—as the word "happen."[37] Basically, *hap* refers to luck—that which happens—and came to be associated with good luck.[38] There is no doubt that happiness is something highly valued for ourselves and for those we care about. Many terms are often equated with happiness. "Words like *pleasure, bliss, ecstasy, and contentment* are often used interchangeably with the word *happiness* but . . . [t]hese emotions are fleeting, and while they are enjoyable and significant, they are not the measure—or the pillars—of happiness."[39]

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32. Erik E. Noftle, Sarah A. Schnitker & Richard W. Robins, *Character and Personality: Connections Between Positive Psychology and Personality Psychology*, *in* DESIGNING POSITIVE PSYCHOLOGY: TAKING STOCK AND MOVING FORWARD 207, 208 (Kennon M. Sheldon, Todd B. Kashdan & Michael F. Steger eds., 2011).

33. Veenhoven, *supra* note 11.

34. *Id.*

35. ERIC SHIRAEV, A HISTORY OF PSYCHOLOGY: A GLOBAL PERSPECTIVE 450 (2011).

36. *Id.*

37. Gloria Vivenza, *Happiness, Wealth and Utility in Ancient Thought*, *in* HANDBOOK ON THE ECONOMICS OF HAPPINESS 3, 15 (Luigino Bruni & Pier Luigi Porta eds., 2007).

38. *Id.*

39. BEN-SHAHAR, *supra* note 16, at 6. It is worth noting that Ben-Shahar's course on happiness at Harvard University is the most popular course in that university's history, with enrollment at one time reaching over 800 students. *Id.* at vii-viii.

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In a systematic sense, it is clear that when we are talking about happiness, we generally are not talking about sensations of pleasure and comfort—hedonism—alone. The modern philosopher Robert Nozick famously demonstrates, by taking us through a thought experiment, that pleasure alone is not the essence of happiness.[40] Suppose technology advances to the point where virtual reality machines allow you to feel any experience that you wish; that these machines also cause you to forget that you are hooked up so you feel the experience and the sensation of happiness and have no reason to believe it is not genuine.[41] If offered the chance to be "hooked up" for the rest of your life, would you accept?[42] Nozick argues that people generally would reject such an offer because the happiness provided by the "experience machines" would not be real.[43] Lacking a connection with activity would remove what really matters—the *doing*.[44] Nozick concludes that, regardless of how a person feels when hooked up to the machine, because the emotion is based on "egregiously unjustified and false evaluations," we would not term such a person "happy."[45]

Seligman emphasizes the notion of what he calls "authentic happiness."[46] The "pleasant life" involves the net surplus of positive over negative emotions associated with hedonism, and "the good life" is obtained by getting what we desire—which may include, but is not limited to, pure pleasure.[47] These two variants are combined with the "meaningful life"— participating in something larger than ourselves through valuable activity— to produce a full life in which happiness is "authentic."[48] Seligman's concept is essentially in line with an ancient Greek term for happiness, *eudaimonia*, which captured a sense of flourishing and a life well-lived.[49]

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40. ROBERT NOZICK, THE EXAMINED LIFE: PHILOSOPHICAL MEDITATIONS 104 (1989).

41. *Id.*

42. *Id.* at 105.

43. *Id.* at 106.

44. *Id.* at 107.

45. *Id.* at 111. The concept of the "experience machine" was originally advanced by Nozick in ROBERT NOZICK, ANARCHY, STATE, AND UTOPIA (1974).

46. *See generally* MARTIN E.P. SELIGMAN, AUTHENTIC HAPPINESS: USING THE NEW POSITIVE PSYCHOLOGY TO REALIZE YOUR POTENTIAL FOR LASTING FULFILLMENT (2002).

47. *Id.* at 249.

48. *Id.*

49. DANIEL GILBERT, STUMBLING ON HAPPINESS 36 (2006).

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> For Socrates, Plato, Aristotle, Cicero, and even Epicurus . . . the only thing that could induce that kind of happiness was the virtuous performance of one's duties, with the precise meaning of *virtuous* left for each philosopher to work out for himself.[50]

More recently, Seligman himself has moved from focusing on "authentic happiness" to focusing on the "well-being theory" which, in addition to the aspects of happiness—positive emotion, engagement, and meaning—that lead to life satisfaction measured subjectively, adds elements involving relationships and achievements; well-being is measured in terms of "flourishing."[51]

While there is no single definition of happiness, much of the research that has been done in recent years focuses on happiness as a measure of "subjective well-being" (SWB).[52] Essentially, it involves asking people how they like their lives, and often involves some version of the question: "All things considered, how satisfied are you with your life as a whole these days" or "[t]aken all together, how would you say things are these days?"[53] Unless otherwise indicated, the term "happiness" is intended to be synonymous with SWB, while remaining mindful of other definitions and particularly the importance of meaningfulness and reflection in "authentic" happiness.

C. The Conduct of Happiness Research

Over the last two decades, efforts to engage in a scientific approach to happiness have involved various measurements of SWB.[54] Many of the studies have taken measurements through simple "surveys that ask people to report how happy they are."[55] As previously mentioned, survey questions generally ask a person how satisfied they are with their life "as a whole."[56] A more rigorous survey approach involves sampling how people are viewing their experiences in real time.[57] With this method, participants are typically given a beeper or receive text messages so that they can be asked, without warning, to answer questions about how they feel right at that moment, what they were doing at the time, and how strongly they feel, whether positive or

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50. *Id.*

51. MARTIN E.P. SELIGMAN, FLOURISH: A VISIONARY NEW UNDERSTANDING OF HAPPINESS AND WELL-BEING 26 (2011) .

52. Daniel Kahneman & Alan B. Krueger, *Developments in the Measurement of Subjective Well-Being*, 20 J. ECON. PERSP., no. 1, 2006 at 3.

53. *Id.* at 6.

54. Frank, *supra* note 22, at 1779.

55. *Id.*

56. Kahneman & Krueger, *supra* note 52, at 6.

57. *Id.*

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negative.[58]   In a variation on this approach, participants respond to a questionnaire that has them recall their activities from one day before—they are called upon to essentially construct a short diary of the previous day in which they systematically describe "episodes" in the day and then rate the experiences according to specified criteria.[59]

Interestingly, these various approaches to self-reported levels of happiness show meaningful correlations with a variety of measurements, including reports by friends, roommates, and spouses;[60] observations of facial expressions[61] and results of electromyography (which measures the frequency of smiling); "sophisticated electroencephalographic assays that measure the frequency and amplitude of the electrical waves emanating from different sites in the brain;"[62] and a range of other physiological phenomena. "In brief, the happiness literature has identified measures of human subjective well-being that are consistent, valid, and reliable."[63]

D. Major Correlations with Happiness

Happiness, as measured in a variety of ways, tends to be highly correlated with a number of observable human behaviors and characteristics. One of the strongest sets of correlations is with a range of social ties. In general, "being alone appears to be worse for SWB than being part of a partnership,"[64] such as a marriage. A number of studies have demonstrated a link between happiness and socializing with family members, close friends,

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58.   Mihaly Csikszentmihalyi & Jeremy Hunter, *Happiness in Everyday Life: The Uses of Experience Sampling*, 4 J. HAPPINESS STUD. 185, 186 (2003).

59.   Daniel Kahneman, Alan B. Krueger, David Schkade, Norbert Schwarz & Arthur A. Stone, *A Survey Method for Characterizing Daily Life Experience: The Day Reconstruction Method*, 306 SCIENCE 1776, 1776 (2004).

60.   *See* Sonja Lyubomirsky & Heidi S. Lepper, *A Measure of Subjective Happiness: Preliminary Reliability and Construct Validation*, 46 SOC. INDICATORS RES. 137, 148 (1999) (people that say they are happy tend to be rated as happy by those that know them).

61.   LeeAnne Harker & Dacher Keltner, *Expressions of Positive Emotion in Women's College Yearbook Pictures and Their Relationship to Personality and Life Outcomes Across Adulthood*, 80 J. PERSONALITY & SOC. PSYCHOL. 112, 121 (2001).

62.   Frank, *supra* note 22, at 1779.

63.   *Id.*

64.   Paul Dolan, Tessa Peasgood & Mathew White, *Do We Really Know What Makes Us Happy? A Review of the Economic Literature on the Factors Associated with Subjective Well-Being*, 29 J. ECON. PSYCHOL. 94, 106 (2008).

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or neighbors.[65]   Beyond such links and the "partnerships" associated with marriage and other intimate relationships, people that get involved in religious congregations or other volunteer organizations tend to report higher levels of life satisfaction.[66]

The feeling of being "in control" over one's life circumstances also has a strong correlation with happiness. This link has been attributed to the fact that "the brain constantly needs to feel that it is in charge, that everything has an explanation, that events are not spiraling out of control."[67] The more we feel in control, the more satisfied we are likely to be. If there is causality, it may flow in either direction. In general, "happy people are more likely to evidence greater self-control and self-regulatory and coping abilities."[68]

Trust and happiness are also correlated.[69] The more one feels able to trust others, the greater the likelihood of reporting better life satisfaction.[70] This association applies not only to trust in other individuals, but to trust in government institutions, including the police and the legal system generally.[71] "In short, feeling able to trust others—both those among whom one lives and works and those in authority—is strongly associated with higher subjective well-being."[72]

Charitable giving—donations of time, money, or other elements—is strongly linked to reported happiness.[73]   "Indeed, this effect is one of the most robust findings in the literature on positive mood and social behavior, having been variously called the 'feel good, do good' phenomenon, the 'glow of goodwill,' and the 'warm glow of success.'"[74] These findings are outcomes of experimental studies demonstrating a clear connection between

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65. *See, e.g.*, ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY 93-95 (2000); Orsolya Lelkes, *Knowing What Is Good for You: Empirical Analysis of Personal Preferences and the "Objective Good"*, 35 J. SOCIO-ECON. 285 (2006); Nattavudh Powdthavee, *Putting a Price Tag on Friends, Relatives, and Neighbours: Using Surveys of Life Satisfaction to Value Social Relationships*, 37 J. SOCIO-ECON. 1459 (2008).

66. John F. Helliwell, *How's Life? Combining Individual and National Variables to Explain Subjective Well-Being*, 20 ECON. MODELING 331, 348 (2003).

67. EDUARDO PUNSET, THE HAPPINESS TRIP: A SCIENTIFIC JOURNEY 55 (2007).

68. Sonja Lyubomirsky, Kennon M. Sheldon & David Schkade, *Pursuing Happiness: The Architecture of Sustainable Change*, 9 REV. GEN. PSYCHOL. 111, 112 (2005).

69. John F. Helliwell & Robert D. Putnam, *The Social Context of Well-Being*, 359 PHIL. TRANSACTIONS ROYAL SOC'Y LONDON 1435, 1442 (2004).

70. *Id.*

71. *Id.*

72. *Id.*

73. Lyubomirsky, King & Diener, *supra* note 24, at 837.

74. *Id.*

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happy moods and contributing to charity—needy children, donating blood, and similar behaviors.[75]

There are many other correlations between happiness and various human factors, both characteristics and behaviors.[76]   Among these are: education (higher levels correlated with SWB); physical health; employment (being unemployed, not surprisingly, is correlated with being less happy); commuting to work (greater commuting time correlated with lower life satisfaction); physical exercise; age (surprisingly, older people tend to report being happier than people in their 30s and 40s); and gender (women tend to report greater happiness than men).[77]

The relationship between happiness and income has proven to be more complicated.[78] Substantial debate on this correlation centers largely on a phenomenon that has come to be known as "the Easterlin Paradox."[79] A 1974 study by Richard Easterlin found that people in wealthier countries were not generally happier than people in poorer countries, though there was some link within individual countries up to a certain level of income.[80] Decades later, British economist Richard Layard claimed to have demonstrated that above little more than a subsistence level (about $15,000), there is minimal correlation between one's income and one's happiness,[81] providing further support for the concept of the Easterlin Paradox. Others have relied on quite different study data to argue that the Easterlin Paradox is wrong. Matt Ridley argues against the Easterlin Paradox: "Rich people are happier than poor people; rich countries have happier people than poor countries; and people get happier as they get richer."[82] Ridley further notes that in "all three categories of comparisons—within countries, between countries, and between times—extra income does indeed buy general well-being."[83] Ridley does acknowledge that, despite income growth in the U.S., "Americans show no trend toward increasing happiness. Is this because the

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75.   *Id.*

76.   Dolan, Peasgood & White, *supra* note 64, at 98-104.

77.   *See, e.g.*, *id.* (for more details on these factors).

78.   Richard Easterlin, *Does Economic Growth Improve the Human Lot?*, *in* NATIONS AND HOUSEHOLDS IN ECONOMIC GROWTH: ESSAYS IN HONOR OF MOSES ABRAMOVITZ 89 (Paul A. David & Melvin W. Reder eds., 1974).

79.   *Id.*

80.   *See generally id.*

81.   *See* RICHARD LAYARD, HAPPINESS: LESSONS FROM A NEW SCIENCE 3 (2005).

