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IDENTITY-RELATED INFORMATION ASYMMETRY: Exploring Responses to the “Faceless Other”

Connor Bildfell

INTRODUCTION

Throughout human history, the classical model of human interaction has been the face-to-face transaction between identified parties. Individual transactions, within small, tightly knit tribes, evolved into more complex trading relationships with neighbouring groups, and this gradually developed into a rudimentary market economy. Throughout this evolution, seldom were negotiating parties “in the dark” about the identity of the other party. With time, however, this model has been eroded.¹ Today, in our globalized and fast-paced market economy, human interaction has increasingly shifted towards greater anonymity.² The advent of the Internet and new communication technology has only accelerated the phenomenon of pervasive anonymity, and as a result, we have entered a new paradigm of interaction in which identity has taken on a new meaning and significance.³ This new paradigm raises pressing challenges for conflict resolution theorists and practitioners.⁴ Before outlining the central issue motivating this paper—namely, responses to what I call “identity-related information asymmetry”

¹ Anonymous [Craig R. Scott], *To Reveal or Not to Reveal: A Theoretical Model of Anonymous Communication*, 8 COMM. THEORY 381, 386 (1998).

² Carole Lucock & Katie Black, *Anonymity and the Law in Canada*, in LESSONS FROM THE IDENTITY TRAIL: ANONYMITY, PRIVACY AND IDENTITY IN A NETWORKED SOCIETY 465, 465-66 (Ian Kerr, Valerie M. Steeves & Carole Lucock eds., 2009).

³ Lucock & Black, *supra* note 2, at 465.

⁴ *Id.*

(IRIA) in conflicts,⁵ which constitutes a distinct permutation of the well-known concept of information asymmetry—we must take two preliminary steps.

The first step is to explore the relationship between anonymity and identity. Anonymity (from the Greek word, *anōnumos*, meaning “nameless”) can be understood as “not being named or identified or as not having identity connected with certain pieces of information.”⁶ This common-sense understanding of anonymity, however, is insufficient and imprecise; we need to break the concept down further. Burkell identifies three aspects of anonymity: (1) identity protection, (2) visual anonymity, and (3) action anonymity.⁷ “Identity protection” refers to the withholding of name or other unique identifiers.⁸ “Visual anonymity” refers to being unseen by communication partners, especially having one’s face hidden (such as when wearing a mask or when communicating through email).⁹ “Action anonymity” refers to situations where the content (and even existence) of one’s actions are unknown to others.¹⁰ While the first sense accords with traditional understandings of anonymity as being unidentified, the latter two senses are more about being *unknown*, either visually or by one’s actions.¹¹ This more nuanced understanding of anonymity is essential to understanding the relationship between anonymity and conflict.

The second step is to recognize that anonymity can arise asymmetrically. Consider a simple two-party negotiation, and assume that identity-related information about a given party is either “known” or “unknown” in an absolute sense—a rather extreme assumption. Using “Party A” as the subject and “Party B” as the counterparty, there are four possible scenarios with

⁵ I use “conflicts” to encompass disputes, negotiations, disagreements, and similar complex human interactions in which some resolution is sought.

⁶ Lucock & Black, *supra* note 2, at 465. See also Scott, *supra* note 1, at 387 (Scott sees anonymity as “the degree to which a communicator perceives the message source [as] unknown and unspecified.”). Scott’s definition of anonymity is robust, as it acknowledges that anonymity is a matter of degree and perception.

⁷ Jacquelyn Burkell, *Anonymity in Behavioural Research: Not Being Unnamed, but Being Unknown*, 3 U.O.L.T.J. 189, 189 (2006).

⁸ Burkell, *supra* note 7, at 189.

⁹ *Id.* The effect of visual anonymity is profound. See ALBERT MEHRABIAN, *SILENT MESSAGES: IMPLICIT COMMUNICATION OF EMOTIONS AND ATTITUDES* (1971) (concluding that communications dealing with feelings and attitudes, facial expression and body language account for 55 per cent of the message).

¹⁰ Burkell, *supra* note 7, at 189.

¹¹ *Id.*

respect to identity-related information: (1) Party A's identity is unknown, and Party B's is unknown; (2) Party A's identity is known, and Party B's is unknown; (3) Party A's identity is unknown, and Party B's is known, or (4) Party A's identity is known, and Party B's is known.

This paper examines the complexities inherent in scenario (2), though I will also explore the "grey areas" that result when we remove the assumption of either absolute presence or absence of identity-related information. The defining feature is this identity related information asymmetry (IRIA). More precisely, the information asymmetry is in favour of the counterparty, meaning that *my* identity is known to both of us (and third parties, if present), but *your* identity remains a mystery; it is one-sided anonymity.

This paper will explore the following core question: What are the various ways in which a known subject may respond to the "faceless other," and how do we navigate and explain that choice? I will proceed as follows: Parts I and II synthesize the literature on identity and anonymity in conflicts. Part I focuses on understanding the behaviour of the "faceless other", and Part II examines theories as to how the subject responds to the "faceless other." In Part III, I argue that, when faced with IRIA, we typically adopt one of five common (though often ill-advised) responses: (1) "shutting down" (i.e., consciously or unconsciously avoiding the conflict), (2) "firing up" (i.e., becoming increasingly aggressive or adversarial), (3) "sweeping aside" (i.e., sweeping identity off the table and focusing exclusively on logic and rational argument), (4) "digging around" (i.e., searching for more information), or (5) "projecting upon" (i.e., filling in the gaps and making source attributions, often haphazardly). These are by no means exhaustive of the potential responses, but they broadly represent five common reactions to the IRIA dilemma. Which response is preferable will depend on the context of the conflict. Part IV introduces a sixth approach: *embracing* asymmetry. I will argue that embracing asymmetry is a far less common, but often more fruitful, response. Part V adds a final piece to the puzzle: *culture*. Part VI provides a conclusion.

I. UNDERSTANDING THE "FACELESS OTHER"

Our identity not only sits at the core of our self-concept,¹² but also it informs (1) how others perceive and act toward us and (2) how we perceive

¹² See BERNARD S. MAYER, THE CONFLICT PARADOX: SEVEN DILEMMAS AT THE CORE OF DISPUTES 238 (2015) (asserting that "[i]dentity refers to our sense of ourselves. It is defined by the personality

and act toward others. Identity is hence a guiding force influencing human relations. It is therefore unsurprising that, when identity is cloaked, humans behave in a curious manner. The first step is to understand why and how anonymity impacts the behaviour of the anonymous party.

Burkell, in summarizing the literature, posits that empirical research supports an impressive list of behavioural consequences of anonymity: “anonymity has been demonstrated to: promote free speech; increase disclosure, including self-disclosure; promote equal contribution to discourse; reduce helping behaviour; increase aggression; increase socially undesirable behaviour, such as cheating; and reduce the feeling of personal responsibility.”¹³ Although a full discussion of these behaviours is beyond the scope of this paper, some exploration is necessary to understand how the identified subject can understand and respond to IRIA scenarios.

The academic literature provides a fascinating account of the “deindividuation” phenomenon,¹⁴ which conveys the idea that when one perceives oneself as unidentifiable (say, in a bustling crowd of protestors), the sense of anonymity “lowers one’s social inhibitions in comparison to when one is operating as an individual and known to a community.”¹⁵ The resulting effect is that anonymity “lowers one’s sense of responsibility and accountability to others” and “lowers the importance of both the other’s concerns and the other’s view of oneself.”¹⁶ When people act anonymously, they “tend to be less courteous, are more easily angered, and do not demonstrate the social inhibitions which facilitate smoother relationships and communication.”¹⁷ Thus, perceiving ourselves as unknown and unknowable leads us to behave in ways that we would not otherwise.¹⁸ To illustrate, deindividuation is “what happens when we get behind the wheel of a car and

traits that we exhibit, the affiliations that we embrace, our sense of continuity, and our beliefs about what sets us apart from others.”).

¹³ Burkell, *supra* note 7, at 192.

¹⁴ See Leon Festinger, Albert Pepitone & Theodore Newcomb, *Some Consequences of Deindividuation in a Group*, 47 J. ABN. SOC. PSY. 382 (1952).

¹⁵ Benedict Sheehy & Norbert Palanovics, *E-Negotiations: Rapport Building, Anonymity and Attribution*, 17 A.D.R.J. 1, 5 (2006). See also PATRICIA M. WALLACE, *THE PSYCHOLOGY OF THE INTERNET* 124–25 (Cambridge University Press ed., New ed. 1999) (“[W]hen people believe their actions cannot be attributed to them personally, they tend to become less inhibited by social conventions and restraints.”).

¹⁶ Sheehy & Palanovics, *supra* note 15, at 5.