82.   MATT RIDLEY, THE RATIONAL OPTIMIST: HOW PROSPERITY EVOLVES 26 (2010).

83.   *Id.*

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rich had got richer but ordinary Americans had not prospered much in recent years? Or because America continually draws in poor (unhappy) immigrants . . . ? Who knows?"[84] The last question perhaps most accurately reflects the current state of consensus about the link between money and happiness—we simply do not yet have enough information to draw firm conclusions.

The variety of correlations with happiness can have major implications for policy and practice in many endeavors, not the least of which is conflict resolution (fully examined below). It is important to exercise caution, however, because the research suffers from the uncertainty that correlations do not necessarily establish causations. Much of the literature suggests that particular behaviors or characteristics lead to happiness. It may also be possible, however, "to show that the alternative causal pathway—that happy people are likely to acquire favorable life circumstances—is at least partly responsible for the associations found in the literature."[85] It is easier to establish a causal connection when there is a passage of time between the circumstance and reported well-being—or vice versa. Examining the relationship between social connections and happiness can be particularly problematic.[86] "Unlike many variables, there is unlikely to be a time delay in the causal pathways between social contact and well-being, which complicates any investigation into the direction of causality."[87] However, "prospective and longitudinal studies show that happiness often precedes and predicts" positive outcomes such as financial success, supportive relationships, coping, and physical and mental health.[88]

E. The Formula for Happiness

In an influential article published in 2005, Professors Lyumbomirsky, Sheldon, and Schkade drew from the growing body of literature on SWB to propose that happiness is based upon three key factors, a proposition that became known as the "formula" for happiness.[89] The formula reads like a

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84. *Id.* at 26-27.

85. Lyubomirsky, King & Diener, *supra* note 24, at 803.

86. Dolan, Peasgood & White, *supra* note 64, at 112.

87. *Id.*

88. Michael A. Cohn, Barbara L. Fredrickson, Stephanie L. Brown, Joseph A. Mikels & Anne M. Conway, *Happiness Unpacked: Positive Emotions Increase Life Satisfaction by Building Resilience*, 9 EMOTION 361, 361 (2009).

89. *See* Lyubomirsky, Sheldon & Schkade, *supra* note 68, at 116.

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mathematical equation: H = S + C + V.[90] H stands for **h**appiness, S stands for a genetic "**s**et point" for happiness, C stands for the **c**ircumstances—or **c**onditions—of one's life, and V stands for the activities in which one **v**oluntarily engages.[91]

The happiness set point, understood as genetically determined, "is assumed to be fixed, stable over time, and immune to influence or control."[92] It is said to account for approximately 50% of our happiness level.[93] The set point concept is closely related to the theory of the "hedonic treadmill."[94] That is, while we react to positive and negative occurrences, after some time we return to a more-or-less fixed locus of perceived well-being; though we constantly strive for greater happiness, our efforts are largely in vain because we are, in effect, on a treadmill.[95] A classic set of studies in the late 1970s surveyed lottery winners and accident victims who had lost the use of limbs.[96] The researchers found that the lottery winners, after initial boosts in happiness, and paraplegics, after initial declines, reverted to previous levels of reported well-being; in general, it was concluded that those struck with especially good or bad fortune are not in the long run particularly more or less happy than others.[97] This treadmill effect was thought to result from hedonic adaptation—our tendency to emotionally (and otherwise) adapt to our surrounding circumstances.[98] The particular locus—or set point—to which we return has been explained as reflecting immutable traits "rooted in neurobiology" that are "highly heritable."[99] Although recent research

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90. Elizabeth Heathcote, *Does the Happiness Formula Really Add Up?*, THE INDEPENDENT (June 20, 2010), http://www.independent.co.uk/life-style/health-and-families/features/does-the-happiness-formula-really-add-up-2004279.html.

91. *Id.*

92. Lyubomirsky, Sheldon & Schkade, *supra* note 68, at 116.

93. *Id.*

94. *Id.*

95. *Id.*

96. Philip Brickman, Dan Coates & Ronnie Janoff-Bulman, *Lottery Winners and Accident Victims: Is Happiness Relative?*, 36 J. PERSONALITY & SOC. PSYCHOL. 917, 918 (1978).

97. *Id.* at 120.

98. *Id.*

99. Lyubomirsky, Sheldon & Schkade, *supra* note 68, at 117.

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suggests that the set point theory may need some revision,[100] there is little doubt that hedonic adaptation has significant explanatory power.[101]

The circumstances or conditions of our lives, as represented in the happiness formula, include those we cannot usually change (race, gender, personal history, etc.) and those we can, if only over time (marital status, employment, residence, etc.). "Conditions are constant over time, at least during a period in your life, and so they are the sorts of things that you are likely to adapt to."[102] Surprisingly, studies have tended to show that "all circumstances combined account for only 8% to 15% of the variance in happiness levels."[103] Again, our tendency to adapt seems to explain much of these findings.[104]

The V part of the formula is an acknowledgment of the important fact that we do have some ability to choose to make changes—to take steps to heighten our level of happiness.[105] Intentional activity—V for voluntary—"is real, and it's not just about detachment. You can increase your happiness if you use your strengths, particularly in the service of strengthening connections . . . ."[106] Our intentional activity is said to account for about 40% of our chronic happiness level.[107] A corollary of the contribution of intentional activity is that one can undertake interventions to boost happiness.[108] Such interventions are discussed in more detail later by comparing them to conflict interventions. For now, it is worth bearing in mind the astounding research findings that life circumstances account for no more than 15% of our happiness; clearly, this has enormous implications for conflict and how we handle it.[109]

F. Happiness as an Asymptote

In mathematics, an asymptote is a line that acts as an outside limit of a curve—as the curve approaches the line, it gets closer and closer, but does

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100. *See, e.g.*, Ed Diener, Richard E. Lucas & Christie Napa Scollon, *Beyond the Hedonic Treadmill: Revising the Adaptation Theory of Well-Being*, *in* THE SCIENCE OF WELL-BEING: THE COLLECTED WORKS OF ED DIENER 103, 108 (Ed Diener ed., 2009).

101. Lyubomirsky, Sheldon & Schkade, *supra* note 68, at 121.

102. JONATHAN HAIDT, THE HAPPINESS HYPOTHESIS: FINDING MODERN TRUTH IN ANCIENT WISDOM 91 (2006).

103. Lyubomirsky, Sheldon & Schkade, *supra* note 68, at 117.

104. *Id.*

105. *See* Heathcote, *supra* note 90.

106. HAIDT, *supra* note 102, at 97-98.

107. Lyubomirsky, Sheldon & Schkade, *supra* note 68, at 116.

108. *Id.* at 124.

109. *Id.* at 117.

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not reach the line in finite space.[110] In the book *Drive: The Surprising Truth About What Motivates Us*, Daniel Pink writes that, "Mastery is an asymptote. You can approach it. You can hone it. You can get really, really, really close to it. But . . . you can never touch it. Mastery is impossible to realize fully."[111] If one substitutes the word "happiness" for the word "mastery," the result is a very apt description of the nature of happiness and perhaps its most important feature. The Declaration of Independence speaks of the "pursuit of happiness" as our fundamental right, but does not suggest that we have the right or even the ability to actually obtain that happiness.[112]

The notion of happiness as an endless aspiration—focusing on the pursuit, not the acquisition—is time-honored.

> Goals once obtained become the new standard, to which we adapt, before continuing our race up the escalating, slippery slope of acquisitiveness and fame. Philosophers and scientists from antiquity to the present generally agree that life is a marathon, not a sprint, and the formula for happiness and well-being is the journey—not achievement of the goal . . . .[113]

This perspective is consistent with what we know about the neurochemistry of the brain. The seeking circuit in the hypothalamus "activates the triggers of pleasure and happiness . . . . It is thus in the search, in anticipation—in getting there rather than being there—that the larger part of happiness lies. . . . Happiness is hidden in its waiting room."[114]

III. EVIDENCE FOR AN INVERSE LINK BETWEEN HAPPINESS AND CONFLICT

A. Relational Situations

As mentioned in the Introduction, higher levels of reported happiness are associated with reduced likelihood of involvement in disputes at work

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110. *Asymptote*, WIKIPEDIA, http://en.wikipedia.org/wiki/Asymptote (last modified Apr. 1, 2012).

111. DANIEL H. PINK, DRIVE: THE SURPRISING TRUTH ABOUT WHAT MOTIVATES US 117-18 (2009).

112. *See* THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

113. Robert R. Provine, *Things Could Always Be Worse*, *in* WHAT ARE YOU OPTIMISTIC ABOUT?: TODAY'S LEADING THINKERS ON WHY THINGS ARE GOOD AND GETTING BETTER 326, 327 (John Brockman ed., 2007).

114. PUNSET, *supra* note 67, at 18.

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and of marriage ending in divorce.[115] It is suggested that happy people may simply be better at resolving conflict.[116] A study of CEOs and managers at over sixty American companies found that work groups made up of people exhibiting the kinds of positive affect associated with happiness were more likely to cooperate and less likely to get involved in conflict, while another workplace study found a strong relationship between certain positive emotions and reduced conflict among coworkers.[117]

With respect to marital conflict, there is substantial evidence that those who report a higher level of happiness are more likely to be satisfied with their marriage.[118] One's chances of getting married in the first place, and of staying married, are both increased as happiness rises.[119] "Indeed, several writers have suggested that satisfaction with marriage and family life is the strongest correlate of happiness. . . . Individual happiness is even associated with high marital satisfaction in one's spouse."[120] The causation arrow, of course, may not point in the expected direction. To a certain extent, as Haidt writes, "Happiness causes marriage. Happy people marry sooner and stay married longer . . . both because they are more appealing as dating partners and because they are easier to live with as spouses."[121]

The correlations between happiness in the workplace and happiness in marital situations should not be surprising, especially given the quantity of research evidence and scholarship linking quality of interpersonal relationships with levels of happiness. As summarized by University of Oxford psychology professor Michael Argyle, "social relationships have a powerful effect on happiness and other aspects of well-being, and are perhaps its greatest single cause."[122] Again, causation can flow both ways. "Good relationships make people happy, and happy people enjoy more and better relationships than unhappy people. . . . [C]onflicts in relationships . . . is one of the surest ways to reduce your happiness. You never adapt to interpersonal conflict . . . ."[123] This is perhaps best interpreted as meaning that we do not adapt to destructive—or even nonproductive—interpersonal conflict cycles. Arguably, being able to have productive conflict (without escalating, or devaluing the other, or letting it infect all aspects of a

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115.   *See supra* notes 7-9 and accompanying text.
116.   Lyubomirsky, King & Diener, *supra* note 24, at 828.
117.   *Id.* (citations omitted).
118.   *Id.* at 824.
119.   *Id.*
120.   *Id.* (citations omitted).
121.   HAIDT, *supra* note 102, at 88.
122.   ARGYLE, *supra* note 20, at 71.
123.   HAIDT, *supra* note 102, at 94.

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relationship) is part of building successful relationships and presumably part of achieving greater happiness.

B. Orientations of People with High SWB

Part of the evidence for connecting happiness and conflict resolution can be found in studies showing that those who report a relatively high level of SWB tend to be more oriented toward cooperation.[124] Indeed, not only do positive moods tend to promote cooperation,[125] "results of these studies generally show that positive moods help to resolve conflict."[126] Further, there is considerable evidence that people in positive moods are more helpful to others and tend to "engage in a variety of other pro-social behaviors."[127]

The mechanism of any causality between SWB and cooperative behaviors is still being explored. One account is that the tendency toward cooperation may result from the degree to which people with positive affect can use it as a resource in interpersonal situations: "Dealing with negative situations involves powerful motivational conflicts and requires a trade off between the immediate emotional cost against long-term gain. . . . [T]hose in a good mood may be better able to behave in a rational and effective way in otherwise difficult and conflict laden situations."[128]

Interestingly, the happy moods of others may influence people to cooperate more and engage in less conflict.[129] One explanation for this phenomenon is that positive affect tends to signal that a person is trustworthy and willing to cooperate, leading other parties to respond by

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124. *See generally* Lyubomirsky, King & Diener, *supra* note 24.

125. William Tov & Ed Diener, *The Well-Being of Nations: Linking Together Trust, Cooperation, and Democracy*, *in* THE SCIENCE OF WELL-BEING: THE COLLECTED WORKS OF ED DIENER 155, 160 (Ed Diener ed., 2009).

126. Sigal G. Barsade & Donald E. Gibson, *Why Does Affect Matter in Organizations?*, 21 ACAD. MGMT. PERSP. 36, 48 (2007) (citing Sonja Lyubomirsky, Laura King & Ed Diener, *The Benefits of Frequent Positive Affect: Does Happiness Lead to Success?*, 131 PSYCHOL. BULL. 803, 855 (2005)).

127. Adam Barsky, Seth A. Kaplan & Daniel J. Beal, *Just Feelings? The Role of Affect in the Formation of Organizational Fairness Judgments*, 37 J. MGMT. 248, 257 (2011).

128. Joseph P. Forgas, *Feeling and Doing: Affective Influences on Interpersonal Behavior*, 13 PSYCHOL. INQUIRY 1, 20 (2002) (citations omitted).