¹⁷ *Id.*

¹⁸ See Burkell, *supra* note 7, at 191 (summarizing Plato’s conclusion in *The Republic* that “under the guise of anonymity ... anyone would act in ways that are unjust.” (emphasis in original)).

feel moved to scream abuse at the woman in front who is slow in turning right”, when we sling nasty words at the referee from the seats of a packed stadium, and when we feel liberated to post negative comments on anonymous (or pseudonymous) blogs and forums.¹⁹

But why is it that when our identity disappears our inhibitions do the same? Some scholars argue that this inhibition-lowering effect occurs because anonymity protects the individual from the social disapproval or rejection that would likely follow from non-adherence to norms.²⁰ The underlying assumption is that humans seek social acceptance and generally avoid “sticks,” whether legal, social, or otherwise. Since anonymity removes certain negative consequences resulting from our actions, we are more inclined to act with lowered inhibitions.²¹

To further illustrate the “stick-avoiding” tendency of individuals, anonymity may also be used as a device for skirting legal obligations.²² As Froomkin asserts, “[n]ot just libel and disclosure of trade secrets and other valuable intellectual property, but conspiracy, electronic hate-mail and hate-speech, electronic stalking and ‘spamming,’ general nastiness, all become lower risk activities if conducted via anonymous communications” because the risk of detection is lowered.²³ As we shall see, however, perceived anonymity may be misapprehended. Seeing anonymity as an impenetrable shield is a fallacy; the aforementioned activities are “low-risk” rather than “no-risk” because there is always the potential to infer the identity of the author from clues intrinsic in the message or to find ways of piercing the veil of anonymity.²⁴

¹⁹ Tim Adams, *How the Internet Created an Age of Rage*, THE GUARDIAN (July 24, 2011), <http://www.theguardian.com/technology/2011/jul/24/internet-anonymity-trolling-tim-adams>.

²⁰ See, e.g., Jenna Chang, *The Role of Anonymity in Deindividuated Behaviour: A Comparison of Deindividuation Theory and the Social Identity Model of Deindividuation Effects (SIDE)*, 6 THE PULSE 1, 2 (2008).

²¹ See Gary T. Marx, *Identity and Anonymity: Some Conceptual Distinctions and Issues for Research*, web.mit.edu/gtmarx/www/identity.html (last visited Dec. 15, 2015) (“[I]ndividuals generally want to avoid negative sanctions and want others to think well of them [and therefore] normative behaviour is more likely when people are identifiable.”); see also Andrew Terjesen, *Anonymity and Trust: The Ethical Challenges of E-Business Transactions*, in ETHICAL ISSUES IN E-BUSINESS: MODELS AND FRAMEWORKS 40, 49 (Daniel E. Palmer ed., 2010) (“Being able to hide one’s actions makes it easier for people to do things that would shame them if their action were public knowledge.” [citations omitted]).

²² See, e.g., A. Michael Froomkin, *Legal Issues in Anonymity and Pseudonymity*, 15 INFORMATION SOCIETY 113, 114-15 (1999).

²³ Froomkin, *supra* note 22, at 114.

²⁴ See Froomkin, *supra* note 22, at 114.

Although it may appear that savageness, nastiness, and barbarism are the inevitable behavioural consequences of anonymity, there are good reasons for why an individual whose identity is cloaked may nonetheless act morally and in accordance with social norms. For example, the individual may be disinclined to upset his or her self-concept and would prefer to act with integrity, regardless of whether he or she is *seen* to act with integrity. This invokes the deeper sense of identity: regardless of my anonymity, I stay true to my identity—my sense of who I am, my place in the world, and my purpose in life—by acting with integrity.²⁵ Of course, it is a fallacy to think that an identity is a fixed, static concept.²⁶ Nonetheless, the concept of “staying true to oneself” is not incompatible with a dynamic, evolving self.

Marx argues that while saints and others with strongly internalized moral codes may respect the rules regardless of whether their identity is attached to their actions, the rest of us are less virtuous.²⁷ But anonymity is not incompatible with benevolence. Anonymous philanthropy belies the notion that, when one chooses to remain anonymous, we necessarily behave in anti-social ways.

For better or worse, it cannot be denied that anonymity has a profound effect on how we make decisions, and conflict-related decisions are no exception. Having discussed one side of the IRIA relationship in conflicts, I will now turn to the other side: how we respond to the “faceless other.”

II. UNDERSTANDING HOW WE RESPOND TO THE “FACELESS OTHER”

(A) Anonymity and Identity as a Matter of Degree

Not all anonymity is created equal. The first step in understanding how we cope with a paucity of identity-related information is to recognize that it is more accurate to speak of identity and anonymity in terms of *degree*, rather than in an absolute sense. This captures the multidimensional and dynamic nature of anonymity. This is best captured by Marx’s theory of “identity knowledge,” which comprises seven aspects of anonymity, with true

²⁵ See MAYER, *supra* note 12, at 24

²⁶ See MAYER, *supra* note 12, at 24; Marx, *supra* note 21 (“[I]dentities are becoming less unitary, homogeneous, fixed and enduring, as the modernist idea of being able to choose who we are continues to expand”).

²⁷ See Marx, *supra* note 21.

anonymity being a polarity at one end of a broad spectrum of identifiability.²⁸ The seven aspects of identity knowledge include name, locatability, identity-linked pseudonyms, unbreakable pseudonymity, pattern knowledge, social categorization, and symbols of eligibility/non-eligibility.²⁹

Having established that anonymity and identifiability is a matter of degree, I submit that all conflicts are, in a sense, characterized by partial anonymity. Does one ever fully “know” a counterparty’s identity? Conversely, are we ever entirely devoid of identity-related information about a particular counterparty? We can examine pseudonymity as a useful example of how anonymity is best conceived of as a spectrum. Pseudonymity (from the Greek *pseudōnymos*, meaning “false name”) implies that we do not know the *true* identity of the counterparty; yet that does not mean we are entirely “in the dark” with respect to our identity knowledge of the other party.³⁰ For example, if Dr. Seuss’s true identity was never revealed, would we say we knew nothing about his interests, needs, and values? Would we not know what to expect when we picked up a book that says “Dr. Seuss” on the cover?

(B) How the Identity Knowledge Spectrum Influences our Treatment of the Counterparty

Where we fall on the identity knowledge spectrum influences how we treat the counterparty. Nadler and Shestowsky observe that “the extent to which the other person is identifiable influences more than merely our judgments—it also affects our behavior toward other people.”³¹ The authors support their assertion by reference to a study demonstrating that the response rate to e-mail requests to participate in a survey increases if the sender’s photograph is included in the e-mail, “thereby making the person more identifiable.”³² Remarkably, by simply offering more information about one’s identity, the relatively mysterious party can encourage greater

²⁸ See Marx, *supra* note 21; see also Burkell, *supra* note 7, at 194.

²⁹ Marx, *supra* note 21.

³⁰ See Burkell, *supra* note 7, at 199 (noting that pseudonymity “serve[s] to associate acts (e.g., statements in a communication context) with each other and with a single actor, even if that actor cannot be explicitly identified.”).

³¹ Janice Nadler & Donna Shestowsky, *Negotiation, Information Technology, and the Problem of the Faceless Other*, in *NEGOTIATION THEORY AND RESEARCH* 145, 151 (Leigh L. Thompson ed., 2006).

³² *Id.* at 151.

cooperation from the other side.³³ It is for this reason that philosopher David Hume argued that human sentiments and social needs favour a certain degree of identification, as it is more difficult to do ill unto others when we (1) know who they are and (2) face the possibility of confronting them.³⁴ Yet, how do we react when this disclosure is not forthcoming?

The answer, it would appear, is that we become cold. In a 2003 study by Small and Loewenstein,³⁵ half the participants received a card labelled “keep,” which entitled them to keep the \$10 initially allocated to them. The other half received a card labelled “lose,” which obligated them to return the \$10 initially allocated to them. The “keep” participants were then asked to decide how much, if any, of the \$10 would be allocated to an anonymous participant in the “lose” group. The key finding was that the “keep” participants whose partners were assigned *before* being asked to make an allocation decision (e.g., “to participant number 9”) allocated more money on average than those whose partners were assigned *after* making the allocation decision, despite the fact that all partners remained anonymous both during and after the experiment. Based on this and other studies, Nadler and Shestowsky conclude that “people are more willing to help a target who is more identifiable than one who is more abstract, even when the act of identification conveys no information whatsoever about the characteristics of the target.”³⁶ Moreover, “when we are asked to make predictions about the abilities or preferences of others, our predictions are strongly influenced by the extent to which we perceive these others as abstract and unknown on the one hand, or specific and real on the other hand.”³⁷

The implication in the IRIA conflict scenario is that the subject will tend to be more generous toward, and perhaps more inclined to cooperate with, a counterparty that is seen as identifiable, even in a weak sense.³⁸ As the

³³ *Id.* at 152 (citing a study by Griffith and Northcraft finding that “[a]nonymous negotiators reached less integrative agreements than identified ones, suggesting that identifiability of the negotiation counterpart encourages cooperative behavior.”).

³⁴ See Marx, *supra* note 21.

³⁵ Deborah A. Small & George Loewenstein, *Helping a Victim or Helping the Victim: Altruism and Identifiability*, 26 THE J. OF RISK AND UNCERTAINTY 5, 8-9 (2003); see also Nadler & Shestowsky, *supra* note 31, at 151 (drawing the summary of this study from this article).

³⁶ Nadler & Shestowsky, *supra* note 31, at 152.

³⁷ *Id.* at 151 [citations omitted] (noting that Nadler and Shestowsky add “although we tend to rate ourselves more favorably than others on ambiguous traits like dependability, intelligence, and considerateness . . . these ratings are likely to depend on the abstractness of the others in question.” [citations omitted]).

³⁸ See Nadler & Shestowsky, *supra* note 31, at 152.

counterparty becomes increasingly abstract, the opposite effect occurs.³⁹ E-mail communications are a clear example.⁴⁰ “The anonymous character of e-mail takes its greatest toll when no independent basis for social identification exists—in this context, negotiators are left imagining a vague and abstract opponent whom they have never seen or met, making it more likely that negotiators will succumb to perceiving the counterpart as unlike themselves and unworthy of investing effort.”⁴¹

A related and critically important insight is that the less abstract the party about whom we make judgments, the more likely we are to judge that party as more similar to ourselves.⁴² This recognizes the importance of *community*. When we do not see anything in the counterparty that could constitute a basis for their being “one of us” or sharing similar values and interests, our willingness to cooperate decreases. Equally, “conceptualizing our negotiation counterpart as a specific, identifiable individual person reduces the perceived difference between the counterpart and ourselves . . . and under some circumstances could incline us to be more generous . . . toward that person.”⁴³

As Nadler and Shestowsky observe, “When we negotiate with a friend, we prefer that our counterpart’s outcome be equal to our own; but when we negotiate with a stranger, we prefer to take more of the surplus for ourselves Negotiation with a stranger, therefore, poses a challenge for achieving outcomes that are efficient and fair to both sides.”⁴⁴ Where IRIA arises in scenarios perceived as one-off conflicts, moreover, the challenge to achieving integrative outcomes may be compounded.⁴⁵ When we conceive of a conflict as a stand-alone event, we may be more inclined to act aggressively toward the counterparty.⁴⁶

Despite the intuitively attractive notion that anonymity of the counterparty will always provoke a less favourable response from the subject, such categorical statements are rarely accurate. Scott posits that the recipient

³⁹ *Id.*

⁴⁰ See generally Nadler & Shestowsky, *supra* note 31, at 152.

⁴¹ *Id.* at 154.

⁴² *Id.* at 151.

⁴³ *Id.* at 152 [citations omitted].

⁴⁴ Nadler & Shestowsky, *supra* note 31, at 158. The authors add that “an existing relationship increases negotiators’ concern about the outcome of the other party.” *Id.* at 158 [citations omitted]. See also MAYER, *supra* note 12, at 28 (summarizing the Thomas-Kilmann model of conflict styles, which sees cooperativeness as “our commitment to addressing others’ needs” and assertiveness as “our focus on meeting our own needs.”).

⁴⁵ Nadler & Shestowsky, *supra* note 31, at 158; MAYER, *supra* note 12, at 28.

⁴⁶ See MAYER, *supra* note 12, at 34.

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of an anonymous message faces two options: acceptance or counter-effort.⁴⁷ Scott appears to see this as an “either/or” choice.⁴⁸ I question this dichotomization. Is it the case that one must either accept or reject anonymity in conflicts? The more plausible argument is that the subject is constantly doing both—he or she is shifting back and forth along the spectrum of acceptance and counter-effort, embracing and contesting particular aspects or dimensions of anonymity.

Scott further argues that the recipient is “more likely to accept an anonymous source when there is minimal perceived threat to them, when the message is agreeable or of minimal importance, when source creditability is unimportant, or when the channel used is either routine or would make source attributions difficult.”⁴⁹ The likelihood of counter-efforts rises where opposing conditions prevail.

Having examined the behavioural implications of anonymity, and having laid a foundation for understanding how the party on the information-deficient end of the IRIA relationship might respond to the relatively mysterious counterparty, we are now in a position to examine five common responses to IRIA in conflicts.

III. EXPLORATION OF FIVE COMMON RESPONSES TO IRIA IN CONFLICTS

(A) “Shutting Down”

“Shutting down” refers to a response whereby we avoid the conflict, either consciously or unconsciously.⁵⁰ The sheer uncertainty and instability that accompanies the counterparty’s anonymity may be paralyzing. It creates a “turbulent” and “tenuously structured” negotiating environment.⁵¹ Nonetheless, there may be very good reason for simply brushing off the conflict and declining to engage with the counterparty altogether, if that is an option. To illustrate this point, we can turn to an examination of a veritable “hotbed” of conflict: the Internet.⁵²

⁴⁷ Scott, *supra* note 1, at 395.

⁴⁸ *Id.*

⁴⁹ Scott, *supra* note 1, at 396.

⁵⁰ See Jayne Seminare Docherty, *The Unstated Models in Our Minds*, in *THE NEGOTIATOR’S FIELDBOOK* 7, 11 (Andrea Kupfer Schneider & Christopher Honeyman eds. 2006).

⁵¹ Docherty, *supra* note 50, at 11.

⁵² Much scholarly attention has been directed toward anonymity in the context of the Internet. This is the case in part because the Internet is “often seen as an anarchic medium.” Froomkin, *supra* note 22, 334

Technological advances have provided fertile grounds for conflicts characterized by IRIA.⁵³ This highlights the connection between the communication medium and the conflict itself. In particular,

[n]egotiators' expectations about the communication medium can be self-fulfilling. Anticipating a counterpart whose face we cannot see and voice we cannot hear can set up expectations about the counterpart's cooperativeness and the ultimate success of the negotiation. In particular, people who are preparing to negotiate face-to-face expect to trust the other party more than people who are preparing to negotiate using e-mail.⁵⁴

As Adams writes, "Digital media allow almost unlimited opportunity for willful deindividuation. They almost require it. The implications of . . . the ubiquity of anonymity . . . are only beginning to be felt."⁵⁵ Recently, owners of websites, personal blogs, and online businesses have faced a conundrum,⁵⁶ what do we do about anonymous commenters who post nothing but vitriol and hatred?⁵⁷ Do we ignore them? Do we fight back? Do we force commenters to either reveal themselves or find somewhere else to park their inflammatory comments?

at 123. However, the analysis need not be so restricted. Conflicts involving IRIA arise in the material world with no less frequency. A sharp comment tossed from someone in a crowd towards a speaker, an anonymous letter from an upset citizen to a well-known politician, an undisclosed principal bargaining with a homeowner through an agent, these are all examples of conflicts and negotiations involving IRIA. In each example, the subject has little identity-related information, whereas the counterparty has far more. *Id.*

⁵³ Nadler & Shestowsky, *supra* note 31, at 154.

⁵⁴ *Id.* [citations omitted].

⁵⁵ Adams, *supra* note 19.

⁵⁶ See Lorrie Faith Cranor & Paul Resnick, *Protocols for Automated Negotiations with Buyer Anonymity and Seller Reputations*, 2 *NETNOMICS* 1, 6 (2000) ("First, [the buyer's anonymity] prevents the seller from taking advantage of any historic information it may have on the buyer. . . . Second, it prevents the seller from distinguishing buyers who are initiating new negotiations from those restarting a recent negotiation. . . . As a result, buyers can come and go at will, returning repeatedly to probe the seller's strategy, without weakening their position in future negotiations.").

⁵⁷ Eric M. Rovie, *The Anonymity of the Internet: A Problem for E-Commerce and a 'Modified' Hobbesian Solution*, in *ETHICAL ISSUES IN E-BUSINESS: MODELS AND FRAMEWORKS* 28, 30 (Daniel E. Palmer ed., 2010) ("According to some social psychological research, hostile remarks may increase by as much as six times if a participant believes she is commenting anonymously." [citations omitted]). A recent article in *The New Yorker* highlights a study carried out by Arthur Santana that compared comments posted on newspaper websites permitting anonymous comments versus newspaper websites that did not permit anonymous comments. Santana found that 53% of anonymous commenters were uncivil, compared to 29% among the non-anonymous commenters. This suggests that anonymity encourages incivility. See Maria Konnikova, *The Psychology of Online Comments*, *THE NEW YORKER* (Oct. 23, 2013), <http://www.newyorker.com/tech/elements/the-psychology-of-online-comments>.

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In my view, there is no “right answer” to this question. The proper response will depend on the context. Yet some have taken a firm stance that the proper response is to “shut down.” Arthur Schopenhauer—one of the great philosophers of the 19th century—argued that we should not even permit the publishing of anonymously written materials.⁵⁸ As Schopenhauer wrote, “[a]nonymity is the refuge for all literary and journalistic rascality” and that anonymous authorship “is a practice which must be completely stopped. Every article, even in a newspaper, should be accompanied by the name of its author.”⁵⁹ For Schopenhauer, this was a matter of honour and accountability: “when a man publicly proclaims through the far-sounding trumpet of the newspaper, he should be answerable for it, at any rate with his honour, if he has any; and if he has none, let his name neutralise the effect of his words.”⁶⁰ Schopenhauer asserted that this would “put an end to two-thirds of the newspaper lies” and “restrain the audacity of many a poisonous tongue.”⁶¹

Schopenhauer’s argument—that we should only give a voice to those who are willing to attach their name to their statements—has merit, particularly in the conflict resolution context.⁶² If the counterparty is not willing to disclose vital information about its identity and if I have the power to decide whether I will engage with them or not, I may conclude that my best alternative is to deny the counterparty a seat at the table. After all, to do otherwise might leave me at a strategic disadvantage due to the resulting information asymmetry.