129. Barsky, Kaplan & Beal, *supra* note 127, at 257.

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placing greater trust in such a person.[130] Another account suggests that this occurs through a kind of mood contagion.[131] At the same time, being in a positive mood may increase the likelihood that one will perceive just and fair treatment in, for example, an organizational setting.[132] Arguably, the perception of fairness would, *a fortiori*, lead to a reduced likelihood of pursuing or escalating conflict. Therefore, if you are more likely to empathize with others, you are less likely to engage in dispositional attributions when you interact with them.

C. *Happiness and Negotiation Behavior*

Though not widely reported in conflict resolution specialty literature, there has been more than a modest amount of research into the relationship between aspects of happiness and strategies and styles of negotiation, and it tends to support the connections between happiness and conflict resolution posited in this article. In 1986, an influential study (building on earlier work) concluded that positive affect had a tendency to "reduce the use of contentious tactics" in negotiation, increase integrative capability, and "lead bargainers to discover integrative solutions . . . ."[133] Other negotiation behaviors tied to positive affect over the years include making greater concessions, engaging in creative problem solving, and increasing use of cooperative strategies.[134] Happy negotiators have also been shown to be more confident and have higher expectations for success while remaining more cooperative and oriented toward integrative strategies.[135]

The mechanism of this effect has been explained by one scholar as part of the processing that occurs with positive mood and emotion. In dealing with an apparently zero-sum situation:

> [W]here one person's win is another's loss, their thoughts and plans will have to be based on open, constructive, and inferential thinking. Positive mood should then selectively prime more positive thoughts and associations, and these ideas should ultimately lead to

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130. Cameron Anderson & Leigh L. Thompson, *Affect from the Top Down: How Powerful Individuals' Positive Affect Shapes Negotiations*, 95 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 125, 127 (2004).

131. Barsky, Kaplan & Beal, *supra* note 127, at 257.

132. *Id.* at 262.

133. Peter J.D. Carnevale & Alice M. Isen, *The Influence of Positive Affect and Visual Access on the Discovery of Integrative Solutions in Bilateral Negotiation*, 37 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 1, 11 (1986).

134. Gerben A. van Kleef, Carsten K.W. De Dreu & Antony S.R. Manstead, *The Interpersonal Effects of Emotions in Negotiations: A Motivated Information Processing Approach*, 87 J. PERSONALITY & SOC. PSYCHOL. 510, 510 (2004).

135. Cohn, Fredrickson, Brown, Mikels & Conway, *supra* note 88, at 361-62.

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the formulation of more optimistic expectations and the adoption of more cooperative and integrative bargaining strategies.[136]

It must be acknowledged, of course, that being in a good mood may cause a person to be more ambitious and more intent on avoiding disappointment.[137] It is also possible that positive moods allow people to face distributive realities without personalizing the problem or engaging in reactions or tactics that endanger relationships.

D. Happiness and the Adversarial Mindset

ADR luminary Len Riskin was by no means the first, nor will he be the last, legal scholar to note that both "[l]aw students and lawyers tend to be unhappy in their work."[138] Indeed, depression, suicide, anxiety, divorce, and alcoholism are far more widespread among attorneys than among the general population.[139]

The unhappiness of lawyers, while widely noted, is not very well understood. However, one aspect of the legal profession has been frequently tied to unhappiness and distress among practitioners: the adversarial nature of the work. "The combination of the increasing bottom-line focus of the profession and a high rate of involvement in win-lose situations (also called zero-sum situations or zero-sum games) is often cited as the most deeply rooted cause of lawyer unhappiness."[140] One study showed a strong link between anger and high levels of reported lawyer distress.[141]

> Appropriately directed anger is probably instrumental in a law career. . . . Unfortunately, the ability to leave this anger at the office is difficult for some lawyers, who may therefore, bring these emotions home. Some evidence that this destructive pattern may be occurring for these lawyers is that the pattern of predictors which is most

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136. Forgas, *supra* note 128, at 15.

137. *Id.*

138. Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and Their Clients*, 7 HARV. NEGOT. L. REV. 1, 10 (2002).

139. Peter H. Huang & Rick Swedloff, *Authentic Happiness & Meaning at Law Firms*, 58 SYRACUSE L. REV. 335, 335-36 (2008).

140. Paula Davis-Laack, *The Science of Well-Being and the Legal Profession*, 83 WIS. LAW. 14, 16 (Apr. 2010).

141. Connie J.A. Beck, Bruce D. Sales & G. Andrew H. Benjamin, *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 J.L. & HEALTH 1, 57 (1996).

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representative of several different categories of psychological distress are high levels of anger, unsatisfactory primary relationships and low levels of social support.[142]

While many of us might disagree that anger is "instrumental" in a law career, there is little doubt that this is a widely held presumption.

The aforementioned founder of positive psychology, Martin Seligman, writing with a colleague from psychology and another from law, points out that zero-sum situations are tied to demoralization yet "lie at the heart of our adversarial system of justice."[143] Training lawyers to be aggressive and competitive, they assert, can be a source of unhappiness. "When the practice of law is tied up with a large number of zero-sum games, it will produce predictable emotional consequences for the practitioner, who will be anxious, angry and sad much of his professional life."[144] Understanding that most situations are not strictly zero-sum and that even in such cases the ability to more productively and gracefully handle distributive elements while searching for integrative potential may be one of the ways in which the field of conflict resolution can contribute to happiness research.

E. Happiness, Cooperation, and a Feedback Loop

If these assumptions are correct (and the evidence set forth above suggests they are, though more research is surely warranted), and if greater happiness leads to more cooperation and enhanced cooperation brings greater happiness, then positing a corollary seems justifiable: happiness and cooperation can synergize in a feedback loop. Furthermore, arguably, unhappiness and conflict can also be both a consequence and a cause in a dynamic loop.

There is some evidence that positive emotions associated with happiness generally trigger positive feedback loops.[145] Positive emotions are linked to broadened attention and cognition, more flexible and creative thinking, and thus improved coping with adversity and stress.[146] This can become the basis of an upward spiral—the improved coping triggered by the positive emotions lead to future positive emotions, which lead to improved coping. "As this cycle continues, people build their psychological resilience . . . ."[147]

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142. *Id.*
143. Martin E.P. Seligman, Paul R. Verkuil & Terry H. Kang, *Why Lawyers are Unhappy*, 23 CARDOZO L. REV. 33, 35 (2001).
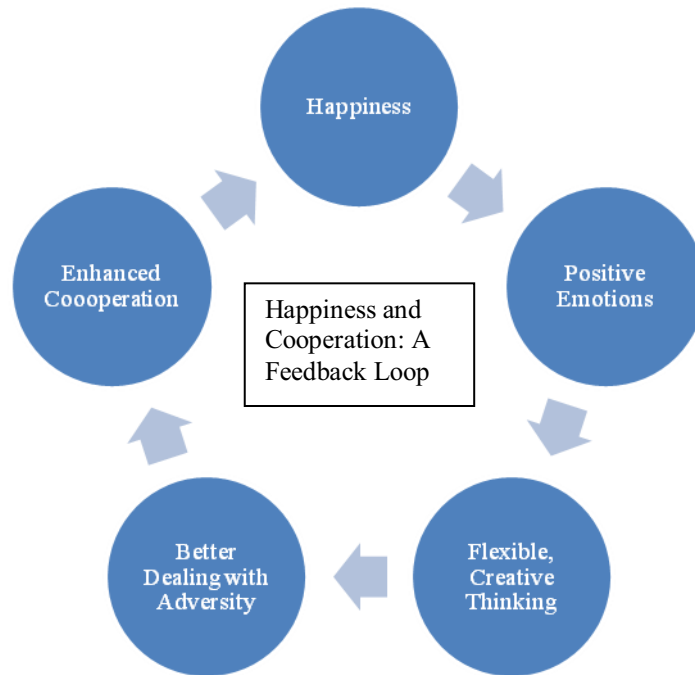144. *Id.* at 47.
145. Barbara L. Fredrickson & Thomas Joiner, *Positive Emotions Trigger Upward Spirals Toward Emotional Well-Being*, 13 PSYCHOL. SCI., 172, 172 (2002).
146. *Id.*
147. *Id.*

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Part of the mechanism of this spiral is that people can find positive meaning in the face of adversity, which provide strength and generates positive emotions, which in turn increase the likelihood of finding positive meaning.[148] A potential happiness–cooperation feedback loop might look something like this:

Happiness

Positive Emotions

Flexible, Creative Thinking

Better Dealing with Adversity

Enhanced Coooperation

Happiness and Cooperation: A Feedback Loop

An interesting conceptual paper in organizational behavior argues that a similar feedback loop—termed a "positive group affect spiral"—may be present among working groups displaying positive affect.[149] The authors of the article argue that working groups involving members with positive affect tend to develop similarities in their levels of such affect, that this characteristic improves the relationship within the group, and that these

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148. *Id.*

149. Frank Walter & Heike Bruch, *The Positive Group Affect Spiral: A Dynamic Model of the Emergence of Positive Affective Similarity in Work Groups*, 29 J. ORGANIZATIONAL BEHAV. 239, 252 (2008).

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elements—positive affect and quality relationship—continuously strengthen each other.[150] The idea of positive feedback loops in organizational behavior has been expressed on a number of occasions.[151] The authors point to several scholarly works suggesting "similar self-reinforcing upward spirals to occur frequently in organizations and work groups."[152]

IV. FACILITATING HAPPINESS AND FACILITATING RESOLUTION: TEN COMPELLING EXAMPLES OF CONVERGENCE

A number of positive psychology experts speak of "happiness interventions" in much the same way as conflict resolution professionals speak of "conflict interventions" (though in one sense intervening to bring about, and in the other, intervening to bring an end or resolve or more effectively engage); many of the interventions and factors that tend to be associated with both happiness and conflict resolution bear great resemblance to each other. Happiness interventions—more commonly known in the scholarly literature as "positive psychology interventions" (PPIs)—are generally defined as "treatment methods or intentional activities that aim to cultivate positive feelings, behaviors, or cognitions."[153] Given that the "happiness formula" discussed earlier suggests that less than half of what accounts for our happiness is even potentially under our control (the "V" in the formula), questions have been raised over the years as to whether it is worth expending much effort in an attempt to increase our levels of happiness. However, "[e]vidence supporting the idea that it is possible to increase [subjective] well-being has steadily been accumulating."[154] Moreover, there is a "growing number of viable interventions" identified in the field of happiness studies.[155]

In addition to specific interventions, there is a variety of motivational and attitudinal factors connected to increased levels of happiness.[156] Because some of these factors are potentially subject to our intention and control,[157] they are also worth examining in comparison to conflict

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150. *Id.* at 264.

151. *Id.* at 244.

152. *Id.* (citations omitted).

153. Nancy L. Sin & Sonja Lyubomirsky, *Enhancing Well-Being and Alleviating Depressive Symptoms with Positive Psychology Interventions: A Practice-Friendly Meta-Analysis*, 65 J. CLINICAL PSYCHOL. 467, 468 (2009).

154. Trevor G. Mazzucchelli, Robert T. Kane & Clare S. Rees, *Behavioral Activation Interventions for Well-Being: A Meta-Analysis*, 5 J. POSITIVE PSYCHOL. 105, 105 (2010).

155. *Id.* at 118.

156. Lyubomirsky, Sheldon & Schkade, *supra* note 68, at 114.

157. *Id.*

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resolution factors. Detailed below are ten interventions—or factors—with demonstrable comparability as far as implications for the applied study of both happiness and conflict resolution.

A. The Importance of Feeling in Control

"A sense of being in control is critical to happiness. In virtually any domain, from relationships to jobs, when people feel that they are losing control, they become unhappy. Dozens of studies . . . consistently show that control is closely related to happiness."[158] This need for control is linked, if not identical, to a drive we have to make things happen.[159] Though we share this drive to some extent with other mammals, in humans the need is identified as a "need for competence, industry, or mastery."[160] This drive can help explain, at least in part, why the pleasure is "in the journey," as discussed earlier.[161] Quoting Shakespeare, Haidt emphasizes in this context that "[j]oy's soul lies in the doing."[162]

An example of the need for people to see themselves as able to exercise choice and effectively manage their environment can be found in the workplace. It has been shown that, in terms of volitional change, where "an individual takes proactive steps to independently alter the way he accomplishes his work, and feels he has the autonomy and support to do so, he is likely to experience meaningfulness based on a sense of having a degree of control over his fate."[163]

Placing control over process and outcomes into the hands of parties is a major part of the promise of ADR.[164] Professor Baruch Bush argues that ADR may be viewed as part of an attempt to allow people to reclaim responsibility for running their own affairs rather than having resolution imposed by authority.[165] Indeed, parties with a greater degree of participation in the mediation process have a greater sense of involvement

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158. Levit & Linder, *supra* note 25, at 359.

159. HAIDT, *supra* note 102, at 220.

160. *Id.*

161. Provine, *supra* note 113, at 326-27.

162. *Id.* at 221.