Imagine the following: you maintain a personal blog, which features a sampling of recent poetry you have written and which is publicly accessible on the Internet. An anonymous user has left a comment criticizing your work and calling you “a disgrace to poets everywhere.” On the one hand, you might engage in this conflict, redirect the discussion towards more constructive dialogue, and eventually glean useful suggestions as to how your poetry might be improved. On the other hand, your best move may be to recognize that the exchange is structured such that meaningful, constructive dialogue may be unlikely and, more importantly, the opinion of someone who throws stones but lacks the courage to offer his or her name is not worth listening to.⁶³ Shutting down is precisely what *Popular Science* did when it announced that

⁵⁸ Adams, *supra* note 19.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ As Adams writes, “who should be afraid to stand up and put their name to their words? And why should anyone listen if they don’t?” Adams, *supra* note 19.

it would no longer accept comments on new articles.⁶⁴ The magazine referenced “vexing commenters” and asserted that a “fractious minority wields enough power to skew a reader’s perception of a story”⁶⁵ The rationale behind the decision to shut down was “comments sections tend[ing] to be a grotesque reflection of the media culture surrounding them, the cynical work of undermining bedrock scientific doctrine is now being done beneath our own stories, within a website devoted to championing science.”⁶⁶ In short, anonymous comments “lead to a culture of aggression and mockery that hinders substantive discourse.”⁶⁷

A related, but distinct, form of avoidance is the reassessing of the weight we accord to views and arguments offered by those who remain anonymous. When one side is anonymous, we may largely discount or discredit the arguments of the anonymous counterparty, for better or for worse.⁶⁸ After all, if they were truly committed to their position, why would they take refuge in anonymity? This assessment, while appealing, may not be accurate in all instances. The counterparty may have good reason for wishing to remain anonymous, which I will discuss in Part III(E) below.

In any conflict resolution, trust is essential. Even where identity-related information is symmetrical, establishing and maintaining trust can feel like walking on eggshells; where identity-related information is asymmetrical, it feels more like walking through a minefield. In fact, it can be argued that the anonymity problem is “essentially a problem of trust.”⁶⁹ We may choose to avoid the conflict entirely due to a firm belief that trust cannot possibly be established. The absence of both trust and empathy could make the subject reluctant to share information; even if the decision to engage is made, the failure to establish trust and to exchange information openly about relative preferences and priorities may weaken the parties’ ability and resolve to reach integrative outcomes.⁷⁰ After all, “[a]nonymity makes us all strangers, and

⁶⁴ This controversial decision was highlighted in *The New Yorker*. See Konnikova, *supra* note 57.

⁶⁵ Suzanne LaBarre, *Why We’re Shutting Off Our Comments*, POPULAR SCI. (Sept. 24, 2013), <http://www.popsci.com/science/article/2013-09/why-were-shutting-our-comments>.

⁶⁶ LaBarre, *supra* note 65.

⁶⁷ Konnikova, *supra* note 57.

⁶⁸ See Konnikova, *supra* note **Error! Bookmark not defined.** (citing a 2012 study finding that anonymous comments are less likely than non-anonymous ones to change a reader’s opinion on an ethical issue).

⁶⁹ Rovie, *supra* note 57, at 34.

⁷⁰ See Nadler & Shestowsky, *supra* note 31, at 157.

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Identity-Related Information Asymmetry

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strangers are hard to trust.”⁷¹ Conversely, we can think of situations where, surprisingly, we place unbounded trust in complete strangers. Consider that each time we step onto an airplane we place our lives in the hands of a pilot about whom we have almost no identifying information. Nonetheless, avoidance feels safer when trust is absent.

The decision to avoid conflict is often driven by a lack of optimism.⁷² Mayer discusses the optimism–realism paradox.⁷³ He defines optimism as “the belief or expectation that things are going to get better and that the vast majority of people are basically well intentioned.”⁷⁴ This sits at odds with the assumption, discussed in Part III(E) below, that the unidentified counterparty is a rotten scoundrel who cannot be trusted. Typically, our assumptions about human nature fall somewhere between these polarities.⁷⁵ Nonetheless, it may be preferable to err on the side of caution—as opposed to the more vulnerable, trusting position—in conflicts where the risk is great, but the potential benefit is minimal. This is supported by Scott’s observations about the conditions influencing the likelihood of anonymity’s acceptance.⁷⁶ For example, it would be hard to imagine a bank willing to make loans to anonymous borrowers. Here, IRIA and its risk implications are too great.⁷⁷ “Risk frames” are therefore important determinants of one’s response to IRIA scenarios.⁷⁸

On the other hand, perhaps we should not so readily assume that anonymity is incompatible with an open, honest exchange. In fact, anonymity is thought to encourage a party’s willingness to disclose socially undesirable or stigmatized behaviours.⁷⁹ I submit that negotiators should take a more contextual approach, looking to the aspects of and circumstances surrounding the anonymity, in an attempt to understand whether shutting down is truly the optimal response. In my view, the knee-jerk reaction to shut down many of us experience when faced with IRIA is misguided; often, when we take a

⁷¹ Froomkin, *supra* note 22, at 114.

⁷² MAYER, *supra* note 12, at 64

⁷³ *Id.*

⁷⁴ *Id.*; see also Mary E. Clark, *Skinner vs the Prophets: Human Nature & Our Concepts of Justice*, 8 CONTEMP. JUST. REV. 163, 164 (2005) (describing the assumption of the founders of all major religions that “all people are fundamentally well-meaning and should be equally valued in society.”).

⁷⁵ MAYER, *supra* note 12, at 64

⁷⁶ See Scott, *supra* note 1, at 395.

⁷⁷ *Id.*

⁷⁸ See Marcia Caton Campbell & Jayne Seminare Docherty, *What’s in a Frame?*, in THE NEGOTIATOR’S FIELDBOOK, 37, 43 (Andrea Kupfer Schneider & Christopher Honeyman eds. 2006) (“Risk frames influence how parties perceive potential gains or losses in negotiations.”).

⁷⁹ See Burkell, *supra* note 7, at 196.

deeper look at the specific aspects of anonymity at play and the ways in which resulting issues can be addressed, we find that there are workable solutions. Moreover, there is the danger that we will use IRIA as an excuse for avoiding conflicts that deserve attention. It is all too easy to brush off a conflict as “intractable” because of IRIA, yet this will cause us to overlook opportunities for positive change. It may also allow incipient conflicts to fester into full-blown catastrophes. One avoids conflict at one’s own peril.

(B) Firing Up

Firing up refers to a response whereby we become increasingly aggressive or adversarial. We may be more likely to respond aggressively—for example, by instigating legal proceedings or lashing out—when facing the faceless other than when the counterparty is known. In contrast to simply shutting down, the subject may feel incensed by the audacity of the counterparty. This may arise, for example, in an anonymous online “trolling” scenario, in which an unidentified party hides behind the safety of a keyboard and spreads inflammatory remarks on the Internet. We think to ourselves, “What a cowardly rat! I will *not* let this worthless bully—whoever it is—off scot-free.”

Consciously or unconsciously firing up may be, in part, a product of frustration with the other party. This frustration can arise from a multitude of sources, but one particularly powerful source is our feeling that the counterparty has (1) violated norms of openness and reciprocity and (2) acted cowardly.

First, in any conflict resolution, we make ourselves vulnerable. Conflicts inevitably involve potential losses, particularly when we lay our identity bare. When the counterparty conceals its identity, however, they are not reciprocating the profound act of vulnerability that the subject has undertaken.⁸⁰ In this respect, Marx submits that “[m]utual revelation is a sign of good faith which makes it easier to trust.”⁸¹ There is a sense that the counterparty is not returning the gesture in kind and is therefore untrustworthy. There is also the sense that the counterparty has violated a norm of reciprocity by not laying down the shield of anonymity as we have done, and they fail to grasp the importance of openness in resolving conflict.⁸²

⁸⁰ Marx, *supra* note 21.

⁸¹ *Id.* Marx adds that mutual revelation “makes possible reciprocity,” which is “perhaps the most significant of social processes.” *Id.*

⁸² See Nadler & Shestowsky, *supra* note 31, at 158 (“[T]he norm of reciprocity is fundamental in human behavior, even among strangers.” [citations omitted]).

Second, this refusal to reciprocate is cowardly. We feel frustrated that the counterparty is so spineless that he or she will not step into the daylight. We may toss our hands up and cry out, “Without knowledge of your identity, what else do I have to go on!?” Moreover, we may feel frustrated because the counterparty has swept away key information that might help us to identify the “self-interest or bias underlying an argument.”⁸³ This frustration often leads us to give a sharp response. Giving in to emotion, however, may be precisely the reaction the counterparty sought to provoke. The effect may be not only to encourage the counterparty’s inflammatory tactics (i.e., “fanning the flames”) but also to escalate the conflict.