163. Brent D. Rosso, Kathryn H. Dekas & Amy Wrzesniewski, *On the Meaning of Work: A Theoretical Integration and Review*, 30 RES. ORGANIZATIONAL BEHAV. 91, 109-10 (2010).

164. Robert A. Baruch Bush, *Alternative Futures: Imagining How ADR May Affect the Court System in Coming Decades*, 15 REV. LITIG. 455, 469 (1996).

165. *Id.*

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and control and express a higher degree of satisfaction in the process.[166] Not only is greater party control thought to increase parties' satisfaction with the process, it is also argued that it increases their perceptions of fairness.[167] On the other hand, parties express lack of satisfaction "when neutrals or lawyers in a resolution process exercise a high degree of control."[168]

B. *Trust and Community*

The few studies that have examined the connection between trust and happiness have found that trusting other people tends to increase SWB.[169] The mechanism of this tendency may start with what trust provides to individuals—an "assurance that their cooperation will not be exploited."[170] In turn, "cooperative interactions" tend to promote "positive affect and attitudes."[171] Engaging in cooperative activities also "may promote positive relationships with others in working toward common goals and help individuals to build upon their social resources, which are among the strongest correlates of SWB."[172]

In organizations, trusting environments have been shown to increase positive attitudes and enhance participation and contribution, while mistrust is associated with distress and decreased vitality.[173] Trust also "cultivates both openness and generativity," provides space for the exchange of ideas, and enhances "feelings of efficacy and capability" so that individuals and groups can "engage in more proactive and risk taking behaviors."[174]

The link between happiness and trust has important implications for how we function as a community and as a democracy. Robert Putnam, of *Bowling Alone* fame, speaks of the importance to civil society of "sturdy norms of generalized reciprocity" and of encouraging "the emergence of

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166. *See* Kenneth Kressel & Dean G. Pruitt, *An Overview of Mediation Research*, *in* MEDIATION RESEARCH: THE PROCESS AND EFFECTIVENESS OF THIRD-PARTY INTERVENTION 1, 19 (Kenneth Kressel et al. eds., 1989) (finding that the vast majority of participants in domestic mediations reported that their direct participation in the mediation, including the chance to voice their opinions on the matter, made the entire experience more positive and satisfying).

167. Roselle L. Wissler, *The Effects of Mandatory Mediation: Empirical Research on the Experience of Small Claims and Common Pleas Courts*, 33 WILLAMETTE L. REV. 565, 567 (1997).

168. J. Brad Reich, *Attorney v. Client: Creating a Mechanism to Address Competing Process Interests in Lawyer-Driven Mediation*, 26 S. ILL. U. L.J. 183, 193 (2002).

169. Dolan, Peasgood & White, *supra* note 64, at 105.

170. Tov & Diener, *supra* note 125, at 156.

171. *Id.* at 158.

172. *Id.* at 159.

173. Abraham Carmeli & Gretchen M. Spreitzer, *Trust, Connectivity, and Thriving: Implications for Innovative Behaviors at Work*, 43 J. CREATIVE BEHAV. 169, 176-77 (2009).

174. *Id.* at 177.

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social trust."[175] Indeed, it has long been argued that "interpersonal trust and tolerance play an important role in the emergence and flourishing of democratic institutions."[176] Furthermore, the role of happiness in this process, through the connection to trust and related phenomena, is profound. "[H]igh levels of subjective well-being are linked with trust, tolerance and emphasis on self-expression that is conducive to the emergence and survival of democracy."[177]

The mutual causality between happiness and trust and the effect of this synergy on orientation toward cooperation and reciprocal relationships has obvious implications for conflict resolution.[178] The importance of the willingness to take risks and exchange ideas—demonstrated elements of trusting relationships—in negotiation and other conflict resolution processes is axiomatic.[179] At the same time, being happy tends to "invite trust and cooperation from others."[180] Needless to say, blind and invariable trust is not to be recommended as a negotiation strategy; context is important, and evidence shows that happy people tend to take this into account.[181]

C. Forgiveness

In his work on social intelligence, Daniel Goleman emphasizes that forgiveness does not require acceptance of an offensive deed, and certainly does not entail forgetting the behavior or reconciling with the transgressor.[182] It does, however, involve "finding a way to free oneself from the claws of obsession about the hurt."[183] There are many definitions of forgiveness and what it means to forgive; however, this is not the place to analyze the various meanings except to mention that there is some distinction between internal elements—how we react in our minds and deal with such emotions

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175. Robert D. Putnam, *Bowling Alone: America's Declining Social Capital*, 6 J. DEMOCRACY 65, 67 (1995).

176. Ronald Inglehart, Univ. of Mich., Paper Presented at Conference on Human Happiness at Notre Dame University: Democracy and Hapiness: What Causes What? (Oct. 22-24, 2006), *available at* http://www.nd.edu/~adutt/activities/documents/InglehartHappinessandDemocracy1.pdf.

177. *Id.*

178. Tov & Diener, *supra* note 125, at 160-62.

179. *Id.*

180. *Id.* at 162.

181. *Id.* at 161.

182. DANIEL GOLEMAN, SOCIAL INTELLIGENCE: THE NEW SCIENCE OF HUMAN RELATIONSHIPS 308 (2006).

183. *Id.*

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as resentment and hostility—and interpersonal elements—how we respond to the offending party.[184] The best comprehensive definition in my view is as follows:

> People, upon rationally determining that they have been unfairly treated, forgive when they wishfully abandon resentment and related responses (to which they have a right), and endeavor to respond to the wrongdoer based on the moral principle of beneficence, which may include compassion, unconditional worth, generosity, and moral love (to which the wrongdoer, by nature of the hurtful act or acts, has no right).[185]

In the study of happiness, there is good evidence that forgiveness tends to improve SWB, and there is generally a strong correlation between being a forgiving person and being a happy person.[186] Indeed, there is evidence that the "health implications of forgiveness and unforgiveness may be substantial."[187]

In the field of conflict resolution, the role of forgiveness (and the related concept of apology) has long been identified as crucial to emotional resolution—in effect, putting the emotional dimension of the conflict behind us.[188] One recurrent question is whether the process of forgiveness strengthens or undermines justice. Ironically, the appreciation of forgiveness as consistent with justice appears stronger from within the field of legal studies than from the outside.[189] "Social scientists who study forgiveness tend to consider it inimical to justice, whereas those in the legal field see no such necessary contradiction in believing that there is a place for forgiveness in the justice system, particularly in problem-solving courts."[190]

As in happiness studies, the field of conflict resolution has seen considerable research into the use of forgiveness interventions.[191] Different kinds of interventions—individual meetings, workshops, extended training,

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184. Maria Teresa Muñoz Sastre, Geneviève Vinsonneau, Félix Neto, Michelle Girard & Etienne Mullet, *Forgivingness and Satisfaction with Life*, 4 J. HAPPINESS STUD. 323, 324 (2003) (quoting ROBERT D. ENRIGHT & RICHARD P. FITZGIBBONS, HELPING CLIENTS FORGIVE: AN EMPIRICAL GUIDE FOR RESOLVING ANGER AND RESTORING HOPE (2000)).

185. *Id.* at 323.

186. *See* Charlotte van Oyen Witvliet, Thomas E. Ludwig & Kelly L.Vander Laan, *Granting Forgiveness or Harboring Grudges: Implications for Emotion, Physiology, and Health*, 12 PSYCHOL. SCI. 117 (2001).

187. *Id.* at 117.

188. BERNARD MAYER, THE DYNAMICS OF CONFLICT RESOLUTION: A PRACTITIONER'S GUIDE 104 (2000).

189. Frank D. Fincham, *Forgiveness: Integral to Close Relationships and Inimical to Justice?*, 16 VA. J. SOC. POL'Y & L. 357, 359 (2009).

190. *Id.*

191. *See, e.g.*, Thomas W. Baskin & Robert D. Enright, *Intervention Studies on Forgiveness: A Meta-Analysis*, 82 J. COUNSELING & DEV. 79 (2004) (reviewing and analyzing a number of research studies on the effectiveness of forgiveness interventions).

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writing letters of forgiveness, systematic application of emotional imagery, and restorative justice—have been shown to have varying degrees of effectiveness in studies under the banner of either positive psychology or conflict resolution.[192]

D. Gratitude

The feeling and expression of gratitude has longstanding identification with virtue in religious and philosophical traditions.[193] "Across cultures and time, experiences and expressions of gratitude have been treated as both basic and desirable aspects of human personality and social life. For example, gratitude is a highly prized human disposition in Jewish, Christian, Muslim, Buddhist, and Hindu thought."[194] Mounting evidence of the correlation between gratitude and happiness can be found in the positive psychology literature.[195] Benefits for well-being have been demonstrated through regular focus on being grateful for one's blessings and through specific gratitude interventions.[196] In some of his classes on positive psychology, Seligman has his students write letters of gratitude and arrange gratitude visits to people about whom they particularly care.[197] In addition to letters and visits, keeping gratitude journals and engaging in other exercises of gratitude have been shown to be effective.[198]

While conflict resolution has not seen the degree of systematic study of gratitude as has been developing in the study of happiness, many in our field have embraced the significance and usefulness of gratitude in application. In *Extreme Facilitation*, for example, Suzanne Ghais suggests that without gratitude we can dig in with a "scarcity mentality" that becomes "a source of hostile, turf-protecting behavior."[199] On the other hand, where "people feel there are adequate good things to go around—whether money, recognition,

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192. BEN-SHAHAR, *supra* note 16, at 121.

193. Robert A. Emmons & Michael E. McCullough, *Counting Blessings Versus Burdens: An Experimental Investigation of Gratitude and Subjective Well-Being in Daily Life*, 84 J. PERSONALITY & SOC. PSYCHOL. 377, 377 (2003).

194. *Id.*

195. *Id.* at 378.

196. *Id.* at 386.

197. BEN-SHAHAR, *supra* note 16, at 121.

198. *Id.*

199. SUZANNE GHAIS, EXTREME FACILITATION: GUIDING GROUPS THROUGH CONTROVERSY AND COMPLEXITY 240 (2005).

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power or love—they are less likely to feel the need to fight over it."[200] Therefore, "[e]ncouraging people to count their blessings, literally, is one way to help foster this attitude."[201] Ghais suggests that third parties can use questions aimed at inviting gratitude: "What's the best thing that has happened in this meeting today? What do you appreciate about the other participants in this group? In what ways will things be okay even if you don't get the specific outcome you are seeking? How can you make the best of it?"[202]

The process known as appreciative inquiry (AI) arguably involves a specialized application of gratitude in very practical situations.[203] AI grew out of a Case Western Reserve University Weatherhead School of Management consultation with the Cleveland Clinic. In the process of data-generating interviews, the Case Western team noticed that as employees were asked questions focusing on positive aspects of their work, their levels of energy and engagement increased.[204] AI has been embraced by many within the field of conflict resolution,[205] as well as within the field of positive psychology.[206]

E. Being Creative

Creative challenge and absorption in activity is closely tied to a concept that one of the founders of the positive psychology movement, Mihaly Csikszentmihalyi, has referred to as "flow."[207] The subjective state of flow involves absorption in creatively dealing with a challenge that entails intense and focused concentration, blurring of distinction between action and awareness, loss of reflective self-consciousness and sense of time, and experience of the activity as intrinsically rewarding.[208]

Creativity, the key element of flow, is closely correlated with levels of happiness. The connection between creativity and SWB may operationally

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200. *Id.*

201. *Id.*

202. *Id.* at 241.

203. Theodore Kinni, *The Art of Appreciative Inquiry*, HARV. BUS. SCH. WORKING KNOWLEDGE (Sept. 22, 2003), http://hbswk.hbs.edu/archive/3684.html.

204. *Id.*

205. *See, e.g.*, Jeffrey L. McClellan, *Marrying Positive Psychology to Mediation: Using Appreciative Inquiry and Solution-Focused Counseling to Improve the Process*, 62 DISP. RESOL. J. 29 (2007).

206. *See* BEN-SHAHAR, *supra* note 16, at 139-40.

207. Jeanne Nakamura & Mihaly Csikszentmihalyi, *The Concept of Flow*, *in* HANDBOOK OF POSITIVE PSYCHOLOGY 89, 90 (C.R. Snyder & Shane J. Lopez eds., 2002).

208. *Id.*

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arise from the reality that "the creative process can liberate the individual from their ordinary everyday cognitions and emotions, find relationship with their environment and provide new insights and understandings. The creative process may fulfill internal longing and searching."[209]

The happiness–creativity connection may find an even stronger explanation with reference to brain chemistry.[210] Neuroscientists have shown that happiness tends to trigger higher levels of activity in the prefrontal cortices of the brain.[211] In turn, activity in the prefrontal cortex "is a strong predictor of idea generation and overall liveliness of thought."[212] In other words, there appears to be a chemical connection between greater happiness and more robust creativity.