Firing up may also reflect the belief of the identifiable party that competitive negotiation—as opposed to cooperative negotiation—is the only possible negotiation style that can be adopted where IRIA presents itself. Cooperative negotiation is “predicated on the search for common ground. It seeks reciprocity, mutuality, and the avoidance of breakdowns because of relationship problems.”⁸⁴ As noted above, reciprocity and mutuality are inherently absent in the IRIA scenario.⁸⁵ The core themes of integrative bargaining such as free exchange of information and open communication are stifled by IRIA. Moreover, trust, which is the bedrock of cooperative negotiation, is lacking; distrust is the assumed condition.⁸⁶ The result may be to abandon all hopes of integrative negotiation and instead stoke the flames of competition and distributive bargaining. The unfortunate upshot is that relying solely on distributive bargaining techniques not only fails to recognize that competition and cooperation are not mutually exclusive—and that they in fact require each other and are always present in any negotiation—but also limits creativity.⁸⁷

An illustration of the “firing up” response to IRIA comes from a recent U.S. defamation lawsuit. A Texas couple filed a lawsuit against anonymous Internet users who posted comments claiming that the two were sexual deviants, molesters, and drug dealers.⁸⁸ The couple brought a lawsuit, the

⁸³ Froomkin, *supra* note 22, at 116; see also *The Constitutional Right to Anonymity: Free Speech, Disclosure and The Devil*, 70 YALE L.J. 1084, 1111 (1961).

⁸⁴ Peter Adler, *Protean Negotiation*, EYE OF THE STORM LEADERSHIP, <http://www.eyeofthestormleadership.com/pg15.cfm> (last visited Dec. 15, 2015).

⁸⁵ Adler, *supra* note 84.

⁸⁶ *Id.*

⁸⁷ See MAYER, *supra* note 12, at ch. 2.

⁸⁸ See Ki Mae Heussner & Susanna Kim, ‘Anonymous’ Posters to Pay \$13 Million for Defamatory Comments, ABC News, Apr. 24, 2012, <http://abcnews.go.com/Business/jury-awards-13-million-texas-defamation-suit-anonymous/story?id=16194071>.

husband emphasizing that “[y]ou can’t post anonymous lies on the Internet without suffering the consequences.”⁸⁹ Much to the surprise of the commenters, the judge ordered the forum host to disclose the Internet Protocol (IP) addresses of the commenters, thus revealing their digital identities and, in turn, their human identities.⁹⁰

Much like the corporate veil, the veil of anonymity provided by electronic media is not impervious to being pierced. As Rovie notes,

[a] person with the appropriate level of tech-savvy (or the right court order) will be able to crack through almost any veil of Internet anonymity, and many ‘anonymous’ Internet participants give away much of their anonymity by using real names, personal details, or personal e-mail addresses in their on-line identities.⁹¹

This illustrates how anonymity is not always what it may appear, and an IRIA scenario can—in the blink of an eye—be transformed into a much more symmetrical situation.

The couple, after vigorously pursuing the case, were awarded \$13.78 million.⁹² It is impossible to know how (or whether) the conflict would have been resolved if the commenters’ names had been attached to their statements from the start, but there is reason to think that the commenters’ attempt to throw stones from behind the veil of anonymity strengthened the couple’s resolve to bring the counterparties to justice. If identity-related information were distributed more symmetrically, not only would the conflict probably never have arisen in the first place, but also the parties may have been more inclined to resolve the conflict through non-court mechanisms. After all, the court was—in the couple’s mind—the *only* way to resolve the conflict satisfactorily, since the identities of the counterparties could not be ascertained without the assistance of a court order.⁹³

(C) “Sweeping Aside”

“Sweeping aside” refers to a response whereby we sweep identity off the table entirely, focusing instead on logic and rational argument. Whereas “shutting down” involves avoidance of conflict, “sweeping aside” involves engaging in conflict, yet turning a blind eye to identity entirely. It differs from

⁸⁹ See Heussner & Kim, *supra* note 88.

⁹⁰ *Id.*

⁹¹ Rovie, *supra* note 57, at 30.

⁹² See Heussner & Kim, *supra* note 88.

⁹³ See Heussner & Kim, *supra* note 88.

“firing up” in that “sweeping aside” takes a calm, cool, Spock-like approach to conflict. The subject devotes his or her energies to logical, objective reasoning.

The rationale behind “sweeping aside” is that although the subject is unable to gain much information about the counterparty’s identity, the parties can still reach a mutually agreeable resolution by focusing on the concrete points at issue, detached from considerations of identity. We already do this naturally when we communicate using technology. Nadler and Shestowsky note that “[w]hen we communicate via technology, we attend less to the other person and more on the message they are disseminating.”⁹⁴ This message orientation can in fact be beneficial. Nadler and Shestowsky point to a study by Morley and Stephenson comparing phone and in-person negotiations.⁹⁵ Participants were put into dyads, with one individual in each dyad being given a “strong case” (i.e., a high number of strong arguments) and the other being given a “weak case.”⁹⁶ The strong case was more successful in the phone negotiation compared to the in-person negotiation; however, the weak argument was more successful in the in-person negotiation compared to the phone negotiation.⁹⁷ The conclusion to be drawn is that when social cues from a visualizable and identifiable counterparty are available, we are less affected by the quality of the argument itself.⁹⁸ Froomkin draws a similar conclusion, arguing that where there is no identifying information such as the age, sex, race, or national origin of the communicator, the communication must be judged solely on its content, “as there is literally nothing else to go by.”⁹⁹ This has the added benefit of making stereotyping more difficult. Accordingly, by “sweeping aside” the issue of identity, we can emphasize rational reasoning (where appropriate) and focus attention on the merits of competing arguments and interpretations.

Certain factors may militate in favour of this approach. For example, considering the conflict through the Material, Relational, Symbolic (MRS) framework,¹⁰⁰ applying logical reasoning and “separating the people from the problem” is advisable where the crux of the conflict falls in the “material”

⁹⁴ Nadler & Shestowsky, *supra* note 31, at 153 [citation omitted].

⁹⁵ *Id.* (citing I.E. MORLEY & G.M. STEPHENSON, *THE SOCIAL PSYCHOLOGY OF BARGAINING* (London: Allen & Unwin, 1997)).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Froomkin, *supra* note 22 at 155–56.

¹⁰⁰ *See generally*, LISA SCHIRCH, *RITUAL AND SYMBOL IN PEACEBUILDING* (2005).

category. A context in which this condition may prevail is eBay negotiations. The seller's identity is generally known, and his or her reputation and past commercial history is made available. Buyers, on the other hand, are often one-time shoppers whose identity is undisclosed. The "conflict" is primarily found on the material level, and thus identity clashes, differing worldviews, and competing symbols play a lesser role. I say "primarily" because, contrary to what many believe, no conflict can be completely extracted from symbols, cultures, meanings, and identities. Nothing is ever "just about the money." Where the issues are concentrated on the material level, however, disputants can strive for objectivity in determining, for example, the fair market price of a particular good; a quasi-scientific inquiry fits the circumstances. Although trust remains in question, the likelihood that the identified seller will "shut down" or "fire up" because of IRIA—which has greatest effect in conflicts bursting with relational or symbolic issues—is low. In sum, the "sweeping aside" approach is appropriate only in certain contexts—the key is to recognize when those contextual factors are present.

(D) *"Digging Around"*

"Digging around" refers to a response whereby we search for more identity-related information. This is perhaps the most natural response to IRIA. We seek to even the playing field. We neither shut down, nor have any particular emotional response to the fact of IRIA, nor sweep identity off the table. Instead, the Sherlock Holmes in us comes to the surface. The key insight motivating this response is that identity is multi-faceted: there are numerous aspects to anonymity and identity, and we can try to unearth hints and clues. Some of the ways to acquire more identity information about the counterparty include (1) asking questions, (2) looking for implicit clues in communications, and (3) persuading the other party to divulge more information. Another approach is to invoke the law.