Arguably, creativity is very much at the heart of the field of conflict resolution. Scholars and practitioners in ADR have long emphasized the importance of creativity, as exemplified by the focus on options for mutual gain in *Getting to Yes*.[213] "Negotiation experts seem to agree that creative solutions are often the key to reaching value-maximizing outcomes in integrative, interest based bargaining."[214] The role of third parties in conflict resolution processes is often fundamentally about creativity. Broadly speaking, "mediators try to get people to look at a dispute from a new perspective that will open more creative ways of thinking about the issues."[215]

F. Use of Coping Strategies

Everyone faces adversity, stress, pain, and conflict at various times in life. Happiness studies have shown that our ability to cope is closely tied to other factors related to SWB. Substantial research has been conducted over recent decades on coping strategies. The interest in positive psychology has

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209. Sue Griffiths, *The Experience of Creative Activity as a Treatment Medium*, 17 J. MENTAL HEALTH 49, 50 (2008).

210. STEVEN JOHNSON, MIND WIDE OPEN: YOUR BRAIN AND THE NEUROSCIENCE OF EVERYDAY LIFE 144 (2004).

211. *Id.*

212. *Id.*

213. ROGER FISHER, WILLIAM L. URY & BRUCE PATTON, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN 11 (2nd ed. 1991).

214. Jennifer Gerarda Brown, *Creativity and Problem-Solving*, 87 MARQ. L. REV. 697, 697 (2004).

215. MAYER, *supra* note 188, at 208.

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grown, expanding the sphere of research in this area.[216] "A common theme in the coping processes related to positive emotion is their link to the individual's important values, beliefs, and goals that comprise the individual's sense of meaning."[217]

Psychologists have identified three major ways in which people tend to cope with misfortune or crisis: "active coping (taking direct action to fix the problem), reappraisal (doing the work within—getting one's own thoughts right and looking for silver linings), and avoidance coping (working to blunt one's emotional reactions by denying or avoiding the events, or by drinking, drugs, and other distractions)."[218] People who tend toward positive affect or optimistic disposition, alternate between active coping and reappraisal; whereas, those with negative affect tend to focus more on avoidance and related defense mechanisms in their efforts to cope.[219] The key to more effective coping appears to be the ability to engage in sense making. "If you can find a way to make sense of adversity and draw constructive lessons from it, you can benefit . . . ."[220]

The parallels between the styles of coping (from active to avoidant) and their relationship to happy dispositions, and the approaches to disputes identified in the field of conflict resolution (from problem-solving to avoidant) seem significant. Yet the conflict resolution literature contains very little on the effect of conflict on cognitive processes for decision making, which is closely tied to the issue of coping.[221] There is evidence that "problem solving skills and qualities such as empathy" are "directly related to individuals' long-term coping with adversity," and that these skills and qualities can be developed "through training in conflict management."[222] One of the major elements in a conflict coping process often involves leveraging one's social network ties.[223]

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216. *See, e.g.*, Susan Folkman & Judith Tedlie Moskowitz, *Coping: Pitfalls and Promise*, 55 ANN. REV. PSYCHOL. 745, 764 (2004).

217. *Id.* at 766.

218. HAIDT, *supra* note 102, at 146.

219. *Id.*

220. *Id.* at 147.

221. *See, e.g.*, Elizabeth Baker Murrill, *Mass Disaster Mediation: Innovative ADR, or a Lion's Den?*, 7 PEPP. DISP. RESOL. L.J. 401, 412 (2007) (emphasizing the lack of study of cognitive thought processes in the ADR field while noting that conflict can challenge one's perceptions of future, identity, and place in the world, though usually leaving some coping mechanisms intact).

222. David W. Johnson, Roger T. Johnson & Dean Tjosvold, *Constructive Controversy: The Value of Intellectual Opposition*, *in* THE HANDBOOK OF CONFLICT RESOLUTION: THEORY AND PRACTICE 65, 76 (Morton Deutsch & Peter T. Coleman eds., 2000).

223. *Id.*

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G. Resilience

Coping and resilience are closely related concepts, often dealt with as a single process or set of processes.[224] Indeed, resilience largely depends upon effective coping mechanisms.[225] However, resilience is at a different place on the "conceptual hierarchy."[226] Resilience has been described as a phenomenon of multiple dimensions that fundamentally is about "the process of bouncing back to a normal or above normal state despite exposure to risk or adversity" and achieving positive outcomes.[227] The distinction, then, between coping and resilience lies in the latter's focus on the adaptive process that comes after facing the problem that is first presented—resilience involves further development and growth as well as actual results.

Interest in researching resilience has increased with the growth of positive psychology. This has been attributed to the common enterprise of examining "the human capacity for positive adaptation and achievement in the face of adversity."[228] The resilience research perspective stresses "the importance of promoting competence through positive models of intervention and change."[229]

Interestingly, coping and resilience are closely tied with the chemistry and physiology of the brain. When we experience extreme stress or misfortune, there is a change in how we respond to future adverse circumstances. In particular, studies have shown that people who exercise behavioral control over aversive events show diminished behavioral and neurochemical responses to new stresses arising even months later.[230] In positive psychology, behavioral control refers to "the ability to alter the onset, termination, duration, intensity, or pattern of a stressor."[231] Thus, the research suggests that from a neuroscience perspective, the use of coping

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224. Bernhard Leipold & Werner Greve, *Resilience:* A *Conceptual Bridge Between Coping and Development*, 14 EUR. PSYCHOLOGIST 40, 40 (2009).

225. *Id.* at 41.

226. *Id.* at 40.

227. Einat S. Metzl, *The Role of Creative Thinking in Resilience After Hurricane Katrina*, 3 PSYCHOL. AESTHETICS, CREATIVITY & ARTS 112, 122 (2009).

228. Tuppett M. Yates & Ann S. Masten, *Fostering the Future: Resilience Theory and the Practice of Positive Psychology*, *in* POSITIVE PSYCHOLOGY IN PRACTICE 521, 522 (P. Alex Linley & Stephen Joseph eds., 2004).

229. *Id.*

230. *See* Steven F. Maier & Linda R. Watkins, *Role of the Medial Prefrontal Cortex in Coping and Resilience*, 1355 BRAIN RES. 52, 53 (2010).

231. *Id.*

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mechanisms and the process of resilience enhance the likelihood of successful coping and resilience in dealing with later crises. In general, the left prefrontal area of the brain "regulates a cascade of circuitry in lower brain areas that determine our recovery time from distress—that is, our resilience."[232]

In conflict resolution, Baruch Bush refers to "moral resiliency" as a key capacity in relational theory that describes how overcoming tendencies of weakness and self-absorption can produce a "virtuous circle" of conflict transformation.[233] Clearly, the ability to adapt and bounce back after involvement in intense conflict is of great significance in producing sustainable implementation of resolution to conflict. In light of growing scholarship on resilience in positive psychology, conflict resolution practitioners should be able to leverage some of the findings to enhance resolutions and make them more enduring.

H. Acts of Kindness and Generosity

Research provides strong evidence that performing acts of kindness and generosity boosts our short-term happiness and likely does the same for our long-term SWB. The mechanism of this connection is not proven, but:

> Such [kind] acts may foster a charitable perception of others and one's community, an increased sense of cooperation and interdependence, and an awareness of one's good fortune. In addition, people who commit acts of kindness may begin to view themselves as altruistic people, as well as to feel more confident, efficacious, in control, and optimistic about their ability to help. Furthermore, acts of generosity can inspire greater liking by others, along with appreciation, gratitude, and prosocial reciprocity, all of which are valuable in times of stress and need. Finally, kind behaviors may help satisfy a basic human need for relatedness, thereby contributing to increased happiness.[234]

The relationship between happiness and kindness almost certainly involves a positive feedback loop: "[T]he more we help others, the happier we become, and the happier we become, the more inclined we are to help others."[235] Ben-Shahar points to research suggesting that positive affect tends to broaden our attention such that "we are more likely to see beyond our narrow, inward-looking, and self-centered perspective and focus on others' needs and wants."[236]

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232. GOLEMAN, *supra* note 182, at 234.

233. Robert A. Baruch Bush & Sally Ganong Pope, *Changing the Quality of Conflict Interaction: The Principles and Practice of Transformative Mediation*, 3 PEPP. DISP. RESOL. L.J. 67, 79-82 (2002).

234. Lyubomirsky, Sheldon & Schkade, *supra* note 68, at 125 (citations omitted).

235. BEN-SHAHAR, *supra* note 16, at 126.

236. *Id.* at 127.

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The elements of cooperation and reciprocity linked with acts of kindness and generosity have obvious implications in conflict resolution. Kindness and benevolence are virtually synonyms. The "inborn tendency to act positively toward the beneficial . . . is the foundation on which the human potentials for cooperation . . . develop. The basic psychological orientation of cooperation implies the positive attitude that 'we are *for* each other,' 'we benefit one another' . . . ."[237] Thus, acts of kindness foster cooperation and other interactional features aligned with the resolution of conflicts.

Kindness and service to and for others has long been identified (by the Founders, among others) with the pursuit of happiness. The notion of service to others, the essence of kindness and generosity, also has wide resonance in religious traditions. For example, the phrase "service to others" is a motto of Jesuit institutions. Kindness is a major example of intentional behavior that can lead to both increased SWB and more effective conflict engagement and resolution.

I. Meaning and Growth

The greater the amount of meaning one finds in life, it would appear, the greater one's level of SWB. Meaning is the *sine qua non* of happiness. Drawing from interdisciplinary work in cognitive science, Haidt explains that humans "gain a sense of meaning when their lives cohere across the three levels of existence."[238] These three levels are physical (our bodies and brains); psychological (our minds that emerge from our bodies and brains); and sociocultural (the societies and cultures that form from the interactions of our minds).[239]

Finding meaning in life is frequently associated with seeking a sense of purpose, a built-in drive to apply our strengths to something larger than ourselves. Ben-Shahar reminds us, however, that setting goals "or even reaching them does not guarantee that we are leading a purposeful existence. To experience a sense of purpose, the goals we set for ourselves need to be intrinsically meaningful."[240] Meaning has been shown to virtually equate with one's sense of integrity—the extent to which people "appraise their

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237. Morton Deutsch, *Cooperation and Competition*, *in* THE HANDBOOK OF CONFLICT RESOLUTION: THEORY AND PRACTICE 21, 24 (Morton Deutsch & Peter T. Coleman eds., 2000).
238. HAIDT, *supra* note 102, at 227.
239. *Id.*
240. BEN-SHAHAR, *supra* note 16, at 38.

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personal projects as consistent with their values, commitments, and other important aspects of self-identity."[241]

The difficulty many professionals experience in finding meaning within their legal careers has been tied to high levels of reported unhappiness among lawyers.[242] In analyzing the search for meaning among lawyers, one scholar reminds us that humans "have a deep-rooted and fundamental desire for meaning in terms of making sense of their lives."[243] He quotes a noted behavioral economist as describing human beings as, "in effect, meaning making machines."[244]

Personal growth accompanies our search for meaning in life—our efforts to experiment, develop ourselves, and realize our potential, in line with our values and identity, are key elements of personal growth and are closely tied to our happiness. Indeed, psychologists Jack Bauer and Dan McAdams have coined the term "eudaimonic growth" to signify the development of psychosocial maturity and SWB over the course of time.[245] The perspective of happiness in this context "considers not only how good one feels about one's life (i.e., SWB) but also how complexly and integratively one thinks about one's life."[246] In this sense, the search for meaning, tied to happiness, highlights the importance of self-reflection and is consistent with the emphasis on "mindfulness" that some professionals in ADR, most notably Len Riskin, are placing in connection with effective conflict engagement.[247]

Because human happiness is tied up in the search for meaning, it may be appropriate to identify that as a goal in a conflict setting. To the extent people frequently are "willing to sacrifice other goals, such as wealth and time, for meaning,"[248] this is a factor that conflict resolution professionals can look to when performing roles as third party neutrals or conflict allies. That is, they can help parties identify and trade certain, less important interests for ones aligned with meaning—and, at the same time, increase the

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241. Ian McGregor & Brian R. Little, *Personal Projects, Happiness, and Meaning: On Doing Well and Being Yourself*, 74 J. PERSONALITY & SOC. PSYCHOL. 494, 496 (1998).

242. *See, e.g.*, Huang & Swedloff, *supra* note 139, at 340.

243. *Id.*

244. *Id.* (Citation omitted).

245. Jack J. Bauer & Dan P. McAdams, *Eudaimonic Growth: Narrative Growth Goals Predict Increases in Ego Development and Subjective Well-Being 3 Years Later*, 46 DEVELOPMENTAL PSYCHOL. 761, 761 (2010).

246. *Id.*

247. *See, e.g.*, Leonard L. Riskin, *Mindfulness: Foundational Training for Dispute Resolution*, 54 J. LEGAL EDUC. 79, 81-81 (2004).

248. Huang & Swedloff, *supra* note 139, at 340 (quoting behavioral economist, George Loewenstein).

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likelihood for integrative opportunity given that meaning is highly individual and variable.

On the other hand, there are situations in which "pursuing a conflict is a great source of meaning for people. In that case the resolution of the conflict entails a significant loss of meaning. . . . [T]his loss may be devastating and may cause them to hold onto a conflict regardless of how well the proposed solution addresses their interests."[249] Thus, conflict resolution professionals need to understand the importance of meaning from multiple perspectives.