The law is ambivalent toward anonymity. On the one hand, there are situations in which a consensus exists that anonymity is justified. Examples include informer privilege, the use of pseudonyms in criminal cases involving youth, whistle blower protection laws, anonymous pamphleteering, etc. On the other hand, the law is wary of anonymity, at least in the private law context. For example, contracts reduced to writing that contemplate an ongoing relationship require identity information of the parties.¹⁰¹ There is good reason for this. Our legal system is premised on the notion that legal

¹⁰¹ See Lucock & Black, *supra* note 2, at 8.

rights and duties are distributed between discrete, identifiable legal persons such that, in the event of a breach or transgression, the injured party can hold the identified counterparty accountable. The law thus encourages “digging around” in order to ascertain the counterparty’s identity—specifically, their legal identity. As Adams argues, “To have substantial exchange, you need to be fully present. That is why facing one’s accuser is a fundamental right of the accused.”¹⁰² Similarly, Larsson et al. conclude that “[i]dentification is key to the enforcement of law.”¹⁰³ This is linked to the law’s conception of accountability. Accountability requires that those responsible for wrongdoing be identified and brought to justice. If the wrongdoer remains anonymous, however, then by definition the wrongdoer cannot be identified, making it impossible to hold them accountable.¹⁰⁴

There are, however, exceptions to this assumed “identity transparency” model.¹⁰⁵ A telling example comes from the law of agency. Where the existence of a principal has been disclosed, but the principal’s identity remains undisclosed, the principal is said to be unnamed.¹⁰⁶ This is a rare instance of IRIA being recognized and permitted by the law.¹⁰⁷ In fact, the law of agency even permits the scenario in which an agent enters into a contract with another—the purchase and sale of real estate is a common example—but where the agent does not disclose the fact that the agent is acting for a principal.¹⁰⁸ This is the “undisclosed principal” doctrine.¹⁰⁹ The situation here is distinct from the comparatively transparent “unnamed principal” scenario: the negotiating party *thinks* that he or she knows the identity of the

¹⁰² Adams, *supra* note 19.

¹⁰³ Stefan Larsson et al., *Laws, Norms, Piracy and Anonymity: Practices of De-Identification in the Global File Sharing Community*, 6 J.R.I.M. 260, 261 (2012).

¹⁰⁴ See David Davenport, *Anonymity on the Internet: Why the Price May Be Too High*, 45 COMMUNICATIONS OF THE A.C.M. 33, 34 (2002).

¹⁰⁵ Davenport, *supra* note 104, at 34-35.

¹⁰⁶ *Friedmann Equity Devs. Inc. v. Final Note Ltd.*, 2000 SCC 34, [2000] 1 S.C.R. 842.

¹⁰⁷ *Undisclosed Agency*, US LEGAL, <https://agency.uslegal.com/undisclosed-agency/> (last visited Feb. 8, 2017).

¹⁰⁸ See *Friedmann Equity Devs. Inc. v. Final Note Ltd.*, 2000 SCC 34, [2000] 1 S.C.R. 842.

¹⁰⁹ See Amanda Stickley, *When Dr Jekyll Turns Out to Be Mr Hyde: The Undisclosed Principal to a Land Contract and Section 52?*, 6 TRADE PRAC. L.J., 19, 20-21 (1998) (noting that many lawyers and scholars have argued that the undisclosed principal doctrine is at odds with one of the fundamental rules of contract law—namely, privity of contract).

counterparty—it is presumably that of the person on the other side of the table—but in fact is entering into a contract with a principal.¹¹⁰ In short,

the concept of the undisclosed principal involves a third party who is unaware that the person with whom he is dealing is acting as agent for another. The unnamed principal concept involves the disclosure by the agent to the third party of the existence, but not the identity, of the principal.¹¹¹

Judge Ambrose in *Williams v. Bulat* acknowledged that purchasers often keep their identity hidden by engaging an agent as a strategic bargaining practice aimed at negotiating a lower price,¹¹² and that this avoided paying an inflated price for property.¹¹³ That is, if the purchaser’s financial position and status were known, a vendor would likely respond by demanding a higher price (i.e., engaging in price discrimination).¹¹⁴

The foregoing suggests that the law encourages the subject to “dig around” in order to ascertain the counterparty’s legal identity, as otherwise there can be no recourse to legal remedies. Moreover, the above observations raise new, complex questions: How do we respond when we know the individual with whom we negotiate is in fact an agent bargaining on behalf of an unnamed principal? Still more vexing, how do we deal with the reality that the counterparty, though silent on the matter, may be simply a puppet for an undisclosed principal? This unnamed (or undisclosed) principal scenario illustrates how IRIA can arise in connection with intermediaries. When intermediaries are added to the mix, the complexity of the matter expands exponentially.

The optimal response of the identified subject in IRIA scenarios may be to probe the situation and gather information. The assumption underlying this belief is that more information is better (though this is not always the case).

¹¹⁰ Notably, the agent may nonetheless also be a party to the contract in certain circumstances. Stickley, *supra* note 109, at 20.

¹¹¹ *Compton Petroleum Corp. v. Alberta Power Ltd.*, 1999 ABQB 42 at para 39, 242 A.R. 3. *See also* 999939 Ontario Ltd. (c.o.b. The Guitar Shop) v. Stutman, 2011 ONSC 1352 at para 9, quoting Harvey & McPherson’s *Agency Law Primer* (“When agent acts with actual, or presumed authority on behalf of a named or unnamed principal to make a contract with a third party, subject to a couple of exceptions, the resulting contract is between a third party and the principal. The agent drops out of the picture, so to speak, and can neither sue nor be sued on the contract.”).

¹¹² [1992] 2 Q.d.R. 566 at 571.

¹¹³ *See* Stickley, *supra* note 109, at 22.

¹¹⁴ *See* Froomkin, *supra* note 22, at 115 (“If merchants know your demographic information, income, credit rating, criminal record, and buying history when you walk in the store, or log into the cybermall, they may be tempted to engage in price discrimination . . . or even more invidious forms of discrimination.” [citations omitted]).

Anonymity does not mean we cannot learn about the other party's interests, needs, and values.

(E) *“Projecting Upon”*

“Projecting upon” refers to a response whereby we fill in the gaps and make source attributions, often haphazardly. This is without question the most dangerous response to IRIA. It is perhaps also the most common. In contrast to “digging around,” when we “project upon” the counterparty, we are filling in information gaps not based on solid evidence, but based on our own desire to remove ambiguity and uncertainty.¹¹⁵

“Filling in” is both tempting and perilous. This notion is captured by Emond: “Messages that are incomplete or distorted by background noise invite the recipient to ‘fill in’ the missing information Unfortunately, ‘filled in’ information is likely to further obscure and distort the message.”¹¹⁶ Applied to IRIA scenarios, the identified subject is prone to fabricate the counterparty's identity, “filling in” informational asymmetries by drawing (often dubious) assumptions. The solution, in my view, is to resist the temptation to make assumptions and instead to embrace the “void” in information, focusing on what information *is* available and then directing our energies toward crafting creative solutions and asking clarifying questions.

One fraught issue is that the subject tends to see the “faceless other” in the most narrow sense. Due to the lack of contextual information (encouraging or otherwise) about the counterparty, we tend to assume the worst and leave no room for contrary interpretations. One-sided anonymity deprives the subject of the opportunity to have “interactive experiences” that help him or her to see the counterparty as broadly as possible, “experiences that foster the recognition of shared identities as well as those that are different.”¹¹⁷ How are we to recognize shared identities when the other side will not even share *its own* identity? In short, we are left guessing, and in turn we may be anxious to remove the discomfort of uncertainty by “projecting upon” the other. Whereas the known counterparty can be viewed in a broad, open-minded manner, the “faceless other” is often perceived in a narrow, ungenerous fashion.

¹¹⁵ See MAYER, *supra* note 7, at 71–76 (noting that uncertainty can be immobilizing and can engender rigidity, neither of which are constructive because individuals tend to remove uncertainty in whatever way they can).

¹¹⁶ D. Paul Emond, *The Essential Role of Communication in Negotiation*, in THE THEORY AND PRACTICE OF REPRESENTATIVE NEGOTIATION 245, 253 (Colleen M. Haycz, Trevor C.W. Farrow & Frederick H. Zemans eds., 2008).

¹¹⁷ Michelle LeBaron, *Culture and Conflict*, BEYOND INTRACTABILITY (July 2003), <http://www.beyondintractability.org/essay/culture-conflict>.

We may (knowingly or unknowingly) ascribe to the unnamed counterparty malicious intentions, wicked traits, and base motives.¹¹⁸ Theorist such as Carl Jung might argue that, in doing so, we are projecting our shadow.¹¹⁹ How we perceive the “other” is our “characterization frame,” which tends “to consist of negative, often stereotyped attributions of blame [...] or causality in the conflict.”¹²⁰ This notion of “assuming the worst” in others is, at its core, about protecting ourselves from being vulnerable. It is a defense mechanism. When we are overly trusting of the counterparty, we open the door for them to take advantage of us, to do us harm when our guard is down.¹²¹

Yet, we may go even further. Rather than project undesirable traits on the counterparty, we may dehumanize them altogether. Terjesen neatly summarizes this phenomenon:

A less often addressed problem with ethical practice and anonymity is that anonymity depersonalizes those we do business with: they’re faceless buyers or sellers who don’t resemble the flesh and blood people we interact with on a regular basis. As a result of this depersonalization, we have a harder time being motivated to treat them ethically. [A]nonymity drains a situation of its moral character.¹²²

Although this account suggests we dehumanize the counterparty subconsciously—as if humans naturally struggle to see the “faceless other” as another human being, worthy of our full respect—this effect may equally take place on a conscious, deliberative level. If we convince ourselves that the counterparty is not *really* like us—that the counterparty does not feel pain like we do—we guard ourselves against having an emotional response to their plight.¹²³ IRIA thus becomes a justification for more aggressive bargaining tactics. In this sense, the information asymmetry may in fact disadvantage the party to whom the information asymmetry favours, which seems counterintuitive. Nonetheless, just because the *information* asymmetry is in favour of the unidentified party does not mean that the *distribution of power* is in favour of that party. In fact, there is a compelling argument that, in

¹¹⁸ *The Shadow*, in THE ESSENTIAL JUNG 91 (Anthony Storr ed., 1983)

¹¹⁹ See *The Shadow*, *supra* note 118 (theorizing that we unconsciously project the shadowy aspects of our personality on the other party).