J. Desire for Attention/Mattering

"Impact is rewarding. Mattering makes us happy."[250] These words by Daniel Gilbert, psychology professor at Harvard University, penetrate to the heart of one of the most important factors in our levels of SWB. "Mattering" is a phenomenon about which there has been considerable research in the field of psychology. It refers to our perception that "we make a difference in the lives of other people and that we are significant to the world around us."[251] Broadly speaking, mattering can be societal or interpersonal. "Societal mattering involves the perception that an individual's ideas and actions can make a difference in his or her social environment. Interpersonal mattering refers to how an individual matters or counts to specific significant others."[252]

John Locke emphasized that every human being,

> however hopeless his pretensions may appear, to all but himself, has some project by which he hopes to rise to reputation; some art by which he imagines that the notice of the world will be attracted; some quality, good or bad, which discriminates him from the common herd of mortals, and by which others may be persuaded to love, or compelled to fear him.[253]

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249. MAYER, *supra* note 188, at 19.

250. GILBERT, *supra* note 49, at 23.

251. Megan K. France & Sara J. Finney, *What Matters in the Measurement of Mattering?: A Construct Validity Study*, 42 MEASUREMENT & EVALUATION COUNSELING & DEV. 104, 104 (2009).

252. Melikşah Demir, Ayça Özen, Aysun Doğan, Nicholas A. Bilyk & Fanita A. Tyrell, *I Matter to My Friend, Therefore I am Happy: Friendship, Mattering, and Happiness*, J. HAPPINESS STUD. 983, 986-87 (2011).

253. Douglas W. Kmiec, *The Human Nature of Freedom and Identity—We Hold More than Random Thoughts*, 29 HARV. J.L. & PUB. POL'Y 33, 46-47 (2005) (quoting John Locke, *No. 164*, *in* RAMBLER 282, 282 (1751)).

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David Hume and Adam Smith attribute much of what allows people to cooperate with one another to "the desire to be pleasing to others, or a sense of belonging to society, or the desire for other people's 'approval.'"[254] Legal scholar Douglas Kmiec cites Jesuit thinking for the notion that this desire for attention or approval, noted by Locke and others, may be traced "to the Creator, who, it was thought, ingeniously implanted it within our natures as a substitute for reason or virtue."[255]

Whether explained by religion or science, clearly "attention addresses a fundamental human desire. . . . While many of us crave huge amounts of recognition, the lure is not merely fame or a place in history. It's also praise from the people around you for what you do."[256] There is substantial support in literature for the notion that when we perceive ourselves as mattering to others—a crucial part of which is the degree of recognition or attention we receive for what we do—our SWB tends to be elevated.[257] In contrast, a lack of what is sometimes termed "attention mattering" may lead to "some of the most detrimental effects on our self-esteem and self-concept."[258]

The importance of attention has been noted in the context of what has been called the "attention economy" or "attentionalistic power."[259] Attention can be a major factor in the economy because it is both a compelling human desire and because it is inherently scarce.[260] The bundle of forms in which attention is realized (including recognition, obedience, praising, critical appraisal, etc.) and avenues for capturing attention (including inventions, expressions, creations, performances, etc.) contribute to a "rich and complex economy."[261] The significance of attention in the socioeconomic sphere reached a crescendo with the advent of the Internet. Indeed, attention itself has been said to be "the only hard currency in the virtual world."[262] When businesses become virtual networks, "it is reputation, or capital of trust, that is the network's most important asset;

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254. NICHOLAS P. WHITE, A BRIEF HISTORY OF HAPPINESS, 106-07 (2006).

255. Kmiec, *supra* note 253, at 47.

256. Michael H. Goldhaber, *Attention Shoppers!*, WIRED (Dec. 1997), *available at* http://www.wired.com/wired/archive/5.12/es_attention.html.

257. Demir, Özen, Doğan, Bilyk &Tyrell, *supra* note 252, at 986-87.

258. Andrea Dixon Rayle, *Mattering to Others: Implications for the Counseling Relationship*, 84 J. COUNSELING & DEV. 483, 484 (2006).

259. *See* Goldhaber, *supra* note 256; ALEXANDER BARD & JAN SÖDERQVIST, NETOCRACY: THE NEW POWER ELITE AND LIFE AFTER CAPITALISM 195-213 (2002).

260. Goldhaber, *supra* note 256.

261. *Id.*

262. BARD & SÖDERQVIST, *supra* note 259, at 199.

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with the help of reputation, attention is attracted to the networks, and there is a great shortage of attention, rather than money, on the net."[263]

Reputational attention may be framed at the level of the individual person in terms of human dignity. "The conception of reputation as dignity has been enormously influential both inside and outside the courtroom. We understand intuitively that the opinions of others play a role in defining us."[264] Indeed, attention "does well for our self-esteem and sense of satisfaction" and therefore can often be a surrogate for money as we are so motivated by these factors.[265]

The concept of attention mattering may have enormous and varied implications for the field of conflict resolution, though there appears to be little research from this perspective. It is widely supposed that adjudication (and often, it is argued, even ADR processes such as mediation) provides parties with what they most desire—their "day in court."

> [D]isputants believe having a chance to describe their version of the story to an impartial adjudicator is the most important factor determining whether they perceive a particular process of dispute resolution as "fair." In fact, this "day in court" factor outweighs every other variable tested, including the actual outcome of the dispute. If these studies are correct, to the extent common law is perceived as fair, it generates greater happiness among disputants than would a system that did not give parties the opportunity to air their views.[266]

Perhaps this "day in court" phenomenon is closely related to the desire for attention—not to downplay the desire for vindication, which itself may be a related concept. Research on this potential link is justified in that, if confirmed, it would guide ADR practitioners in creating surrogates for providing such attention without the actual courtroom experience.

Conflict itself frequently may be, at least in part, a manifestation of lack of attention. Because of our compelling desire for attention, "feeling irrelevant to others may lead some individuals to do almost anything in order to matter. Individuals who are ignored and perceive that they do not matter may 'act out' in socially undesirable ways to gain others' attention—

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263. *Id.*

264. David S. Ardia, *Reputation in a Networked World: Revisiting the Social Foundations of Defamation Law*, 45 HARV. C.R.-C.L. L. REV. 261, 286 (2010).

265. Arjo Klamer & Hendrik P. van Dalen, *Attention and the Art of Scientific Publishing*, 9 J. ECON. METHODOLOGY 289, 298 (2002) (noting that attention may be what motivates scientists most in their research and "must compensate for the pecuniary income forgone").

266. Frank Partnoy, *Synthetic Common Law*, 53 U. KAN. L. REV. 281, 296-97 (2005).

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whether the attention is positive or negative is of no concern . . . ."[267] Understanding that people may seek negative attention, rather than none at all, may help conflict resolution professionals gain a different perspective on some disputes and can also assist with developing solutions by taking into consideration the need for mattering.

Reputation, closely tied to attention, is a major factor in the world of conflict resolution. The factor of reciprocity in human relationships has major lessons for modern-day dispute resolution and reputation is the key driver. "Reputation has long been a strong substitute for judicial enforcement in close-knit communities, enabling greater use of privately ordered conflict resolution in those environments: the effects of reputation induce disputants to abide by the results of private dispute resolution and the prospect of future dealings encourages cooperative behavior."[268] Indeed, inasmuch as "a personal reputation for collaboration" can become "a valuable resource,"[269] understanding more about the role of attention in reputation may provide more of that resource to the community of conflict resolution professionals.

As attention increasingly becomes the "hard currency" of the virtual world, we can expect conflict to arise over that very currency, creating more need for conflict resolution professionals.[270] To the extent that attention is inherently scarce, when one person gets more attention, someone else is denied.[271] This makes attention subject to distributive bargaining effects when it is at issue. However, there are potential integrative opportunities with respect to attention. As Swedish philosophers and internet commentators Alexander Bard and Jan Soderqvist point out:

> [I]t is possible both to have your cake and to eat it. You keep the information yourself, and its value, at the same time as sharing it with a select few . . . value is accrued in connection with the transaction: communication creates attentional value for the person offering the information, and that value remains so long as the information in question is of interest.[272]

The importance of attention mattering has potential implications for strengthening techniques in conflict resolution. Attention mattering is

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267. Rayle, *supra* note 258, at 484.

268. Arthur Pearlstein, *Meet the New Lawyer*, 10 CARDOZO J. CONFLICT RESOL. 1, 9 (2008) (reviewing JULIE MACFARLANE, THE NEW LAWYER: HOW SETTLEMENT IS TRANSFORMING THE PRACTICE OF LAW (2008)).

269. JULIE MACFARLANE, THE NEW LAWYER: HOW SETTLEMENT IS TRANSFORMING THE PRACTICE OF LAW 91 (2008).

270. BEN-SHAHAR, *supra* note 16, at 53.

271. Goldhaber, *supra* note 256.

272. BARD & SÖDERQVIST, *supra* note 259, at 209.

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arguably closely related to appreciation, a concept Roger Fisher emphasizes in exploring the emotional component of negotiation and conflict resolution:

> If unappreciated we feel worse. If properly appreciated, we feel better. . . . We become more open to listening and more motivated to cooperate. . . . Appreciation takes on an added value as both a core concern and a strategic action since honestly expressing appreciation is often the best way for one person to meet many of the core concerns of another. Thus, *appreciate others* can be taken as a shorthand, all-purpose guide for enlisting helpful emotions in those with whom you negotiate.[273]

Finally, study of attention can inform conflict resolution—demonstrating attention mattering by third party neutrals or by parties to conflict creates a powerful dynamic much as it can in counseling.[274] Dixon Rayle suggests counselors can greatly benefit from taking account of attention mattering.[275] For example, by exploring with clients how much they matter in the very process; by the "use of empathic eye contact and nonverbal gestures;" and "[t]hrough intentional demonstrations of attention, importance, and reliance."[276] Mediators and other conflict resolution professionals can similarly apply lessons from the study of attention mattering. Many of these lessons, of course, are already being applied (e.g., active listening, appreciative inquiry), albeit on different bases. Understanding some of these approaches from the standpoint of attention as an important element in happiness may strengthen existing techniques or provide ideas for new ones.

K. Feedback Loops and Happiness/Conflict Factors

The ten factors examined above each have their own potential and usefulness for strengthening happiness as well as conflict resolution. To a substantial degree, however, each of the factors has possible relationships to each and every one of the other factors; in other words, each factor has the potential for involvement in a self-reinforcing loop with one or more other factors. Through close study and improvisation, conflict resolution professionals should be able to select from these and other factors and design and adapt interventions that capitalize on the enormous potential arising from these feedback loops.

273. ROGER FISHER & DANIEL SHAPIRO, BEYOND REASON: USING EMOTIONS AS YOU NEGOTIATE 26-27 (2005).

274. Rayle, *supra* note 258, at 486.

275. *Id.*

276. *Id.*

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A simple example can illustrate the point. Creativity, coping, and resilience are clearly related and we can imagine how they might be involved in a self-strengthening loop. Creativity is closely connected with the adaptation after adversity that is the essence of resilience.[277] Several "characteristics associated with creativity are likely contributors to processes of resilience."[278] In turn, resilience has been shown to generate positive emotions.[279] As discussed earlier, positive emotions enhance coping strategies with increased focus on active and reappraisal approaches; positive emotions also enhance creativity.[280] Better coping strategies help with becoming resilient. Thus, the directional arrows point all ways and are largely mediated through the degree to which all of these factors are related to happiness. The figure below illustrates this feedback loop with just the three factors. Keep in mind that the number and complexity of combinations of the ten factors is potentially enormous, for each factor has the potential for involvement in a self-reinforcing loop with one or more other factors. It should be possible to start with by focusing on the factors that seem most readily applicable and leveraging the influence of those factors on strengthening the effect of other factors. Because there are so many complex links among the factors, even enhancing one or two can, in theory, have substantial impact.
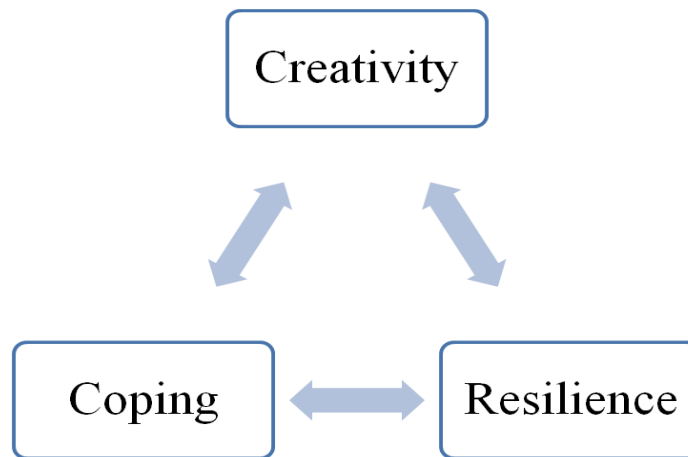
Feedback Loop among 3 Happiness/Conflict Factors

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277. Metzl, *supra* note 227, at 114.
278. *Id.*
279. Cohn, Fredrickson, Brown, Mikels & Conway, *supra* note 88, at 362.
280. *See supra* Part III.F.