¹²⁰ See Campbell & Docherty, *supra* note 78, at 42.

¹²¹ See Adler, *supra* note 84 (“If everyone is trusting, it is easy to be cheated by competitors disguised as cooperators.”).

¹²² Terjesen, *supra* note 21, at 49.

¹²³ Terjesen, *supra* note 21, at 52.

certain circumstances, the advantaged party in the IRIA scenario is the party whose identity as known, particularly where that party's identity is a source of power (like, for example, where that identity confers status, wealth, and respect).

One device related to "projecting upon" is visual imagery.¹²⁴ Research shows that visibility of the "other" promotes helping behaviour, even if no other identifying information is available.¹²⁵ If the aspect of anonymity at issue takes the form of "visual anonymity," and we are cognizant of this, we might simply visualize the other as having a human face.¹²⁶ This moves us from abstraction to humanization, and may increase our tendency to bargain in a more integrative and cooperative manner.¹²⁷ The danger, of course, is that in creating a specific, fictionalized "person," we may be projecting specific attributes and traits on the counterparty that do not accord with their actual identity. We must therefore find the "sweet spot" between experiencing the counterparty as a nameless, faceless abstraction and projecting onto the counterparty a fully fleshed out, but false, identity.

The key, I submit, is to recognize our propensity to project upon or dehumanize anonymous counterparties and to find ways of establishing shared values, mutual interests, and community, as well as recognizing and reconciling the ways in which the parties differ. Reframing may be central to promoting dispute tractability, as it can facilitate "acknowledging the existence of underlying identity issues . . . and reducing the negative characterizations that parties use to describe each other."¹²⁸ Moreover, we should strive to understand *why* the other party is anonymous: Was it by choice? What might be the reasons why the counterparty wants to remain anonymous?¹²⁹ Can we empathize with, or at least understand, this decision?

¹²⁴ See Burkell, *supra* note 7.

¹²⁵ See *id.* at 198 (noting that "[v]isibility (both of self and other) also reduces aggressive behavior.").

¹²⁶ *Id.* at 201.

¹²⁷ *Id.*

¹²⁸ Campbell & Docherty, *supra* note 84, at 780.

¹²⁹ Marx, *supra* note 21. To provide a starting point, Marx lists 15 rationales for anonymity: to facilitate the flow of information; to obtain personal information for research; to encourage attention to the content of the message; to encourage reporting, information seeking and self-help; to obtain a resource or encourage action involving illegality; to protect donors or those taking controversial but socially useful action; to protect strategic economic interests; to protect one's time, space and person; to aid judgments based on specified criteria; to protect reputation and assets; to avoid persecution; to enhance rituals, games, play and celebrations; to encourage experimentation and risk-taking; to protect personhood; and traditional expectations. *Id.* See also Scott, *supra* note 1 (positing that individuals may strategically choose anonymity "when they have less relational status, are conveying suspect or sensitive information, have low credibility concerns, or can anonymize with relative ease.").

Asking ourselves these questions helps to dig us out from cycles of accusation, blaming, and “projecting upon,” and instead move us towards greater understanding and empathy.

IV. EMBRACING ASYMMETRY

One of my principal arguments is that, in many circumstances, the optimal response is to *embrace* asymmetry. The fact that a negotiation is characterized by IRIA need not leave us paralyzed or closed-minded; instead, we should use IRIA as a springboard for *creativity* and novel approaches to resolving conflict.¹³⁰ Embracing asymmetry differs from “sweeping aside” in important respects.¹³¹ Whereas the latter blocks out considerations of identity, focusing solely on the purportedly “objective” merits of the arguments, embracing asymmetry maintains that identity is a central consideration in *any* conflict, and IRIA-structured conflicts are no exceptions.¹³² Embracing IRIA does not push identity off the table; it places identity firmly at the center of the debate and proceeds to conceptualize identity in new and creative ways.¹³³

One-sided anonymity can distort the interpretation of messages relayed in communication.¹³⁴ On the other hand, a dearth of information can sometimes be a boon. It is all too easy to become distracted by the “noise” created by an overabundance of identity-related information. This too can distort messages and interfere with interpretation. When we embrace anonymity, by contrast, and accept that we have relatively little identifying information, we simply *listen*. The distortion of messages and the distraction caused by the deafening roar of “too much information” both subside.

Consider how we interpret and appreciate art. If we are presented a painting, and we are told it is the work of Claude Monet, and we are given a lengthy account of Monet’s life, we will inevitably interpret the painting in light of our understanding of Monet. By contrast, if we are presented the same painting *without* being told of its creator, we immerse ourselves in the

¹³⁰ See Tatsushi Arai, *Conflict Paradigms: Toward a Theory of Creativity in Conflict Resolution* (Paper delivered at the International Peace Research Association (IRPA) Conference in Leuven, Belgium, July 15–19, 2008) (Arai sees creativity as the overlap between unconventionality and viability. The former refers to novelty or unorthodoxy in approach; the latter refers to the sense of having practical effectiveness for resolving the conflicts at hand).

¹³¹ *See id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

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painting, and the painting alone. True, we may pass over the nuances of the piece that reflect the influence of Boudin's influence on Monet's wispy brush strokes, which might only be detected with the benefit of identifying information, but we capture something more valuable: the essence of the work in its own right. Applied to the conflict resolution context, we are approaching issues with an open mind, and we import fewer assumptions into our lens of interpretation.

Just as IRIA can open up opportunities for creativity by removing background noise and assumptions, so too can it encourage the relatively identifiable party to think in a more sophisticated way about the identifying information that *is* available.¹³⁵ For example, thinking in a nuanced way about *why* the counterparty has presented itself anonymously can spur creative thought about how to frame and resolve conflicts. However, the subject must remain vigilant and avoid placing too much attention on particular aspects of identity (i.e., latching on to some piece of information) to the exclusion of other important considerations.

The identified party, by embracing asymmetry, comes to appreciate that its position in the IRIA relationship is not always the one of disadvantage.¹³⁶ IRIA may serve to shift power in favour of the identified party where, for example, the anonymous party is unable to invoke its status or authority that is tied to its identity.¹³⁷ More importantly, being the relatively identifiable party can be a powerful impetus for that party to act in accordance with his or her self-concept. It is a reminder that "who I am" and "who I see myself to be" are fundamental considerations that should drive our actions. In this sense, IRIA can guide us to grapple with our *own* identity more profoundly than we would if identity-related information were distributed symmetrically.¹³⁸

I submit that IRIA can be beneficial for *both* parties where the identified party embraces asymmetry. One argument in support of this is that anonymity protects fundamental values that the parties may share. For example, Wallace argues that anonymity has numerous positive effects, including "allowing people to express themselves in a manner that their local community might discourage."¹³⁹ Free expression is a value the parties may share deeply, and

¹³⁵ Tatsushi, *supra* note 130.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ See also Larsson et al., *supra* note 103, at 262 (stating that anonymity can be "liberating, allowing [individuals] to become less inhibited by social conventions and restraints."). See also McIntyre v. 350

they may prize that value even at the expense of accountability. Moreover, anonymity can be liberating; it can free us to think more creatively by (almost literally) “stepping outside ourselves.”¹⁴⁰ Anonymity can also encourage greater openness, honesty, and disclosure.¹⁴¹ Yet, there are limits to the value of anonymity.¹⁴² When disputants sense that anonymity is not being used to protect core values such as free and honest expression, and is instead being abused as an instrument for inciting conflict and disagreement, the best response may be to shut the lines of communication down entirely or insist on a more transparent, open means of resolving the conflict.¹⁴³ Embracing anonymity can promote shared values, but only when anonymity is not being abused.¹⁴⁴

Embracing anonymity helps us to appreciate that the counterparty may well have *chosen* to remain anonymous for one of many reasons.¹⁴⁵ For example, the counterparty may legitimately be avoiding the possibility of retaliation.¹⁴⁶ To illustrate, consider teacher evaluations.¹⁴⁷ One 1977 study demonstrated that students, on average, evaluate their teachers more critically

Ohio Election Comm’n, 514 US 334, 357 (1995) (“Anonymity is a shield from the tyranny of the majority.”); Froomkin, *supra* note 22, at 115 (“Not everyone is so courageous as to wish to be known for everything they say, and some timorous speech deserves encouragement.”). Consider the importance and influence of *The Federalist Papers* in the U.S. in the late 18th century. At the time of publication, the authorship of *The Federalist Papers* remained hidden behind the pseudonym “Publius.” This was, in part, a device used to enable the authors to freely articulate ideas that were, to some, unorthodox or even heretical, without fear of reproach or social backlash.