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This loop illustrates how each example factor can influence two other factors in all directions. For example, creativity can lead to better coping in a challenging conflict situation. Better coping can lead to resilience. Resilience can lead to more creativity. However, better coping can also lead to more creativity which can in turn lead to more resilience. And so on.

V. IS HAPPINESS THE ULTIMATE INTEREST?

> When parents are asked what they hope for their children, the typical answer is . . . above all else that they will be happy in whatever path they choose for themselves. . . . [They] seem to agree with Aristotle, in that they understand that while every other good is a means to an end, happiness is *the* good in itself . . . .[281]

> Ushta![282]

> Indeed, man wishes to be happy even when he so lives as to make happiness impossible.[283]

However we define it, happiness is clearly an end in itself and arguably is highest on the hierarchy of interests. In a field that places so much emphasis on identifying underlying interests of parties—conflict resolution—it is appropriate to ask whether happiness is at the foundation of every interest. Harvard University Professor Tal Ben-Shahar describes happiness as the "ultimate currency."[284] Indeed, speaking in the context of conflict resolution, he suggests that whether or not "we decide to forgive and reconcile or to condemn and disengage, the key is to use happiness as the standard for evaluation. To do so, we need to ask ourselves the simple question with the complex answer: which path will lead to the highest profits in the ultimate currency?"[285] Ben-Shahar's suggestion is very compelling.

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281. Mihaly Csikszentmihalyi, *The Future of Happiness*, *in* THE NEXT FIFTY YEARS: SCIENCE IN THE FIRST HALF OF THE TWENTY-FIRST CENTURY 93, 98 (John Brockman ed., 2002).

282. Ushta is a word used in the teachings of Zoroaster (Zarathushtra) and is often used as a greeting by Zoroastrians in the sense of "may you radiate happiness to others through your happiness" or "may you enlighten others through the happiness you achieve through enlightenment." *See, e.g.*, ALI A. JAFAREY, AN OUTLINE OF THE GOOD RELIGION OF ZARATHUSHTRA 8 (1999).

283. SAINT AUGUSTINE, THE CITY OF GOD 426 (1993).

284. BEN-SHAHAR, *supra* note 16, at 53.

285. *Id.* at 163.

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A.   Applying Happiness Lessons to the Value of a Dispute Settlement

In putting a value on the settlement of a dispute, parties suffer from a major handicap common to human beings in general—we are very poor at accurately predicting what current choice will serve to make us happier in the future. In other words, when trying to resolve disputes, a focus on a settlement that will make parties happier in the long run is problematic. Not only do people often "fail to predict accurately which option in the available choice set will generate the best experience," they sometimes simply "fail to base their choice on their prediction."[286]

When people try to predict the consequences of their settlement options, they are subject to one or more of several different systematic biases.[287] Among these biases are: the tendency to overestimate the intensity and duration "of an affective event," also known as *impact bias*;[288] the tendency to be strongly influenced by one's current state of arousal or strong emotion, known as the *projection bias*;[289] the tendency to predict future experiences based on memories of similar kinds of past experiences, overlooking the fallibility of our memories and the disproportionate influence of peak and end experience, known as *memory bias*;[290] and the tendency for people to incorrectly theorize about what will make them happy by overgeneralizing to situations where the theory would not apply, known as *belief bias*.[291]

Much of the phenomenon of "misprediction" can be explained by the adaptation principle—people adapt to circumstances and "over time good things and bad things usually lose their power to strongly affect us."[292] Adaptation is, to some degree, attributable to the way neurons operate: "Nerve cells respond vigorously to new stimuli, but gradually they

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286.   Christopher K. Hsee & Reid Hastie, *Decision and Experience: Why Don't We Choose What Makes Ws Happy?*, 10 TRENDS COGNITIVE SCI. 31, 31 (2006).

287.   *Id.*

288.   *Id.* Examples given by the authors include junior faculty members overestimating their happiness with being awarded tenure or their misery with being rejected for tenure, or football fans overestimating their joy in the days following their teams' victory. *Id.*

289.   *Id.* at 32.   The authors point to the phenomenon of people making a prediction, immediately after a big dinner, about how much they will enjoy a nice breakfast the next morning— they naturally will underestimate the pleasure of breakfast at that point; on the other hand, hungry shoppers will tend to purchase too much food at the grocery. *Id.*

290.   *Id.* at 32-33.

291.   *Id.* at 33.   One example offered by the authors is the potentially valid theory that having more choices is better, but failing to realize that in some situations more choices can make us less happy, such as where winning a free trip to Paris (no choice) or to Hawaii (no choice) may make us happier than winning the choice of a free trip to Paris or Hawaii (in which case we tend to emphasize the relative downside of each choice—e.g., Paris does not have nice beaches). *Id.*

292.   Ed Diener & Shigehiro Oishi, *The Nonobvious Social Psychology of Happiness*, 16 PSYCHOL. INQUIRY 162, 163 (2005).

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'habituate,' firing less to stimuli that they have become used to. It is *change* that contains vital information, not steady states. Human beings, however, take adaptation to cognitive extremes."[293] Nevertheless, adaptation and other factors are more often overlooked than not. It is "difficult to consider what it is we may not be considering—and this is one of the reasons why we so often mispredict our emotional responses to future events."[294] Thus, when we contemplate the value of a particular settlement offer, we are not only likely to fail to predict its effect on our happiness, but we are also unlikely to appreciate that there may be a problem with how we are making our prediction.

The problem of inaccurate predicting is compounded by the fact that people often fail to act according to their predictions of what will lead to maximum happiness. There are several different directions that they may pursue instead: they may "choose the option that has the greatest immediate appeal (impulsivity);" go with the approach "that fits their choice rules (rule-based choice);" go with the option "that is easy to justify (lay rationalism);" or go with the option that "yields the greatest token reward such as money (medium maximization)."[295]

Misprediction, especially when it arises from adaptation, has great implications for determining the settlement value of a case—it can even affect the assessment of damages. "If ordinary people make mistakes in forecasting the effects of adverse events in their own lives, there is every reason to think that juries (and judges) will make similar mistakes in assessing the effects of those events on plaintiffs, especially but not only when they are projecting future losses."[296]

Two economists who have looked at issues of happiness ask: "Imagine courts have to decide about compensation for losses suffered in a car accident. For the same physical harm, shall they award lower damages to people with a strong capacity to adapt and higher damages to others?"[297] The best answer seems to be no, of course not; however, this differentiation can happen naturally anyway in that more adaptive people may not seek a recovery or may more readily settle for less. Indeed, raising awareness of

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293. HAIDT, *supra* note 102, at 86.

294. GILBERT, *supra* note 49, at 103.

295. Hsee & Hastie, *supra* note 286, at 33-35.

296. Cass R. Sunstein, *Illusory Losses*, 37 J. LEGAL STUD. S157, S168-69 (2008).

297. Bruno S. Frey & Alois Stutzer, *Should National Happiness Be Maximized?*, *in* HAPPINESS, ECONOMICS AND POLITICS: TOWARDS A MULTI-DISCIPLINARY APPROACH 301, 311 (Amitava Krishna Dutt & Benjamin Radcliff eds., 2009).

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adaptation and poor prediction generally could be a technique available to third-party neutrals as they work on bringing parties to resolution.

On the other hand, it has been argued that the process of adaptation may serve as a justification for delay in civil trials.[298] In other words, rather than raise awareness of adaptation, we can allow—or require—the parties to experience it as they travel the long road to trial.

> [D]uring the time that it takes her case to reach trial, the aggrieved plaintiff is likely to adapt hedonically to her injury . . . . Consequently, the amount of money that the plaintiff believes will fairly compensate her for her injury—will "make her whole" in the typical parlance of tort damages—will decrease. The sum that the plaintiff is willing to accept in settlement will decline accordingly, and the chances of settlement will increase.[299]

The phenomenon of hedonic adaptation is a poor argument for prolonging adversarial litigation in the wait for trial; indeed, a deeper analysis leads to the conclusion that the adversarial process itself undercuts the natural mechanism of adaptation. For one thing, it is important to understand that adaptation to a problem—or lack thereof—is closely related to the degree of attention we pay. "Nothing in life matters quite as much as you think it does while you are thinking about it."[300] Part of our surprise in failing to predict our future happiness—at least the hedonic aspect—after suffering a loss or injury lies in the fact that when put in the position of making our forecast, we are required to focus our attention on the loss or injury; in the long term, we normally do not pay such close attention.[301] "Focusing illusion" is a name that has been given to this phenomenon: "[P]eople focus on a particular loss without seeing that after the loss has occurred, they are not likely to focus (much) on that loss."[302]

The focusing illusion means that people are more likely to return to a higher level—or at least their own set point level—of happiness once they stop paying so much attention to the loss or injury at hand. Thus, the adversarial process may have a negative impact on happiness—in addition to the stress typically attendant to litigation—by interfering with a party's ability to move on in life.[303] "A plaintiff may be reminded of her injury at a number of points during the litigation process, such as while drafting the

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298. John Bronsteen, Christopher Buccafusco & Jonathan S. Masur, *Hedonic Adaptation and the Settlement of Civil Lawsuits*, 108 COLUM. L. REV. 1516, 1518 (2008).

299. *Id.* at 1516.

300. Daniel Kahneman & Richard H. Thaler, *Anomalies: Utility Maximization and Experienced Utility*, 20 J. ECON. PERSP., no. 1, 2006 at 229 (*quoted in* Sunstein, *supra* note 296, at S170).

301. Sunstein, *supra* note 296, at S170-71.

302. *Id.* at S171.

303. Rick Swedloff, *Accounting for Happiness in Civil Settlements*, 108 COLUM. L. REV. SIDEBAR 39, 44 (2008).

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complaint, while attending motions to dismiss or for summary judgment, and during discovery."[304]

Moreover, lawyers themselves play a major role in focusing parties on their loss or injury and thus in reducing their adaptability. Many people may disapprove, but when attorneys help set clients' expectations and sense of entitlement, the result can be "an endowment effect . . . that time will not abate through adaptation."[305] In the case of a plaintiff, the attorney's very role is often perceived, in part, to remind her "about the severity of an injury and her attendant pain, suffering, and loss of enjoyment of life."[306] Furthermore, because attorneys themselves are made relatively unhappy by their constant participation in adversarial processes,[307] it is conceivable that lawyer–client interactions by their very nature will dampen the client's feeling of subjective well-being in the context of litigation.

Helping parties appreciate the significance and nuances of happiness is closely related to efforts to help them focus on interests rather than positions in the field of conflict resolution. No matter how deep we delve into the importance of meaningfulness and reflection as an element of happiness, we need to "address the people who still equate preferences with interests and for whom the pursuit of happiness entails satisfying those preferences to the utmost."[308] In the context of civil disputes, it has been suggested that the answer lies in reframing conflict through an emphasis on "happiness perception."[309] The potential value of this reframing takes the traditional interest-based approach to the next level, and suggests that a more appropriate focus is on how the parties can enhance or restore the elements of their own happiness, including meaning, pleasure, and personal strengths. We can capitalize on considerations of happiness in helping the parties to develop and leverage this major asset—what I call "happiness capital"—for the more effective engagement and resolution of conflict.

To some extent, focusing on happiness perception may be seen as overlapping with the trend toward the use of therapeutic jurisprudence and

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304. *Id.*

305. *Id.* at 45.

306. *Id.* Just to be clear, I do not agree that this is properly the attorney's role. Instead, I see the lawyer having the role, if any in this context, of helping clients think through these issues for themselves with help, where appropriate, from their loved ones or from other kinds of professionals.

307. *See supra* text accompanying notes 136-41.

308. Miriam Galston, *Taking Aristotle Seriously: Republican-Oriented Legal Theory and the Moral Foundation of Deliberative Democracy*, 82 CALIF. L. REV. 329, 368-69 (1994).

309. BEN-SHAHAR, *supra* note 16, at 159-60.

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preventive law (TJPL). The promotion of psychological well-being "is clearly the primary goal" of therapeutic jurisprudence.[310] Indeed, therapeutic jurisprudence is arguably "an academic term for 'happiness jurisprudence.'"[311] More generally, TJPL emphasizes examining solutions that benefit our SWB and are emotionally satisfying. Andrea Schneider is among many who find that the approach of TJPL is "consistent with many of the goals of ADR."[312] Moreover, she argues that the TJPL approach "adds a needed layer to the current analysis of ADR choices by explicitly adding emotional and psychological concerns to that of the traditional legal and financial analysis."[313]

B. *Implications for Organizational Conflict*

People spend a growing amount of time and energy in the workplace or related organizational setting, and it is the locus or source of an incalculably high proportion of our interpersonal relationships. It would appear self-evident that organizations whose members or employees enjoy a higher degree of SWB are likely to experience greater levels of cooperation and fewer instances of destructive conflict.[314] There is certainly support for this in the literature.[315] At the group level, positive affect has been shown to lower "intragroup conflict, while improving cooperation, task performance, and individual well-being."[316] This impact is strengthened when there is similarity in positive affect among members of the group,[317] and naturally moods and emotions may tend to converge to a degree among people who work together.

The mechanisms for development of positive group affective similarity include "emotional contagion" (unconscious responses to expressions, emotions, body language, etc.); "emotional comparison" (consciously comparing feelings and checking for social cues); and "empathy" (vicariously experiencing the moods and emotions of others).[318] The flip

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310. Christopher Slobogin, *Therapeutic Jurisprudence: Five Dilemmas to Ponder*, 1 PSYCHOL. PUB. POL'Y & L. 193, 200 (1995).

311. *Id.* at 203.

312. Andrea Kupfer Schneider, *Building a Pedagogy of Problem-Solving: Learning to Choose Among ADR Processes*, 5 HARV. NEGOT. L. REV. 113, 122 (2000).

313. *Id.* at 124.

314. Lyubomirsky, King & Diener, *supra* note 24, at 828.

315. *See, e.g.*, *id.*

316. Walter & Bruch, *supra* note 149, at 240.

317. *Id.*

318. *Id.* at 241-42.

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side is also true: negative group affect can develop in parallel ways.[319] So much so, in fact, that one specialist has advocated for the explicit enforcement of the "no asshole rule,"[320] a concept and turn of phrase that seems to have taken off. Basically, the idea is that organizations should not tolerate those who demean, disparage, or humiliate others—even high-performing stars within an organization should be forced to reform or lose their jobs.[321] In the absence of such rules, demoralization and negative affect can quickly ensue, leading to lower cooperation, increased conflict, and reduced productivity.[322]

There are at least two strong implications for organizational conflict resolution and dispute systems design. First, it is important for members of an organization to participate in key features of its design. Whether in a community or a workplace, "individuals can learn how to devise well-tailored rules and norms of cooperation when they participate in the design of the institutions affecting them."[323] Part of what is needed to bring about this participation may be promoting perceptions by members or employees of an organization's virtue—awareness of virtuous organizational behavior encourages active participation in the "construction of healthy and virtuous organizations."[324] Of course, this leads to the kinds of positive feedback looping discussed earlier: "[W]hen organizational members flourish, organizations also flourish, and spirals of mutual reinforcement between such entities may emerge."[325]

A second, and not unrelated, implication is the importance of an organization demonstrating that it pays attention to its members or employees—that they matter. The degree to which an organization is perceived as valuing its members' contributions and caring about their well-being "has been shown to enhance employees' job satisfaction and positive job-related feelings."[326] At the same time, an organization can seek to

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319.   *Id.* at 243.

320.   ROBERT I. SUTTON, THE NO ASSHOLE RULE: BUILDING A CIVILIZED WORKPLACE AND SURVIVING ONE THAT ISN'T 64 (2007).

321.   *Id.* at 34.

322.   *Id.* at 29.

323.   STEVEN R. QUARTZ & TERRENCE J. SEJNOWSKI, LIARS, LOVERS, AND HEROES: WHAT THE NEW BRAIN SCIENCE REVEALS ABOUT HOW WE BECOME WHO WE ARE 271 (2002).

324.   Arménio Rego, Neuza Ribeiro & Miguel P. Cunha, *Perceptions of Organizational Virtuousness and Happiness as Predictors of Organizational Citizenship Behaviors*, 93 J. BUS. ETHICS 215, 231 (2010).

325.   *Id.*

326.   Walter & Bruch, *supra* note 149, at 253.

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strengthen network ties among its members.[327] We have already examined the significance of social network ties generally in fostering happiness and effective conflict resolution.[328] It is therefore not surprising that strong and expansive network ties are linked to enhanced affective similarities and improved feelings among those who make up the organization.[329] On the other hand, traditional "scientific" management approaches (e.g., involving standardization, measurement, monitoring, and control) "serve to isolate the individual from others in the workplace and often to minimize his or her unique contribution to the job."[330] Using positive psychology to create more robust network ties offers a more productive path. At the level of the organization or group, positive psychology "is about the civic virtues and the institutions that move individuals toward better citizenship: responsibility, nurturance, altruism, civility, moderation, tolerance, and work ethic."[331]

C. Is Unhappiness, Like Conflict, Not Always a Bad Thing?

In the field of conflict resolution, we are often reminded that conflict is not always, per se, a negative. As early as the 1920s, Mary Parker Follett pointed out that conflict is here to stay:

> [A]s we cannot avoid it, we should . . . use it. Instead of condemning it, we should set it to work for us. Why not? . . . We talk of the friction of mind on mind as a good thing. So in business, too, we have to know when to try to eliminate friction and when to try to capitalize it, when to see what work we can make it do.[332]

More recently, Bernie Mayer has reminded us that "people in conflict are not always ready to cooperate nor should they be. Just as cooperation is productive under the right circumstances, so is competition."[333]

Have we become too focused on happiness so as to overlook opportunities to capitalize on unhappiness, and to miss circumstances under which an absence of pleasure can be more productive or even more just? Recently there has emerged what *Newsweek* refers to as a "backlash against

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327. *Id.*

328. *See supra* Part III.F.

329. *Id.*

330. Joanne H. Gavin & Richard O. Mason, *The Virtuous Organization: The Value of Happiness in the Workplace*, 33 ORGANIZATIONAL DYNAMICS 379, 388 (2004).

331. Seligman & Csikszentmihalyi, *supra* note 2, at 5.

332. MARY PARKER FOLLETT, PROPHET OF MANAGEMENT: A CELEBRATION OF WRITINGS FROM THE 1920S, 67-68 (Pauline Graham ed., 1995).

333. BERNARD S. MAYER, BEYOND NEUTRALITY: CONFRONTING THE CRISIS IN CONFLICT RESOLUTION 121 (2004).

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the happiness rat race."[334] In the article, the author reminds us that "negative emotions evolved for a reason. Fear tips us off to the presence of danger, for instance. Sadness, too, seems to be part of our biological inheritance: apes, dogs and elephants all display something that looks like sadness, perhaps because it signals to others a need for help."[335] Daniel Gilbert famously put it in a pithier way: "You may think that it would be good to feel happy at all times, but we have a word for animals that never feel distress, anxiety, fear, and pain: That word is *dinner*."[336] Surely if everyone was happy all the time, the pursuit of happiness would not be the significant, civilization-affirming motivator it has become.

Eric Wilson, an English professor at Wake Forest University, after experimenting with various happiness techniques, rebelled and went so far as to write a widely popular book entitled *Against Happiness*.[337] In it, Wilson asks: "What are we to make of this American obsession with happiness, an obsession that could well lead to a sudden extinction of the creative impulse . . . ?"[338] Wilson suggests that this overemphasis can lead to bland existence and "mechanistic behavior[s]."[339] He argues that it might even be dangerous "to desire only happiness in a world undoubtedly tragic is to become inauthentic, to settle for unrealistic abstractions that ignore concrete situations."[340]

It is valid to question whether happiness is always a good thing, just as we question whether conflict is always bad. Certainly it is worth pausing to reframe what has happened along with our increasing focus on happiness, as suggested by Peter Whybrow, professor of psychiatry and bio-behavioral science at UCLA: "Self-fulfillment, self-gain, self-expression, self-realization, and even self-help became the order of the day, with the goal of achieving a self that was satisfied for its own sake."[341]

It is fair, and even important, to remind ourselves of the limitations of the "happiness perception," to guard against happiness as a selfish directive,

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334. Sharon Begley, *Happiness: Enough Already*, NEWSWEEK (Feb. 2, 2008, 8:10 AM), *available at* http://www.thedailybeast.com/newsweek/2008/02/02/happiness-enough-already.html.

335. *Id.*

336. Daniel Gilbert, *The Science of Happiness*, EDGE (May 22, 2006), http://www.edge.org/documents/archive/edge182.html.

337. *See generally* ERIC G. WILSON, AGAINST HAPPINESS: IN PRAISE OF MELANCHOLY (2008).

338. *Id.* at 5.

339. *Id.* at 6.

340. *Id.*

341. PETER C. WHYBROW, AMERICAN MANIA: WHEN MORE IS NOT ENOUGH 254 (2005).

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and to avoid becoming complacent in the face of injustice. We cannot allow the pursuit of happiness to be a code expression for greed, or for domination by the elite, or even for conformity. Some of the critique of the happiness literature, however, is one-sided and fails to keep perspective on the concepts in play. While the definitions vary, as discussed earlier, few serious scholars are suggesting a search for pure, selfish pleasure or an obsessive mania. Instead, most in the field of positive psychology and its progeny appear to take stock of the importance of balance and meaning in our lives and in the definitions of happiness. With a questioning approach, and both transparency and lucidity in our application of terminology, helping others seek happiness need not be more of a hazard than helping them more productively engage in, and when possible, resolve conflict.

VI. CONCLUSION

There is a strong argument to be made that the essence of conflict is in parties seeking to win back the pursuit of happiness they perceive as having been interrupted by the actions of others. Indeed, it is worth asking whether we ever value a particular preference in working toward resolution of a conflict other than for its ultimate potential to enhance our happiness, or at least to remove hurdles from our pursuit of happiness. The notion of happiness as the "ultimate currency"[342] has potentially enormous implications for the training, techniques, and processes of conflict resolution professionals as they plumb for underlying interests in any conflict.

Among the limitations of this article is its very focus on the "positive" in the growing discipline of positive psychology—there is an underlying assumption in our field of conflict resolution that most disputants are, more or less, mentally healthy; that being the case, resolution may be promoted by fostering the pursuit of happiness, a natural desire for all healthy people. Yet it is possible, and indeed likely, that a disproportionate number of those involved in more unproductive conflicts are subject to one or more relatively intractable mental health problems. Those with extremely conflict-prone orientations, such as in sociopathic, borderline, and narcissistic personality disorders, are especially likely to end up in unproductive conflict situations; happiness per se, as examined herein, does not tend to be a priority for such people. They fail to see their problems as coming from within, even in part, because they attribute their problems entirely to external sources.

> [T]he difficulties of those with personality disorders continue and often become quite distressing. So they look for something or someone else to blame. If they can get that

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342. BEN-SHAHAR, *supra* note 16, at 53.

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> system or person to change . . . they believe that they will feel better. But this doesn't work either, leaving them feeling even more distressed and helpless.[343]

There are other mental health problems that often exacerbate conflict, such as addictions, bi-polar syndromes, psychosis, and related issues. Attempting interventions aimed at increasing happiness, or focusing on happiness as an underlying interest, may be ineffective or even counterproductive when dealing with personality disorders and similar mental health conditions. Often these people are aiming toward keeping a conflict going—the conflict itself is a distorted kind of happiness and may keep them at the center of attention, exactly where they want to be. While this article advocates an agenda of increased exploration of the lessons from happiness research in conflict resolution, an increased focus on the importance of personality disorders in conflict should also be a priority.

Hopefully, this article has demonstrated that it is critical in conflict resolution studies and practice to utilize the vast amounts of data and research that have been gathered in the study of happiness. Approaches in positive psychology, with the heavy use of scientific method and expensive equipment, have been enabled, in large part, by vast resources that have been brought to bear. The field of conflict resolution suffers from a lack of resources at this level, but surely we can leverage the research on happiness given the enormous similarities and overlap in agenda.

One of our priorities in the field of conflict resolution should be applying successful happiness interventions in improving existing conflict interventions and in developing new ones. Some interventions already overlap as we have seen, such as in the case of appreciative inquiry. A number of happiness interventions and principles should be more systematically tested in conflict settings. The concept of "attention mattering," for example, seems to have great potential for use in conflict resolution, certainly out of all proportion to the scarce amount of research and scholarly literature thus far devoted to the idea.

If there is a simple and easily agreed-upon agenda for applying lessons of happiness to conflict resolution, it is in the area of education. There is a strong human tendency to "default to zero-sum thinking," and we may even be "wired" to be envious of others.[344] Happiness studies can help justify

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343. BILL EDDY, HIGH CONFLICT PEOPLE IN LEGAL DISPUTES 25 (2d prtg. 2006).

344. Michael E. DeBow & Dwight R. Lee, *Happiness and Public Policy: A Partial Dissent (Or, Why a Department of Homeland Happiness Would Be a Bad Idea)*, 22 J.L. & POL. 283, 299-300 (2006).

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great new efforts in education at all levels to demonstrate the importance and efficacy of non-zero-sum thinking—it is crucial to "open[] our eyes to the fact that other individuals' successes do in fact improve our own lives."[345] In critical respects, this resonates with the virtuous pursuit of happiness that was so much a founding principle of America.

The burgeoning science of happiness has taken society and many academic disciplines by storm in recent years. At a minimum an appreciation, and more importantly a careful examination, of the implications of the science of happiness for the field of conflict resolution is long overdue. There is strong reason to believe that individual and organizational accumulation of "happiness capital" can have a major, positive impact on the more effective engagement and resolution of conflict. Although much research remains to be done, the robust link between our pursuit of happiness and our resolution of conflict can scarcely be denied.

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345. *Id.* at 300.

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