¹⁴⁰ See Konnikova, *supra* note 57 (“[A]nonymity has also been shown to encourage participation; by promoting a greater sense of community identity, [Internet] users don’t have to worry about standing out individually. Anonymity can also boost a certain kind of creative thinking and lead to improvements in problem-solving. . . while face-to-face interactions tend[] to provide greater satisfaction, in anonymous settings participation and risk-taking flourish[].”).

¹⁴¹ See Burkell, *supra* note 7, at 195 (concluding that empirical studies suggest that “anonymity typically leads to a great[], and presumably more honest, reporting of a variety of behaviours . . . [and] less distortion of other personal information.”).

¹⁴² *Id.* at 196.

¹⁴³ See Minjeong Kim, *The Right to Anonymous Association in Cyberspace: US Legal Protection for Anonymity in Name, in Face, and in Action*, 7 SCRIPTED 51, 52 (2010) (“[T]he benefits of anonymity can be dubious when it is used to avoid accountability for socially unruly behaviours and illegal activities.”).

¹⁴⁴ Kim, *supra* note 143, at 52.

¹⁴⁵ *Id.* at 61.

¹⁴⁶ *Id.*

¹⁴⁷ See Eugene F. Stone, Mark D. Spool & Samuel Rabinowitz, *Effects of Anonymity and Retaliatory Potential on Student Evaluations of Faculty Performance*, 6 RES. IN HIGHER EDUC. 313 (1977) (studying the effect of anonymous student evaluations).

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when anonymous compared to when identified.¹⁴⁸ The researchers speculated that this effect occurs because anonymity reduces the possibility of retaliation, and therefore the students—who occupy a positive of relative power weakness—can be more honest.¹⁴⁹ Research indicates that while subordinates typically prefer anonymity when ranking superiors, superiors view such anonymity negatively, emphasizing the value of accountability.¹⁵⁰ This illustrates a tension between (1) honest and open communication and (2) accountability.

In fact, IRIA gives rise to numerous paradoxes, which include open and honest communications vs. civility, accountability vs. privacy, creativity and experimentation vs. irresponsible behaviour, and the subject's interests in knowing vs. the counterparty's interests in protecting identity information.¹⁵¹ These tensions often leave the subject vigorously defending what he or she perceive as the “right” end of the polarity. The better approach, however, is to embrace IRIA and search for ways to integrate *both* ends of these polarities and to search for creative solutions.

Rather than getting incensed by the student's critical comments, the teacher, might benefit by stepping back and embracing the role anonymity plays in this transaction. Although the teacher may wish for greater context so as to understand the particular comment—such as the student's educational history, goals, expectations, etc.—there is value in appreciating and absorbing the feedback and recognizing anonymity's facilitative role in the exchange, rather than getting emotionally tangled up in the belief that IRIA has distorted the communication.

Of course, the teacher may legitimately experience frustration for several reasons. For example: (1) she cannot ask clarifying questions; (2) she lacks contextual information about the student that would assist her in understanding and interpreting the evaluation; and (3) the evaluation presents itself in a vacuum, without the aid of visual or auditory cues. Anonymity thus involves trade-offs; while the resolution of the conflict or issue may be facilitated in some respects, it is hindered in others. Embracing asymmetry is about recognizing these trade-offs and thinking about the scenario in a more creative, open-minded way.

Before concluding, there is a final piece that must be added to the puzzle: *culture*.

¹⁴⁸ Stone, Spool & Rabinowitz, *supra* note 147, at 313.

¹⁴⁹ See Burkell, *supra* note 7, at 196.

¹⁵⁰ Scott, *supra* note 1, at 386.

¹⁵¹ See Marx, *supra* note 21.

V. IRIA AND CULTURE

A key determinant of how one responds to IRIA is one's culture. The significance and effects of anonymity vary across (and within) cultures. We can reasonably expect that individuals from cultures characterized as "high-context communication" cultures will encounter greater struggles in the IRIA scenario. Individuals from cultures closer to the "low-context" end of the spectrum are more inclined to focus on the substance of what is in dispute (thus predisposed to the "sweeping aside" response) and exhibit a willingness to heed Fisher and Ury's hallowed advice to "separate the people from the problem."¹⁵² By contrast, those accustomed to high-context communicative norms may feel paralyzed by the fact that although *my* history, beliefs, and identity lay bare, those of the *counterparty* remain shrouded in secrecy.¹⁵³ The core issue is that most of a message in high-context communication is conveyed by the context *surrounding* the message, rather than the words themselves.¹⁵⁴

We can understand the high- to low-context spectrum not only as relative cultural "starting points" for communication, but also as individual communicative strategies.¹⁵⁵ Where some aspect of anonymity is embedded in the communicative mode, the parties may be forced to adopt a low-context communicative exchange, focusing on express, direct signals and relying little on implied, indirect signals. Conversely, anonymity may reflect a *choice*, rather than a *condition*. For example, one party may prefer the detached, objective flavour of low-context communication, and therefore may opt to remain anonymous in an attempt to encourage this negotiation style. By contrast, the counterparty may feel the opposite—that the nuanced and multidimensional nature of high-context negotiations is preferable, and therefore may push for mutual identity disclosure. The result is a powerful tension, and a potentially precarious IRIA landscape.

Through the high-context communication lens, there is simply not a lot to work with. The most critical contextual detail—who is talking—is absent. The potential for miscommunication is pronounced. Moreover, in some cultures, identity transparency may be a precondition to the conflict resolution process. That is, if you cannot (or will not) be open about your identity, how

¹⁵² See ROGER FISHER & WILLIAM L. URY, *GETTING TO YES* 17-40 (1981).

¹⁵³ See FISHER & URY, *supra* note 152.

¹⁵⁴ See LeBaron, *supra* note 117.

¹⁵⁵ *Id.*

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can one expect you to be open about anything else? The subject would “shut down,” or at least clam up, in the absence of such information. Indeed, in the absence of an existing relationship, assumptions rooted in cultural lenses may leave the subject questioning whether revealing information will lead to a mutually beneficial exchange of information. Instead, revealing information to a “stranger” may be presumed to lead directly to that stranger, using the information to that stranger’s own benefit and to the subject’s own detriment.¹⁵⁶

Recalling the three aspects of anonymity, certain aspects may have greater paralyzing effect. It is plausible that “visual anonymity” may be fatal to negotiation in one culture, but relatively unimportant in another. Equally, “action anonymity”—a lack of knowledge as to the counterparty’s past actions and associations—may be a trivial matter in one culture, yet vitally important in another. The same goes for the lay understanding of anonymity as the concealing of one’s name. In Western, market-oriented societies, we do not bat an eye when buying and selling shares with complete anonymity on the stock market; yet, in a different cultural context—say, the purchase and sale of commodities in rural South America—anonymity may have far greater effect.

One-sided anonymity may have the effect of leaving only one set of cultural frames in the subject’s contemplation: the subject’s own cultural frames. As Kertsen observes, “In face-to-face negotiations subjects may modify their behavior and attitudes according to their perceptions of the counterparts’ culture. In anonymous negotiations, participants cannot rely on these clues and thus are more likely to base their behavior on scripts inherent to their own culture.”¹⁵⁷ The result is that the likelihood of making a cultural faux pas, overlooking important cultural values, and failing to contemplate alternative cultural frames and viewpoints increases exponentially. Culture remains hidden beneath the surface, and relying on only one set of cultural frames leaves a vast set of symbols and meanings unearthed.

To resolve conflicts effectively, we must attend to (1) what aspects of anonymity are present and (2) how those aspects have significance both through our own cultural lens and that of the counterparty. This requires that

¹⁵⁶ See Nadler & Shestowsky, *supra* note 31 at 158.

¹⁵⁷ Gregory E. Kertsen & Sabine T. Köszegi, *The Effects of Culture in Anonymous Negotiations: Experiment in Four Countries* (Paper delivered at the 35th Hawaii International Conference on System Sciences, 2002) at 9, <http://www.computer.org/csdl/proceedings/hicss/2002/1435/01/14350027b.pdf>. Kertsen & Köszegi add, “when most obvious signs of culture like physical distance people try to keep, their facial expressions, manners, etc. are removed, is there any possibility left for cultural differences to manifest themselves?”

we constantly strive for greater cultural fluency. At the same time, we must actively counter our tendency to stereotype and over-generalize. Although anonymity may *tend* to produce certain effects in particular cultures, there will always be variation between individuals within that culture—and, more importantly, each of us belongs to multiple cultures that overlap and interact.

VI. CONCLUSION

This paper has examined the IRIA in conflicts. Where a person remains anonymous—understanding anonymity to be a multidimensional concept and a matter of degree—curious behaviours ensue. The subject will often respond in one of five ways, with that choice often being made unknowingly and haphazardly. This paper has called for a more sophisticated understanding of the role anonymity—and, in particular, IRIA—plays in conflicts, and has advocated for an unconventional, but often superior, approach: *embracing* anonymity. It is hoped that this new appreciation for IRIA will result in a greater capacity for achieving integrative bargaining solutions and a more nuanced approach to conflict resolution.

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